

# **INSTRUCTIONS FOR USING THE MICHIGAN SCHOOL BUSINESS OFFICIALS (“MSBO”) PROTOTYPE FORM OWNER/CONSTRUCTION MANAGER AGREEMENT**

Please be advised that the purpose of this Instruction Sheet is to explain to School District Owners how to properly utilize the MSBO prototype form – Owner/Construction Manager Agreement.

- The attached Agreement should only be used by an Owner who intends to use the services of a Construction Manager in conjunction with the services of its Architect.
- The MSBO prototype form – Owner/Construction Manager Agreement is intended to be used as an Addendum (“Addendum”) to the Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is NOT a Constructor – Construction Manager – Adviser Edition, AIA Document B801/CMA – Electronic Format, 1992 Edition (“Agreement”) which may be obtained from your Construction Manager.
  1. Insert the Date of the Contract, Name of Owner, Name of Architect, Name of Construction Manager, Description of the Project (or insert “See Detailed Description of the Project” and attach the Description of the Project) on Page 1 of the Agreement.
  2. Insert the following language in Article 14 as Paragraph 14.2:

14.2 See Addendum attached hereto and incorporated herein by reference which amends this Agreement in its entirety, as if the same had been originally incorporated herein.
  3. Sign the Agreement on Page 14 and have the Construction Manager sign the Agreement on Page 14, where indicated.
- The following Paragraphs within the Addendum must be reviewed, negotiated and filled-in prior to contract execution:
  1. Paragraph 2.3.31 – This language must be contained in the Bid Specifications for the Contractors.
  2. Paragraph 5.2.2 – Choose option A, B or C.
  3. Paragraph 7.1– Choose option A or B.
  4. Paragraph 11.1.2 – Insert amount of insurance (Note: The School District’s Insurance Carrier and Risk Management Administrator should

review the insurance provisions within the Agreement to ensure such insurance provisions are adequate to protect the interests of the School District Owner).

5. Paragraph 12.1.1.5 – Insert amount of Personnel Reimbursable Rates for Project Personnel into **Exhibit A** and provide personnel rates, where indicated.
  6. Paragraph 12.1.1.6 – The Agreement references an attached **Exhibit B**, the General Condition Items. **Exhibit B** identifies items that have traditionally been designated as General Conditions. Prior to contract execution, the parties must decide if any other items should be added or removed from the Exhibit.
  7. Paragraph 13.2.1 – Insert amount of Basic Compensation (Choose option A or B).
  8. Paragraphs 13.3.1 – Attach list of Hourly Billing Rates for Additional Services (**Exhibit A**).
  9. Paragraph 13.5.1 – Insert number of months (Note: The date of the Agreement, on Page 1, will impact this Paragraph).
  10. Paragraph 13.5.2 – Insert number of days.
  11. Paragraph 14.1 – Insert amount of insurance (Note: The Owner’s Insurance Carrier and Risk Management Administrator should review the insurance provisions within the Addendum to ensure such insurance provisions are adequate to protect the interests of the School District Owner).
- The Addendum references, at Paragraph 14.3, a Team Responsibility Matrix. Such Matrix must be agreed to by the Owner, Architect and Construction Manager and attached to the Addendum. Also, the date of said Matrix must be inserted into Paragraph 14.3 prior to contract execution.
  - The following are optional clauses which may be negotiated with the Construction Manager and inserted into the Addendum:
    1. Paragraph 1.1.1 – Key Personnel:

The Construction Manager agrees to commit key individuals throughout the duration of the Project as identified in **Exhibit C** attached hereto. In this case, **Exhibit C** must also be attached.

2. Paragraph 1.1.6 – Bond Contingency:

Basic Compensation of the Construction Manager and of the underlying school construction Projects will be financed through the Owner's issuance of General Obligation Unlimited Tax Bonds (the "Bonds"), if such election is successful.

Construction Manager shall provide all services necessary to pre-qualify the Bonds with the Michigan Department of Treasury pursuant to the State Loans to School Districts Act, MCL 388.921 et seq., and to assist the Owner in its bond election. Construction Manager shall not provide any further services until Construction Manager receives written notice from Owner that Owner has issued the above-referenced Bonds and authorizes Construction Manager to proceed under the Agreement, unless otherwise directed by Owner in writing.

Notwithstanding any other provision of this Agreement to the contrary, Construction Manager acknowledges that compensation for any services to be performed by Construction Manager is expressly contingent upon Owner's issuance of General Obligation Unlimited Tax Bonds. In the event that Owner does not issue such Bonds, in the complete discretion of Owner, Owner may terminate this Agreement and Owner shall not be responsible for compensating Construction Manager.

If you choose this option, Paragraph 13.5.1 should be modified to read as follows:

"If the Basic Services covered by this Agreement have not been completed within \_\_\_\_\_ (\_\_\_\_) months from the date of the sale of the Bonds, and if sold in separate series, from the date of the sale for that particular series, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as provided in Subparagraphs 12.2.3 and 13.3.1."

Also, Exhibit B should be modified by adding the following phrase after the word "approval" in the first sentence as follows:

“ . . . which estimate shall not exceed the amount identified for such items in the 200\_\_ Bond Application for Prequalification.”

3. Paragraph 2.19 – Lowest Responsible Bidder:

When recommending awards to the Owner, it is the Construction Manager’s responsibility to confirm that the successful bidder is the “lowest responsible bidder” as that term is used in Attorney General Opinion, 1959-60, No. 3303, Vol. 1, p. 169.

