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# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM**

Iredell-Statesville Schools Board of Education –  
Athletic Stadium Upgrades Project: Turf Infields, New  
Tracks, and LED Stadium Lighting

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**Document No. 525**

Second Edition, 2010

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Washington, DC



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EXHIBITS.....



# Standard Form of Agreement Between Owner and Design-BUILDER - Lump Sum

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_ in the year of \_\_\_\_\_, by and between the following parties, for services in connection with the Project identified below.

## **OWNER:**

Iredell-Statesville Schools Board of Education  
549 North Race St.  
Statesville, NC 28677

## **DESIGN-BUILDER:**

*(Name and address)*

## **PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

Project name:

Project location:

In consideration of the mutual covenants and obligations contained herein, Owner and Design-BUILDER agree as set forth herein.

## **Article 1**

### **Scope of Work**

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **Article 2**

### **Contract Documents**

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

**2.1.2** The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

**2.1.3** This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

**2.1.4** The General Conditions of Contract, including the exhibits;

**2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and

**2.1.6** The Proposal submitted by the Design-Builder in response to the Owner's Request for Qualifications for Design-Builders.

**2.1.7** The budget proposal from the Design-Builder, dated December 19, 2022 (Quote 2202-005).

## **Article 3**

### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take

precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract and in the Supplementary General Conditions.

**3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 4**

### **Ownership of Work Product**

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service which become the property of the Owner. The Design-Builder shall have no ownership and property interests (including, but not limited to, intellectual property interests, copyrights, and patents).

**4.2 Use of Work Product on other Projects.** The Design-Builder shall have no liability for use of the Work product on other projects by the Owner or others and any such use shall be at the user's risk.

## **Article 5**

### **Contract Time**

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. The parties agree that the Date of Commencement shall be the date that this Agreement is fully executed.

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion for the improvements to the Turf Field shall be achieved no later than \_\_\_\_\_ ("Scheduled Substantial Completion Dates"). Substantial Completion is the date upon which the Work is sufficiently complete so that the Owner can occupy and use the Project for its intended purposes pursuant to the definition of Substantial Completion or Substantially Complete set forth in Section 1.2.18 of the General Conditions of Contract.

**5.2.2** Design-Builder shall use its best efforts to meet interim milestones, and shall achieve Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") as follows:

**5.2.2.1** The Construction Schedule submitted by the Design-Builder in its proposal to the Owner.

**5.2.3** Final Completion of the Work shall be achieved no later than thirty (30) calendar days after the date of Substantial Completion. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

**5.2.4** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.**

**5.4.1** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner FIVE HUNDRED Dollars (\$ 500) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

**5.4.2** Design-Builder understands that if Final Completion is not achieved within thirty (30) calendar days after the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within thirty (30) calendar days after the Scheduled Substantial Completion, Design-Builder shall pay to Owner TWO HUNDRED FIFTY Dollars (\$ 250), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

## **ARTICLE SIX**

### **Contract Price**

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Changes in Contract Price Involving Unit Prices.** If the Contract Price requires an adjustment due to performance of Work subject to application of unit prices set forth in the Unit Prices Exhibit, the adjustment shall be product of the number of units of Work multiplied by the applicable unit price. No markups, overhead, profit, or other additional costs and charges shall be allowed for the performance of such unit price Work.

**6.3 Allowance Items and Allowance Values.**

**6.3.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Allowance Exhibit attached hereto and incorporated herein.

**6.3.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values.



**6.3.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner.

**6.3.4** The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

**6.3.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Sections 6.3.3 and 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **Article 7**

### **Procedure for Payment**

#### **7.1 Progress Payments.**

**7.1.1** Design-Builder shall submit to Owner on the twentieth (20<sup>th</sup>) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within twenty (20) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.2 Retainage on Progress Payments.** Owner will retain FIVE percent (5%) of each Application for Payment. Retainage on progress payments or final payments made by the Owner to the Design-Builder and by the Design-Builder to Subcontractors shall be retained, released, maintained at a minimum level, and reinstated in accordance with the provisions of North Carolina General Statutes § 143-134.1; however, nothing in that statute or the Contract Documents prevents the Owner from withholding payment for unsatisfactory job progress, defective construction not remedied, disputed work, and third-party claims or reasonable evidence that a third-party claim will be filed.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of seven (7) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of seven (7) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement

are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## **Article 8**

### **Termination for Convenience**

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** The cost of Work performed as of the date the Design-Builder receives the written notice of termination.

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner's Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Dr. Jeff James, Superintendent

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Mr. Tim Ivey, Executive Director

#### **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

## **Article 10**

### **Bonds and Insurance**

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

10.2.1 The Design-Builder shall provide the Owner with a Performance Bond and a separate Payment Bond, each in the amount of one hundred percent of the Contract Price prior to the execution of the Contract by the Owner. The form of the required bonds shall be those forms attached to the Bond Exhibit attached to and incorporated in the Contract.

## **Article 11**

### **Other Provisions**

**11.1 Other provisions, if any, are as follows:**

**11.1.1 Litigation.** Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state and county in which the Project is located.

**11.1.2 E-Verify.** The Design-Builder and the Design-Builder's Subcontractors are required to comply with the E-Verify requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina regarding employees as a term of this Contract made essential to this Contract by the provisions of § 143-133.3 of the General Statutes of North Carolina. The Design-Builder represents to and covenants with the Owner that the Design-Builder and its Subcontractors will fully comply with those statutory E-Verify requirements.

**11.1.3 Jessica Lunsford Act.** Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. The Design-Builder agrees to conduct a check of all its employees and require its subcontractors to conduct checks of its employees working at the Project site on the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program, and the National Sex Offender Registry.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

[signature page follows]

**OWNER**

The Iredell-Statesville Schools  
Board of Education

By: \_\_\_\_\_

*(Signature)*

\_\_\_\_\_

Board Chair

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

**DESIGN-BUILDER**

By: \_\_\_\_\_

*(Signature)*

\_\_\_\_\_

*(Printed Name)*

*(Title)*

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

**Preaudit Certificate**

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

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