



County of Orange
Financial Services Department - Purchasing Division

REQUEST FOR PROPOSAL # 5203
Orange County Jail Project Design
April 28, 2015

The County of Orange is inviting interested and qualified firms to submit statements of qualifications for professional architectural/engineering services for the design of a new County Detention Center.

Firms must be licensed in the State of North Carolina and shall have extensive experience in the planning, design, and construction of County Detention Facilities. Orange County will also consider firms with extensive experience in the utilization and construction of "Prototype" County Detention Facilities. At this time Orange County does not have a preference and reserves the right to consider both alternatives during this process.

The services solicited in this Request for Qualifications (RFQ) will include a full range of basic and specialty professional services as outlined in the scope of services.

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) May 21, 2015**.

I. Background

The Orange County Jail was originally built in Hillsborough in 1925 to accommodate 38 inmates. In 1979 inmates were temporarily moved out and the jail essentially gutted and reconfigured. The result, in terms of inmate capacity was four (4) additional beds. Between approximately 1982 and 1994 periodic and variously configured "modifications" to the space that existed were made in an effort to accommodate an increasing jail population. By the early 1990s' the jail's "capacity" was 94 in number but beginning to average more than that on a daily basis. Subsequently, by 1995 the construction of a new Jail Annex was completed which increased the legal capacity of the Jail, as certified by the North Carolina Department of Health and Human Services, at 129 inmates; a capacity limit that remains to this day.

The jail remains overcrowded. Currently it does not, nor can it physically comply with existing State Jail Standards (10A NCAC 14J). It is poorly configured to enable the efficient supervision of the inmate population housed there, and its mechanical, electrical, plumbing and security systems are blatantly outdated. Of the eight years of inmate population data (2006-2013) reviewed during the programming effort; i.e. 96 months; the jail's average daily population (ADP) was *under* its rated legal capacity during only *five (5)* of those months.

Facility Program

Orange County has contracted with Solutions for Local Government, Inc. to develop a facility program for the new County Detention Center. The document is expected to be completed by July 30th and will be available to the firm selected to proceed with design.

At this time, the consultant's preliminary recommendation includes the development of a new 144-216 bed Detention Center comprised of a potential combination of single and double cells and utilizing indirect supervision. The core facilities; i.e. Booking, Food Services, Medical, Administration & Staff Support, etc. should be designed to accommodate an eventual population of up to 250 inmates as projected to occur on or approximately by 2033.

A site has been identified in Hillsborough which consists of approximately 6.8 acres. (attached)

II. SCOPE OF SERVICES

The selected firm shall be responsible for the schematic design, design development, construction documents, bidding, and construction administration of a new detention facility or the design adaptation, construction documents, bidding, and construction administration of a new detention facility utilizing a suitable prototype. The firm will work with an owner design committee which shall include but not be limited to the County Manager, Asset Management Services Director, and the Jail Administrator. The County Manager shall have final approval on all decisions relative to this project.

The firm shall be responsible for preparing and updating budget cost estimates for all phases of the project including such items as construction costs, site development, geo-technical analysis, furniture, fixtures & equipment, technology, professional fees, contingency costs and all other relative costs associated with the project. The firm shall also provide a timeline for implementation and completion of the project.

The firm shall be prepared to meet as required to receive input and/or provide updates.

The firm shall provide a computerized model of the final design, including elevations and selected floor plans for use in public presentations. The firm shall assist in the creation of print and multimedia items which will be used in marketing, and public awareness.

III. SUBMISSION

- A. Submittals: Submit five (5) hard copies (duplex printing on recycled paper), marked "New Orange County Detention Center" and one (1) electronic copy (single pdf file on thumb drive or CD with firm's name in the filename). 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), May 21, 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. 5203** and proposal subject, "New Orange County Detention Center".
- 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.

IV. 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, 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 (see Section V, paragraph C).
- D. Any interpretation, correction or change of this RFQ will be made by Addendum. Addenda will be mailed or 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.

V. 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;

All questions pertaining to this RFQ must be submitted in writing no later than May 14, 2015.

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 July 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.

G. SUBCONSULTANTS

If any sub-consultants will be used for the project, the successful firm shall provide to the Purchasing Agent a list of names of any of the intended sub-consultants, their applicable license number(s) and a description of the work to be performed by each sub-consultant.

The successful firm shall not substitute other sub-consultants without the written consent of the County.

The successful firm shall be responsible for all services performed by a sub-engineer as though they had been performed by the successful firm. Responsibilities include, but are not limited to, compliance with applicable licensing regulations.

