

**NORTH CAROLINA  
DURHAM COUNTY**

**CONTRACT for CONSTRUCTION  
BETWEEN OWNER AND CONTRACTOR**

**This Contract for Construction** is made, and entered into this the 9<sup>th</sup> day of December , 2019, by and between the **COUNTY OF DURHAM**, a political subdivision of the State of North Carolina, (hereinafter “**OWNER**”), and **ASJ Wilson Construction, LLC, EID# 11-3821891** hereinafter “**CONTRACTOR**”), whose principal place of business is: **411 Pisgah Church Road, PMB 128 Greensboro, NC 27455**.

The Project: **Construction Services for South Grandstand Renovations at Durham county Memorial Stadium IFB 20-004,**

Name and Location: **Memorial stadium  
2700 Stadium Drive  
Durham, NC 27701**

The Designer is: **DTW Architects and Planners LTD,  
229 North Gregson Street  
Durham, NC 27701**

1. **CONTRACT DOCUMENTS.** The “Contract Documents” consist of this Contract for Construction, General Conditions, Bid Proposal Package No. IFB 20-004 entitled **Construction Services for South Grandstand Renovations at Durham County Memorial Stadium**, CONTRACTOR Bid Proposal dated **November 21, 2019**, Addenda issued prior to execution of this Agreement and listed below, and any Modifications executed by the parties after execution of this Contract. The Contract Documents form the Contract and are fully a part of the Contract as if attached to this Contract or repeated herein. The Contract represents the entire and integrated agreement between the OWNER and CONTRACTOR hereto and supersedes any and all prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents and other than Modifications, appears in Article 15, herein.

OWNER and CONTRACTOR agree that should the CONTRACTOR utilize the services of a subcontractor for any Work under this Contract, the subcontractor shall be required to comply with all terms and conditions of this Contract and any and all Contract Documents entered into between the OWNER and CONTRACTOR and any of its CONTRACTORS or subcontractors shall so require of their subcontractors.

2. **WORK.** CONTRACTOR shall execute all of the Work described collectively in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.
3. **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION.**

3.1 This Contract shall commence on the date first written above (hereinafter “Commencement Date”). The CONTRACTOR shall notify the OWNER in writing not less than five days before commencing the Work.

3.2 The CONTRACTOR shall achieve Substantial Completion of the entire Work no later than the time established in the Contract Documents; subject to adjustments of the Contract Time as provided in the Contract Documents. In view of the difficulty of estimating damages to the OWNER by reason of

the failure of the CONTRACTOR to complete the work herein proposed within the time limit herein proposed, or within such further time as same may be extended, as provided for, proposed, OWNER shall be and hereby is authorized to deduct and retain out of the moneys which may be due or become due to CONTRACTOR the sum of One Thousand Dollars (\$1,000.00) per day for each and every calendar day that the work may be incomplete beyond the time limit fixed for its completion, or as same may have been extended, which sum per day is hereby agreed upon, fixed and determined by the parties hereto as the ascertained and liquidated damages that the OWNER will suffer by reason of such default. The above sum shall be held to include the additional expense to the OWNER for loss of interest or investment, for the employment of architects, engineers, inspectors, and other employees, together with their expenses, and all other damages to the OWNER by reason of such delay.

4. CONTRACT SUM AND PAYMENT

4.1 CONTRACTOR shall receive from OWNER a sum not to exceed **Six Hundred and Fifty Thousand and Zero Dollars (\$650,000.00)**, as full compensation for the provision of construction services provided under this Contract, subject to additions and deductions as provided in the Contract Documents. OWNER agrees to pay for services, satisfactorily performed, in accordance with the Contract Documents. Unless otherwise specified, CONTRACTOR shall submit an Application for Payment in the manner described in Article 9, of the General Conditions. Payment will be processed promptly upon receipt and approval of the Application by OWNER.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the OWNER:

N/A

4.3 Unit prices, if any, are as follows:

N/A

5. PROGRESS PAYMENTS. Based upon Applications for Payment submitted to the Designer by the CONTRACTOR and Certificates for Payment issued by the Designer, the OWNER shall make progress payments on account of the Contract Sum to the CONTRACTOR as provided in section 9.3 of the General Conditions.
6. FINAL PAYMENT. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the OWNER to the CONTRACTOR when (1) the Contract has been fully performed by the CONTRACTOR and all requirements imposed by Paragraphs 9.3 and 9.11 of the General Conditions have been satisfied except for those requirements set forth in Paragraphs 11.2 and 11.3 of the General Conditions and any other requirements which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Designer; such final payment shall be made by the OWNER not more than 30 days after the issuance of the Designer's final Certificate for Payment.
7. INDEMNIFICATION. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the OWNER and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONTRACTOR's performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or CONTRACTORS under this Contract or

under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the CONTRACTOR, a subcontractor, an employee of a subcontractor, or an agent of the CONTRACTOR or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

8. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF DURHAM  
PURCHASING DEPARTMENT  
4TH FLOOR, 200 EAST MAIN STREET  
DURHAM, NORTH CAROLINA, 27701

ASJ WILSON CONSTRUCTION, LTD  
411 PISGAH CHURCH ROAD, PMB 128  
GREENSBORO, NC 27455

9. NON-DISCRIMINATION. CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by OWNER, and CONTRACTOR may be declared ineligible for further OWNER contracts.
10. EMPLOYMENT ADVERTISING REQUIREMENTS. CONTRACTOR shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit CONTRACTOR'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.
11. TERMINATION OR SUSPENSION. This Contract may be terminated by the OWNER or the CONTRACTOR as provided in Article 13 of the General Conditions. The Work may be suspended by the OWNER as provided in Paragraph 13.3 of the General Conditions.
12. INSURANCE. CONTRACTOR shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the CONTRACTOR shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the COUNTY. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. CONTRACTOR shall advise the COUNTY of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. CONTRACTOR'S insurance shall be primary and any insurance or self-funded liability programs maintained by the

COUNTY shall not contribute with respect to the CONTRACTOR'S insurance. COUNTY shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONTRACTOR. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

**12.1 Commercial General Liability:** Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Products-completed operations coverage shall be provided for a minimum of six (6) years following the completion of the project.

**12.2 Commercial Automobile Liability:** ISO Form CA 00 01 covering any auto with limit not less than **\$2,000,000** per accident for bodily injury and property damage.

**12.3 Worker's Compensation and Employers Liability:** as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than **\$1,000,000** per occurrence.

**12.4 Builder's Risk:** Shall be a limit equal to the completed value of the project and no coinsurance penalty provisions utilizing an "All Risk" (Special Perils) coverage form.

**12.5 Professional Liability (Errors & Omissions):** Shall be a limit of not less than **\$5,000,000** per occurrence or claim, and **\$5,000,000** aggregate with an extended reporting period of not less than six (6) years following the completion of the project.

**12.6 Contractor's Pollution Legal Liability:** Shall be a limit of no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** aggregate.

By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to the COUNTY in this Contract. CONTRACTOR shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the CONTRACTOR to maintain such insurance or to meet its obligations under the indemnification provisions.

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the COUNTY, which immunity is hereby reserved to the COUNTY.

13. **PERFORMANCE BOND AND PAYMENT BOND.** The CONTRACTOR shall furnish bonds covering the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or required by North Carolina law. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the CONTRACTOR shall promptly furnish a copy of the bonds or shall permit a copy to be made.

#### 14. ENUMERATION OF CONTRACT DOCUMENTS

14.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

- 1) This executed Contract for Construction between OWNER and CONTRACTOR.
- 2) The General Conditions of the Contract for Construction. Where reference is made in this Contract to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.
- 3) The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated October 21, 2019, and are as follows:

Document: IFB No. 20-004

Title: Construction Services for South Grandstand Renovations at Durham County Memorial Stadium- General conditions.

Pages: 16 through 45

Document: IFB No. 20-004

Title: Construction Services for South Grandstand Renovations at Durham County Memorial Stadium- Special conditions

Pages: 46 Through 49

- 4) The Specifications are those contained in the Project Manual dated as in Paragraph 14.1.(3) above, and are as follows:

Section: Chapters 1-18

Title: Chapters 1-18

Pages: 4 through 98

Section: Division 3

Title: Concrete

Pages: 1-6

Section: Division 1

Title: General Requirements

Pages: As listed

Section: Division 4

Title: Masonry

Pages: as listed

Section: Division 1A

Title: Abatement General requirements

Pages: As listed

Section: Division 6

Title: Wood, plastics and Composites

Pages: As listed

Section: Division 2

Title: Existing conditions

Pages: 1-2

Section: Division 7

Title: Thermal & Moisture Control

Pages: As listed

Section: Division 2A

Title: Abatement site work

Pages: As listed

Section: Division 8

Title: Openings (doors & frames)

