

**FORM OF CONSTRUCTION CONTRACT**

(PRIME CONTRACT(S))

THIS AGREEMENT made the 21st day of September in the year of 2020 by and between **ELLINGTON CONTRACTING, INC.** hereinafter called the Party of the First Part and **CHATHAM COUNTY**, hereinafter called the Party of the Second Part.

**WITNESSETH:**

That the Party of the First Part and the Party of the Second Part for the consideration herein named agree as follows:

1. Scope of Work: The Party of the First Part shall furnish and deliver all of the materials, and perform all of the work in the manner and form as provided by the following enumerated plans, specifications and documents, which are attached hereto and made a part thereof as if fully contained herein: advertisement; Instructions to Bidders; MWBE Program; General Conditions; Specifications; accepted proposal; contract; performance bond; payment bond; power of attorney; workmen's compensation; public liability; property damage and builder's risk insurance certificates; certificate by the Office of the Finance Director of the County, and drawings, titled:

CHATHAM COUNTY – ANNEX PHASE 2 RENOVATIONS

Consisting of the following sheets:

Including, but not limited to -  
CS1.1; CS1.2; D1.1; A1.1; A2.1; A3.1; A4.1; A5.1;

A6.1; A7.1; A8.1; A9.1; A10.1; P1; P2; M1; M2; E1; E2; E2A; E3; E4; FA1; FA2; FA3  
Along with all specifications.

And the following addenda:

Addendum No.	<u>1</u>	Dated:	<u>7/31/2020</u>	Addendum No.	<u>2</u>	Dated:	<u>8/7/2020</u>
Addendum No.	<u>3</u>	Dated:	<u>8/11/2020</u>	Addendum No.	<u>4</u>	Dated:	<u>8/13/2020</u>

2. That the Party of the First Part shall commence work to be performed under this agreement on a date to be specified in a written order of the Party of the Second Part and shall fully complete all work hereunder within **180** consecutive calendar days from said date. For each day in excess thereof, liquidated damages shall be as stated in the Project Specifications and General Conditions. The Party of the First Part, as one of the considerations for the awarding of this contract, shall furnish to the Party of the Second Part a construction schedule setting forth planned progress of the Project broken down by the various divisions or part of the work and by calendar days. If the Party of the First Part fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the Party of the First Part shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Party of the Second Part may give notice in writing, sent by certified mail, return receipt requested, to the Party of the First Part and his surety of such delay, neglect or default, specifying the same, and if the Party of the First Part within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Party of the Second Part shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the Party of the Second Part in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Party of the Second Part shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Party of the First Part, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Party of the Second Part, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said Party of the First Part and surety. In case the expense so incurred by the Party of the Second Part shall be less than the sum which would have been payable under the contract, if it had been completed by said Party of the First Part, then the said Party of the First Part and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the Party of the First Part and the surety shall be liable and shall pay to the Party of the Second Part the amount of said excess.

3. The Party of the Second Part hereby agrees to pay to the Party of the First Part for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States as follows:

Five Hundred Twenty-Eight Thousand Thirty Four Dollars and Zero Cents  
( \$ 528,034.00 )  
(Price Includes Alternates G1 thru G7)

Summary of Contract Award:

4. On or before the 30th day of each calendar month, the Party of the Second Part shall make payments to the Party of the First Part on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this agreement and until such work has been accepted by the Second Party. The Second Party may elect to reduce retainage requirements after 50 percent of the work has been satisfactorily completed on schedule.

5. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this agreement and the acceptance of such work by the Second Party.

6. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Second Party shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the First Party shall, at its expense, within five (5) days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Second Party. In such event no further payment to the First Party shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.

**E-VERIFY:**

Effective September 4, 2013 North Carolina local government units are prohibited from entering into certain contracts unless the contractor and the contractor's subcontractors, if any, comply with the requirements of N.C. Gen. Stats. §64-26(a). If Contractor or any Contractor's sub-contractors, are subject to the provisions of N.C. Gen. Stats. §64-26(a), Contractor agrees to fully comply with such statute and require Contractor's subcontractors, if any, to fully comply with such statute.

**DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL:**

Contractor certifies that (a) it is not identified on the Israel Boycott List or any other list created by the NC State Treasurer pursuant to NC G.S. 147-86.80 et al, and (b) it will not take any action causing it to appear on any such list during the term of the Contract Agreement.

**IRAN DIVESTMENT ACT CERTIFICATION:**

By acceptance of this Contract Agreement, Contractors, and/or subcontractors affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4, Iran Divestment Act Certification.

**REQUIREMENT TO RECYCLE CERTAIN ELECTRONIC EQUIPMENT:**

Contractor's failure to properly recycle any electronic equipment as specified in Article 9, Chapter 130A of the North Carolina General Statute or failure to comply with any statutory requirement within the formal bid request, as provided in the bid packet, incorporated herein by reference, shall be grounds for immediate termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written and without proof or accounting for other counterparts, this shall be deemed an original contract.

Witness:

Michael Boling

Isaac Ellington

Contractor: Ellington Contracting, Inc.

By: Isaac Ellington

Title: President

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

CHATHAM COUNTY

\_\_\_\_\_

Witness:

\_\_\_\_\_

By

: Karen Howard

Title

: Chatham County BOC Chair

**FORM OF PERFORMANCE BOND**

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_  
Name of Principal  
(Contractor) \_\_\_\_\_

Name of Surety: \_\_\_\_\_

Name of  
Contracting  
Body: CHATHAM COUNTY

Amount of Bond: \_\_\_\_\_

Project CHATHAM COUNTY – ANNEX PHASE 2 RENOVATIONS

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body. Executed in \_\_\_\_\_ counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

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

Title: \_\_\_\_\_  
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

\_\_\_\_\_  
Contractor: (Trade or Corporate Name)

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

Title: \_\_\_\_\_  
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

\_\_\_\_\_  
(Surety Company)

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

Title: \_\_\_\_\_  
(Attorney in Fact)

Witness:

Countersigned:

\_\_\_\_\_

(Surety Corporate Seal)

\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_  
Name and Address-Surety Agency

\_\_\_\_\_  
Surety Company Name and N.C.  
Regional or Branch Office Address

**FORM OF PAYMENT BOND**

Date of Contract: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_  
Name of Principal  
(Contractor) \_\_\_\_\_  
Name of Surety: \_\_\_\_\_  
Name of  
Contracting  
Body: CHATHAM COUNTY \_\_\_\_\_  
Amount of Bond: \_\_\_\_\_  
Project CHATHAM TRANSIT BUILDING \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in \_\_\_\_\_ counterparts.



Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

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

Title  
: \_\_\_\_\_  
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_

\_\_\_\_\_  
Name and Address-Surety Agency

\_\_\_\_\_

\_\_\_\_\_  
Surety Company Name and N.C.  
Regional or Branch Office Address

\_\_\_\_\_  
Contractor: (Trade or Corporate Name)

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

Title: \_\_\_\_\_  
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

\_\_\_\_\_  
(Surety Company)

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

Title: \_\_\_\_\_  
(Attorney in Fact)

(Surety Corporate Seal)

## Sheet for Attaching Power of Attorney

## Sheet for Attaching Insurance Certificates

**CERTIFICATION BY THE FINANCE DIRECTOR  
OF CHATHAM COUNTY**

Provision for the payment of money to fall due and payable by the \_\_\_\_\_  
\_\_\_\_\_ under this agreement has been provided for by allocation made and is available for the purpose of carrying out this agreement.

This \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signed \_\_\_\_\_  
Financial Officer