If at any time the County determines that any sub-engineer is incompetent or undesirable, the County shall notify the successful firm accordingly, and the successful firm shall take immediate steps for cancellation of the subcontract and replacement.

Nothing contained in any contract resulting from this RFQ shall create any contractual relationship between any sub-engineer and the County of Orange.

It shall be the successful firm's responsibility to ensure that all terms required in the attached contract that is executed are incorporated into all subcontracts.

H. INSURANCE

The successful respondent will be required to show proof of professional liability insurance in types and amounts satisfactory to the County. The County typically requires liability limits of at least \$1,000,000 per occurrence with a \$2,000,000 aggregate coverage. Exact limits would be determined during contract negotiations.

Respondents will also cite in their response, any and all claims that have been filed against the professional liability insurance carried by the respondent within the past ten years, regardless of the settlement disposition.

VI. STATEMENT OF QUALIFICATIONS REQUIREMENTS

In order to expedite the evaluation of proposals, each Respondent shall organize its qualification package in accordance with this section. Firms that do not follow the specified outline may be deemed non-responsive and may be disqualified from the evaluation process.

- Section 1. Completed Responders' Certification Form and *notarized* Non-Collusion Affidavit
- Section 2. Introduction: Firm name, address, telephone, fax number, contact person and e-mail address; year established and former firm names; Include names of principles of the firm and the states in which they are registered; and types of services for which the firm is qualified;
- Section 3. Cover letter confirming that the elements of the RFQ have been reviewed and understood. The cover letter should be signed by an individual authorized to bind the firm contractually.
- Section 4. Experience: Provide a statement of your understanding of the scope of work/services requested; specifically with regards to county detention facilities and the utilization of prototype facilities. Also include a brief discussion regarding your experience working with the North Carolina Jail Standards (10A NCAC 14J) and the various State agencies with whom you will have contact during this project in central North Carolina dealing with soil structures, soil repairs, etc. as well as experience working for units of local government.

- Section 5. Project Team: List of staff members and resumes of those persons who will be assigned to work with the County on this project. Include an Organizational Chart but do not include resumes or list personnel who will not be assigned to this project. Also include the firm's commitment to keep the originally-assigned project team through project completion.
- Section 6. Describe the firm's construction administration service delivery model.
- Section 7. Orange County Government desires to utilize this construction project to enhance the local economy. Describe manner in which firm would encourage local construction companies' participation in this project.
- Section 8: List of current ongoing projects. Include: Project start date; expected completion date; total project cost; your ability to devote staff resources to complete this project. Describe how other existing trips to the area could contribute to cost savings on the services sought within this RFQ.
- Section 9: List and describe up to five (5) of your firm's previous experiences in the planning, design and construction of County Detention Facility projects similar in nature to the one for which this Request for Qualifications is being sought, Experience in North Carolina is preferred. Orange County will also consider firms with extensive experience in the utilization and construction of "Prototype" County Detention Facilities. Please include up to five (5) experiences with "Prototype" County Detention Facilities, , Experience in North Carolina is preferred

For each project listed, the information should include:

- Name and location of the project
- Brief description of the project
- Date the project was completed
- Name and telephone number of owner
- Name of the firm's project manager assigned to each listed project
- Original contract amount
- Number of change orders and total amount of change orders
- Total project cost (inclusive of change orders)

Section 10: Names of outside consultants (sub-consultants) who would be retained to provide services required for these projects. Provide a one-page synopsis for each consultant to include the following information:

- Individual's proposed role in the project
- A resume or brief description of the individual's previous experience as it relates to his/her role in the project
- For any proposed sub consultants, indicate how long your firm has worked with the sub-consultant on previous projects

Section 11: Firms willingness to affiliate with minority, woman-owned, or disadvantaged businesses.

- Section 12: Demonstration of Quality Control and Assurance processes as stated above in Section VI.
- Section 13: Letter disclosing any pending litigation or litigation within the last ten years related to the firm' projects.
- Section 14: Hourly billing rates charged by your firm each position type and reimbursable expenses.
- Section 15: Firms willingness to sign Orange County Standard Contract Agreement for Design Consultant Services (copy attached).

VII. EVALUATION PROCESS:

Following the deadline for submittal of qualifications, a review of the submitted qualifications will be conducted by a selection committee established by the County Manager. The selection committee will review all submittals based on their response to the information requested. The committee shall then make a recommendation to the County Manager based on criteria established herein.

If desired, the selection committee may short list a number of qualified firms. The County reserves the discretion to determine the number of firms that will be on the short list. The County may engage in individual discussions with two or more firms deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Interviews are not anticipated; however, the selection committee may schedule interviews if desired in the selection process. Such firms shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.

