



VSBIT Multi-line Intermunicipal School Program

Construction Contract for Small Projects

Key items to consider

- + This contract is intended for “small” projects, without architect involvement in contract administration**
- + The contract still requires careful description of scope of work**
- + The contract must be carefully reviewed to make sure that it is appropriate for your project**

CONSTRUCTION CONTRACT

_____ Project

The Owner: _____

The Contractor: _____

The Project: _____

The Owner's Architect: _____

The Owner's Engineer: _____

Mobilization Date: _____ On-Site Commencement Date: _____

Substantial Completion Date: _____

Bonds: Check here [] if bonds are required pursuant to Paragraph 13(b) below; if no check appears in the box Paragraph 13(a) applies.

THIS AGREEMENT is made effective the _____ day of _____, 20____, by and between the Owner and the Contractor with respect to the Project, all as named above.

1. **Contract Sum.** The Contractor agrees to furnish all labor and materials required for the completion of the Work in strict accordance with the specifications and the plans for the Project referred to herein for the Contract Sum of _____ (\$ _____), as it may be adjusted by Change Order, and the Owner agrees to pay the Contractor said sum for said work. Allowance items and unit prices which are included in the Contract Sum are set forth on Attachment A.

2. **Definitions.**

- a. "Contract" means this Contract signed by the parties hereto, Attachment A "Scope of Work," any Change Orders signed by the parties and any other documents incorporated by reference, including the plans and specifications described in Attachment A, "Scope of Work."
- b. "Project" means the Owner's entire construction, of which the Work is a part.
- c. "Work" is the labor, materials and services to be performed by the Contractor as part of the Project, as described in Attachment A, "Scope of Work."

3. **The Work; Changes.** The Contractor agrees to furnish all items necessary to perform all of its Work as well as any work not shown or specified but which may reasonably be implied to be within the scope of the Contractor's Work, all in good workmanlike manner and in strict accordance with all plans, specifications, addenda and other documents which form a part of the Contract. The Owner, without nullifying this Contract, may direct Contractor by written Change Order to make changes, additions, deletions, or other revisions to Contractor's Work upon receipt of which the Contractor shall proceed promptly with such Work, unless otherwise provided in the Change Order and the Contract Sum shall be equitably adjusted for increases or decreases in the cost of and time for performing the work caused by such change. Owner is not obligated to pay Contractor for extra work or work different

from that required or permitted by this Contract unless the Owner has authorized such extra or changed work in writing. The Contractor agrees to communicate with the Owner about the Project or the Contractor's Work or any changed, extra or additional work only through Owner's Representative, and not directly.

4. **Time, Liquidated Damages, Actual Damages.** Time is of the essence in this Contract. The Contractor agrees to begin its Work promptly upon authorization from the Owner and to do the several parts of the Work in a prompt and diligent manner commensurate with the Owner's progress and at such times and in such order as the Owner may direct without delaying the Owner or any other contractors employed by the Owner. The Contractor shall compensate Owner for any damages suffered by Owner as a consequence of Contractor's failure to perform its Work timely.

- a. The Contractor shall mobilize on site not earlier than the Mobilization Date stated above.
- b. The Contractor shall commence work on site not earlier than the On-Site Commencement Date stated above.
- c. The Contractor shall achieve Substantial Completion of the Entire Work not later than the Substantial Completion Date stated above, as adjusted by Change Order.
- d. Liquidated Damages: Damages shall be paid as follows:
The Contractor acknowledges that failure to achieve Substantial Completion of the Work by the Substantial

Completion Date shall cause various losses to the Owner, the magnitude of which will be difficult to determine and may vary depending upon the date and the extent to which the Work is not substantially complete and may include disruption of class or canceling of all school classes, locating, preparing and securing alternative classrooms, and notifications to the community regarding school disruptions or closing. In the event the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty for each and every day thereafter until it achieves Substantial Completion according to the requirements of the Contract Documents the sum of _____ dollars (\$_____) per day

5. **Safety.** The Contractor shall be responsible for all safety precautions that may be necessary or appropriate in connection with the performance of its Work, and shall comply with all safety laws and regulations governing the performance of its Work.

