

INSTRUCTIONS FOR USING THE MICHIGAN SCHOOL BUSINESS OFFICIALS (“MSBO”) PROTOTYPE FORM OWNER/ARCHITECT AGREEMENT WITHOUT CONSTRUCTION MANAGER COORDINATION

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/Architect Agreement without Construction Manager Coordination (AIA Document B141 – 1987 Edition).

- The attached Agreement should only be used by an Owner who does not intend to use the services of a Construction Manager in conjunction with the services of its Architect.
- The following Paragraphs within the Agreement must be reviewed, negotiated and filled-in prior to contract execution:
 1. Paragraph 2.6.23 – This language must be contained in the Bid Specifications for the Contractors.
 2. Paragraph 6.1 – Choose option A or B.
 3. Paragraph 11.2.1 – Insert amount of Basic Compensation.
 4. Paragraphs 11.3.1 and 11.3.2 – Attach list of Hourly Billing Rates for Additional Services (**Exhibit B**).
 5. Paragraph 11.3.3 – Insert multiple (if any).
 6. Paragraph 11.4.1 – Insert multiple (if any).
 7. Paragraph 11.5.1 – Insert number of months (Note: The date of the Agreement, on Page 1, will impact this Paragraph).
 8. Paragraph 11.5.2 – Insert number of days.
 9. Paragraph 12.1 – Insert amounts 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 Agreement references an attached **Exhibit A**, the Menu of Services. The Menu of Services identifies items that have traditionally been designated as Basic Services. Such items have been “pre-designated” by inserting a “B” on the checklist. Prior to

contract execution, an Owner must decide if any other items on the Menu should also be included as part of Basic Services and/or whether some “pre-designated” items should be removed and designated as either Additional Services or Services that are Not Required/Not Applicable.

- The following are optional clauses which may be negotiated with the Architect and inserted into the Agreement:

1. Paragraph 1.1.1 – Key Personnel:

The Architect 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 Architect 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.

Architect 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. Architect shall not provide any further services until Architect receives written notice from Owner that Owner has issued the above-referenced Bonds and authorizes Architect to proceed under the Agreement, unless otherwise directed by Owner in writing.

Notwithstanding any other provision of this Agreement to the contrary, Architect acknowledges that compensation for any services to be performed by Architect 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 Architect.

If you choose this option, Paragraph 11.5.1 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 Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.2.3 and 11.3.2."

3. Paragraph 2.5.1 – Lowest Responsible Bidder:

When recommending awards to the Owner, it is the Architect'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 2.5.1 – 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 12.1 – Indemnification:

Additionally, the Architect 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 Architect, its officers, directors and employees, agents or subcontractors; (ii) any breach of the terms of this Agreement by the Architect; or (iii) any breach of any representation or warranty by the Architect under this Agreement. The Architect 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.