The selection committee may conduct discussions with the firm(s) submitting responses regarding the contract and shall select from among the firm(s) deemed most qualified to provide the required services. At the discretion of the County, the discussions with the firm(s) may consist of written questions and responses, and/or personal interviews with members of the firm(s). If personal interviews are required by the County, the persons proposed to be responsible for performing the work required herein shall attend the interview. If requested, firms should be prepared to submit financial status information, which shall be held in confidence.

The County will negotiate a stipulated lump sum fee for basic services and a rate schedule to be utilized for additional services and contingent additional services with the most qualified firm at a compensation which is considered to be fair and reasonable to the County. These rates shall include all disciplines (example: architect, project manager, engineers, administrative staff, etc.). The rate schedule for additional services shall remain firm throughout project completion. In making this decision, the County will take into account the established value, general scope, the complexity, and the professional nature of the services to be rendered. Should the County be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated.

Negotiations will then proceed with the remaining ranked firms in the same manner until an agreement is reached, unless it is determined by the committee that it is in the best interest of the County that the process be terminated or modified.

The County of Orange reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The County reserves the right to finalize a contract with one firm based on all information submitted in the written qualification submittal without further discussion or interviews.

VIII. SELECTION PROCESS

The included criteria may be used in the evaluation of qualification packages for development of a shortlist to be considered for potential negotiations. These criteria are not necessarily listed in order of importance.

- Firms qualifications and experience including location of offices and related staffing
- Firms understanding of the project objectives
- Previous work experience on similar projects and demonstrated experience in the design and construction of similar projects.
- Familiarity with construction in central counties which have unique soil and site requirements
- Demonstrated strategy to encourage local participation by the Orange County construction market
- Proposed staff, including sub-contracted professionals, proposed to perform the work
- Financial stability of the firm
- Demonstration of Quality Control: Demonstrated systematic approach to quality assurance and interdisciplinary coordinator methodologies throughout the various phases of design and construction administration.
- Demonstration of Cost Control: Demonstrated experience implementing cost saving measures that effectively maximized the utilization of funding from a variety of sources and minimized unnecessary expenses while achieving desired results.
- The ability of the consultant to begin work immediately and complete the projects in a timely manner.
- References: Evaluation of comments received from referenced previous clients

IX. 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
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



Not to scale

NON-COLLUSION AFFIDAVIT

State of North Carolina
County of Orange

Proposal Request No. 5203

_____, 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: _____

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

**SERVICES AGREEMENT OVER \$90,000.00
RFP – NO REIMBURSABLE EXPENSES**

ORANGE COUNTY

This Services Agreement (hereinafter “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 "Provider").

WITNESSETH:

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

1. Services

a. Scope of Work.

- i) This Services Agreement (“Agreement”) is for professional services to be rendered by Provider to County with respect to (*insert type of project*):
- ii) By executing this Agreement, the Provider represents and agrees that Provider 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.
- iii) Time is of the essence with respect to this Agreement.
- iv) The services to be performed under this Agreement consist of Basic Services, as described and designated in Section 3 hereof. Compensation to the Provider for Basic Services under this Agreement shall be as set forth herein.

2. Responsibilities of the Provider

- a. Services to be provided. The Provider shall provide the County with all services required in Section 3 to satisfactorily complete the Project within the time limitations set forth herein and in accordance with the highest professional standards.
- b. Standard of Care.
 - i) The Provider shall exercise reasonable care and diligence in performing services under this Agreement in accordance with the highest generally accepted standards of this type of Provider practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Provider is solely responsible for the professional

quality, accuracy and timely completion and/or submission of all work related to the Basic Services.

- ii) Provider shall be responsible for all errors or omissions of its agents, contractors, employees, or assigns in the performance of the Agreement. Provider shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the County.
- iii) The Provider 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.
- iv) Provider is an independent contractor of County. Any and all employees of the Provider engaged by the Provider in the performance of any work or services required of the Provider under this Agreement, shall be considered employees or agents of the Provider 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 Provider.
- v) Provider agrees that Provider, its employees, agents 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 Provider's services under this Agreement.
- vi) If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Provider 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.

3. Basic Services

a. Basic Services.