6. **Contractor's Payables.** The Contractor agrees to pay timely all amounts due its employees, subcontractors, suppliers, and equipment lessors, any union dues, any employee benefits, any and all unemployment compensation taxes as required by the state in which the Work is being carried on, sales, use and excise taxes, federal and state income taxes withheld from employees, social security taxes, local taxes and any other charges levied on the Contractor by others to whom it may be indebted. The Contractor shall indemnify and hold harmless the Owner from any costs, expenses, or damages (including attorneys fees and expenses) arising out of a breach or claimed breach of this covenant. Contractor agrees to provide affidavits of payment of its subcontractors and suppliers and lien waivers from all persons providing labor, materials, equipment and services which are part of the Contractor's Work upon request of and in the form required by Owner as a condition precedent to payment of progress and final payments.

7. **Payments to Contractor.**

- a. The Contractor must submit a separate Application for Payment each month for each building to the Owner addressed care of _____ at _____.
- b. Based upon monthly Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the extent of the percentage completion of the Work at each building, less previous payments and less retainage of ten percent (10%). Owner shall pay Contractor no later than twenty (20) days after receipt of the Application for Payment.
- c. For payment purposes, the amount, quantity or extent of Work put in place during the billing period or

under the Contract shall be as determined by the Owner.

- d. No progress payment shall be due until Contractor has provided a partial lien waiver in form provided by Owner and final payment shall not be due until Contractor has provided a final lien waiver in form provided by Owner.
- e. No progress payment shall be conclusive, and all payments shall be subject to adjustment and/or correction in the final payment.
- f. Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor has fully performed the Contract (except for the performance of warranty work and the satisfaction of other requirements which extend beyond final payment).

8. **Withholding Payment.** To the extent permitted by law, Owner may withhold payments otherwise due the Contractor (a) to protect itself from loss from any good faith claim for unsatisfactory job progress, defective construction, disputed Work, third party claims, and claims that Contractor has failed or refused to pay its subcontractors, suppliers or employees and (b) to guarantee the satisfactory performance of or compliance with any of the provisions of this Contract.

9. **Insurance.** The Contractor agrees to take out and maintain during the life of this Contract insurance with a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and reasonably acceptable to the Owner, as follows:

- a. Worker's Compensation or similar Insurance as required by the laws of the state in which this Work is to be performed or by applicable federal law,
- b. Employer's Liability Insurance,
- c. Comprehensive or Commercial General Liability Insurance covering bodily injury, death and property damage with Bodily Injury Liability in an amount not less than \$1,000,000 per person and \$2,000,000 per occurrence and Property Damage Liability in an amount of not less than \$1,000,000 per occurrence. The explosion, collapse and underground excavation exclusion, commonly known as the "XCU Exclusion," shall be eliminated and coverage for these perils shall be provided. Coverage shall include the Broad Form Property Damage endorsement (including Completed Operations).
- d. Comprehensive Automobile Liability Policy with Bodily Injury Liability in an amount not less than \$500,000 per person and \$1,000,000 per occurrence, and Property Damage Liability in an amount not less than \$50,000 per occurrence. This Policy shall cover all Owned and Non-Owned Vehicles and to include Non-Ownership and Hired Car Coverage.

- e. Broad Form Completed Operations (or Products) Liability for the same limits as specified in c) above for the period of two years after final payment is made to Contractor,
- f. Independent Owner's Protective,
- g. Contractual Liability specifically including this Contract for the same limits as specified in c) above, and
- h. Any additional insurance required for the performance of Contractor's Work by the terms of the Contract.

10. **Insurance Certificate.** The Contractor agrees to obtain from its insurance carrier(s) an insurance certificate or certificates in the form required by the Owner, and indicating the Project name, within five days of the effective date of this Contract, and in every event prior to commencement of on-site Work by the Contractor. Such certificates shall certify that coverage as required above is in full force and effect and shall also include a provision whereby the Owner will be given 30 days written notice in the event of cancellation or modification of any of the coverage. The Owner may withhold such payments as it may deem necessary to guarantee compliance with these requirements or to indemnify it, against claim or loss that should be covered by the required insurance. The Certificate of Insurance shall show any Umbrella Policy Contractor carries in the same manner as all other insurance policies.

11. **Additional Insureds.** The Contractor is required to name the Owner as insured or additional insured on each of these policies except for Worker's Compensation. Each policy shall state that such insurance is primary and any insurance maintained by the Owner shall be excess and noncontributory.

