

## OWNER-DESIGN-BUILDER AGREEMENT

THIS AGREEMENT is made this [redacted] day of September 2024 by and between the Lenoir County Board of Education (herein referred to as the "Owner"), whose mailing address is 2017 W. Vernon Avenue, Kinston, North Carolina 28504 and \_\_\_\_\_, Inc. (herein referred to as the "Design-Builder"), whose mailing address is \_\_\_\_\_. Correspondence, submittals, and notices relating to or required under this Agreement shall be sent in writing to the above addresses unless either party is notified in writing by the other of a change in address.

In consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Design-Builder for \_\_\_\_\_ bleacher renovation project.

The following documents, if any, are attached as Exhibits to this Agreement and incorporated by reference herein:

Exhibit A – Scope of Work

Exhibit B – Change Proposal Form

Exhibit C – Sexual Offender Registry and Criminal Background Check Certification Form

1. Scope of Services. The Design-Builder shall perform the Work described in Exhibit A. The Work shall be performed in accordance with the terms and conditions of this Agreement and any plans and specifications prepared for this Work, all of which are incorporated into this Agreement. The Design-Builder agrees that all plans, drawing, specifications, designs and surveys in draft or final form are the property of the Owner, who may demand possession of them at anytime from Design-Builder and receive the same within three business days of demand. The Design-Builder shall provide all materials, tools, equipment, and labor, and supply all other services and things necessary to fully and properly perform and complete the Work as required by this Agreement. The Design-Builder shall perform the Work in compliance with all governmental laws and regulations. The Design-Builder shall also, unless otherwise specified, supply and pay for all transportation, utilities, fuel, sanitary facilities, and incidentals necessary for the completion of the Work, and be responsible for the safe, proper and lawful construction of the Work, and shall perform the Work in the best and most workmanlike manner, as shown on or stated in any plans or specifications referenced herein, or reasonably implied therefrom. All materials shall be new and of quality specified. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades, except as exceeded or qualified by any plans or specifications referenced herein. The Design-Builder shall keep the site and surrounding area reasonably free from rubbish at all times. Before final inspection and acceptance of the Work, the Design-Builder shall thoroughly clean the site, and completely prepare the Work and site for use by the Owner. The Design-Builder shall commence the Work promptly upon the date established in the Notice to Proceed and achieve Substantial and Final Completion by the dates established below.
2. Design-Builder's Professional Responsibility and Standard of Care.
  - 2.1 By execution of this Agreement, the Design-Builder warrants that (a) it is an experienced and duly licensed firm or individual having the ability and skill necessary to perform all the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules and regulations which are applicable to the design and construction of the Project (such laws, rules and regulations including, but not limited to, all local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and all orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of services on the Project), and that all drawings, specifications and other documents prepared by the Design-Builder shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.
  - 2.2 The Design-Builder hereby represents and agrees that the drawings, specifications and other documents prepared by it pursuant to this Agreement shall be complete and functional, except as to any deficiencies which are due to causes beyond the control of the Design-Builder.
  - 2.3 The Design-Builder shall be responsible for any errors, inconsistencies or omissions in the drawings, specifications, and other documents. In addition, the Design-Builder will correct at no additional cost to the Owner any and all errors and omissions in the drawings, specifications and other documents prepared by the Design-Builder. The Design-Builder further agrees, at no additional cost, to resolve problems relating to the design or specified materials.
  - 2.4 It shall be the responsibility of the Design-Builder throughout the period of performance under this Agreement to exercise the abilities, skills and care customarily used by Design-Builders of the training and background needed to perform the Services required under this Agreement who practice in the Wilmington, NC area or similar communities.
  - 2.5 Throughout all phases of the Project, the Design-Builder and its consultants shall meet periodically with the Owner when reasonably requested. Participants shall be as determined by the Owner.
  - 2.6 The Design-Builder shall ensure that the drawings, specifications, and other documents prepared for the Project, fulfill the Scope of Work and are in accordance with the requirements of all regulatory agencies.
3. Representation of the Design-Builder. In order to execute this Agreement and recognizing that the Owner is relying thereon, the Design-Builder, by executing this Agreement, makes the following express commitments to the Owner:
  - 3.1. The Design-Builder is fully qualified and licensed to act as the Design-Builder for the full scope of work for this Project and shall maintain any and all licenses, permits, insurance, and any authorizations necessary to act as the contractor.
  - 3.2. The Design-Builder has become familiar with the Project site and all conditions under which the Project is to be constructed and has identified to the Owner any and all issues.
  - 3.3. The Design-Builder warrants title of all material, supplies, and equipment installed or incorporated into this Project and agrees upon completion of all work delivered to Owner free of any claims, liens, and charges.
  - 3.4. It is understood that the Owner, or his representatives and/or agents may reproduce the drawings without modifications and distribute the prints without incurring obligation for additional compensation to the Design-Builder. One reproducible of all work products shall be provided to the Owner for this purpose.

