



County of Orange  
Financial Services Department - Purchasing Division

**REQUEST FOR PROPOSAL #5213**  
Orange County Landfill Surveying Services  
September 30, 2015

Proposals are requested for surveying services by properly licensed firms at the Orange County Landfill and also at other remote locations in the County. Surveying at remote locations may be for solid waste recycling facilities or other facilities as required for the Solid Waste Management Department to accomplish their mission.

The term of the agreement for surveying services will be three years, with an option for an additional two three year terms. It is anticipated that 50 to 80 hours of surveying services will be required annually and that about 75 percent of the time will be fieldwork. All work products shall become the property of Orange County.

All proposals should address the attached Scope of Work, and include at a minimum, the following information:

- General information regarding your firm and its capabilities/qualifications to carry out the stated scope of work;
- A discussion of your staffing and their experience, typical response time/availability to respond to request for surveying services, and the surveying equipment available to your firm;
- A copy of your standard billing rates. This is requested for comparison and is not a cost quote. Costs will be negotiated with the successful firm following review of the proposals and determination of the firm's qualifications;
- Any other information pertinent to your submittal of a proposal.

**Scope of Services**

The Surveyor shall provide the following services at a minimum for the Orange County Solid Waste Management Department as requested:

:

1. Conduct surveys of permitted solid waste disposal facilities, other county owned property or other property as designated by the department.
2. Prepare topographic drawings, plats or boundary surveys of properties.

3. Survey activities related to development of new, refurbished or expanded disposal facilities, recycling centers, transfer station, materials processing/sorting facility, administrative buildings, parking or storage areas or any other facilities.
4. Preparation of drawings, calculations, evaluations, estimates, assessments, etc.
5. Miscellaneous surveying or technical assistance.
6. Surveying related to potential future property acquisitions or future facilities as required by the Department.

Proposals must be received in the office of the Purchasing Agent, 200 S. Cameron Street, PO Box 8181, Hillsborough, NC 27278 no later than **5 pm (EST) October 15, 2015**.

## **SUBMISSION**

- A. Submittals: Submit five (5) hard copies (duplex printing on recycled paper), and one (1) electronic copy (single pdf file on thumb drive or CD) with firms name in the filename. Failure to submit the firm's response in a single pdf file could make the submittal non-responsive. Proposals must be received in the office of the Purchasing Agent, 200 S. Cameron Street, PO Box 8181, Hillsborough, NC 27278 no later than 5 pm (EST), October 15, 2015.
- B. Qualification packages may be hand-delivered or mailed. If the submittal is sent by mail or commercial express, the Respondent shall be responsible for actual delivery of the qualification package to the proper county office before the deadline. All submittals become property of the County. Request for Qualification packages will not be accepted via fax machine or internet e-mail.
- C. Mark outside of envelope with **RFQ No. 5213** and proposal subject, "Orange County Landfill Surveying Services" as well as the firm's license number.
- D. Time is of the essence and any proposal or addenda pertaining thereto received after the announced time and date for submittal, whether by mail or otherwise, will be rejected. It is the sole responsibility of the firm to ensure that their proposal is received by the Purchasing Department personnel before the deadline indicated above. There is nothing in this RFQ that precludes the County from requesting additional information from firms at any time during the qualification process.
- E. Nothing herein is intended to exclude any responsibilities or in any way restrain or restrict competition. On the contrary, all responsible firms/individuals are encouraged to submit responses. The County of Orange reserves the right to waive any informality, to reject any and/or all proposals, and to accept any proposal which in its opinion may be in the best interest of the County.
- F. Qualification packages may be withdrawn by written request prior to submittal deadline.

## **PREPARATION**

- A. Firms are to submit their qualifications and understanding of the services to be

performed. Emphasis should be placed on completeness of services offered and clarity of content. All submittals should be complete and carefully worded and must convey all of the information requested by the County. If errors or exceptions are found in the firm's qualification package, or if the package fails to conform to the requirements of the RFQ, the County will be the sole judge as to whether that variance is significant enough to reject the firm's submittal.

