

## PROFESSIONAL SERVICES AGREEMENT

This professional services agreement is between the STATE OF MICHIGAN (the "State"), the DEPARTMENT OF TREASURY, a principal department of the State (the "Department"), and STEVEN W. RHODES, an individual (the "Manager").

A financial emergency exists within the Detroit Public School District (the "District") under the Local Fiscal Stability and Choice Act, 2012 PA 436, as amended, MCL 141.1541 to 141.1575 ("Act 436"), financial conditions in the District have not yet been corrected in a sustainable fashion, and the District remains in receivership under Act 436.

The emergency manager appointed under Act 436 to address the District's financial emergency has terminated his contract effective February 29, 2016, creating a vacancy that must be filled under section 9(3) of Act 436 (the "Vacancy").

Pursuant to section 17 of article 5 of the Michigan Constitution of 1963, the Governor of the State (the "Governor") has recommended to the 98th Michigan Legislature (the "Legislature") measures that the Governor considers necessary and desirable to correct the District's financial conditions in a sustainable fashion, rectify the District's financial emergency, and assure the provision of free public education to the residents of the District administered by a school board elected by residents of the city of Detroit (the "Legislation").

In this transitional period for the District, the Governor wants to engage the Manager to focus on working with the Legislature and others in securing enactment of the Legislation, implementing the Legislation after enactment, and supervising related administrative functions as a transition manager for the District (the "Transition Manager for Detroit Public Schools"), and is appointing the Manager to fill the Vacancy.

The Manager is a former judge of the United States Bankruptcy Court for the Eastern District, has more than 5 years of experience and demonstrable expertise in business, financial, or local or state budgetary matters.

The State and the Department want to leverage the Manager's skills and abilities on behalf of students and residents of the District.

The Manager wants to serve as the Transition Manager for the Detroit Public Schools.

The parties therefore agree as follows:

1. **Appointment.** (a) The parties acknowledge that the Governor has appointed the Manager as an emergency manager to address a financial emergency within the District for a term beginning on March 1, 2016 (see exhibit A) and ending on the date provided in section 4 (the "Appointment").

(b) The Manager states all of the following:

- (1) that the Manager satisfies the minimum qualifications for appointment under Act 436;
- (2) that the Manager has no personal or financial interest, and will not acquire any such interest, that would conflict in any manner or degree with the performance of this agreement; and

(3) that the Manager is not subject to any non-disclosure, non-competition, or similar clause with a current or prior client or employer that will interfere with the Manager's performance of this agreement and that the Manager acknowledges that the State is not subject to liability for any such claim.

(c) The Manager hereby accepts the appointment. The Manager shall take and subscribe to the constitutional oath of office required by section 1 of article 11 of the Michigan Constitution of 1963.

(d) The Manager may use the title of "Transition Manager for Detroit Public Schools" when performing powers, duties, functions, or responsibilities under this agreement.

(e) The parties believe that nothing in the federal case relating to the bankruptcy of the city of Detroit (the "Detroit Bankruptcy Case") restricts or prohibits the Manager from entering into this agreement or performing powers, duties, functions, or responsibilities under this agreement, including an order issued by the Manager granting relief from the automatic stay as to the case of *Phillips v Governor*, No 13-11370 (ED Mich 2012), and any other order issued in the Detroit Bankruptcy Case by the Manager prior to his retirement from the United States Bankruptcy Court for the Eastern District of Michigan. In the event that the Detroit Public Schools must take any action in the Detroit Bankruptcy Case, the Manager shall immediately recuse himself from any participation in the action and notify the Treasurer in writing of the recusal. The appointment of an individual who will take such action shall be done in accordance with the law.

(f) The parties intend that the Manager be an independent contractor. Except as explicitly provided in Act 436 or this agreement, the parties intend that no liability, workers' compensation rights or liabilities, insurance rights or liabilities, or any other rights or liabilities arising out of, or relating to, a contract for hire, or an employer-employee relationship will arise, accrue, or be implied to a party or to an agent, subcontractor, or employee of a party due to this agreement.

