

## OWNER-CONTRACTOR AGREEMENT

THIS AGREEMENT is made this 12th day of November 2024 by and between the Warren County Board of Education (herein referred to as the "Owner"), whose mailing address is 109 Cousin Lucy's Lane, Warrenton, NC 27589 and DeValdia, Inc herein referred to as the "Contractor"), whose mailing address is 106 West Macon Street, Warrenton, NC 27589. 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 Contractor for the Warren County High School Gym Concession Project.

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

Exhibit A- Proposal

Exhibit B - Sexual Offender Registry and Criminal Background Check Certification Form

1. Scope of Services. The project includes turnkey renovation of the Warren County High School gymnasium lobby concession stand as more particularly described on Exhibit A Scope of Work/Proposal. The Contractor shall perform the Work described on Exhibit A. The Work shall be performed in accordance with the terms of this Agreement and any plans and specifications referenced herein, all of which are incorporated into this Agreement. The Contractor 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 Contractor shall perform the Work in compliance with all governmental laws and regulations. The Contractor 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 Contractor shall keep the site and surrounding area reasonably free from rubbish at all times. Before final inspection and acceptance of the Work, the Contractor shall thoroughly clean the site, and completely prepare the Work and site for use by the Owner. The Contractor 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. Representation of the Contractor. In order to execute this Agreement and recognizing that the Owner is relying thereon, the Contractor, by executing this Agreement, makes the following express commitments to the Owner:
  - (A) The Contractor is fully qualified and licensed to act as the Contractor 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.
  - (B) The Contractor 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.
  - (C) The Contractor has received and carefully reviewed all contract documents as listed above in Paragraph 1 and has found them complete, accurate, adequate, and sufficient for construction.
  - (D) The Contractor 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. Compensation. Provided that the Contractor shall strictly and completely perform all of its obligations under this Agreement, the Owner shall pay the Contractor \$39,500.00. 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 Contractor 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 Contractor within thirty (30) business days following approval of a payment request. Each payment request shall be signed by the Contractor and shall constitute the Contractor's surety 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 Contractor 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 Contractor 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 Contractor 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 contract to allow for breakdown of payments and shall include overhead and profit within each item. The Contractor's schedule of values shall not inflate any portion of the work. The Contractor acknowledges that the same documentation required for a Change in the Work shall be provided as backup for the use of allowances.

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 Contractor 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 Contractor has not paid these parties, the Owner has the right to issue future payments to the Contractor 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 Contractor.

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 Contractor due to:

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

4. Substantial and Final Completion. When Substantial Completion has been achieved, the Contractor shall notify the Owner in writing that he/she is ready for a pre-final punchlist. At this time, the Contractor shall have already conducted its own internal punchlist of the completed work. The Owner and/or Design Consultant shall conduct an inspection of the completed and provide a written list of unfinished items or items in need of correcting. The Contractor shall bear the cost of any and all corrections of incomplete work, correcting and bringing into conformance all defective or nonconforming work. The Contractor shall notify the Owner when all nonconforming work has been completed and is ready for final inspection and subsequent final payment. If the Contractor 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 being entitled to receive final payment, the Contractor shall furnish the Owner:

- (A) an affidavit that all of the Contractor'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 Surety bond; and
- (C) all product warranties, operating manuals, instruction manuals, record drawings, test results, and other documents expressly required to complete the Project.

5. Date of Commencement and Substantial Completion. The Contractor shall commence the performance of this Agreement on the date of this contract and diligently continue its performance until final completion. The contract time shall be measured from the date of commencement and the Contractor shall achieve Substantial Completion of the entire Work not later than December 1<sup>st</sup>, 2024. The Contractor shall achieve Final Completion within 15 days of date established above for Substantial Completion.
6. 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 Contractor. The Contractor shall submit to the Owner complete documentation supporting the cost of the change in the Work in a format acceptable to the Owner. 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 Contractor to provide any required documentation shall constitute a waiver by the Contractor 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 Contractor 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 Contractor 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 Contractor or any Subcontractor.

Any change in the contract sum resulting from a Change Order shall be mutually agreed upon by the Contractor and the Owner together with any conditions relating thereto. If no mutual agreement can be reached between the Owner and the Contractor, the change in contract price, if any, shall be derived by the Owner determining reasonable actual costs incurred or saved.

