

ORANGE COUNTY FINANCIAL SERVICES

200 South Cameron Street, Post Office Box 8181 • Hillsborough, NC • 27278
Phone: 919-245-2651 • Fax: 919-644-3324

Request for Qualifications (RFQ), Professional Engineering Services - Efland Sewer to Mebane, Phase 2 Extension – Design, Bid and Construction Phase Services RFQ NO. 367-5222 PROPOSALS DUE 5:00 PM EST, Thursday August 11, 2016

Section I - Introduction

Ladies and Gentlemen:

Orange County is seeking proposals from qualified consultants to provide professional services for the above referenced project. A selection panel will review and evaluate proposals and submit a recommendation for a consulting firm for this project to the Orange County Manager. The County reserves the right to select more than one consultant and/or to divide the scope of services into design/bid phase and construction phase services.

As part of your statement of qualifications (SOQ), Orange County expects an expression of interest in and an understanding of the scope outlined herein. It is not necessary to repeat the scope, just reference the RFQ number.

PROJECT DESCRIPTION:

PROJECT: Efland Sewer to Mebane, Phase 2 Extension

ESTIMATED CONSTRUCTION COST: \$3,961,000

SCOPE OF SERVICES

The project generally consists of the construction of the following elements:

- Approximately 8,300 linear feet of gravity sewer (8" & 12"), including a bore & jack under I-40/85.
- Approximately 19,000 linear feet of sewer force main (10" & 12").
- A submersible sewer pump station (700 gpm) along West Ten Road.

The remaining effort on the subject project falls short of full services, as plans, technical specifications, easement documents and the legal plat for the West Ten Pump Station have been completed to approximately the 95% level (engineering firm went out of business). For all intents and purposes, there are no useable CAD electronics available. PDF's are available and the firms may explain how they can be used in present form with edits and clarifications as necessary. Easements have been acquired for all but four (4) properties. The legal plat creating the pump station lot has yet to be finalized and recorded. Orange County will be responsible for all property owner liaison responsibilities.

General Scope:

1. Perform a constructability and technical review of the previously prepared construction documents to establish the integrity of the documents and acceptance of the former engineering design.
2. Completion of construction documents (plans & specifications) previously prepared to approximately the 95% level. Consultant will have the option of utilizing their own standard technical specifications for construction.
3. 100% edit of Orange County's template construction contract and integration with bid documents to be included in the project/contract manual.
4. Complete redesign of the pump station site plan, submittal to Orange County Current Planning and related site plan review processing to secure a zoning compliance permit.
5. Permitting updates, as necessary to accommodate plan revisions. All but the erosion & sedimentation control approval had been previously acquired.
6. Obtain DEQ verification of approval for erosion & sedimentation control (review comments never returned – auto-approved?). This may be best accomplished through reapplication.
7. Easement plat modifications, as necessitated by property owner negotiations. At least one property is affected.
8. Legal plat modifications for creation of pump station lot. (Former plat competed to 95% and has been reviewed by Orange County Current Planning twice – minor corrections to complete.)
9. Bidding and Award services
10. Construction engineering & inspections (CEI/CMT). Construction materials testing (CMT) and related inspections may be provided by a subconsultant; however, management by the prime consultant is a requirement, including day-to-day scheduling during construction, as needed.
11. Record drawing preparation.
12. State system certifications.
13. Perform a constructability and technical review of the previously prepared construction documents to establish the integrity of the documents and acceptance of the former engineering design.
14. In addition to the above duties, Consultant will attend public meetings, Board of County Commissioners meetings, public hearings and information sessions as may be necessary during the course of the project.

Detailed Scope Outline:

1. Bidding and Construction Documents

- a. Obtain from the Owner copies of all design drawings; calculations; specifications; and permits as available.
- b. Utilizing the above information, review the existing design for compliance with North Carolina Department of Environmental Quality (NCDEQ) minimum design criteria, City of Mebane design standards, and Orange County design standards.
- c. Review the provided drawings prepared by former design consultant, dated August 27, 2015, for compliance with City of Mebane and Orange County's previous design review comments. Where comments have not been addressed, make revisions to the drawings as required.
- d. Submit revised plans, where necessary, for jurisdictional review and approval. Make corresponding revisions in response to comments, if any.
- e. Prepare contract specifications utilizing information provided by the Owner and Consultant's standard specifications.
- f. Prepare an updated Engineer's estimate of probable construction costs, following approval of revised plans by the Owner and City of Mebane.
- g. Complete revisions to the pump station subdivision plat and the easement plat for the M.M. Fowler property on Mt Willing Road, as necessary.
- h. Prepare contract documents in one of the two following formats:

- i. OPTION A: Utilize Consultant's standard contract documents, which are based on EJCDC format.
- ii. OPTION B: Utilize and Orange County standard format provided by the County Attorney, for construction contract and related special provisions.
- iii. Either option above will include Orange County requirements for safety, disadvantaged business participation, and insurance requirements.

2. Bidding and Award Assistance

- a. Assist the Owner with formal bidding of the project in accordance with NCGS 143-129. Prepare an advertisement for bid for circulation in newspapers and other sources as appropriate. The Owner shall be responsible for the cost of advertising.
- b. Distribute bid packages on behalf of the Owner with plans, technical specifications, and contract documents.
- c. Review questions and requests for clarifications from contractors during the bid period and issue addenda as may be required.
- d. Conduct a formal bid opening at the offices of the Owner.
- e. Review contractors' bids for completeness. Prepare a bid tabulation and issue to the Owner a recommendation of award to the lowest responsive, responsible bidder.
- f. Upon approval of the recommendation by the Owner, prepare a Notice of Award to be issued to the successful contractor and contract documents for execution by the successful contractor.