(g) The treasurer of the State (the "State Treasurer") and the Governor shall obtain the Manager's consent to the content of an announcement or press release relating to the Manager, the Manager's actions, or the Manager's appointment to fill the Vacancy before issuing the announcement or the press release.

2. **Duties.** (a) The Manager shall perform the powers, duties, functions, and responsibilities vested in the Manager under the Appointment, Act 436, and this agreement (the "Duties"), including all of the following:

- (1) developing and amending a written financial and operating plan for the District as required under section 11 of Act 436, which may rely upon enactment and implementation of the Legislation;
- (2) working cooperatively with the Governor and the State Treasurer and keeping both informed of any major initiative undertaken under this agreement before any public announcement of the initiative;
- (3) establishing and maintaining an appropriate protocol of ongoing communications with District officials and residents and the media using a variety of methods, including personal interaction; and

(4) transmitting reports as required under sections 9(5) and 17 of Act 436.

(b) The Manager shall devote the efforts necessary to discharge the Duties that a reasonable person in the Manager's position would use to discharge the Duties faithfully and promptly consistent with section 2(c).

(c) The Manager shall establish a schedule for work under this agreement consistent with the responsibilities of the Manager under this agreement. The Manager may observe holidays observed by the District. The Manager also may: (i) serve on industry, trade, civic, or charitable boards or committees; (ii) engage in charitable activities and community affairs; (iii) manage personal investments; and (iv) devote time to personal and family matters; and (v) engage in the practice of law, including the representation of nonparty clients if the activities do not interfere or conflict with the Manager's performance of Duties under this agreement, consistent with the standard under section 2(b). The parties believe that that the Manager's discharge of Duties under this agreement will require about 60% of his professional time (approximately 96 hours per month).

(d) The State and the Department acknowledge that the Manager currently represents nonparty clients as a lawyer and may represent additional nonparty clients as a lawyer while this agreement is in effect consistent with any applicable rules of professional conduct for lawyers, including those relating to conflicts of interest, and the standard under section 2(b).

(e) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, as provided by section 9(9) of Act 436, the Manager is subject to all of the following:

- (1) 1968 PA 317, as amended, MCL 15.321 to 15.330, as a public servant;
- (2) 1973 PA 196, as amended, MCL 15.341 to 15.384, as a public officer; and
- (3) 1968 PA 318, as amended, MCL 15.301 to 15.310, as if the Manager were a public officer under that law.

(f) The Manager shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 to 37.2804, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 to 37.1607, and any other applicable federal, State, or local fair employment practices and equal opportunity laws. The Manager shall not do either of the following:

- (1) discriminate against any employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status; or
- (2) discriminate against any employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

(g) The Manager shall not enter into a contract for the performance of any obligation under this agreement with a subcontractor, manufacturer, or supplier whose name appears on the register of employers found in contempt of court for failure to correct an unfair labor practice under 1980 PA 278, as amended, MCL 423.231 to 324 (the "Register"). The State and the Department may terminate this agreement if the Manager or any subcontractor, manufacturer, or supplier of the

Manager is a party to a contract for the performance of any obligations under this agreement and appears in the Register.

(h) The Manager will not be responsible to manage any litigation regarding District employee sick-outs or the condition of District buildings or facilities, but the Manager will be consulted on any significant decisions relating to any such litigation impacting the District.

(i) The Manager will not be responsible to manage any litigation regarding the validity of Act 436. The parties believe that section 20(2) of Act 436 requires the attorney general of the State to defend any civil claim, demand, or lawsuit challenging any of the following:

- (1) the validity of Act 436;
- (2) the authority of a state official acting under act 436; and
- (3) the authority of an emergency manager if the emergency manager is or was acting within the scope of authority for an emergency manager under act 436.