4. **Payments.** Provided that the Design-Builder shall strictly and completely perform all of its obligations under this Agreement, the Owner shall pay the Design-Builder \$ [REDACTED]. No compensation shall be paid for any additional work that is not approved in advance by the Owner. One progress payment per month, if any, may be made by the Owner to the Design-Builder only after certification that a portion of the Work is complete. Under no circumstances will the Owner make more than one payment per month. The Owner shall pay the Design-Builder within thirty (30) business days following approval of a payment request. Each payment request shall be signed by the Design-Builder and shall constitute the Design-Builder's assurance that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict conformance with the requirements of this Agreement, and that the Design-Builder knows of no reason why payment should not be made as requested. The submission of a payment request also constitutes an affirmative representation and warranty that all work is free and clear of any lien, claim, or other encumbrance upon payment from the Owner. Final payment will be withheld until Design-Builder has provided Owner with copies of all Operation and Maintenance (O & M) Manuals and warranties applicable to the Work.

If requested by the Owner, the Design-Builder shall provide to the Owner a Schedule of Values for approval apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment within ten (10) calendar days of the date of commencement. The Schedule of Values shall be presented in enough detail to adequately apportion the Agreement to allow for breakdown of payments and shall include overhead and profit within each item. The Design-Builder's schedule of values shall not inflate any portion of the work.

The amount of each payment request shall be computed as follows:

- (A) take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less maximum retainage allowed by law. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as amended;
- (B) add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less maximum retainage allowed by law;
- (C) subtract the aggregate of previous payments made by the Owner; and
- (D) subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment.

When payment is received from the Owner, the Design-Builder shall promptly pay all subcontractors, materialmen, laborers, and suppliers the amounts that are due for the work covered by such payment. In the event the Owner becomes informed that the Design-Builder has not paid these parties, the Owner has the right to issue future payments to the Design-Builder less the amounts owed to any subcontractor, supplier, or laborer. Continued claims for by subcontractors for lack of payment may be deemed a breach of this Agreement by the Design-Builder.

The Owner shall have the right to refuse to make payment and, if necessary, demand the return of a portion or all of the amount previously paid to the Design-Builder due to:

- (A) the quality of a portion, or all, of the Design-Builder's work is not in accordance with the requirements of this Agreement;
- (B) the quantity of the Design-Builder's work not being as represented by the Design-Builder's payment request;
- (C) the Design-Builder's rate of progress being such that in the Owner's opinion, will not provide for final completion as required by this Agreement;
- (D) the Design-Builder's failure to adequately keep records of as-built conditions; and
- (E) the Design-Builder's failure to use payments to pay project related obligation including but not limited to subcontractors, laborers, and material and equipment suppliers.

