

# CONTRACTOR AGREEMENT

This Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2024, between the Voluntown Board of Education (the 'BOE'), and [NAME OF CONTRACTOR], of [TOWN], Connecticut (the "Contractor").

## ARTICLE I

### SCOPE OF CONTRACTOR'S SERVICES

The BOE hereby retains the Contractor to provide professional services for as described in the Request for Proposal; Voluntown Elementary School HVAC Gymnasium Upgrade Project RFP #2024-1 dated January 24, 2024 hereto as Exhibit A and made a part hereof

- 1.1.1 The BOE wishes to retain the Contractor to provide professional services as outlined in and as more particularly described in Exhibit A and the scope of services (the "Work"), as defined in Exhibit A.
- 1.1.2 The Contractor shall provide professional services and coordinate the Work as instructed by the BOE and in accordance with Exhibit A.
- 1.1.3 The Contractor acknowledges that the timely performance of its services and the Work on each project is an important element of this Agreement. Accordingly, the Contractor shall make every effort to complete the Work for each project according to the schedule as mutually agreed upon between the BOE and the Contractor.
  - 1.1.4a All days shall be considered as calendar days. All services shall be completed as mutually agreed upon between the BOE and the Contractor.
  - 1.1.4b This Agreement constitutes the complete agreement of the parties and supersedes all prior oral or written understandings on the Project.

The Contractor shall designate a Representative ("Contractor's Representative") authorized to act on the Contractor's behalf with respect to the Contractor's services.

The Contractor's services shall be performed in a manner, sequence and timing so that they will be coordinated with those of any other parties involved with the Project or the work performed on an individual project.

- 1.2 The Contractor's services shall be performed in a workmanlike manner consistent with industry standards, as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of the BOE, the Contractor shall submit for the BOE's approval a schedule for the performance of the Contractor services which may be adjusted by mutual agreement as the work proceeds, and shall include allowances for periods of time required for the BOE's review and for approval of submissions by other authorities having jurisdiction. The Contractor shall recommend to the BOE appropriate investigations, surveys,

tests, analyses and reports to be obtained as necessary for the proper execution of the Contractor's services and work.

- 1.3 The Contractor shall not be responsible for the acts or omissions of the BOE, the BOE's other Contractors, contractors, subcontractors, their agents or employees or other persons performing any of the work on the Project, except where such acts or omissions are due to the negligence of the Contractor or its sub-Contractors, agents, or employees, or their failure to perform their responsibilities and obligations under this Agreement.
- 1.4 All meetings with BOE staff members required under this Agreement shall be held in the Town of Voluntown at locations established by the BOE. The Contractor will provide written minutes of each meeting within ten (10) business days.
- 1.6 No report, information, specification, or data given to, or prepared or assembled by the Contractor, shall be made available to any person or organization by the Contractor without the prior written approval of the BOE.

## **ARTICLE II**

### **BOARD OF EDUCATION'S RESPONSIBILITIES**

- 2.1 The BOE will designate a Representative ("BOE's Representative") authorized to act on the BOE's behalf with respect to the Project and to coordinate with the Contractor's Representative. The Contractor's instructions shall be received solely from the BOE's Representative.
- 2.2 The BOE shall, upon reasonable notice, provide available information within the BOE's control to the Contractor as necessary for the performance of the Contractor's services and Work.

## **ARTICLE III CONTRACT PRICE**

- 3.1 The BOE will pay the Contractor for all of the basic services rendered on the basis of lump sums as per the attached fee structure submitted in response to the RFP which is hereby made a part of this agreement hereto as Exhibit B.