3. Construction Engineering and Inspections

- a. Schedule a Pre-Construction Conference with the Owner, Mebane, Contractor, Engineer and all other applicable parties to assure discussion of all matters related to the Project. Prepare and distribute minutes of the Pre-Construction Conference to all parties.
- b. Schedule quarterly Progress Meetings (four (4) total) with the Owner, Mebane, Contractor, Engineer and all other applicable parties to discuss progression of the project and coordination matters related to the Project. Prepare and distribute minutes of the Progress Meetings to all parties.
- c. Provide General Administration of Construction Contract. Consult with Owner and act as Owner's representative as provided in the General Conditions.
- d. Provide a Construction Field Representative (CFR) to periodically observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During such visits and on the basis of on-site observations as an experienced and qualified professional, keep the Owner informed of the progress of the work, and endeavor to guard the Owner against defects and deficiencies in the work of the Contractor. The total construction contract time is assumed to be twelve (12) months. As part of this contract, field observation will be provided by a CFR on a limited, part-time (defined as partial day visits three (3) days per week) basis during active work. Additional requested CFR time will be considered Additional Services.
- e. Provide a CFR to periodically observe installation of riparian buffer mitigation required for the project. Field observation for mitigation is expected to include up to eight (8) visits to confirm installation of plantings.
- f. Based on Engineer's observations as an experienced and qualified professional and on review of Applications for Payment and accompanying supporting documentation, make recommendation for amounts to be paid to the Contractor.
- g. Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

- h. Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required. Services related to expanding the project scope or resolving deficiencies in contract documents shall be considered additional services.
- i. Review and take action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and any approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Shop Drawings and Samples identified as "frivolous" in the General Conditions of the construction contract documents shall be returned to the Contractor unreviewed. Review of substitute materials is excluded; however, if the Contractor proposes a substitution that the Contractor believes will materially benefit the Owner, it will be brought to the attention of the Owner.
- j. Promptly after notice that Contractor considers the entire Work ready for its intended use, in company with Owner, Mebane, and Contractor, conduct a pre-final observation visit to determine if the Work is substantially complete. If after considering any objections of Owner and Mebane, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner, Mebane, and Contractor, along with a punch list of outstanding and/or corrective work necessary for the project to be considered 100% complete. Additional visits, required due to work not being ready for Substantial Completion, or Contractor scheduling conflicts, are excluded.
- k. In company with Owner's and Mebane's representatives, conduct a final observation visit to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement. Additional visits required due to work not being ready for final completion, or to further inspect punch list items remaining are excluded.
- l. Issue instructions to the Contractor from the Owner as to interpretations and clarifications to the project design plans, specifications and contract documents.
- m. Prepare information required to resolve problems due to actual field conditions and to respond to Requests for Information (RFI) from the Contractor.
- n. Coordinate and track the testing of pipelines and placing same into service for the project. Additional visits required due to work not being ready for testing, retesting, or Contractor scheduling conflicts are excluded.
- o. Provide the services of an independent geotechnical and materials testing laboratory to perform compaction testing as requested by the Owner. It is anticipated that compaction testing will be needed once per week when the Contractor is working along the roadway shoulder, limited to twenty (20) site visits. Compaction testing will also be needed across the paved areas on properties of Fowler and Ramarge on Mt Willing Road. Groundwater testing will also be performed on Fowler property to analyze for petroleum contamination.
- p. Review and determine the acceptability of any schedules that Contractor is required to submit to Engineer, including Progress Schedule, Schedule of Submittals and Schedule of Values.
- q. Prepare certifications of completion for submission to NCDEQ for final approvals, as necessary.
- r. Prepare for the Owner record drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by the Contractor. Record drawings will be prepared by "red marking" drawings provided by the Owner from the Designer, and not graphical changes for horizontal and vertical project changes. Provide to Owner and Mebane two (2) printed copies and one (1) electronic PDF copies of record drawings.
- s. Provide or make available all Project files and information to effect project closeout, including a final spreadsheet tally of quantities, unit pricing, extended item totals and variances from contract amounts to corroborate the final adjusting change order, if any.

4. Construction Material and Geotechnical Testing

- a. Independent geotechnical and material testing services will be provided on an “on-call” basis, with a 24-hour notice to schedule services with a subconsultant.
- b. Earthwork related services will include the following:
 - i. Perform laboratory moisture-density relationship, grain size analysis and Atterberg limits on proposed fill soils.
 - ii. Perform density testing on native and fill soils and stone to determine the moisture content and percent compaction of the soil material.
 - iii. It is anticipated that earthwork related services will be needed once per week when the Contractor is working along the roadway shoulder, limited to twenty (20) site visits.
- c. Provide subconsultant with OSHA 40-hr HAZWOPER certification to provide the following services:
 - i. Screen excavated soil with a PID;
 - ii. Collect soil samples from stockpiles for analysis and/or waste characterization;
 - iii. Collect water samples from groundwater in utility trenches for analysis; and
 - iv. Provide a summary report of field observations, analytical results, and recommendations for soil and/or groundwater management.

5. Post-Construction Phase

The Consultant, following the completion of construction of the project will:

1. Compile project inspector logs, site inspection notes, construction photographs and, if not already provided, a complete reporting of all construction material testing and submit a digital record of same to the County.
2. Compile all operator’s manuals and material information for the project and submit to the County in hardcopy and digital format.
3. Provide a final accounting of all quantities installed versus bid, including change orders and related costs.
4. Assist and advise County on release of retainage and the final project reconciliation change order.
5. Create and seal a set of record (as-built) drawings of the newly completed sewer extension for submission to the State, City of Mebane and Orange County’s records.
6. Provide final certification of the sewer construction as required by the various local, State agencies involved with this project.

7. Other Engineering Related Activities

The Consultant will perform other engineering related activities, as necessary, during the project on a per hour basis using agreed upon rates, including but not limited to

- Revise drawings as necessary to reflect specific minor details prior to beginning of construction or during construction, e.g. minor manhole location shifts and additions, deletion or shifting of service lateral locations, etc.
- Major re-design work caused by unforeseen field conditions or other factors, e.g. rerouting entire sewer lines

OWNER'S RESPONSIBILITIES:

The County shall provide or perform the following:

1. Access to and reproduction of all pertinent records maintained by the County
2. Direction with regard to fundamental project objectives
3. General review of all materials submitted
4. Designate an owner’s representative to interface with citizens and press and deal with public relation issues
5. Provide timely responses to questions from consultant

6. Submit all completed permit applications and regulatory review packages

PROJECT TIME LINE:

1. Analysis, Design/Bid Phase: As quickly as possible – schedule to be determined by selected firm/team
2. Construction Phase: To begin no later than July 1, 2017
3. Construction Duration: 14 months from Notice to Proceed
4. Post-Construction Phase: Record (as-built) drawings and other post-construction engineering activities shall be completed within 45 days of the end of the Construction Phase.