5. **Substantial and Final Completion.** When Substantial Completion has been achieved, the Design-Builder shall notify the Owner in writing that the project is ready for a pre-final punchlist. At this time, the Design-Builder shall have already conducted its own internal punchlist of the completed work. The Owner and Design-Builder shall conduct an inspection of the Work and provide a written list of unfinished items or items in need of correcting. The Design-Builder shall bear the cost of any and all corrections of incomplete work, correcting and bringing into conformance all defective or nonconforming work. The Design-Builder shall notify the Owner when all nonconforming work has been completed and is ready for final inspection. If the Design-Builder feels it is outside of their control to finish the Work within the time prescribed, they must submit proper reasoning to the Owner in writing and at that time it is the Owner's discretion to accept or reject the request.

Prior to the conclusion of the Project, the Design-Builder shall furnish the Owner:

- (A) an affidavit that all of the Design-Builder's obligations to subcontractors, laborers, equipment and material suppliers, or other third parties involved in the Project, have been paid or otherwise satisfied;
- (B) waiver of right of claim against the Owner by all subcontractors; and
- (C) all product warranties, operating manuals, instruction manuals, record drawings, test results, and other documents expressly required to complete the Project.

6. **Date of Commencement and Substantial Completion.** The Design-Builder shall commence the performance of the Work on the date of this Agreement and diligently continue its performance until final completion. The Contract Time shall be measured from the date of commencement and the Design-Builder shall achieve Substantial Completion of the entire Work not later than [REDACTED].

The Design-Builder shall achieve Final Completion within [redacted] days of date established above for Substantial Completion. In the event that circumstances beyond the Design-Builder's control force a delay that prohibits or may prohibit the Design-Builder's compliance with the schedule, the Design-Builder shall inform the Owner immediately.

7. **Changes in the Work.** If the Owner elects to have a change in the Work performed on a lump sum or a time and material basis, the same shall be performed by the Design-Builder. The Design-Builder shall submit to the Owner complete documentation supporting the cost of the change in the Work in a format acceptable to the Owner. The Change Proposal Form attached as Exhibit B shall be used to submit change proposals on the Project. The Owner may require authentication of all time and material tickets and invoices prior to payment for the change in the Work. The failure of the Design-Builder to provide any required documentation shall constitute a waiver by the Design-Builder of any claim for the cost of that portion of the change in the Work. Up to 15% of direct material and labor costs can be applied as overhead and profit for the Design-Builder or any Subcontractor actually performing the work (said overhead and profit to include all small tools), and may further include the reasonably anticipated rental costs in connection with the Change in the Work, plus up to 8% thereof as overhead and profit. The Design-Builder and/or subcontractor may include up to 8% markup on any Change in the Work performed by a lower-tiered subcontractor. Payroll costs are limited to 39% of the net pay of the worker. Overhead and profit shall not be applied by the entity performing the work to labor burden, any sales and use tax paid for any purpose, or to any transportation or shipping costs incurred by the Design-Builder or any Subcontractor. Any change in the Contract Sum resulting from a Change Order shall be mutually agreed upon by the Design-Builder and the Owner together with any conditions relating thereto.
8. **Insurance.** The Design-Builder shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Design-Builder's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or (2) omissions for which the Design-Builder is legally liable. All such insurance policies shall be provided by insurance companies properly licensed in North Carolina and having a financial rating of at least "A" by A.M. Best or equivalent. Minimum limits of coverage shall be:

Insurance Description	Minimum Required Coverage
a. Workers' Compensation	Statutory
b. Public Liability	Combined Limit
Bodily Injury: Each Person	\$ 1,000,000.00
Bodily Injury: Each Accident	\$ 1,000,000.00
Property Damage: Each Accident	\$ 1,000,000.00
c. Automobile Liability & Property Damage	Combined Limit
Bodily Injury: Each Person	\$ 1,000,000.00
Bodily Injury: Each Accident	\$ 1,000,000.00
Property Damage: Each Accident	\$ 1,000,000.00
d. Professional Liability:	\$ 1,000,000.00