## **ARTICLE IV INSURANCE**

- 4.1 The Contractor shall, at its own expense and cost, obtain and keep in force during the entire duration of the Project or Work the following insurance coverage covering the Contractor and all of its agents, employees, sub-contractors and other providers of services and shall name the Voluntown Board of Education, its employees and agents as an Additional Insured on a primary and non-contributory basis to the Contractor's Commercial General Liability and Automobile Liability policies. These requirements shall be clearly stated in the remarks section on the Contractor's Certificate of Insurance. Insurance shall be written with insurance carriers approved in the State of Connecticut and with a minimum Best's Rating of A-. In addition, all carriers are subject to approval by the BOE. Minimum limits and requirements are stated below in Sections 4.1.1 through and including 4.1.4:

4.1.1 Worker's Compensation Insurance:

- Statutory Coverage
- Employer's Liability
- \$500,000 each accident/\$500,000 disease-policy Limit/\$500,000 disease each employee
- A Waiver of Subrogation shall be provided

4.1.2 Commercial General Liability:

- Including Premises & Operations, Products and Completed Operations, Personal and Advertising Injury, Contractual Liability and Independent Contractors.
- Limits of Liability for Bodily Injury and Building Damage Each Occurrence \$1,000,000 Aggregate \$2,000,000 (The Aggregate Limit shall apply separately to each job.)
- A Waiver of Subrogation shall be provided

4.1.3 Automobile Insurance:

- Including all owned, hired, borrowed and non-owned vehicles
- Limit of Liability for Bodily Injury and Building Damage: Per Accident \$1,000,000
- A Waiver of Subrogation shall be provided

4.1.4 Errors and Omissions Liability or Professional Services Liability Policy Provide Errors and Omissions Liability or Professional Services Liability Policy for a minimum Limit of Liability \$1,000,000 each occurrence or per claim. The Contractor will be responsible to provide written notice to the BOE thirty (30) days prior to cancellation of any insurance policy.

4.2 The Contractor agrees to maintain continuous professional liability coverage for the entire duration of this Project.

4.3 The Contractor shall direct its Insurer to provide a Certificate of Insurance to the BOE before any work is performed. The Contractor will be responsible to provide written notice to the BOE thirty (30) days prior to cancellation of any insurance policy. The Certificate shall evidence all required coverage including the Additional Insured on the General Liability and Auto Liability policies and Waiver of Subrogation on the General Liability policy, Auto Liability and Workers Compensation policies. The Contractor shall provide the BOE copies of any such insurance policies upon request.

## **ARTICLE V INDEMNIFICATION**

5.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Voluntown Board of Education, and their Contractors, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, attorneys and other professionals and court and arbitration costs) to the extent arising out of or resulting from the performance of the Contractors Work, provided that such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission by the Contractor, or breach of its obligations herein or by any person or

organization directly or indirectly employed or engaged by the Contractor to perform or furnish either of the services, or anyone for whose acts the Contractor may be liable.

- 5.2 As to any and all claims against the Voluntown Board of Education or any of their Contractors, agents or employees by any employee of Contractor, by any person or organization directly or indirectly employed by Contractor to perform or furnish any of the work, or by anyone for whose acts Contractor may be liable, the indemnification obligation stated herein shall not be limited in any way by any limitation on the amount of type of damages, compensation or benefits payable by or for Contractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.
- 5.3 The provisions of this Article shall survive termination or expiration of this Agreement.

### **ARTICLE VI ARBITRATION**

- 6.1 If the parties are unable to settle disputes by non-binding mediation pursuant to Paragraph 6.5 below, the BOE, at its sole discretion and option, may have all claims, disputes or other matters in question between the parties to this Agreement decided by arbitration in accordance with the Commercial or Construction Industry Arbitration Rules of the American Arbitration Association (whichever is appropriate) then pertaining unless the parties mutually agree otherwise. No arbitration arising out of or related to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person or entity not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the BOE. Any consent to arbitration involving any additional person or entity shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein.
- 6.2 If the BOE consents to arbitration, notice of demand for arbitration shall be filed in writing with the other party to this agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation.
- 6.3 If the BOE consents to arbitration, the award rendered by the arbitrator shall be final, and not subject to appeal, and judgment may be entered upon in accordance with the laws of the State of Connecticut.
- 6.4 If the BOE does not consent to arbitration, all disputes shall be subject to determination by a court of competent jurisdiction. The venue for such action shall be Superior Court, Judicial District of Hartford, at Hartford, Connecticut.
- 6.5 Prior to arbitration, the parties shall endeavor to settle disputes by non-binding mediation in accordance with the Commercial or Construction Industry Mediation Rules of the American Arbitration Association (whichever is applicable) currently in effect, unless the parties mutually agree otherwise in writing. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the

claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute other matters in question would be barred by the applicable statute of limitations.

