

## INTERLOCAL AGREEMENT

This Interlocal Agreement (this "Agreement") is made and entered into by and between the County of Muskegon with offices at 990 Terrace Street, Muskegon, MI 49442 (the "County") and South Bend School District, a municipal corporation with offices at 215 South St. Joseph Street, South Bend, IN 46601 ("Client").

### I. RECITALS

- A. County has the capacity to offer professional and support services relating to, among other things, PLC (Programmable Logic Controller) and Utility Project Management solutions, and County is willing to provide services to Client on the terms and subject to the conditions set forth below; and
- B. Client desires to engage County, and County desires to be engaged by Client, to provide professional and support services on the terms and subject to the conditions set forth below.
- C. This Agreement between County and Client is authorized by MCL 124.501.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Client hereby agree as follows:

### II. TERMS

This Agreement shall be effective when signed by both Parties (the "Effective Date") and thereafter shall remain in effect for one (1) year, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). This Agreement shall automatically be renewed beyond the Initial Term for an additional one (1) year (each a "Renewal Term") unless earlier terminated as otherwise provided in this Agreement.

### III. PROFESSIONAL SERVICES

- A. County agrees to provide Client with PLC programming, design, and implementation to include product of choice;
- B. County agrees to provide Client with maintenance and support for Client's PLC and subsequent utility management solution;
- C. County agrees to provide consultation services to support Client's strategic and capital plans;

#### **IV. TECHNICAL SUPPORT**

Technical Support is to be provided by the County and included in the allocation formula. This technical support will include Help Desk (tier 1) and Escalated Support (tier 2) which includes on-site work. Tier 3 level support (engineering support services) will be the responsibility of the Client.

#### **V. FEES**

##### **A. Professional Services Fees**

Client shall pay County an hourly fee in the amount of \$130.44. Client to pay for all travel related expenses. This fee shall be paid within 15 days of receipt of the invoice.

##### **B. Change in Fee**

Parties acknowledge that the fees can change from year to year depending on the level of services provided and the equipment/infrastructure required, as well as any necessary maintenance.

##### **C. Additional Services Fee/Equipment Fee**

Unless otherwise agreed to in writing, Client shall pay to County all fees for Additional Services on a time and materials basis as invoiced by County. Any additional services must be requested by the Client and mutually agreed to in writing by the parties.

#### **VI. WARRANTIES**

##### **A. County Warranties**

County represents and warrants that:

1. County has the power and authority to enter into and perform its obligations under this Agreement; and
2. County's services under this Agreement shall be performed in a workmanlike manner.

#### **VII. INDEMNIFICATION**

##### **A. Client**

Client agrees to indemnify, defend, and hold harmless County, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action is based upon a claim that:

1. If true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder;
2. Arises out of negligence or willful misconduct of Client; or

3. Any of the Client content to be provided by Client hereunder or other material infringes or violates any rights of third Parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

**B. County**

County agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action arises out of the gross negligence or willful misconduct of County.

**VIII. NOTICE**

In claiming any indemnification hereunder, the indemnified Party shall promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing paragraphs. The indemnifying Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified Party shall not be final without the indemnified Party's written consent, which shall not be unreasonably withheld.

**IX. COUNTY WARRANTIES**

**A. Work Product Warranty.**

County warrants that any work product or made changes to the content shall not:

1. Infringe of the Intellectual property rights of any third party or any rights of publicity or privacy;
2. Violate any statute, ordinance or regulation;

**B. Additional Warranties.**

County warrants that:

1. Any work product or County tools will conform to their applicable specifications or acceptance criteria when delivered and will carry the original equipment warranty for a period one-year thereafter;
2. There is no outstanding contract, commitment or agreement which County is a party or legal impediment of any kind know to County which conflicts with this agreement or might limit, restrict or impair the rights granted to Client hereunder.

**X. CLIENT COVENANT**

During the period that County provides professional and support services pursuant to this agreement, Client shall not distribute any content that:

- A. Infringes on the intellectual property rights of any third party or any rights of publicity or privacy;
- B. Violates any laws, statutes, ordinances or regulations.

#### **XI. DISCLAIMER WARRANTIES**

Except as set forth herein each party expressly disclaims all warranties or conditions of any kind expressly or implied, including without limitation, the implied warranty of title, non-infringement, merchant ability and fitness for a particular purpose.

#### **XII. NO THIRD-PARTY BENEFICIARY**

No person dealing with the County or Client shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement. This Agreement is not intended to, nor shall it be interpreted to create a special relationship between the County or the Client and any staff, visitors, residents, or other individuals who may have business through the County.

#### **XIII. COMPLIANCE WITH THE LAW**

Client shall, at his sole cost and expense, comply with all local, State, and Federal ordinances, laws, rules, regulations and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Client in any action or proceeding against Client, whether County be a party thereto or not, that Client has violated any such ordinance or statute shall be conclusive of that fact as between Client and County.

#### **XIV. LIMITATION OF LIABILITY**

COUNTY SHALL HAVE NO LIABILITY FOR UNAUTHORIZE ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CLIENT'S DATA FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT; FRAUDULENT OR UNAUTHORIZED MEANS OR DEVICES. COUNTY SHALL HAVE NO LIABILITY WITH RESPECT TO COUNTY'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF COUNTY TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO COUNTY BY CLIENT UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

## **XV. GENERAL PROVISIONS**

### **A. Termination**

This Agreement may be terminated upon thirty (30) days written notice by either the Client or the County.