- i) The Provider shall perform as Basic Services the work and services described herein and as specified in the County's Request for Proposals (the "RFP") "RFP Number _____ for "_____ " issued _____, 20_____, and the Provider's proposal, which are fully incorporated and integrated herein by reference together with Attachments _____ (designate all attachments). In the event a term or condition in any document or attachment conflicts with a term or condition of this Agreement the term or condition in this Agreement shall control. Should such conflict arise the priority of documents shall be as follows: This Agreement, the County's RFP together with attachments, Provider's Proposal together with attachments.
- ii) The Basic Services will be performed by the Provider 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.	

iii) Should County reasonably determine that Provider has not met the Milestone Dates established in Section 3(a)(ii), County shall notify Provider of the failure to meet the Milestone Date. The County, at its discretion may provide the Provider seven (7) days to cure the breach. County may withhold the accompanying payment without penalty until such time as Provider cures the breach. In the alternative, upon Provider’s failure to meet any Milestone Date the County may modify the Milestone Date schedule. Should Provider 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 Provider. This section shall not be interpreted to limit the definition of breach to the failure to meet Milestone Dates.

4. Duration of Services

- a. Term. The term of this Agreement shall be from _____ to _____ .
- b. Scheduling of Services
 - i) The Provider shall schedule and perform its activities in a timely manner so as to meet the Milestone Dates listed in Section 3.
 - ii) Should the County determine that the Provider is behind schedule, it may require the Provider to expedite and accelerate its efforts, including providing additional resources and working overtime, as necessary, to perform its services in accordance with the approved project schedule at no additional cost to the County.
 - iii) The Commencement Date for the Provider's Basic Services shall be _____ .

5. Compensation

- a. Compensation for Basic Services. Compensation for Basic Services shall include all compensation due the Provider from the County for all services under this Agreement. The maximum amount payable for Basic Services is _____ Dollars (\$ _____). In the event the amount stated on an invoice is disputed by the County, the County may withhold payment of all or a portion of the amount stated on an invoice until the parties resolve the dispute. 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(a)(ii) are achieved. *(For example, if there are 10 Project Tasks with Milestone Dates then Provider 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 Provider may invoice for the next 10% of the whole.)*

- b. Additional Services. County shall not be responsible for costs related to any services in addition to the Basic Services performed by Provider unless County requests such additional services in writing and such additional services are evidenced by a written amendment to this Agreement.

6. Responsibilities of the County

- a. Cooperation and Coordination. 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/or 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.

7. Insurance

- a. General Requirements. Provider shall obtain, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, Workers' Compensation 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 consist of (if no additional insurance required mark N/A as being not applicable). Provider shall not commence work until such insurance is in effect and certification thereof has been received by the Owner's Risk Manager.

8. Indemnity

- a. Indemnity. The Provider agrees to defend, 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 Provider 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 Provider to indemnify the County to the fullest extent permitted under North Carolina law.

9. Amendments to the Agreement

- a. Changes in Basic Services. 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 Provider. The Provider

shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the County.

10. Termination

- a. Termination for Convenience of the County. This Agreement may be terminated without cause by the County and for its convenience upon seven (7) days prior written notice to the Provider.
- b. Other Termination. The Provider 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 Provider shall give the County seven (7) days' prior written notice of its intent to terminate this Agreement for cause.
- c. Compensation After Termination.
 - i) In the event of termination, the Provider 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 Provider.
 - ii) Should this Agreement be terminated, the Provider 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.
- d. Waiver. The payment of any sums by the County under this Agreement or the failure of the County to require compliance by the Provider 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.

11. Additional Provisions

- a. Limitation and Assignment. The County and the Provider each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the County nor the Provider shall assign or transfer its interest in this Agreement without the written consent of the other.
- b. Governing Law. 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.
- c. Compliance with Laws. Provider 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. Pursuant to the terms of North Carolina General Statute 153A-449(b) no county may enter into a contract with a contractor unless the contractor and the contractor's 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 Provider's breach of this Agreement. By executing this Agreement Provider affirms Provider is in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

- d. Dispute Resolution. 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. It is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. Binding arbitration may not be initiated by either Party, however, the Parties may agree to nonbinding mediation of any dispute prior to the bringing of such suit or action.
- e. Entire Agreement. This Agreement, together with the RFP and its attachments and the Proposal and its attachments, represents the entire and integrated agreement between the County and the Provider and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties. Modifications may be evidenced by facsimile signatures.
- f. Severability. 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.
- g. Ownership of Work Product. Should Provider's performance of this Agreement generate documents, items or things that are specific to this Project such documents, items or things shall become the property of the County and may be used on any other project without additional compensation to the Provider. The use of the documents, items or things 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.
- h. Non-Appropriation. Provider 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 Provider 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 Provider of such limitation or change in County's legal authority.

- i. Signatures. 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.

- j. Notices. 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

Provider'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.

ORANGE COUNTY:

PROVIDER:

By: _____
 , Chair
Orange County Board of Commissioners

By: _____
Printed Name and Title