## **ARTICLE VII TERMINATION**

- 7.1 This Agreement may be terminated by either party by thirty (30) days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party and providing such breach is not corrected within seven (7) days of receipt of said notice. If this Agreement is terminated by reason of the BOE's breach, the Contractor shall be compensated for services performed prior to the termination notice date and for its reimbursable expenses then due. The Contractor shall not be entitled to its anticipated profit. If this Agreement is terminated by reasons of the Contractor's breach, then payment shall be withheld pending resolution of its obligations thereunder. In any event, the Contractor shall not be relieved of any responsibilities, warranties or obligations under this Agreement as a result of a breach or failure to perform by either party.

## **ARTICLE VIII MISCELLANEOUS PROVISIONS**

- 8.1 If the Contractor observes or otherwise becomes aware of any fault or defect in the Project, prompt written notice thereof shall be given by the Contractor to the BOE. Failure to give such notice or, upon exercise of reasonable diligence, to become aware of such fault or defect, shall constitute a breach of this Agreement by the Contractor, and the Contractor shall be responsible for any damages, including consequential damages, incurred by the BOE.
- 8.2 The Contractor shall not have control over acts or omissions of any others performing work on the Project, except where such acts or omissions are due to the negligence of the Contractor or its sub-Contractors or their failure to perform their responsibilities and obligations under this Agreement
- 8.3 The Contractor shall cooperate with the BOE and any contractor performing work on the Project in scheduling and performing the Contractor's work to avoid conflict, delay in or interference with the work of the contractor, subcontractors or the BOE's own employees.
- 8.4 If, in rendering the Work described herein, the Contractor finds it necessary to subcontract work to sub-Contractors, the Contractor will obtain written approval from the BOE prior to the selection of said sub-Contractors and the Contractor will be solely responsible for the payment of other such sub-Contractors from the fee stated herein. Nothing herein shall be deemed to create a legal relationship between the BOE and said sub-Contractors.
- 8.5 Failure to insist upon strict compliance with any terms, covenants or conditions hereof will not be deemed a waiver of such terms, covenants or conditions, nor any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.
- 8.6 This Agreement may be executed in one or more counterparts, each of which will be an original instrument and all of which together will constitute one and the same instrument.

- 8.7 If any provision of this Agreement is found to be invalid or illegal by a court of the competent jurisdiction, the remaining provisions shall remain in full force and effect the parties to agree to substitute for the invalid provision another which most closely effectuates the legal and economic intent of the invalid provision within bounds of the law. Each and every provision of law and change required by law to be inserted in this agreement shall be deemed to be inserted herein and the agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such portion is not inserted or is not correctly inserted, then upon the application of either party, the agreement shall forthwith be physically amended to make such insertion.
- 8.8 Both parties acknowledge and agree that this Agreement has been freely negotiated by both parties and that, in any dispute over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.
- 8.9 This Agreement shall be binding upon the parties, their successors, executors, administrators, and assigns. Neither the BOE nor the Contractor shall assign, or otherwise transfer its respective interest in this Agreement without the express written consent of the other.
- 8.10 This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut.

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**For the Voluntown Board of Education:**

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(Signature)

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(Date)

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(Name)

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(Title)

**Witness:**

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(Signature)

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(Date)

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(Name)

**For the Contractor:**

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(Signature)

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(Date)

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(Name)

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(Title)

**Witness:**

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(Signature)

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(Date)

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(Name)

**EXHIBIT A**



**EXHIBIT B**