Section II - Information About the Firm and Experience

All respondents are requested to provide the information cited below, as well as any supplemental information that provides a comprehensive view of the prime consultant, the proposed project team and the approach to this project. The information should be presented in a clear, organized and concise manner on two-sided paper.

- A. General overview of the firm and its experience relative to this project, highlighting experience working for Orange County or in Orange County.
- B. Describe which office will be performing the work for the prime consultant.
- C. Specifically address the firm's experience in working with stakeholders and speak to the composition of those groups (staff, citizens, customer, elected officials, etc.).
- D. Note specific project experience with a minimum of five (5) completed projects similar in scope, providing for each the following information (SF255 or SF330 format acceptable):
 1. Project name.
 2. Description, including year completed, location, utility type, length/size of lines, number and capacity of pump stations, and your scope of services provided.
 3. Include a complete list of subconsultants and their role/scope of work in the project.
 4. Approximate total cost and cost of that portion for which your firm was responsible.
 5. Project team involved and specific responsibilities.
 6. Client reference and contact information (name of owner's representative, telephone number and e-mail address)
- E. Address the firm's current workload and how this project would fit within the firm's existing work.

Section III - Information About the Proposed Project Design Team

- A. Prime Consultant - List the proposed design team and, at a minimum, the following information for each:
 1. Role/project responsibility on this project team.
 2. Physical location of each team member.
 3. Qualifications.
 4. Education.
 5. Professional registration, if any.
 6. Relative experience, with specific focus on governmental projects.
 7. Length of service with present firm. If less than two years, cite name of previous firm.
 8. List relative projects completed by each team member during the past five (5) years, complete with the same information as outlined in Section II. Denote any of the listed projects that were completed when team member was employed by other than the current firm.
 9. Specifically address each team member's experience working with municipalities on similar projects.

B. Subconsultants

1. Include a complete list of subconsultants and their anticipated role/scope of work in the project. If a subconsultant is proposed to share work of similar scope, such as design, provide a projection of the shared scope (i.e. Design 50% Firm/50% Consultant A). Respondents are expected to present their complete project team in the response.
2. Include a partnering commitment letter for the proposed project scope.
3. Since subconsultant qualifications will be evaluated similarly to the proposing firm's own design team, please ensure that complete information is included.
4. A description of the plan to involve MBE/WBE firms, including previous teaming experience.

C. Computer Aided Design (CAD) and Mapping capabilities

Provide a description of the firms and, in specific, the proposed teams experience with the following:

1. As noted previously, there are no reliable CAD files available for the project, only Portable Document Format (pdf) versions. Please address how your firm intends to perform the 5% or so required design edits to complete this project and your related experience with performing such edits, including the post-construction preparation of record (as-built) drawings.
2. AutoCAD – It is anticipated that the consultant will need to totally redesign and prepare the West Ten Pump Station site plan in AutoCAD. The County has planimetric base.dwg-file (no contours) dating back to 01/05/15. Please describe how you plan to redesign/recreate the pump station site plan and your/team's experience with similar challenges.
3. Topographic data in North Carolina State plane coordinates, NAD 83 and NAVD 88.
4. For any portions of the project drawings prepared in CAD, the consultant is expected to provide a version of drawings in ESRI shape file format suitable for ArcMap version 9.3 or current version used by the County. Please address your experience in exporting shape files.

Section IV: Project Management Approach

Note that Orange County will be responsible for all property owner and media liaison responsibilities.

- A. Provide a detailed narrative of the firm's perception of the project requirements and understanding that the Consultant will indemnify the County and the original design engineer for the design and take responsibility for the design of the system going forward.
- B. Outline any unique features or conditions that appear to need special attention and that the firm and proposed project team may be particularly well qualified to address.
- C. Verify that your firm can begin services as soon as the construction contract for the project has been signed and approved by the County Manager or Orange County Board of County Commissioners, as required.

V. Additional Information

Orange County also would like to invite respondents to share their experience regarding contract documents and respond to the following in their submission:

1. Preferred standard form of construction contract documents (i.e. EJCDC, AIA, firm standard, proprietary, etc.)?
2. Preferred guide documents for technical specifications (i.e. EJCDC, AIA, firm standard, proprietary, etc.)?
3. Postulation as to the effect on fees and schedule, if any, to integrate proprietary construction agreement, related general conditions, special provisions and/or related proprietary documents?

4. If the respondent believes integrating proprietary construction contract documents would increase fees and/or schedule, please provide some order of magnitude in terms of percentage, for fees, and/or days, for schedule, as compared to standard forms.

Section VI MINORITY BUSINESSES

The County of Orange encourages all businesses, including DBE, minority and women-owned businesses to respond to all Requests for Qualifications. Please provide information on DBE, minority and women-owned businesses included as sub consultants and any outreach you performed

Section VII: Submission Of Statements Of Qualifications (SOQ)

1. Your SOQ must be submitted no later than 5:00 PM EST, Thursday August 11, 2016 to:
David E Cannell, Purchasing Agent
Financial Services
200 South Cameron Street
PO Box 8181
Hillsborough, NC 27278
2. Statements of qualifications shall include statements of interest, ability to complete the work within the required time, experience, and qualifications. All qualified firms are invited to submit as follows:
 - Two (2) electronic copies on either two thumb drives or two CD's. The electronic file shall be in pdf format and shall be a single (binder) file.
 - Five (5) hard copies are required (one clearly marked "ORIGINAL"). Hard copies must be bound with printing on both sides of sheet on recycled paper (with the exception of tab or divider pages).
3. Proposals received after the set time for receipt shall not be considered and shall be returned unopened to the proposer.
4. Orange County reserves the right to accept or reject any or all proposals, to waive irregularities, and to reissue any request for proposals. The County also reserves the right to select more than one consultant and/or to divide the scope of services into design/bid phase and construction phase services.
5. Any questions concerning the technical aspects of this project should be directed to:
Mr. David Cannell
Purchasing Agent
PO Box 8181
Hillsborough, NC 27278
(919) 245-2651
Email: dcannell@co.orange.nc.us
6. By submitting an SOQ response, the offeror agrees that it shall not be withdrawn for a period of 90 days following the due date for proposal responses.
7. Attached is a copy of Orange County's standard contract. This document will be utilized to execute the final agreement between Orange County and the successful Engineering firm.