Pages: As listed

Section: Division 9

Title: Finishes

Pages: As listed

Section: Division 32

Title: Exterior Improvements

Pages: 1-3

- 5) The Drawings are as follows, and are dated 10/2/2019, unless a different date is shown below:

Number: T-01  
Title: Cover  
Dated: as above

Number: D-03  
Title: Demo Elev.  
Date: As above

Number: D-01  
Title: South Floor Plan  
Date: as above

Number: A-02  
Title: floor plan  
Dated: as above

Number: A-05  
Title: Ramp Sections  
Dated: as above

Number: D-02  
Title: South-Ceil Plan  
Dated: as above

Number: A-01  
Title: Reference Plan  
Dated: as above

Number: A-07  
Title: Grandstand Elev  
Dated: as above

Number: A-03  
Title: Reflected Ceil  
Dated: As above

Number: A-04  
Title: Renovate Spaces Sections  
Dated: as above

Number: A-06  
Title: Bleacher Elev & Sections  
Dated: as above

- 6) The Addenda, if any, are as follows:

Addendum No. 1	Dated: 11/4/2019	Addendum No. ____	Dated: ____
Addendum No. 2	Dated: 11/13/2019	Addendum No. ____	Dated: ____
Addendum No. ____	Dated: ____	Addendum No. ____	Dated: ____

- 7) Other documents, if any, forming part of the Contract Documents are as follows:

Invitation to Bid.  
Instruction to Bidders

15. COMPLIANCE WITH LAWS. CONTRACTOR shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONTRACTOR is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by OWNER and CONTRACTOR may be declared ineligible for further OWNER contracts.
16. HEALTH AND SAFETY. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing services under this contract.
17. E-VERIFY. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if CONTRACTOR provides the services to the OWNER utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina

General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the OWNER.

18. **SECURITY BACKGROUND CHECKS.** The Contractor is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining County identification badges and allowed unescorted access to County facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff's Office will conduct background investigations for those Contractor employees who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Contractor employee from employment on a County contract unless explicitly mandated by law.

The Contractor will send the results of the background checks to their County point of contact who will provide them to the Durham County Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham County buildings. The Security Manager will consult the Legal Office on any negative determinations. The Security Manager will notify the Contractor's County point of contact of the results of the review. A Contractor can appeal a negative determination by the Security Manager to the County Manager for final disposition. Appeals need to be submitted in writing to the contract point of contact within 30 days of notice of a decision to remove or deny an individual from working the County contract due to adverse information in the background check.

This information will be updated annually by the Contractor, 90 days prior to the renewal or extension of the contract, and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings restricted.

Additional background screening may be necessary at specific county buildings. The Contractor shall provide names of all individuals in the Contractor communications log and to the County Representative. This information will be reviewed annually.

For those Contractor employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. The Contractor will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. A Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Contractor and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

19. **DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the OWNER and the CONTRACTOR, arising from this Agreement or the services and/or materials being provided by the CONTRACTOR, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to

the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the CONTRACTOR in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing the services and/or materials. The costs of the mediation shall be divided equally between the parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

20. **NON-ASSIGNMENT.** This Contract is not assignable by either party, by operation of law or otherwise.
21. **GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
22. **MODIFICATION.** This Contract may be modified only by a written agreement executed by both parties hereto.
23. **REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS.** Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in **Exhibit B – Federal Uniform Guidance Contract Provisions Certification.**
24. **ENTIRE AGREEMENT.** This Contract and the Contract Documents described herein sets forth the entire agreement between the parties and supersedes any and all other agreements on this subject between the parties.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the CONTRACTOR, one to the Designer for use in the administration of the Contract, and the remainder to the OWNER.

**OWNER: COUNTY OF DURHAM**

By: \_\_\_\_\_  
**Wendell Davis, County Manager**

**Date of Signature:** \_\_\_\_\_

This instrument has been pre-audited in the manner required



by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
**Susan Tezai, Durham County Chief Financial Officer**

**CONTRACTOR**

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

**Print Name/Title:** \_\_\_\_\_

**Date of Signature:** \_\_\_\_\_

**ATTEST**

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

**Print Name/Title:** \_\_\_\_\_

**Date of Signature:** \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is \_\_\_\_\_ of \_\_\_\_\_, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_, sealed with its corporate seal and attested by \_\_\_\_\_ as its \_\_\_\_\_.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

(SEAL)