12. **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and any other person or entity required by the specifications, and agents, officers and employees of any of them, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than to injury to or destruction of all or any portion of the Project or the Work which injury or destruction is paid for by property insurance, without right of subrogation), but only to the extent caused by the negligent acts or omissions of the Contractor, its subcontractors and suppliers, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in whole or in part by a party indemnified hereunder.

13. **Bonds.** Either (a) or (b) applies. See Paragraph 1.

(a) The Owner at all times reserves the right to require the Contractor to furnish the bond of a surety company authorized to do business in the state in which the Project is

located and approved by the Owner in form specified by the Owner, for the good and faithful performance of this Contract, or any uncompleted portion thereof, as well as a labor and material payment bond, in a sum equal to the Contract Sum or such lesser sum as Owner may specify. Unless otherwise provided for in this Contract, the premium for said bond shall be paid by the Owner. In the event the Contractor is unable or unwilling to furnish such bonds the Owner may proceed in the manner provided in Paragraph 17.

(b) The Contractor agrees to furnish a performance bond and a labor and material payment bond within five days of the date hereof, both in the amount of 100% of the amount of the Contract Sum plus any additions or less any deductions as may be agreed upon. The surety shall be authorized to do business in the state in which the Project is located and shall be subject to the approval of the Owner. The bonds shall be in the form specified by the Owner (see Attachment B). All premiums for said bonds shall be paid by the Contractor.

14. **Correction of Work.** In addition to any warrantee and Work correction requirements of the specifications, the Contractor warrants that its Work shall be free of all defects of materials and/or workmanship and in conformance with the requirements of the Contract, and agrees to correct, repair or replace promptly any Work that is defective or does not conform to the requirements of the Contract.

15. **Governing law.** This Contract shall be construed according to and any disputes hereunder governed by the laws of the place in which the Project is located, without regard to the principles of conflicts of laws, except that the Federal Arbitration Act, 9 U.S.C. § 1, et seq., shall apply to any arbitration hereunder.

16. **Termination without cause.** This Contract is subject to termination by unilateral action of the Owner without cause for the Owner's convenience. In the event of termination pursuant to this Paragraph 16, the Owner agrees to pay the Contractor within 60 days of the effective date of termination the reasonable cost of all Work satisfactorily performed and conforming materials furnished to the Project site to the time set forth in the notice of termination, including a reasonable profit thereon, but excluding any overhead or profit for Work not yet performed. In no event shall the total sum due the Contractor in the event of termination exceed the Contract Sum.

17. **Remedies for Contractor's Default.** In addition to any other remedy it may have, in the event of a material default by the Contractor the Owner may in its discretion and without obligation on five business days written notice given by hand delivery, certified mail return receipt requested, or national overnight delivery service return receipt requested, do any combination of the following: (a) supply labor, materials or equipment for Contractor's use, (b) expel the Contractor from the project, take possession of and use the Contractor's materials, tools, and appliances and complete or arrange for the completion of the Work in such manner as the Owner sees fit, or (c) terminate the Contract; and may withhold any further payments to the Contractor until Contractor's Work hereunder

shall be wholly finished and approved. At that time all costs and damages incurred by the Owner shall be deducted from money then due or to become due to the Contractor or, if the costs incurred by the Owner exceed the balance due the Contractor, then such excess of costs over said balance due shall immediately become due and payable to the Owner by the Contractor.

18. Termination by Contractor. The Contractor may terminate the Contract for nonpayment of amounts due under this Contract for 60 days or longer, or for other material breach by the Owner, on ten (10) business days written notice given by hand delivery, certified mail return receipt requested, or national overnight delivery service return receipt requested; provided such non-payment or breach is not cured within such time. In the event of such termination by the Contractor for any reason which is not the fault of the Contractor, its sub-contractors or their agents or employees or other persons performing portions of the Work under contract with the Contractor, the Contractor shall be entitled to recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages, but excluding any overhead or profit for Work not yet performed. In no event shall the total sum due the Contractor in the event of termination exceed the Contract Sum.

19. Claims; Extra or Changed Work. Claims by the Contractor for extra or altered Work, changes, modifications, changed conditions, subsurface conditions or obstructions at the site, any Act of God, the elements, delays, equitable adjustments and damages resulting from requirements, acts or omissions of the Owner or any third party, or from any cause beyond the control of the Contractor shall be made in writing, within ten (10) business days after the occurrence giving rise to the Claim, and in any event prior to proceeding with the affected Work. Any such Claim shall be deemed waived if not made in timely fashion by the Contractor.