3. **Assistance.** (a) The Manager may appoint additional staff and secure professional assistance (including consultants) in addition to staff otherwise authorized by law as the Manager considers necessary to fulfill the Duties under this agreement, consistent with section 9(4) of Act 436.

(b) The Manager may employ or contract for, at the expense of the District and with the approval of the state financial authority under section 12(1)(o) of Act 436, auditors and other technical personnel the Manager considers necessary to implement this agreement and Act 436.

(c) The Manager may retain one or more persons or firms, which may be an individual or firm selected from a list approved by the State Treasurer, to perform the duties of a local inspector or a local auditor under section 12(1)(p) of Act 436.

(d) The Manager may at the expense of the District employ or contract for school administrators necessary to implement this agreement and the act, with the approval of the State Treasurer, as provided under section 14(g) of Act 436. The parties intend that the Manager will appoint an individual as interim superintendent for the District, authorize that individual to exercise the powers of the office of superintendent of the District as permitted under section 9(2) of Act 436, including powers relating to academics and budgeting, and assist the Manager in developing and implementing any academic plan for the District required under Act 436.

(e) The Manager may receive security protection in connection with the Manager's performance of Duties under this agreement. The Manager shall not retain security personnel without the prior approval of the State Treasurer or an individual designated by the State Treasurer, and after consultation with the director of the Department of State Police, or his or her designee.

(f) The Manager shall consult with the State Treasurer, or an individual designated by the State Treasurer, at least 24 hours before extending any offer of employment for a position paying \$50,000.00 or more per year.

(g) Engagement of personnel under this section 3 requires a written contract with each person engaged, including a requirement that the person not engage in any other paid commitment without the express written approval of the Manager. The Manager shall consult with the State Treasurer, or an individual designated by the State Treasurer, at least 24 hours before approving

outside engagement under this section 3(g). The Manager shall require in any contract with a subcontractor performing an obligation under this agreement that the subcontractor also comply with the Manager's obligations relating to nondiscrimination under section 2(f).

(h) Costs incurred under sections 3(a) to 3(e) will be paid by the District, not the State.

4. Term. (a) This agreement is effective beginning on March 1, 2016 and ends when terminated under sections 4(b) to 4(d).

(b) The Manager will serve at the pleasure of the Governor, except as provided in section 9(3)(d) and 9(6)(c) of Act 436. The Governor may rescind the appointment at any time, and without cause, by notifying the Manager. If the Manager is notified under this section 4(b), except as otherwise directed by the Governor or the State Treasurer, the Manager shall do all of the following:

- (1) cease work under this agreement as provided in the notice;
- (2) incur no costs beyond the date specified in the notice;
- (3) submit to the State Treasurer on the date the termination is effective all records and reports specified by the State Treasurer and carry out any directives issued by the State Treasurer relating to the safeguarding of records and property; and
- (4) submit within 30 days a closing memorandum and final submission of expenses allowable under this agreement.

(c) The Manager may terminate this agreement at any time, and without cause, by notifying the Department at least 30 days before the date of termination. If the Manager notifies the Department under this section 4(c), except as otherwise directed by the State Treasurer, the Manager shall do all of the following

- (1) cease work under this agreement on date of termination specified in the notice;
- (2) incur no costs beyond the date of termination specified in the notice;
- (3) submit to the State Treasurer on the date of termination specified in the notice any records and reports requested by the State Treasurer and carry out any directives issued by the State Treasurer relating to the safeguarding of records and property; and
- (4) submit within 30 days of the date of termination a closing memorandum and final submission of expenses.

(d) If this agreement is not terminated under sections 4(b) or 4(c), this agreement will terminate on the earliest of the following dates or events:

- (1) a vacancy in the office of emergency manager for the District under section 9(3)(d) or 9(6)(c) of Act 436;
- (2) the death of the Manager;
- (3) June 1, 2016, if the Manager and the State Treasurer jointly determine in writing that the Legislation, or similar legislation, is not enacted; or

(4) September 30, 2016.