- B. Qualification packages should be prepared simply and economically. All data, materials, and documentation shall be available in a clear, concise form. Orange County does not expect nor will any more favorable consideration be given to submittals with fancy covers or binding, color photographs, sample plans, non-pertinent information on other accomplishments of the firm which have no direct bearing on these projects, resumes of individuals who will not be engaged in the work, or pages of other non-projected related material. **Brevity will be appreciated.** Submittals shall be limited to thirty (30) pages, double sided 8 ½ x 11 (fifteen sheets of paper), minimum 12 point font. Covers, addenda, dividers, affidavits and Responder's Certification Form do not count in the thirty (30) pages total.
- C. Firms requiring clarification or interpretation of this RFQ shall make a written request, which shall reach the Orange County Purchasing Department no later than the date and time for submittal of written questions
- D. Any interpretation, correction or change of this RFQ will be made by Addendum. Addenda will be delivered to all who are known by the County Purchasing Department to have received a complete set of RFQ documents. It is the responsibility of the firm to ensure that all Addenda were received.
- E. All submittals shall provide a straight forward, concise description of the firm's ability to satisfy the requirements of the RFQ.
- F. Qualification packages (and copies) should be bound in a single volume where practical. All documentation submitted with the offer should be bound in that single volume.
- G. In addition to the transmittal letter, the (included) Non-Collusion Affidavit and E-Verify Affidavit must be signed by a principal of the firm or an officer of the corporation duly authorized to bind the corporation.
- H. If any submittal includes comments over and above the specific information requested in this RFQ such comments must be included as a separate appendix.
- I. The firm is solely responsible for all costs and expenses associated with the preparation of the submittal and of any supplementary presentation (including any oral presentation) if requested by County.
- J. Qualification Packages must be made in the official name of the individual, firm, or corporation under which the business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the business entity submitting the qualification.

## GENERAL TERMS AND CONDITIONS

A. **NON-COLLUSION AFFIDAVIT**

Each qualification package must be accompanied by a *notarized* affidavit of non-collusion, executed by the firm or in the case of a corporation, by a duly authorized representative of said corporation. The Non-Collusion Affidavit is provided herein.

B. **ADDENDA/CHANGES**

Any additions, deletions, modifications or changes made to this RFQ shall be processed through the Orange County Purchasing Department. Any deviation from this procedure may result in the disqualification of the firm's submittal or the cancellation of any contract resulting from this RFQ.

C. **E-VERIFY**

HB786 imposes E-Verify requirements on contractors who enter into certain contracts with state agencies and local governments. The legislation specifically prohibits governmental units from entering into certain contracts "unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes." (Article 2 of Chapter 64 establishes North Carolina's E-Verify requirements for private employers). It is important to note that the verification requirement applies to subcontractors as well as contractors. The new laws specifically prohibit governmental units from entering into contracts with contractors who have not (or their subs have not) complied with E-Verify requirements. Complete the attached affidavit, and include it with your submittal.

D. **QUESTIONS**

Questions concerning this RFQ should be directed to:

Orange County Purchasing Department  
David Cannell Purchasing Agent,  
200 S Cameron Street, PO Box 8181,  
Hillsborough, NC 27278;  
(919) 245-2651 (v); 919-636-4913 (f)  
[dcannell@Orangetcounync.gov](mailto:dcannell@Orangetcounync.gov) (preferred method)

**All questions pertaining to this RFQ must be submitted in writing no later than October 12, 2015 at 5:00 pm.**

Only written questions will be considered formal. **Any information given by telephone will be considered informal.** Any questions that the County feels are pertinent to all proposers will be mailed as an addendum to the RFQ. Fax and e-mail messages will be treated as written questions.

E. **PROPRIETARY INFORMATION**

Trade secrets or proprietary information submitted by a firm in connection with a procurement transaction shall not be subject to the public disclosure under the North

Carolina Public Records Act pursuant to NC General Statutes §66-152(3). However, the firm must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data on other materials to be protected and state the reasons why protection is necessary. **Each individual page considered a trade secret or proprietary information must be labeled “Confidential” in the top right corner.**

**F. MINORITY BUSINESSES**

The County of Orange encourages all businesses, including DBE, minority and women-owned businesses to respond to all Requests for Qualifications.

**G. AWARD/CONTRACT TIME**

No part of this solicitation is to be considered part of a contract, nor are any provisions contained herein to be binding of Orange County.

Award shall be made to the responsible firm whose qualifications are determined to be most advantageous to the County, taking into consideration the evaluation factors set forth in the RFQ.

A notice of contract award is anticipated no later than December 2015. The detailed Scope of Work and schedule of deliverables shall be negotiated with the successful firm.

The successful firm will be **required** to enter into the county’s standard design consultant services agreement. A copy of the County’s standard Agreement is attached.

**CONTACT POLICY**

After the date and time established for receipt of proposals by the County, any contact initiated by any firm with any County representatives, other than the Purchasing Agent listed herein, concerning this RFQ is prohibited. Any such unauthorized contact may cause the disqualification of the firm from this qualification process.