4. Paragraph 2.20 – Arbitration:

All references to Arbitration shall be removed from each AIA type contract prepared including, but not limited to, Arbitration language within the Standard Form of Agreement Between Owner and Contractor and the General Conditions of the Contract for Construction.

5. Paragraph 11.3.1 – Indemnification:

Additionally, the Construction Manager agrees to indemnify, defend and hold harmless the Owner, its successors, assigns, employees and agents from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney’s fees, arising out of the (i) the negligent acts or willful misconduct of the Construction Manager, its officers, directors and employees, agents or subcontractors; (ii) any breach of the terms of this Agreement by the Construction Manager; or (iii) any breach of any representation or warranty by the Construction Manager under this Agreement. The Construction Manager agrees to notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under this Agreement.

**EXHIBIT A**

**PERSONNEL REIMBURSABLE RATES**

Reimbursable Rates for Project Personnel shall be reimbursed at a not-to-exceed cost of \$\_\_\_\_\_. Reimbursable Rates for the Project Personnel will be reimbursed using the following rates:

Note: In the event the not-to-exceed Personnel Reimbursable Rate is not needed, the remaining amount (savings) shall inure to the benefit of the Owner.

## EXHIBIT B

### GENERAL CONDITION ITEMS

Prior to the start of Construction, the Construction Manager shall provide a cost estimate breakdown for all General Conditions required for completion of the Project for the Owner's review and approval. These items will be paid for monthly, at cost, without any mark-up. The Owner shall have the option of providing the Construction Manager with any General Condition items where such items meet or exceed the Construction Manager's reasonable requirements.

Any General Condition items purchased by the Construction Manager for the Project in conjunction with this Agreement which are charged to the Owner shall be the property of the Owner during and at the completion of the Project. General Condition items are identified as follows:

#### FIELD OFFICE SUPPORT

- Office Trailer Rental
- Office Space or Trailer Setup
- Maintain Field Office
- Security System
- Outside Services
- Office Cleaning
- Architect's Trailer Rental
- Architect's Space or Trailer Setup
- Radios
- Electric Hookup – Trailers and Office
- Electric Usage – Trailers and Office
- Water Hookup – Trailers and Office
- Water Usage – Trailers and Office
- Sewer Hookup – Trailers and Office
- Telephone/Network Setup
- Telephone Monthly Costs
- Office Furniture/Furnishings
- Calculators
- Typewriter
- Fax Machines/Supplies
- Office and Miscellaneous Supplies
- Copier/Supplies
- Photocopying Out-sourced
- Engineering Supplies
- Cameras/Film and Processing
- Drawing Reproduction
- Computers/Printers
- Software (Company Approved CMS. Sched.)

- Postage/Overnight Express

#### TEMPORARY UTILITIES – TEMPORARY HEAT

- Temporary Heat Setup and Maint.
- Temporary Heat-Fuel
- Maintenance of Perm. System
- Temporary Water & Sewer Hookup
- Temporary Water & Sewer Usage
- Temporary Electric Hookup
- Temporary Electric Usage

#### TEMPORARY FACILITIES, FENCES AND BARRICADES

- Temporary Storage Sheds
- Temporary Toilets/Port-a-johns
- Temporary Fence
- Barricades
- Covered Walks/Overhead Protection
- Temporary Rail
- Temporary Roads
- Job Signs
- Temporary Parking/Bus Services
- Temporary Roof Protection
- Drinking Water
- Temporary Partitions-Dust Part.
- Temporary Ladder & Stairs
- Dust Control, Road Maintenance

#### WEATHER PROTECTION

- Snow Removal
- Weather Protection Enclosures
- Pumping/De-watering
- Erosion Control

#### SAFETY AND SECURITY

- Watchman-Security Service
- Guard Shacks
- Safety Program
- Safety Incentives
- Extinguishers
- First Air Kit
- Hard Hats and Rain Gear
- Safety Signs

#### CLEAN-UP

- Clean-up Foreman
- Periodic Clean-up
- Final Clean-up
- Final Glass Cleaning
- Hauling trash by truck
- Dumpsters
- Dump Fees with Dumpsters
- Rubbish chutes-install/maintain/remove
- Dump carts

#### PROTECTION OF FINISHED AND EXISTING WORK

- Protect Existing Facilities
- Protect Finished Work
- Elevator Protection-Cabs and Jambs

#### TOOLS AND EQUIPMENT

- Surveying Equipment and Supplies
- Small Tools
- Miscellaneous Equipment

#### MATERIAL HANDLING AND HOISTS

- Temporary Elevator Cabs
- Hoist and Crane Communications
- Cranes
- Crane Operators
- Elevator Operators
- Hoist Operators
- Buck Hoists/Single or Double

#### CONSULTANT AND PROFESSIONAL SERVICES

- Boring and Soil Investigation Reports
- Testing and Inspection
- Air Monitoring Services
- Test and Balance
- Special Certifications
- Predemolition/Preconstruction Survey
- Legal Expenses
- Public Relations
- Surveyors

#### PERMITS AND FEES

- General Building Permits
- State Fire Marshal
- Local Fire Marshal

- HVAC and Plumbing Permits
- Electrical Permits
- DNR Permit
- Flood Plain Permits

**EXHIBIT C**

**KEY PERSONNEL**