8. Please complete the attached E-Verify Affidavit and Iran Divestment affidavit and read the County's Living Wage Policy

Section VIII: Potential evaluation criteria

1. Demonstrated success on projects of similar scope and completed without major legal or technical problems and under budget;
2. Qualifications of individuals assigned to the project team, including subconsultants;
3. Relevant governmental experience (North Carolina experience preferred);
4. Capacity of firm and key project personnel to complete this project in a timely manner, considering other work on the board;
5. Experience working with Gov't entities on land use requirements;
6. Demonstrated history of bringing projects in under budget
7. Relevant and easily understood response to proposal; and interview
8. DBE, minority and women-owned businesses participation and outreach

STATE OF NORTH CAROLINA

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 _____, 201_.

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 _____, 2014.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

**IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S.
143C-6A-5(a)**

Name of Contractor, Vendor or Bidder: _____

As of the date listed below, the contractor, vendor or bidder listed above, and all subcontractors utilized by the contractor, vendor or bidder listed above, is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the contractor, vendor or bidder listed above to make the foregoing statement.

Signature

Date

Printed Name

Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

Section I:	General Government and Administration
Policy 10.0:	Living Wage Contractor Policy
Reviewed by:	County Attorney/County Manager
Approved by:	County Manager
Original Effective Date:	April 21, 2016
Revisions:	

Policy Statement

It is the policy of Orange County to ensure its employees, and all individuals who provide services for Orange County, are paid a living wage.

Purpose

To encourage all vendors and contractors to pay a living wage to all employees who perform work pursuant to a contract with Orange County.

Applicability

Applies to all Orange County contracts and purchases.

Policy

10.1 Living Wage

10.1.1 Orange County is committed to providing its employees with a living wage and encourages all contractors and vendors doing business with Orange County to pursue the same goal. Orange County's living wage is \$13.16 per hour. To the extent possible, Orange County recommends that contractors and vendors seeking to do business with Orange County provide a living wage to their employees.

10.1.2 Prior to final execution of a contract with Orange County all contractors and vendors seeking to do business with Orange County shall submit to the County's representative a statement indicating whether those employees who will perform work on the Orange County contract are paid at least the living wage amount set out above. If such employees do not make at least the living wage amount set out above the contractor or vendor shall indicate in the statement the actual amount paid to such employees. For bid projects this statement should be submitted as part of the bid packet.

This policy may be reviewed annually and updated as needed by the Manager's Office

[Departmental Use Only]
TITLE
FY

NORTH CAROLINA

PROFESSIONAL SERVICES CONTRACT

ORANGE COUNTY

THIS PROFESSIONAL SERVICES CONTRACT (hereinafter called "Agreement"), made as of the _____ day of _____, 20____, by and between _____, a professional _____ (architectural/engineering/landscape architectural-select one) firm with a partner or principal registered in North Carolina as a licensed _____ with offices in North Carolina (hereinafter called the "Designer") and Orange County, a political subdivision of the State of North Carolina, (hereinafter called the "County," "Orange County," or "Owner").

WITNESSETH:

Whereas the Owner published a Request for Qualifications and the undersigned Designer submitted a responsive Statement of Qualifications evaluated and approved by Owner; and

Whereas the Designer and the Owner now wish to form and memorialize their agreement for design services and for the consideration herein named do hereby agree as follows:

ARTICLE 1

1.1 Scope of Work

1.1.1 This Agreement is for professional services to be rendered by Designer to Owner with respect to a project known as (herein referred to as the "Project"). The Project is located in Orange County, North Carolina. It is described more particularly in Attachment A.

1.1.2 By its execution of this Agreement, the Designer represents and agrees that it is qualified and fully capable to perform and provide professional services and other services required or necessary under this Agreement in a fully competent, professional and timely manner, and that its Consultants are also fully capable and qualified to perform and provide the services that they will provide hereunder.

1.1.3 Time is of the essence of this Agreement.

1.1.4 The services to be performed under this Agreement consist of Basic Services, as described and designated in Article 4 hereof and in Attachment B to this Agreement, and such Additional Services as are designated in Article 5 of this Agreement or as may from time-to-time be agreed upon by the Owner and Designer by Amendment or Addendum to this Agreement.

Compensation to the Designer for Basic Services under this Agreement shall be as set forth herein, and compensation for Additional Services shall be as set forth herein or in any Amendment or Addendum providing for them. All services performed by the Designer not identified as Additional Services in Article 5 or in a written Amendment or Agreement entered into by the Owner and the Designer and providing for additional compensation for such additional services relating to the Project shall be deemed to be Basic Services which are provided without additional compensation.

ARTICLE 2

2.1 Definitions

2.1.1 Additional Services - See Section 1.1.4 and Article 5.

2.1.2 Basic Services - See Article 4 and Attachment B.

2.1.3 Certificate of Final Completion - See the General Conditions of Orange County's Standard Construction Agreement with contractors.

2.1.4 Compensation for Basic Services - See Section 7.1 and 7.2.

2.1.5 Consultants - See Section 3.3.1 and Attachment E.

2.1.6 Board of County Commissioners - The Board of Commissioners of Orange County North Carolina.

2.1.7 County Manager - The employee of Orange County bearing that title.

2.1.8 Milestone Dates - See Attachment D.

2.1.9 Project - All phases of the Project as described in Section 1.1.1 and Attachments A and B including but not limited to the schematic design, design development, construction document, bidding and contract award, construction and post-construction phases.

2.1.10 Reimbursable Expenses - See Section 7.5.

2.1.11 Total Project Cost - See Section 4.2.1

ARTICLE 3

RESPONSIBILITIES OF THE DESIGNER

3.1 Services to be Provided.

3.1.1 The Designer shall provide the Owner with all professional services required to satisfactorily complete all phases of the Project within the time limitations set forth herein and in accordance with the highest professional standards. Such services may include (select all that apply):

- Architectural programming
- Master planning
- Space planning
- Evaluation and analysis of the site or sites
- Architectural design
- Civil engineering
- Structural engineering

- Mechanical engineering
- Electrical engineering
- Landscape and irrigation system design
- Interior design
- Signage and graphics design
- Construction inspection
- Construction contract administration
- All other services customarily furnished by a Designer and its Consultants with respect to projects and activities similar to the Project.