By: David E. Cannell,  
Purchasing Agent,  
Orange County, North Carolina

**RESPONDER'S CERTIFICATION FORM**

I have carefully examined the Request for Qualifications, the sample Agreement for Design Consultant Services and any other documents accompanying or made a part of this Request for Qualification.

I hereby propose to furnish the professional design consultant services for Orange County in accordance with the instructions, terms, conditions, and requirements incorporated in this Request for Qualification. I certify that all information contained in this response is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this response on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

NAME OF FIRM: \_\_\_\_\_

BY: (printed name) \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP CODE: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

**ACKNOWLEDGEMENT OF ADDENDA**

Responder hereby acknowledges receipt of all Addenda through and including:

Addendum No.	Date	Acknowledgement
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**NON-COLLUSION AFFIDAVIT**

State of North Carolina  
County of Orange

Proposal Request No. 5213

\_\_\_\_\_, being first duly sworn, deposes and says that:

- 1. He/She is the \_\_\_\_\_ of \_\_\_\_\_, the proposer that has submitted the attached proposal;
- 2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
- 3. Such proposal is genuine and is not a collusive or sham proposal;
- 4. Neither the said proposer nor any of its officers, partners, Owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer firm or Person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Orange or any person interested in the proposed contract; and
- 5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Subscribed and Sworn to Before Me,

This \_\_\_\_\_ day of \_\_\_\_\_, 20

Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

AFFIDAVIT

ORANGE COUNTY

\*\*\*\*\*

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).

2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)

a. YES \_\_\_\_\_, or

b. NO \_\_\_\_\_

4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Signature of Affiant

Print or Type Name: \_\_\_\_\_

State of North Carolina Orange County

Signed and sworn to (or affirmed) before me, this the \_\_\_\_\_

day of \_\_\_\_\_, 201\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

(Affix Official/Notarial Seal)

**NORTH CAROLINA**

**CONSULTING SERVICES AGREEMENT  
RFP---UNDER \$90,000**

**ORANGE COUNTY**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”) by and between Orange County, North Carolina a body politic and corporate of the State of North Carolina (hereinafter, the "County") and \_\_\_\_\_, (hereinafter, the "Consultant").

**WITNESSETH:**

That the County and Consultant, for the consideration herein named, do hereby agree as follows:

**ARTICLE 1            SCOPE OF WORK**

1.1        Scope of Work

1.1.1      This Services Agreement (“Agreement”) is for professional consulting services to be rendered by Consultant to County with respect to (insert type of project)

1.1.2      By executing this Agreement, the Consultant represents and agrees that Consultant is qualified to perform and fully capable of performing and providing the services required or necessary under this Agreement in a fully competent, professional and timely manner.

1.1.3      Time is of the essence with respect to this Agreement.

1.1.4      The services to be performed under this Agreement consist of Basic Services, as described and designated in Article 3 hereof. Compensation to the Consultant for Basic Services under this Agreement shall be as set forth herein.

**ARTICLE 2            RESPONSIBILITIES OF THE CONSULTANT**

2.1        Services to be Provided. The Consultant shall provide the County with all services required in Article 3 to satisfactorily complete the Project within the time limitations set forth herein and in accordance with the highest professional standards.

2.2.        Standard of Care

2.2.1      The Consultant shall exercise reasonable care and diligence in performing services under this Agreement in accordance with the highest generally accepted standards of this type of Consultant practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Consultant is solely responsible for the professional quality, accuracy and timely completion and submission of all reports, drawings, specifications, plans, documents and services (hereinafter “Deliverables”) related to the Basic Services.

2.2.2 The Consultant shall be responsible for all errors or omissions, in the deliverables prepared by the Consultant.

2.2.3 The Consultant shall correct at no additional cost to the County any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in any Deliverables prepared by the Consultant.

2.2.4 The Consultant shall assure that all Deliverables prepared by it hereunder are in accordance with applicable laws, statutes, and that any necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay the Project.

2.2.5 The Consultant shall not, except as otherwise provided for in this Agreement, subcontract the performance of any work under this Agreement without prior written permission of the County. No permission for subcontracting shall create, between the County and the subcontractor, any contract or any other relationship.

2.2.6 Any and all employees of the Consultant engaged by the Consultant in the performance of any work or services required of the Consultant under this Agreement, shall be considered employees or agents of the Consultant only and not of the County, and any and all claims that may or might arise under any workers compensation or other law or contract on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Consultant.