(e) This section 4(e) and sections 4(b)(4) and 4(c)(4) will survive the termination of this agreement. After the termination of this agreement, the State shall pay any compensation payable under section 5 and any expense reimbursements payable to the employee under section 6, to the Manager (or to the Manager's estate in the event of the Manager's death), consistent with requirements under this section 4. The Manager's estate is not entitled to any other compensation under this agreement.

5. **Compensation.** (a) The State shall pay the Manager at a rate of \$18,750.00 per month in installments consistent with the written policies and procedures of the Department. If this agreement is terminated after the Manager has provided services under the agreement for a portion of a month, for that month the State shall pay the Manager an amount equal to \$18,750.00 multiplied by a fraction, the numerator of which is the number of days in that month in which the Manager provided services under this agreement and the denominator of which is the total number of days in that month.

(b) Compensation under this agreement is subject to any withholding or deductions required under applicable law or regulations.

6. **Expenses; Reimbursement.** The Manager may submit actual and necessary expenses incurred by the Manager when performing Duties under this agreement, including customary and reasonable expenses related to travel, meals, and lodging for reimbursement by the District consistent with District policies for reimbursement of expenses incurred by District administrators. The Manager shall provide original copies of receipts for expenses incurred with any request for reimbursement. The reimbursement of an expense incurred by the Manager under this section 6 must be reviewed and approved in writing by the chief financial officer of the District before payment by the District.

7. **Records.** The Manager shall maintain complete records in accordance with generally accepted accounting practices, sound business practices, and applicable law, including records maintained or stored in a computer system of the Manager or the District. The State Treasurer may inspect records relating to this agreement.

8. **Liability.** (a) The parties intend that the State, the Governor, the State Treasurer, the Department, and all other State departments, agencies, officers, and employees will not be liable for any obligation of or claim against the District resulting from actions taken under the Act 436 or this agreement.

(b) The Manager is immune from liability as provided in section 7(5) of 1964 PA 170, as amended, MCL 691.1407, pursuant to section 20(1) of Act 436.

(c) A person employed by the Manager is immune from liability as provided in section 7(2) of 1964 PA 170, as amended MCL 691.1407, pursuant to section 20(1) of Act 436.

9. **Insurance.** (a) The Manager may procure and maintain at the expense of the District workers' compensation, general liability, professional liability, and motor vehicle insurance for the Manager and any employee, agent, appointee, or contractor of the Manager (each a "Covered Person") as may be provided to elected officials, appointed officials, or employees of the District, consistent with section 20(4) of Act 436.

(b) Insurance procured and maintained by the Manager may extend to any claim, demand, or lawsuit asserted, or costs recovered against the Manager or a Covered Person from March 1, 2016 until the expiration of the applicable statute of limitation, if the claim, demand, or lawsuit asserted, or costs recovered against the Manager or a Covered Person resulted from the conduct of the Manager or a Covered Person taken under Act 436 while this agreement is effective pursuant to section 20(4) of Act 436.

(c) If after the date of the Manager's service under this agreement ends, the Manager or a Covered Person is subject to a claim, demand, or lawsuit arising from action taken while this agreement is effective and is not covered by an insurance policy, the parties intend for litigation expenses to be paid by the District as provided under section 20(5) of Act 436.

(d) If the District has an errors and omission insurance policy, the Manager may take action necessary to provide for coverage of the Manager or Covered Persons, or both, under the policy at the expense of the District.

(e) The District, not the State, will be responsible for paying the cost of any insurance under this agreement, but the State Treasurer may reject an unacceptable insurer.

10. **Bankruptcy.** The Manager shall not recommend to the Governor or the State Treasurer, or both, that the District be authorized to proceed under chapter 9 of title 11 of the United States Code, as amended, 11 USC 901 to 946. The parties believe that enactment and implementation of the Legislation is a reasonable alternative to rectify the District's financial emergency.

11. **Non-assignment.** This agreement is personal to the Manager. The Manager shall not assign any of the Manager's rights or delegate any of the Manager's obligations under this agreement to any other person other than by will or intestate succession unless specifically authorized in this agreement.