- 8.1 Evidence of such insurance shall be attached hereto, and the Owner shall receive thirty (30) days prior written notice of any cancellation, nonrenewal or reduction of coverage of any of the policies. Upon notice of such cancellation, nonrenewal or reduction, the Design-Builder shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 8.2 The Design-Builder shall deliver to the Owner a Certificate of Insurance for its Professional Liability coverage annually for three years following the completion of the Project.
- 8.3 All insurance policies (with the exception of Professional and Public Liability and Worker's Compensation) required under this agreement shall name the Owner as an additional insured for the insurance and shall contain a waiver of subrogation against the Owner.
- 8.4 The Design-Builder shall maintain in force during the performance of this Agreement and for three years after final completion of the Project, the Professional Liability insurance coverage referenced above.

9. Hold Harmless. To the fullest extent allowed by law, the Design-Builder shall indemnify and hold the Owner harmless from and against any and all losses, liabilities, claims, lawsuits, judgments, and demands whatsoever, including costs of investigation (including reasonable legal fees and all costs) caused by any act or omission or intentional wrongdoing of the Design-Builder or its agents, employees or subcontractors. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2 and shall survive the termination, completion or expiration of this Agreement.
10. Codes, Permits and Applicable Laws. The Design-Builder shall at Design-Builder's expense obtain the required permits, give all notice and comply with all laws, ordinances, codes, rules, regulations and Owner's policies bearing on the conduct of the Work under this Agreement. If the Design-Builder observes that the drawings and specifications are at variance therewith, Design-Builder shall promptly notify the Owner in writing. If the Design-Builder performs any Work knowing (or under circumstances in which Design-Builder ought to have known) it to be contrary to such laws, ordinances, codes, rules and regulations. Design-Builder shall bear all cost arising therefrom. This Agreement and the relationship of the parties shall be construed under the laws of the state of North Carolina. Design-Builder shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. Design-Builder represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. Design-Builder certifies that as of the date of this Agreement, Design-Builder is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Design-Builder acknowledges that the Owner has adopted policies governing conduct on Owner's property and agrees to abide by all relevant Owner policies while on Owner's property. The Design-Builder acknowledges that Owner's policies are available on the Owner's website.
11. Safety Requirements. The Design-Builder shall be responsible for the Work area and the construction of the Work and provide all the necessary protections as required by laws, rules, regulations or ordinances governing such conditions and as required by the Owner. Design-Builder shall be responsible for any damage Design-Builder or Design-Builder's employees, agents, suppliers or subcontractors cause to the Owner's property or that of others on the job and shall promptly repair any such damage. The Design-Builder shall clearly mark or post signs warning of hazards existing, and shall barricade excavations and similar hazards. Design-Builder shall maintain all necessary protective devices and signs throughout the progress of the Work.
12. Hazardous Materials. The Design-Builder is responsible for compliance with any requirements included in the Agreement and any state, federal or local requirements regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Agreement, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, the Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up. The Owner shall not be responsible under this section for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner. The Owner shall be responsible for materials or substances required by the Owner, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances. The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under this section, except to the extent that the cost and expense are due to the Owner's fault or negligence. If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Agreement, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.
13. Warranties. The Design-Builder guarantees and warrants to the Owner all Work as follows: that all materials and equipment furnished under this Agreement will be new and the best of its respective kind unless otherwise specified; that all Work will be of good quality in accordance with the industry standards; that the Work will be free of omissions and poor quality, defective material or workmanship; that the Work, including but not limited to, mechanical and electrical devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care; that the products or materials incorporated in the Work will not contain asbestos; and that all subcontractors, agents or employees of Design-Builder will be fully qualified, possess any requisite licenses, and otherwise be legally entitled to perform the services provided. If, within one year (two years for painting) after the date of completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, any of the Work is found to be defective, not in accordance with this Agreement, or not in accordance with the guarantees and warranties specified in this Agreement, the Design-Builder shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so. For items which remain incomplete or uncorrected on the date of Substantial Completion, the one-year warranty shall begin on the date of Final Completion of the Work.
14. Termination for Convenience. The Owner may terminate this Agreement at any time in its complete discretion upon ten (10) days written notice. In the event of a termination for convenience, all finished or unfinished work and materials pursuant to this Agreement

shall be turned over to the Owner and become its property. If the Agreement is terminated by the Owner in accordance with this section, the Owner shall only be responsible for paying Design-Builder for Work performed and accepted and materials delivered to the site as of the date of termination. In the event of a termination for convenience by Owner, Design-Builder's warranty shall still apply to all portions of the Work and all equipment installed by Design-Builder prior to termination.