All services of the Designer shall be provided in accordance with the terms and conditions of this Agreement.

3.2. Standard of Care

3.2.1 The Designer and its Consultants shall exercise reasonable care and diligence in performing their services under this Agreement in accordance with generally accepted standards of similar professional design practice throughout the United States and in accordance with federal, state and local laws and regulations applicable to the performance of these services. The Designer shall serve as a representative of the Owner in accordance with the terms and conditions of this Agreement to guard the Owner against defects and deficiencies in the Work.

3.2.2 The Designer shall be responsible for all errors or omissions, in the drawings, specifications, and other documents prepared by the Designer or its Consultants. It shall be the responsibility of the Designer throughout the period of performance under this Agreement to use reasonable professional care and judgment to guard the Owner against defects and deficiencies in the Work.

3.2.3 The Designer shall correct at no additional cost to the Owner any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the drawings, specifications and other documents prepared by the Designer or its Consultants.

3.2.4 The Designer shall assure that all drawings, specifications and other documents prepared by the Designer or its Consultants hereunder are in accordance with applicable laws, statutes, building codes and regulations and that all 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 design or construction activities of the Project.

3.2.5 The Designer and its Consultants shall perform all services in a timely manner in accordance with all schedules for the Project or required under the Agreement and in accordance with the Construction Register, as provided in the General Conditions of the Owner's contracts with the Contractors for the Project.

3.2.6 The Designer shall reimburse the Owner, as stipulated in 3.2.6.A and 3.2.6.B for costs, damages and expenses, including attorney's fees, incurred by the Owner when such costs, damages and expenses are the result of any error, omission or delay of the Designer or its Consultants.

A. To the extent that the cost to the Owner for all errors, premium value of omissions or delays of the Designer is less than one-half of one percent (0.5%) of the Total Project Cost identified in Attachment C, the Designer shall not be liable to the Owner for such costs.

B. If the aggregate cost to the Owner for such errors, premium value of omissions or delays of the Designer amounts to more than one-half of one percent (0.5%) of the Total Project Cost identified in Attachment C, the Designer shall reimburse the Owner for all such costs in excess of said one-half of one percent (0.5%).

3.3 Designer's Consultants

3.3.1 The Designer's Consultants for the project, along with their key project personnel, are listed in Attachment E to this Agreement. No changes in the consultants or key personnel indicated shall be permitted except with the prior written consent of the Owner.

3.3.2 All of the Designer's contracts with its Consultants shall be in writing and shall expressly provide that if this Agreement is terminated for any reason, the Owner may, at its sole option, take the assignment of the Consultants' contract with the Designer, that such assignment shall automatically take place upon notification in writing by the Owner to the Consultants and the Consultants shall continue to be bound by the contract after such assignment. A copy of each contract between the Designer and a Consultant shall be furnished to the Owner within seven (7) days of its execution.

ARTICLE 4

BASIC SERVICES

4.1 Basic Services

4.1.1 The Designer shall perform as Basic Services the work and services described herein and in Attachment B to this Agreement.

4.1.2 The Basic Services will be performed by the Designer in the phases described in Attachment B.

4.1.3 The Owner shall have the right and option to require the Designer to prepare separate bid packages with no additional compensation due the Designer. Such bid packages, at the Owner's option, may include:

- A. Demolition and preliminary site work;
- B. General work, plumbing, mechanical, electrical, fire protection;
- C. Landscaping and irrigation;
- D. Signage;
- E. Furniture.

4.2 Project Cost Estimates

4.2.1 At the times designated herein, the Designer shall develop an estimate of the total cost of the Project (the "Total Project Cost"), including Designer's fees, costs of the construction, costs of equipment, furnishings, furniture and signage, permit fees and appropriate contingencies. These costs shall be prepared and submitted to the Owner substantially in the format shown in Attachment C to this Agreement, with supporting documents listing quantities, unit price, labor rates, man-hour estimates, overhead and profit.

4.2.2 These Total Project Cost estimates shall be prepared by a qualified cost estimating Consultant to the Designer who is acceptable to the Owner.

4.2.3 Total Project Cost estimates shall be prepared at three points in the production of the Designer's work:

- A. At completion of schematic design;
- B. At completion of design development; and
- C. At completion of 80% of the construction documents.

4.2.4 When the first of these estimates of Total Project Cost has been approved in writing by the Owner, it shall be used by the Owner as a basis for appropriating funds specifically for the Project. Once this Total Project Cost has been so approved by the Owner, the Designer shall be obligated, without additional compensation, to adjust the design of the Project to assure that it remains within the approved Total Project Cost.

4.2.5 Should bidding or negotiation with contractors produce prices which, when added to the other elements of the approved Total Project Cost, produce a cost that is in excess of the approved Total Project Cost, the Designer shall participate with the Owner in rebidding, renegotiation, and design adjustments to the extent such are necessary to obtain prices within the approved Total Project Cost. All activity of the Designer with respect to these matters shall constitute Basic Services and shall be performed by the Designer without additional compensation.

4.3 Project Conferences

4.3.1 For the duration of the development of the Project, the Designer and its Consultants shall meet periodically with the Owner. The minimum regularly scheduled meetings which the Designer shall be required to attend are listed below (Select all that apply):

- Initial orientation meeting
- Progress meetings during pre-design and design phases will be held every other week.
- Pre-Bid conferences
- Bid openings
- Pre-construction conferences
- Construction progress meetings every other week
- Additional meetings as required to properly fulfill the requirements of this Agreement.

4.4 Construction Administration

4.4.1 As part of Basic Services, the Designer shall provide all of the administrative services described in the Owner's contracts with the Contractors for the Project.

ARTICLE 5

ADDITIONAL SERVICES

5.1 Additional Services to be provided by the Designer or its Consultants pursuant to this Agreement are:

5.1.1 Providing fully detailed presentation models or professional artist's renderings.

5.1.2 Making major revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or are due to causes beyond the control and without the fault or negligence of the Designer.