### **B. Amendment**

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made and duly executed by the County and Client.

### **C. Enforceability**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted.

### **D. Assurances**

1. County shall cooperate with Client both during and after the terms of this agreement in the procurement and maintenance of Client's rights to intellectual property created hereunder and execute when requested any other documents deemed necessary or appropriate by Client to carry out the purposes of this Agreement.
2. County shall insure that it's professional and supports services will comply with all applicable international, national and local laws and regulations.

### **E. Severability/Waiver**

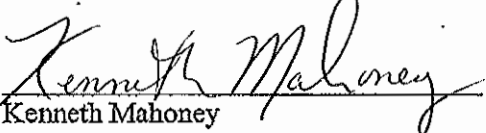
If any provisions of this Agreement are held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provisions with a valid provision which most closely approximate the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver by any other or subsequent breach.

### **F. Headings**

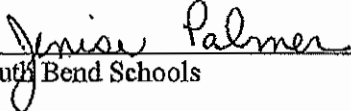
**Headings made in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such action or in any way effect this Agreement.**

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date set forth below.

Date: Feb 22, 2013

  
Kenneth Mahoney  
Chairperson  
Muskegon County Board of Commissioners

Date: Jan 16, 2013

  
South Bend Schools

Indiana Department of Revenue  
General Sales Tax Exemption Certificate

Indiana registered retail merchants and businesses located outside Indiana may use this certificate. The claimed exemption must be allowed by Indiana code. Exemption statutes of other states are not valid for purchases from Indiana vendors. This exemption certificate can not be issued for the purchase of Utilities, Vehicles, Watercraft, or Aircraft. Purchaser must be registered with the Department of Revenue or the appropriate taxing authority of the purchaser's state of residence.

Sales tax must be charged unless all information in each section is fully completed by the purchaser. Purchasers not able to provide all required information must pay the tax and may file a claim for refund (Form GA-110L) directly with the Department of Revenue.

Name of Purchaser South Bend Community School Corporation

Business Address 215 S. St. Joseph St. City South Bend State IN Zip 46601

Purchaser must provide minimum of one ID number below.\*

Provide your Indiana Registered Retail Merchant's Certificate  
TID and LOC Number as shown on your Certificate. 0001899287 - 002  
TID# (10 digits) LOC# (3 digits)

If not registered with the Indiana DOR, provide your State Tax  
ID Number from another State. \_\_\_\_\_  
\*See instructions on the reverse side if you do not have either number. State ID# State of Issue

Section 2  
Is this a  blanket purchase exemption request or a  single purchase exemption request? (check one)  
Description of items to be purchased. \_\_\_\_\_

- Purchaser must indicate the type of exemption being claimed for this purchase. (check one or explain)
- Sales to a retailer, wholesaler, or manufacturer for resale only.
  - Sale of manufacturing machinery, tools, and equipment to be used directly in direct production.
  - Sales to nonprofit organizations claiming exemption pursuant to Sales Tax Information Bulletin #10. (May not be used for personal hotel rooms and meals.)
  - Sales of tangible personal property predominately used (greater than 50 percent) in providing public transportation - provide USDOT#. A person or corporation who is hauling under someone else's motor carrier authority, or has a contract as a school bus operator, must provide their SS# or FID# in lieu of a State ID# in Section #1. USDOT# \_\_\_\_\_
  - Sales to persons, occupationally engaged as farmers, to be used directly in production of agricultural products for sale. Note: A farmer not possessing a State Business License# may enter a FID# or a SS# in lieu of a State ID# in Section #1.
  - Sales to a contractor for exempt projects (such as public schools, government, or nonprofits).
  - Sales to Indiana Governmental Units (agencies, cities, towns, municipalities, public schools, and state universities).
  - Sales to the United States Federal Government - show agency name. \_\_\_\_\_ Note: A U.S. Government agency should enter its Federal Identification Number (FID#) in Section #1 in lieu of a State ID#.
  - Other - explain. \_\_\_\_\_

Section 3  
I hereby certify under the penalties of perjury that the property purchased by the use of this exemption certificate is to be used for an exempt purpose pursuant to the State Gross Retail Sales Tax Act, Indiana Code 6-2.5, and the item purchased is not a utility, vehicle, watercraft, or aircraft.  
I confirm my understanding that misuse, (either negligent or intentional), and/or fraudulent use of this certificate may subject both me personally and/or the business entity I represent to the imposition of tax, interest, and civil and/or criminal penalties.  
Signature of Purchaser Robert M. Orlowski Date 1/1/13  
Printed Name Robert Orlowski Title Assist. Supt.

The Indiana Department of Revenue may request verification of registration in another state if you are an out-of-state purchaser.  
Seller must keep this certificate on file to support exempt sales.

## Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

**Name (as shown on your income tax return)**

**Business name, if different from above**  
**South Bend Community School Corporation**

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....  Exempt payee  
 Other (see instructions) ▶

**Address (number, street, and apt. or suite no.)**  
**215 S. St. Joseph Street**

**City, state, and ZIP code**  
**South Bend, IN 46601**

**Requester's name and address (optional)**

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

<b>Social security number</b>	
OR	
<b>Employer identification number</b>	<b>35 1076622</b>

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here** Signature of U.S. person ▶ *Robert Polowski* Date ▶ *11/1/13*

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,