2.2.7 Consultant agrees that Consultant and its subcontractors, if any, shall be required to comply with all federal, state and local antidiscrimination laws, regulations and policies that relate to the performance of Consultant's services under this Agreement.

2.2.8 If activities related to the performance of this agreement require specific licenses, certifications, or related credentials Consultant represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses certifications, or credentials are current, active, and not in a state of suspension or revocation.

**ARTICLE 3            **BASIC SERVICES****

3.1        Basic Services

3.1.1 The Consultant shall perform as Basic Services the work and services described herein and as specified in the County's "RFP Number            for            (the "RFP")" issued            , 20            , which is fully incorporated and integrated herein by reference together with Attachments            (designate all attachments).

3.1.2 The Basic Services will be performed by the Consultant in accordance with the following schedule: (Insert task list and milestone dates)

<u>Task</u>	<u>Milestone Date</u>
1.	
2.	

- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

3.1.3 Should County reasonably determine that Consultant has not met the Milestone Dates established in Section 3.1.2 of this Article, County shall notify Consultant of the failure to meet the Milestone Date. The County, at its discretion may provide the Consultant seven (7) days to cure the breach. County may withhold the accompanying payment without penalty until such time as Consultant cures the Breach. In the alternative, upon Consultant's failure to meet any Milestone Date the County may modify the Milestone Date schedule. Should Consultant or its representatives fail to cure the breach within seven (7) days, or fail to reasonably agree to such modified schedule County may immediately terminate this Agreement in writing without penalty or incurring further obligation to Consultant. This section shall not be interpreted to limit the definition of breach to the failure to meet Milestone Dates.

#### **ARTICLE 4 DURATION OF SERVICES**

##### 4.1 Scheduling of Services

4.1.1 The Consultant shall schedule and perform his activities in a timely manner so as to meet the Milestone Dates listed in Article 3.

4.1.2 Should the County determine that the Consultant is behind schedule, it may require the Consultant to expedite and accelerate his efforts, including providing additional resources and working overtime, as necessary, to perform his services in accordance with the approved project schedule at no additional cost to the County.

4.1.3 The Commencement Date for the Consultant's Basic Services shall be \_\_\_\_\_.

#### **ARTICLE 5 COMPENSATION**

##### 5.1 Compensation for Basic Services

5.1.1 Compensation for Basic Services shall include all compensation due the Consultant from the County for all services under this Agreement except for any authorized Reimbursable Expenses which are defined herein. The maximum amount payable for Basic Services is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment for Basic Services shall become due and payable in direct proportion to satisfactory services performed and work accomplished. Payments will be made as percentages of the whole as Project milestones as set out in Section 3.1.2 are achieved. *(For example, if there are 10 Project Tasks with Milestone Dates then Consultant may invoice for the first 10% of the whole upon County's acknowledgement of the satisfactory completion of Task one. Upon the County's acknowledgement that the second Task has been satisfactorily completed Consultant may invoice for the next 10% of the whole.)*

**ARTICLE 6     **RESPONSIBILITIES OF THE COUNTY****

6.1     Cooperation and Coordination

6.1.1    The County has designated            to act as the County's representative with respect to the Project and shall have the authority to render decisions within guidelines established by the County Manager and the County Board of Commissioners and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

6.1.2    The County shall be solely responsible for determining whether Consultant as satisfactorily completed Tasks associated with Milestone Dates. Upon County's written determination to Consultant that a Task has been satisfactorily completed by its accompanying Milestone Date Consultant may submit an invoice for payment. It is agreed that County shall not unreasonably withhold its determination of satisfactory completion of any Task. In the event the amount of an invoice is disputed County may withhold payment until the dispute is resolved by the parties. County may also withhold payment on an invoice until the satisfactory completion of a Task by Consultant.

**ARTICLE 7     **INSURANCE AND INDEMNITY****

7.1     General Requirements

7.1.1    Consultant shall obtain, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, Workers' Compensation Insurance, Professional Liability Insurance, and any additional insurance as may be required by Owner's Risk Manager as such insurance requirements are described in the Orange County Risk Transfer Policy and Orange County Minimum Insurance Coverage Requirements (each document is incorporated herein by reference and may be viewed at <http://orangecountync.gov/purchasing/contracts.asp>). If Owner's Risk Manager determines additional insurance coverage is required such additional insurance shall be designated here            (if no additional insurance required mark N/A as being not applicable). Consultant shall not commence work until such insurance is in effect and certification thereof has been received by the Owner's Risk Manager.