5.1.3 Preparing supporting data and other services in connection with a significant Owner initiated change order, but only if Designer can demonstrate that such services cause a direct increase in Designer's cost of rendering its Basic Services hereunder.

5.1.4 Preparing to serve or serving as an expert witness for the Owner in connection with dispute resolution, arbitration, or legal proceedings unless the subject matter of the proceedings includes matters arising out of or related to the Designer's or Consultant's performance or service with respect to the Project; however, preparing to serve or serving as a fact witness for the Owner in such proceedings or rendering testimony necessary to secure governmental approval of zoning or land use clearances for the Project shall not constitute an Additional Service.

5.1.5 Providing professional services made necessary by the default of a Contractor.

5.1.6 Providing additional or extended services during the Construction Phase made necessary by (a) defective work of the contractor(s); (b) prolongation of more than sixty (60) days, provided the prolongation is not due to the fault or negligence of the Designer, its employees, consultants or agents; or (c) default under the construction contract due to delinquency or insolvency.

5.1.7 Providing additional services and costs necessitated by special out-of-town travel required by the Designer and approved in advance in writing by the Owner, other than visits to the Project and other than travel reasonably required to fully accomplish the Basic Services.

5.1.8 Attending special public hearings for the Project, other than those listed herein, which are called by the County Board of Commissioners.

ARTICLE 6

DURATION OF DESIGNER'S SERVICES

6.1 Scheduling of Services

6.1.1 Attachment D to this Agreement is the Key Milestone Listing which defines the sequence and timing of the design and construction activities. The Designer and its Consultants shall schedule and perform their activities so as to meet the Milestone Dates shown. No deviation by the Designer or his Consultants from the Key Milestone Listing shall be allowed without prior written approval by the Owner.

6.1.2 The Designer's schedule for the performance of its activities and the activities of its Consultants shall be reduced to writing and submitted to the Owner for review and approval. The Designer shall also prepare and submit to the Owner for review and approval a schedule of all known items of information, approvals or decisions to be furnished or made by the Owner, including the dates by which the Owner shall have all information necessary from the Designer with respect to that item, approval or decision and the date by which

the item of information, approval or decision should be communicated to the Designer. The Owner shall always have a reasonable time within which to provide such item of information, approval or decision and shall not have any responsibility for any delay occurring by reason of the Owner's being unable, through no fault of the Owner, to supply such item of information, approval or decision.

6.1.3 Should the Owner determine that the Designer is behind schedule, it may require the Designer to expedite and accelerate its efforts, including providing additional manpower and/or overtime, as necessary, to perform its services in accordance with the Key Milestone Listing at no additional cost to the Owner.

6.1.4 The commencement date for the Designer's Basic Services shall be the date of delivery to the Designer from the Owner of a fully executed original of this Agreement.

6.2 Adjustments to the Schedule

6.2.1 If the Designer's work on the Project is or will be delayed for more than sixty (60) days through no fault of the Designer, or if the Owner increases or decreases the scope or size of the Project by ten percent (10%) of currently estimated Total Project Cost, the Designer shall give prompt written notice to the Owner. Provided that such notice has been given, the Designer may request in writing an adjustment in the Key Milestone Listing dates, which shall be granted by the Owner to the extent reasonable.

ARTICLE 7

DESIGNER'S COMPENSATION

7.1 Compensation for Basic Services

7.1.1 Compensation for Basic Services shall include all compensation due the Designer from the Owner for all services under this Agreement except for Additional Services and Reimbursable Expenses.

7.2 Breakdown of Compensation for Basic Services

Compensation for Basic Services consists of the following compensation for the following separate categories of services:

7.2.1 Schematic Design Phase. Lump sum fee of _____.

7.2.2 Design Development Phase. Lump sum fee of _____.

7.2.3 Construction Document Phase. Lump sum fee of _____.

7.2.4 Bidding and Contract Award. Lump sum fee of _____.

7.2.5 Construction Phase. Lump sum fee of _____.

7.2.6 Post Construction Phase. Lump sum fee of _____.

7.2.7 Additional Basic Services (Select all that apply):

Programming. Lump sum fee of _____.

Master Planning. Lump sum fee of _____.

Signage. Lump sum fee of _____ .

Furniture. Lump sum fee of _____ .

7.3 Payment for Basic Services Rendered

7.3.1 Payment to the Designer for Basic Services shall become due and payable monthly in proportion to satisfactory services performed and work accomplished. Payments will be made monthly by the Owner within 30 calendar days of receipt of an invoice which is in form and substance acceptable to the Owner. In the event the Owner finds any part or parts of all or any portion of an invoice presented by the Designer not to be acceptable, it shall identify to the Designer the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. No deductions shall be made from the Designer's fees for basic services except in accordance with this Agreement or to reimburse the Owner for costs or expenses incurred or anticipated to be incurred for which the Designer is liable.

7.3.2 If the Owner increases or decreases the scope of the Project by ten percent (10%) or more of the currently estimated Total Project Cost, the compensation for Basic Services shall be equitably adjusted.

7.4 Compensation for Additional Services

7.4.1 With respect to Additional Services performed by the Designer in accordance with Article 5 or any Addendum or Amendment to this Agreement, the Designer shall be compensated at the hourly rates shown in Attachment F to this Agreement, unless the Owner and the Designer otherwise agree in writing.

7.5 Reimbursable Expenses

7.5.1 Reimbursable expenses are in addition to the fees for Basic Services and Additional Services, and are for the following expenditures to the extent reasonable and actually incurred by the Designer, its employees, or Consultants with respect to the Project:

A. Actual expenditures for postage, reproductions, photography, and long distance telephone charges directly attributable to this Project.

B. The actual cost of reproduction of plans and specifications excluding documents for exclusive use by the Designer.

7.5.2 Neither the Designer nor its Consultants shall be entitled to any mark-up on actual expenses which are incurred.

7.6 Accounting Records

7.6.1 Accounting records of the Designer's compensation for Additional Services and Reimbursable Expenses pertaining to the Project shall be maintained by the Designer and its Consultants in accordance with generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representatives at mutually convenient times for a period of three (3) years after issuance of the Certificate of Final Completion for the Project.