15. **Lunsford Act/Criminal Background Checks.** Design-Builder acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. Design-Builder shall provide certification, on the form attached as Exhibit C, that it has conducted sexual offender registry checks and criminal background checks on each of its owners, employees, agents and subcontractors who will engage in any service on or delivery of goods to Owner's property (sex offender checks can be conducted at no cost at <http://www.nsopw.gov/>). Design-Builder shall not assign or allow any individual to deliver goods or provide services on Owner's property if said individual appears on any of the listed sex offender registries or who has ever had any of the following criminal convictions, or similar criminal convictions, without receiving prior written permission from Owner, which Owner may withhold in its reasonable discretion: murder, rape, sexual offense, sexual assault, statutory rape, indecent liberties with a minor, child abuse, kidnapping, abduction, manufacture, sale or delivery of controlled substances, assault with a deadly weapon, assault inflicting serious bodily injury, manslaughter, trafficking or exploitation of minors or felony level burglary, robbery, embezzlement, theft or larceny.
16. **Anti-Nepotism.** Unless disclosed to the Owner in writing prior to the Board's approval and execution of the Agreement, Design-Builder warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Owner's Board of Education or of any principal or central office staff administrator employed by such Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Design-Builder become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Design-Builder shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless disclosed prior to the execution of the Agreement or formally waived by the Owner at a Board meeting, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Design-Builder.
17. **Entire Agreement.** All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party unless in writing signed by both parties. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Agreement. If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of the Agreement or the application of the same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.
18. **Risk of Loss.** Design-Builder shall bear the risk of loss in the event that any of the Work is stolen, lost damaged or destroyed prior to Final Completion of the Work and acceptance by Owner, unless caused by the intentional or reckless acts of Owner or Owner's authorized agents. If any of the Work is stolen, lost, damaged, or destroyed prior to Final Completion of the Work and acceptance by the Owner, due to any reason except the intentional or reckless acts of Owner or Owner's authorized agents, Design-Builder shall bear the full cost of repairing or replacing all such Work, including all equipment and materials.
19. **Interpretation of Agreement.** Design-Builder and Owner acknowledge that the Agreement shall not be construed against Owner due to the fact that it may have been drafted by Owner. For purposes of construing this Agreement, both Design-Builder and Owner shall be considered to have jointly drafted the Agreement.
20. **Taxes.** The Design-Builder shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Design-Builder which are legally enacted at the time bids are received, whether or not yet effective. The Design-Builder shall indemnify and hold the Owner harmless from any claims arising out of the Design-Builder's failure to pay all required taxes, including claims by the county for its inability to recover taxes that were not properly paid to the State of North Carolina by the Design-Builder.
21. **Federally Funded Projects.** The Design-Builder is notified that this project will be financed with federal funds. The Design-Builder shall ensure that all subcontracts and other contracts for goods and services for this project have the below provisions of this section their contracts. Design-Builder agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the Owner to issue a cancellation notice to the Design-Builder. In the event of a conflict between this section and any other provision in this Agreement, the parties agree that this section shall prevail.