7. Insurance. The Contractor shall obtain and maintain in effect during the term of this Agreement, general liability and automobile liability insurance in which the Owner and the Contractor shall each be named as insured parties in an amount not less than \$1,000,000, with a \$2,000,000 aggregate, for personal injury, including death, to any one person, and from claims for property damages in an amount of not less than \$1,000,000 for each occurrence arising from any act or omission of Contractor, its agents, employees or subcontractors. The Contractor shall obtain and maintain in effect during the term of this Agreement a policy or policies of workers' compensation insurance which shall cover all of Contractor's employees and all individuals who enter onto Owner's property on behalf of Contractor pursuant to this Agreement. The Contractor shall promptly furnish to the Owner certificates of insurance evidencing such insurance coverage. Insurance required by this section shall contain an endorsement to provide the Owner at least 10-day's written notice of any intent to cancel or terminate by either the Contractor or insurance company. Contractor's Worker's Compensation policy shall contain an endorsement waiving subrogation against Owner. 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.
8. Hold Harmless. To the fullest extent allowed by law, the Contractor 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 Contractor 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.
9. Codes, Permits, Applicable Laws and Owner's Policies. The Contractor shall at Contractor'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 Contractor observes that the drawings and specifications are at variance therewith, Contractor shall promptly notify the Owner in writing. If the Contractor performs any Work knowing (or under circumstances in which Contractor ought to have known) it to be contrary to such laws, ordinances, codes, rules and regulations. Contractor 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. Contractor shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. Contractor 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. Contractor certifies that as of the date of this Agreement, Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor acknowledges that the Owner has adopted policies governing conduct on Owner's property and agrees to abide by any and all relevant Owner policies while on Owner's property. The Contractor acknowledges that Owner's policies are available on the Owner's website.
10. Safety Requirements. The Contractor 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. He shall be responsible for any damage Contractor or Contractor'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 Contractor shall clearly mark or post signs warning of hazards existing, and shall barricade excavations and similar hazards. Contractor shall maintain all necessary protective devices and signs throughout the progress of the Work.
11. Warranties. The Contractor 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 Contractor 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 Contractor 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.

12. 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 Contractor 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, Contractor's warranty shall still apply to all portions of the Work and all equipment installed by Contractor prior to termination.
13. Lunsford Act/Criminal Background Checks. Contractor 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. Contractor shall provide certification, on the form attached as Exhibit B, 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/>). Contractor 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.
14. Anti-Nepotism. Unless disclosed to the Owner in writing prior to the Board's approval and execution of the Agreement, Contractor 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 Contractor 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, Contractor 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 Contractor.
15. 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.
16. Risk of Loss. Contractor 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, Contractor shall bear the full cost of repairing or replacing all such Work, including all equipment and materials.
17. Interpretation of Agreement. Contractor 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 Contractor and Owner shall be considered to have jointly drafted the Agreement.
18. Taxes. The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided

by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. The Contractor shall indemnify and hold the Owner harmless from any claims arising out of the Contractor'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 Contractor.

19. 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:

Owner's Representative/Address:  
**Dr. Dennis Carrington/Warren County Schools**  
**109 Cousin Lucy's Lane**  
**Warrenton, NC 27589**

Contractor's Representative/Address:  
**DeValdia, Inc.**  
**106 West Macon Street**  
**Warrenton, NC 27589**

Neither the Owner's nor the Contractor'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 Contractor 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.

**WARREN COUNTY**  
**BOARD OF EDUCATION**

**DEVALDIA, INC.**

\_\_\_\_\_  
Board Chair

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

\_\_\_\_\_  
Interim Superintendent

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

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

Date

**DeValdia, Inc.**  
106 West Macon St.  
Warrenton, N.C. 27589  
NCGC# 86110

**Proposal**

10/21/2024

RE: WCHS Gymnasium Concession

ATTN: Dr. Dennis Carrington

All Concerned,

This proposal includes pricing for the turnkey renovation of the existing WCHS gymnasium lobby concession stand. The scope of work based on the description given by board member J. Simes at an onsite evaluation which includes all materials, insurances, labor and is as follows.

1. Demolition of all necessary components to extend the concession stand approximately six feet in length.
2. Replace VCT flooring and base trim inside the concession stand and as necessary in close proximity of the exterior construction area.
3. Install new rough in plumbing piping and termination fixtures for new or existing sinks or appliances. This includes supply and waste.
4. Install new lay in tile ceiling grid and panel on the inside of the concession stand and as necessary in close proximity of the exterior side renovation.
5. Temporary construction of isolation safety walls for expedited construction schedule.
6. Electrical wiring and reconfiguration of switches and any receptacles.
7. Installation of any new sinks and appliances furnished and specified by the owner  
(A)Actual cost of any equipment and or appliances is EXCLUDED in this proposal.
8. Daily clean up and removal of all construction spoils.
9. Necessary shift scheduling to accommodate the owners school scheduling and meeting of necessary deadlines.

Upon the review of this proposal and the decision of the acceptance or denial of this proposal an official contract and all necessary documentation will be executed and filed prior to any commencement of construction. Our proposed price is \$39,500.00 (Thirty Nine Thousand, Five Hundred U.S. Dollars). This price reflects a ten percent discount from our original proposal. If there are any questions, please don't hesitate to call.

Thank You,  
Christopher D. Privett, President

  
DeValdia, Inc.

**Exhibit A**

**Proposal/Scope of Work**

**Exhibit B**

**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)