ARTICLE 8

RESPONSIBILITIES OF THE OWNER

8.1 Cooperation and Coordination

8.1.1 The Owner shall meet with the Designer as necessary at mutually convenient times to provide information necessary to enable the Designer to develop a detailed written analysis and complete needs summary of the Project.

8.1.2 The Owner shall examine documents submitted by the Designer and shall make reasonable efforts to render decisions pertaining thereto no later than the dates specified in the schedule for such decisions described in Article 6.1.2.

8.1.3 shall be the Owner's Construction Projects Administrator and shall act in the Owner's behalf and as its representative with respect to the Project and shall have the authority to render decisions and approve changes in the scope of the Project within guidelines established by the County Manager and the Board of County Commissioners and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

8.2 Surveys and Testing

8.2.1 The Owner shall furnish the Designer with a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees, and other pertinent information reasonably requested by the Designer including that concerning available service and utility lines, both public and private, above and below grade, including inverts.

8.2.2 The Owner shall provide the services of a geotechnical engineer or other consultant, when such services are reasonably deemed necessary by the Designer as shown on the Designer's schedule described in Article 6.1.2, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, all together with reports and appropriate professional recommendations thereof.

8.2.3 All services, data, information, surveys and reports required of the Owner pursuant to this Article 8, shall be furnished at the Owner's expense and, absent any negligence or failure to follow professional standards on the part of Designer, the Designer shall be entitled to rely upon the accuracy and completeness of such services, data, information, surveys and reports.

8.3 Permits and Approvals

8.3.1 The Owner shall secure and pay for all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Designer shall provide the Owner with a schedule of all required approvals and of the dates by which application for such approvals must be made in order to avoid any risk of delay to the Project, prepare necessary application forms, present documents requiring approval by the Owner and submit documents with the Owner's approval to the appropriate approval agency.

ARTICLE 9

INSURANCE

9.1 General Requirements

9.1.1 The Designer shall purchase and maintain and shall cause each of its Consultants to purchase and maintain during the period of performance of this Agreement and for five years after issuance of a Certificate of Final Completion of the Project insurance for protection from claims under workers' or workmen's compensation acts; Comprehensive General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out

of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Designer's or Consultants' employees or any other person and to real and personal property including loss of use resulting thereof; Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising out of or related to the performance under this Agreement by the Designer or its agents, Consultants and employees.

9.1.2 The minimum insurance ratings for any company insuring the Designer shall be Best's A-. Should the ratings of any insurance carrier insuring the Designer fall below the minimum rating, the County may, at its option, require the Designer to purchase insurance from a company whose rating meets the minimum standard.

9.2 Limits of Coverage

9.2.1 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://www.orangecountync.gov/departments/purchasing_division/contracts.php). If Owner's Risk Manager determines additional insurance coverage is required such additional insurance shall be designated here (if no additional insurance required leave blank or 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.

9.2.2 All insurance policies (with the exception of Worker's Compensation and Professional Liability) required under this Agreement shall name the Owner as an additional insured party for the insurance.

9.3 Proof of Coverage

9.3.1 Evidence of such insurance shall be furnished to the Owner. Upon cancellation, non-renewal or reduction, the Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

9.4 Indemnity

9.4.1 The Designer agrees to indemnify and hold harmless the Owner 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 Designer except to the extent same are caused by the negligence or willful misconduct of the Owner. It is the intent of this provision to require the Designer to indemnify the Owner to the fullest extent permitted under North Carolina law.

9.5 Owner's Insurance Option

9.5.1 At any time during the performance of this Agreement, the Owner may, at its sole option, provide for itself, for the Designer and for its Consultants any or all of the insurance coverage required under the Article.

9.5.2 If the Owner elects to provide such coverage it shall notify the Designer in writing and provide to the Designer such certificate or certificates of coverage as may be applicable.

9.5.3 If the Owner elects to provide such coverage it shall be entitled to pro rata reduction in the fees for Basic Services equal to the cost of providing such coverage to the Designer and its Consultants.

ARTICLE 10

AMENDMENTS TO THE AGREEMENT

10.1 Changes in the Designer's Basic Services

10.1.1 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 Owner and the Designer. The Designer shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the Owner or a written notice from the Owner directing the Designer to proceed, whichever is earlier.

10.2 Owner Changes

10.2.1 The Owner may, without invalidating this Agreement, make written changes in the Designer's Basic Services or Additional Services of this Agreement by preparing and executing an Amendment to the Agreement. Within three (3) days of receipt of such an Amendment, the Designer shall notify the Owner in writing of any change contained therein that the Designer believes significantly increases or decreases the Designer's services with respect to the Project and request an adjustment in compensation with respect thereto. If the Amendment significantly increases or decreases the Designer's services, the Designer's compensation may be equitably adjusted.

ARTICLE 11

TERMINATION AND SUSPENSION

11.1 Termination for Convenience of the Owner

11.1.2 This Agreement may be terminated without cause by the Owner and for its convenience upon seven (7) days written notice to the Designer.

11.2 Other Termination

11.2.1 After seven (7) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

11.3 Compensation After Termination

11.3.1 In the event of termination for the convenience of the Owner, the Designer shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of its compensation for Basic Services earned to date or of its unearned compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be unearned by the Owner due to errors or omissions of the Designer.

11.3.2 In the event of termination by reason of a material breach of the Agreement by the Owner, the Designer shall be entitled to the same compensation as it would have received had the Owner terminated the Agreement for convenience, and the Designer expressly

agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

11.3.3 In the event of termination by reason of a material breach of the Agreement by the Designer, the Designer shall be paid that portion of its 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 Owner due to errors or omissions of the Designer or by reason of the Designer's breach of this Agreement.

11.3.4 Should this Agreement be terminated as provided under this Article 11 the Owner shall be granted, at no additional cost, ownership of all documents, drawings, and electronic databases relating to the Project, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Designer. The Designer shall turn over to the Owner within seven (7) days and in good unaltered condition reproduces of all original drawings, specifications, documents, electronic data bases and materials. In the event of such termination, and should the Owner use such drawings for completion of the Project, the Owner shall indemnify and hold the Designer harmless, to the extent authorized by North Carolina Law, from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the Owner, its Contractor(s), agents or employees in connection with Owner's use of such drawings, plans, specifications, renderings, models and other work provided as part of Basic Services and Additional Services. The Designer specifically agrees to incorporate the provisions of this paragraph in all contracts for the services of Designer's Consultants. The Owner agrees that the Designer may retain one set of drawings for its records.