20. Waiver of Consequential Damages. The Contractor waives any claims it may have against the Owner for consequential damages of any kind arising out of or relating to this Contract or the breach thereof, including, but not limited to, damages for Contractor's principal office expenses, including the compensation of personnel stationed there, for losses of financing, business bonding capacity and reputation, and for loss of profit other than anticipated profits arising directly from the Contractor's Work. This waiver is applicable, without limitation, to all consequential damages due to Contractor's termination in accordance with Paragraph 17.

21. Dispute Resolution - Negotiation. In the event of any dispute, claim, question or disagreement arising out of or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle such disputes, claims, questions or disagreement. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and

equitable solution satisfactory to both parties. The parties shall continue to perform their respective obligations under this Contract during the pendency of any dispute resolution mechanism, including negotiation, mediation, arbitration or litigation; Contractor shall continue to perform the Work and Owner shall make continue to make all undisputed payments.

22. Dispute Resolution - Mediation. If the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation under the Construction Mediation Rules of the American Arbitration Association then in effect, as a condition precedent to arbitration or the institution of legal proceedings by either party. Requests for mediation shall be filed in writing with the other party and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless otherwise agreed by the parties. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county in which the Project is located, unless another location is mutually agreed upon.

23. Dispute Resolution – Arbitration. Thereafter any such dispute that remains unresolved shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. Any arbitration may include, by consolidation or joinder, the Owner and its consultants and any subcontractors or suppliers of the Owner if such other person is substantially involved in a common question of fact or law. The arbitrator shall issue a reasoned opinion of his or her award. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. All hearings shall be conducted in the county in which the Project is located unless the parties otherwise agree.

24. Joinder in Third-Party Litigation or Arbitration. Notwithstanding any provision of Paragraphs 21, 22 or 23 to the contrary, the Owner shall have the right to join the Contractor (or to demand that the Contractor participate in the defense or prosecution of any claim) in any mediation, litigation or arbitration proceeding in which the Owner may be involved with a third party, including a design professional or another Contractor of the Owner or any other person, if the matters in controversy in such proceeding involve the Work of the Contractor. In such event, the Owner and Contractor shall be mutually bound to each other by the terms of the litigation judgment or arbitration award.

25. Hazardous Materials. Should the Contractor encounter, during the performance of his Work, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or other hazardous or toxic material or substance ("Hazardous Material"), Contractor shall immediately notify Owner and suspend Work in the affected area until instructed to resume

by the Owner. Contractor shall maintain and supply to the Owner, Material Safety Data Sheets on any hazardous material Contractor brings on the Project. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a sub-Contractor or anyone directly or indirectly employed by them, the Contractor shall, prior to harmful exposure of the Owner's employees to such substance, give written notice of the chemical composition thereof to the Owner in sufficient detail and time to permit the Owner's compliance with such laws.

26. **Independent Contractor.** While performing services hereunder, the Contractor is an independent contractor and not an officer, agent or employee of the Owner.

Owner

By: _____

27. **Owner's Representative.** The Owner's representative authorized to represent it in all respects hereunder, is _____, with offices at _____.

28. **Amendment; Entire Agreement.** This Contract may be amended solely by a writing signed by both parties. This Contract, as so amended in writing, constitutes the entire agreement between the parties with respect to the Project and supersedes any prior bids, proposals, correspondence, negotiations or agreements among them.

Contractor

By: _____

ATTACHMENT A

SCOPE OF WORK

The Contractor's Work under this Contract shall be to provide all the labor, materials, equipment, facilities, safety appliances, transportation, and trade permits, as well as any incidental design services required by the Plans and Specifications, necessary or desirable to:

furnish and install _____

Provide _____

all in accordance with the Plans and Specifications, as modified by Change Order or written field orders or instructions from the Architect or Engineer provided to Contractor by the Owner.

The Plans and Specifications are as follows:

Allowances and unit prices included in the Contract Sum are:

Item	Unit	Unit Price	Estimated Units	Estimated Price

The actual price to be paid for each of these allowance and unit price items shall be determined by multiplying the actual units of each item by the unit price for that item. Upon completion of the Contractor's Work the Contract Sum shall be increased by Change Order by the difference between the estimated price of each unit price item and the actual price of that item if the actual price is higher, and decreased by that amount if it is lower.