- a. Remedies for Breach.  
The Owner reserves all rights and privileges under the applicable laws and regulations with respect to this Agreement in the event of breach of contract by either party.
- b. Termination for Cause and for Convenience by Owner.  
In addition to the Owner's right to terminate this Agreement as provided in Section 12 above, the Owner reserves the right to immediately terminate this Agreement in the event of a breach or default of the agreement by Design-Builder, in the event Design-Builder fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified by this Agreement; (2) make any payments owed; or (3) otherwise perform in accordance with the Agreement. The Owner also reserves the right to terminate the Agreement immediately, with written notice to Design-Builder, for convenience, if the Owner believes, in its sole discretion that it is in the best interest of the Owner to do so. The Design-Builder will be compensated for work performed and accepted and goods accepted by the Owner as of the termination date if the Agreement is terminated for convenience of the Owner. The award of this Agreement is not exclusive and the Owner reserves the right to purchase goods and services from other vendors when it is in the best interest of the Owner.
- c. Equal Employment Opportunity.  
Except as otherwise provided under 41 CFR Part 60, when funds will be expended by the Owner pursuant to this Agreement that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, Design-Builder certifies it will comply with the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- d. Davis-Bacon Act, as Amended (40 U.S.C. 3141-3148).  
During the term of this Agreement, the Design-Builder certifies it will be in compliance with all applicable Davis-Bacon Act provisions. In accordance with the statute, Design-Builder shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Design-Builder shall pay wages not less than once a week, unless employees voluntarily agree to a different schedule. The Owner will report all suspected or reported violations to the Federal awarding agency. Design-Builder certifies it will comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Design-Builders and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each vendor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Owner will report all suspected or reported violations to the Federal awarding agency.
- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).  
The Design-Builder certifies that during the term of an award for all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Design-Builder will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act. Under 40 U.S.C. 3702 of the Act, each vendor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f. Rights to Inventions Made Under a Contract or Agreement.  
If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Design-Builder wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Design-Builder agrees to comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- g. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) Compliance.  
The Design-Builder certifies that during the term of an award for all contracts by the Owner associated with this Agreement in excess of \$150,000, the Design-Builder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Debarment and Suspension.  
Design-Builder certifies that during the term of an award for all contracts by the Owner associated with this Agreement, the Design-Builder certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

- i. **Compliance with Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).**  
When federal funds are expended by the Owner for a contract exceeding \$100,000, the Design-Builder certifies that during the term and after the awarded term of all contracts by the Owner associated with this Agreement, the Design-Builder certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The Design-Builder further certifies that:
  - 1. No Federal appropriated funds have been paid or will be paid for on behalf of the Design-Builder, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
  - 3. The Design-Builder shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.
  
- j. **Compliance with Solid Waste Disposal Act.**  
In the event the Contract involves the purchase of more than \$10,000 in items designed by guidelines of the Environmental Protection Agency at 40 C.F.R. Part 247, Design-Builder agrees to comply with the requirements of section 6002 of the Solid Waste Disposal Act. In particular, the Design-Builder certifies that the percentage of recovered materials to be used in the performance of the Agreement will be at least the amount required by applicable specifications or other contractual requirements.
  
- k. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.**  
As detailed in 2 CFR § 200.216, Design-Builder certifies that any equipment, services, or systems provided through this Agreement shall not use covered telecommunications equipment or services as a substantial or essential component of a system or as part of any system.
  
- l. **Domestic Preference.**  
As detailed in 2 CFR § 200.322, as appropriate and to the extent consistent with law, Design-Builder certifies that, to the greatest extent practicable, the goods, products, or materials furnished through this award will be produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
  
- m. **Records Retention Requirements.**  
The Design-Builder certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. The Design-Builder further certifies that Design-Builder will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
  
- n. **Certification of Non-Collusion Statement.**  
Design-Builder certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.
  
- o. **Prohibition on Gifts.**  
Design-Builder certifies that it will comply with the prohibition against giving gifts, gratuities, favors or anything of monetary value to an officer, employee or agent of the School System. Design-Builder understands and agrees that violation of these standards will result in termination of the Agreement and may result in ineligibility for future contract awards.

22. **Notice.** All notices shall be in writing and shall be deemed submitted if mailed or emailed to the representatives as listed below at the respective addresses:

**The Owner's Representative:**

**The Design-Builder's Representative:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Neither the Owner's nor the Design-Builder's representative shall be changed without ten days written notice to the other party.





IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed and the Design-Builder has caused this Agreement to be signed by a person with the authority to enter this Agreement, as hereinafter attested, all as of the day and year first above written.

**LENOIR COUNTY  
BOARD OF EDUCATION**

**DESIGN-BUILDER**

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
President/Vice President

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Finance Officer \_\_\_\_\_

Date \_\_\_\_\_

**Scope of Work**

**Exhibit B**

**CHANGE PROPOSAL FORM**

**Project:** \_\_\_\_\_  
**Contract:** \_\_\_\_\_  
**Design-Builder:** \_\_\_\_\_

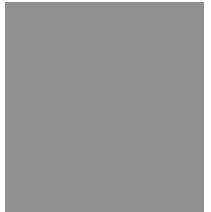
**Proposal #:** \_\_\_\_\_  
**Project #:** \_\_\_\_\_  
**Design-Builder #:** \_\_\_\_\_

**Description of change:**

**Materials** (Attach list with Qty, Item, Unit \$, Unit mh, Total mh, OT mh, Total \$)

**SUBTOTALS**

- 1 Total Direct Cost of Materials \_\_\_\_\_
- 2 Overhead & Profit on Item 1. \_\_\_\_\_  
(15% maximum, includes small tools & consumables)
- 3 Sales Tax \_\_\_\_\_
- 4 Shipping & Transportation \_\_\_\_\_



**Labor**

- 5 Total Manhours: \_\_\_\_\_ MH @ \_\_\_\_\_ /hr. \_\_\_\_\_
- 6 Overhead & Profit on Item 5. \_\_\_\_\_  
(15% maximum on straight labor cost, not premium portion)  
(O & P includes supervisor's time)
- 7 Payroll Taxes & Insurance \_\_\_\_\_ %  
39 \_\_\_\_\_



**Equipment Rental** (Include quotes)

- 8 Equipment Rental \_\_\_\_\_
- 9 Overhead & Profit on Item 8 (8% maximum). \_\_\_\_\_



**Subcontractors** (Include quotes with material & equipment backup)

- 10 Subcontractors \_\_\_\_\_
- 11 Overhead & Profit on Item 10 (8% maximum). \_\_\_\_\_



**Subtotal of Proposal** \_\_\_\_\_

**TOTAL OF CHANGE PROPOSAL** \_\_\_\_\_

Time Extension Requests: \_\_\_\_\_ day(s) Schedule Activity # Affected: \_\_\_\_\_

The Design-Builder agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with the Agreement documents if the work is authorized by the Owner.

**Design-Builder's Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approval Recommended by Design-Builder:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Owner's Representative Approval:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Exhibit C**

**Sexual Offender Registry and Criminal Background Check Certification Form**

Check the appropriate box to indicate the type of check:

- Initial
- Supplemental
- Annual

I, \_\_\_\_\_ (insert name), \_\_\_\_\_ (insert title) of \_\_\_\_\_ (insert company name) hereby certify that I have performed all of the required sexual offender registry and criminal background checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors ) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries or has any criminal conviction listed in the Agreement, and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries or has any criminal conviction listed in the Agreement, without the prior written permission of Owner . I agree to maintain all records and documents associated with these registry and criminal background checks, and that I will provide such records and documents to the Owner upon request. I specifically acknowledge that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner’s sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

**Contractual Personnel Names**

**Job Title**

- |    |       |  |       |
|----|-------|--|-------|
| 1. | _____ |  | _____ |
| 2. | _____ |  | _____ |
| 3. | _____ |  | _____ |
| 4. | _____ |  | _____ |
| 5. | _____ |  | _____ |

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

\_\_\_\_\_  
 \_\_\_\_\_ (print name)  
 \_\_\_\_\_ (title)

\_\_\_\_\_  
 \_\_\_\_\_ (signature)  
 \_\_\_\_\_ (date)