11.3.5 Should this Agreement be terminated, the Owner shall, nevertheless, have the right to require the Designer and/or its Consultants to perform such additional effort as may be necessary to provide professionally certified and sealed drawings and to delivering to the Owner such certified and sealed drawings with respect to any phase or item of the project, for which effort the Designer shall be compensated in accordance with this Agreement.

11.4 Suspension

11.4.1 The Owner may, in writing, order the Designer to suspend, delay or interrupt all or any part of its Services on the Project for the convenience of Owner.

11.4.2 In the event the Designer believes that any suspension, delay or interruption of any or all of the Work on the Project, may require an extension of the duration of Basic Services or an increase in the level of staffing by Designer, it shall so notify the Owner and propose an amendment of the Key Milestone Listing for consideration of the Owner. Such amendment or extension shall be effective only upon the written approval of the Owner, which will not be withheld unreasonably. In the event the duration of Basic Services is extended or shortened or the level of staffing by the Designer is increased or decreased, the Designer's compensation for Basic Services may be equitably adjusted.

11.4.3 A suspension, delay or interruption of the Project shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of the Designer's services for a period exceeding ninety (90) days, the Designer's compensation for Basic Services may be equitably adjusted.

11.5 Waiver

11.5.1 The payment of any sums by the Owner under this Agreement or the failure of the Owner to require compliance by the Designer with any provisions of this Agreement or the waiver by the Owner of any breach of this Agreement shall not constitute a waiver of any

claim for damages by the Owner for any breach of this Agreement or a waiver of any other required compliance with this Agreement by the Designer.

11.5.2 Owner and Designer mutually waive any claim against each other for consequential damages. Consequential Damages include:

- A. Damages incurred by Owner for loss of use, income, financing, or business.
- B. Damages incurred by Designer for office expenses, including personnel, loss of financing, profit, income, business, damage to reputation, or any other non-direct damages.

ARTICLE 12

ADDITIONAL PROVISIONS

12.1 Confidentiality

12.1.1 The Designer and its Consultants shall use their best efforts not to disclose or permit the disclosure of any confidential information relating to the Project, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

12.2 Limitation and Assignment

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

12.3 Governing Law

12.3.1 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.

12.4 Dispute Resolution

12.4.1 Any dispute arising under pursuant to the Project shall be addressed under the terms of the Dispute Resolution Rules and Procedures for Orange County Design, Building Construction, Renovation, and Repair Projects. These rules and regulations are available upon request.

12.4.2 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.

12.5 Extent of Agreement

12.5.1 This Agreement represents the entire and integrated agreement between the Owner and the Designer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Designer.

12.6 Severability

12.6.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

12.7 Ownership of Documents

12.7.1 All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the property of the Owner and may be used on any other project without additional compensation to the Designer. The use of the documents by the Owner 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 Owner or such person or entity.

12.8 E-Verify

12.8.1 Pursuant to the terms of North Carolina General Statutes no county may enter into a contract unless the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Where applicable, failure to maintain compliance with the requirements of Article 2 of Chapter 64 of the General Statutes constitutes Design-Builder's breach of this Agreement. By executing this Agreement Design-Builder affirms Design-Builder is in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

12.9 Electronic Signatures

12.9.1 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.

12.10 Iran Divestment

12.10.1 Designer certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 143-6A et seq. In compliance with the requirements of the Iran Divestment Act Designer shall not utilize in the performance of this Agreement any subcontractor or Consultant that is identified on the Final Divestment List.

12.11 List of Attachment and Referenced Documents and Priority

12.11.1 The design documents consist of this Agreement and the attached and referenced documents. The attachment and referenced documents are listed in this Section 12.11.1 and are incorporated herein and made part of this Agreement by reference. In the event of any inconsistency between or among the terms of this Agreement and any of the incorporated listed documents such inconsistency or conflict shall be interpreted in the following order of priority:

This Agreement

Attachment A - Description of the Project

Attachment B - Description of Basic Services

Attachment C - Format of Total Project Cost Estimates

Attachment D - Key Milestone Listing

Attachment E - Consultants and Key Personnel

Attachment F - Hourly Rates Schedule

Request for Qualifications

Statement of qualifications

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and date first above written in a number of counterparts, each of which shall, without proof or accounting for other counterparts, be deemed an original contract.

ORANGE COUNTY:

DESIGNER:

By: _____

By: _____

Printed Name and Title

Printed Name and Title

SAMPLE

ORANGE COUNTY—DEPARTMENT USE ONLY

Department

Party/Vendor Name: _____ Party/Vendor Contact Person: _____ Contact Phone: _____ Party/Vendor Address: _____ City _____ State: _____
Zip: _____ Department: _____ Amount: _____ Purpose: _____ Budget Code(s): _____ Vendor # _____ (N/A if new vendor) Vendor is a BOCC
consultant? Yes No Contract Type: (Check one) New Renewal Amendment Effective Date _____ Approved by Board Yes No
 Agenda Date: _____

This agreement is approved as to technical form and content:

Department Director's Signature _____ Date: _____

Information Technologies

(Applicable only to hardware/software purchases or related services) This agreement has been reviewed and is approved as to information technology content and specifications:

Office of the Chief Information Officer _____ Date: _____

Risk Management

This agreement is approved for sufficiency of insurance standards, specifications, and requirements:

Office of the Risk Management Officer _____ Date: _____

Financial Services

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

Office of the Chief Financial Officer _____ Date: _____

Legal Services

This agreement is approved as to legal form and sufficiency:

Office of the County Attorney _____ Date: _____

Clerk to the Board

Received for record retention:

All DocuSign contracts must be copied to Donna Lloyd upon completion @ Dolloyd@orangecountync.gov

The following signature block is for hard copies only and is not required for DocuSign contracts:

Office of the Clerk to the Board _____ Date: _____

SAMPLE

SAMPLE

SAMPLE

SAMPLE

SAMPLE

SAMPLE