7.2     Indemnity

7.2.1    The Consultant agrees to indemnify and hold harmless the County from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the Project and arising from bodily injury including death or property damage to any person or persons caused in whole or in part by the negligence or misconduct of the Consultant except to the extent same are caused by the negligence or willful misconduct of the County. It is the intent of this provision to require the Consultant to indemnify the County to the fullest extent permitted under North Carolina law.

**ARTICLE 8     **AMENDMENTS TO THE AGREEMENT****

8.1     Changes in Basic Services

8.1.1 Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written Amendment to this Agreement executed by the County and the Consultant. The Consultant shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the County.

## **ARTICLE 9    **TERMINATION****

### 9.1    Termination for Convenience of the County

9.1.1 This Agreement may be terminated without cause by the County and for its convenience upon seven (7) days prior written notice to the Consultant.

### 9.2    Other Termination

9.2.1 The Consultant may terminate this Agreement based upon the County's material breach of this Agreement; provided the County has not taken all reasonable actions to remedy the breach. The Consultant shall give the County seven (7) days' prior written notice of its intent to terminate this Agreement for cause.

### 9.3    Compensation After Termination

9.3.1 In the event of termination, the Consultant shall be paid that portion of the fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the County due to errors or omissions of the Consultant.

9.3.2 Should this Agreement be terminated, the Consultant shall deliver to the County within seven (7) days, at no additional cost, all Deliverables including any electronic data or files relating to the Project.

### 9.4    Waiver

9.4.1 The payment of any sums by the County under this Agreement or the failure of the County to require compliance by the Consultant with any provisions of this Agreement or the waiver by the County of any breach of this Agreement shall not constitute a waiver of any claim for damages by the County for any breach of this Agreement or a waiver of any other required compliance with this Agreement.

## **ARTICLE 10    **ADDITIONAL PROVISIONS****

### 10.1    Relationship of Parties

10.1.1 Consultant is an independent contractor of the County. Neither Consultant nor any employee of the Consultant shall be deemed an officer, employee or agent of the County. Consultant's personnel shall not be employees of, or have any contractual relationship with, the County.

### 10.2    Limitation and Assignment

10.2.1 The County and the Consultant each bind themselves, their successors, assigns, and legal representatives to the terms of this Agreement. Neither the County nor the Consultant shall assign or transfer its interest in this Agreement without the written consent of the other.

### 10.3 Governing Law

10.3.1 This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina. Consultant shall at all times remain in compliance with all applicable local, state, and federal laws, rules, and regulations including but not limited to all anti-discrimination laws.

### 10.4 Dispute Resolution

10.4.1 Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Orange County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. The Parties may agree to nonbinding mediation of any dispute prior to the bringing of such suit or action.

### 10.5 Extent of Agreement

10.5.1 This Agreement, together with the Request for Proposals together with attachments distributed by the County and the Consultant's submitted Proposal, all of which constitute the Contract Documents, represents the entire and integrated agreement between the County and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict among the terms of the Contract Documents, the priority of documents shall be This Agreement, the County's Request for Proposals, attachments to the County's Request for Proposals, the Consultant's Proposal. This Agreement may be amended only by written instrument signed by both parties. Modifications may be evidenced by facsimile signatures.

### 10.6 Severability

10.6.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be valid and binding upon the Parties.

### 10.7 Ownership of Deliverables

10.7.1 All Deliverables, together with all supporting materials, source documentation, data collected, field notes, and working drafts, developed in the performance of this Agreement shall become the property of the County and may be used on any other project without additional compensation to the Consultant. The use of the Deliverables by the County or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of the County.

### 10.8 Non-Appropriation

10.8.1 Consultant acknowledges that County is a governmental entity, and the validity of

this Agreement is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to County immediately upon written notice to Consultant of the unavailability and non-appropriation of public funds. It is expressly agreed that County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis.

In the event of a change in the County's statutory authority, mandate and/or mandated functions, by state and/or federal legislative or regulatory action, which adversely affects County's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to County upon written notice to Consultant of such limitation or change in County's legal authority.

10.9 Notices and Signatures

10.9.1 This Agreement together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the intent of the Parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.

10.9.2 Any notice required by this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested to the following:

Orange County  
Attention:  
P.O. Box 8181  
Hillsborough, NC 27278

Consultant's Name & Address

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties, by and through their authorized agents, have hereunder set their hands and seal, all as of the day and year first above written.

COUNTY: Orange County

CONSULTANT:

\_\_\_\_\_

County Manager

\_\_\_\_\_

Printed Name and Title