12. **Modification; Waiver.** No amendment of this agreement will be effective unless it is in writing and signed by the Manager and the State Treasurer. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

13. **Notice; Communication.** (a) The State Treasurer will be the Manager's principal contact for matters relating to this agreement.

(b) For a notice under this agreement to be valid, it must be in writing and delivered by hand or by email.

(c) Subject to section 13(f), a valid notice under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:

- (1) if it is delivered by hand upon receipt as indicated by the date on a signed receipt;
- (2) if it is delivered by email, when the recipient, by an email sent to the email address for the sender stated in section 13(d), acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section 13;

- (3) if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

(d) For a notice to a party under this agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this section 13:

to the State and the Department: State Treasurer  
Treas\_LocalGov@michigan.gov;

to the Manager: Steven W. Rhodes  
rhodessw@comcast.net.

(e) A party shall notify the other parties of a change in an email address under section 3(d).

(f) If a notice addressed to a party is received after 5:00 p.m. on a business day at the address specified for that party under section 13(d), or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

(g) A communication other than a notice under this agreement must be in writing and may be transmitted to another party by hand or by email using the information specified in section 3(d) for that party or any other information specified by that party in a notice in accordance with this section 13.

14. **Severability.** The parties intend as follows:

- (1) that if any provision of this agreement is held to be unenforceable, that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- (2) that if an unenforceable provision is modified or disregarded in accordance with this section 14, then the rest of the agreement will remain in effect as written; and
- (3) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

15. **Counterparts.** If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.

16. **Governing Law.** The laws of the State, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this agreement.

17. **Entire Understanding.** This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties.

18. **Effectiveness; Date.** (a) By signing this agreement, the State Treasurer is approving this agreement for purposes of section 9(3)(e) of Act 436.

(b) The date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this agreement. If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this agreement, and the other party may inscribe that date as the date associated with the signing party's signature.

Each party is signing this agreement on the date stated opposite that party's signature.

STATE OF MICHIGAN

Date: February 29, 2016

By:   
Rick Snyder  
Governor

DEPARTMENT OF TREASURY

Date: February \_\_\_\_, 2016

By: \_\_\_\_\_  
N.A. Khouri  
State Treasurer

Date: February \_\_\_\_, 2016

\_\_\_\_\_  
STEVEN W. RHODES

(b) The date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this agreement. If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this agreement, and the other party may inscribe that date as the date associated with the signing party's signature.

Each party is signing this agreement on the date stated opposite that party's signature.

STATE OF MICHIGAN

Date: February \_\_\_\_, 2016

By: \_\_\_\_\_  
Rick Snyder  
Governor

DEPARTMENT OF TREASURY

Date: February \_29\_, 2016

By:   
\_\_\_\_\_  
N.A. Khouri  
State Treasurer

Date: February \_\_\_\_, 2016

\_\_\_\_\_  
STEVEN W. RHODES

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STATE OF MICHIGAN

Date: February \_\_\_\_, 2016

By: \_\_\_\_\_  
Rick Snyder  
Governor

DEPARTMENT OF TREASURY

Date: February \_\_\_\_, 2016

By: \_\_\_\_\_  
N.A. Khouri  
State Treasurer

Date: February 29, 2016

  
\_\_\_\_\_  
STEVEN W. RHODES

EXHIBIT A

*[insert Rhodes appointment letter]*



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

February 29, 2016

The Honorable Ruth Johnson  
Secretary of State  
Office of the Great Seal  
Michigan Department of State  
Lansing, Michigan 48909

Dear Secretary Johnson:

Please be advised of the following appointment to office:

**Emergency Manager – Detroit Public School District**

Steven W. Rhodes of 1610  
succeeding Darnell Earley, is appointed to serve effective March 1, 2016.

Sincerely,

A handwritten signature in cursive script that reads "Rick Snyder".

Rick Snyder  
Governor