



**ADDENDUM #1  
PRE-BID MEETING MINUTES  
SPORTSPLEX MAIN BUILDING ROOF REPLACEMENT  
ORANGE COUNTY, HILLSBOROUGH, NC  
BID No. 367-5288  
ATLAS PROJECT NO. J2400**

MEETING DATE:       October 1, 2020

ATTENDEES:           Angel Barnes – Orange County Asset Management Services  
                          Rob Tatum – Atlas Engineering  
                          Gary Kurth – AAR Roofing  
                          Will Trute – Allied Roofing  
                          Juan Rios – Curtis Construction  
                          Nathan Darrah – BAR Roofing and Maintenance  
                          Gary Daughtry – CFE, Inc.  
                          Chris Brackin – Muter Construction  
                          Matthew French – BIRS, Inc.  
                          Eddie Lester – B&M Roofing  
                          Caleb Smith – Hamlin Roofing  
                          Brady Knowles – Owens Roofing, Inc.  
                          Will Diachenko – Baker Roofing  
                          Jack Brewer – Brewer Scaffold  
                          Ryan Walsh – Sarnafil  
                          Jim Taylor – Carolina Construction and Restoration

A mandatory pre-bid meeting was held at the Orange County Sportsplex located in Hillsborough, North Carolina on October 1, 2020 at 10:00 a.m. to discuss the roof replacement project for the main building of the Sportsplex.

- Key project team members were introduced. Ms. Angel Barnes is the project manager for Orange County. Mr. Andrew Stock and Mr. John Stock will be the main points of contact for the facility. Mr. Rob Tatum is the Project Manager for Atlas Engineering and will be the primary source of contact for the Designer.
- **The pre-bid meeting is mandatory.** Companies that are not listed on the attached sign-in sheet will not be able to bid. All addenda will be e-mailed to eligible bidders.
- The following documents were not included in the initial distributed bid documents: The Form of Proposal, Form of Bid Bond, Safety Questionnaire for Formal Bids, Sheet for Attachment of Living Wage Certification, Form of Construction Contract, Form of Performance Bond, and Form of Payment Bond. These documents were on the thumb drive distributed at the pre-bid and are each attached to Addendum 1.
- Submit bids to Orange County Financial/Administrative Services, 405 Meadowlands Drive, Hillsborough, NC 27278 to the attention of Orange County Purchasing. Bids are due on Thursday, October 22, 2020 at 3:00 p.m. Bidders are responsible for delivering the bid to the correct address by the

specified time. Bids will be publicly opened and read starting at 3:30 p.m. in the Parking Lot at 405 Meadowlands Drive, Hillsborough, NC 27278.

- Bidders shall include the Form of Proposal, MBE Affidavit A or B, Bid Bond (5%), Contractor's Safety Record Information, and Living Wage Certification with their bid. The contractor is to use the documents provided in the project manual and Addendum #1.
- Contractors must have the proper license as required by the State of North Carolina. General Contractors must have license classification for Building.
- Performance and Payment Bonds will be required for one hundred percent of the contract price. These bonds are not required with the bid, but Bidders must be sure they are able to obtain bonds for the full amount they are bidding. Contractors are to use the documents in the project manual and Addendum #1.
- The proposal shall be valid for a period of 90 days.
- The owner reserves the right to reject any or all bids and to waive informalities.
- The contractors were reminded to read the "Notice to Bidders" and follow all requirements. The contractor will have to meet the insurance requirements.
- Last day for questions will be by 5:00 p.m. on October 12, 2020 and no addenda will be issued after 5:00 p.m. October 16, 2020. Acknowledge all addenda on the proposal.
- Contractor will have 60 consecutive calendar days from the Notice to Proceed to complete the project. Liquidated damages will be imposed at a rate of \$500 per calendar day beyond the date of Final Acceptance.
- The contractor is to include the unit quantities in Section 012100, Item 1.03 into their base bid. Fill out "unit prices" on the Form of Proposal. Any unused base bid quantities will be credited back to Orange County through a change order at the end of the project.
- The contractor is responsible to review the Hot Work Permit Program in the project manual. The contractor is to follow the FM Global Hot Work Permit process and has a minimum of 4 hour fire watch (Includes heat welding membrane seams). Workers will have to complete the FM Global training program and obtain a certificate. Copies of the certificate will be provided to Orange County.
- All equipment shutdowns have to be approved in writing in advance by the Orange County. A minimum of 72 hour notice before any shut down is required. More advanced notice may be required for the larger pieces of equipment.
- Section 010100, Item 1.01B was reviewed.
- The contractor may work Monday through Friday from 6:00 a.m. to 8:00 p.m. Work may occur on the weekends, but prior approval must be obtained from Orange County. Notice of weekend work must be provided by the end of the day on Thursday.
- The contractor must have prior experience with the materials/systems to be installed, have performed projects of similar size and scope, and shall have been in business a minimum of five years prior to the date of bid.

- Submittals are to be provided in PDF format. A Dropbox file can be created for the submittals.
- Contractor shall provide a foreman or a representative from the Contractor that is in a supervisory position that is familiar with the installation of the new roof system and who will be on the site anytime that work by the Contractor or one of his Subcontractors is in progress. The Contractor must provide a representative that is fluent in English on-site at all times when work is in progress to ensure that the Owner and Designer can communicate with the crew members as needed during construction.
- The Installers of the single-ply roof system must be approved/certified applicators of the manufacturer systems/products to be installed. The certification/approval must be provided by the manufacturer and must be based on installation training, contractor experience with the system, and installation performance and technical observation, not solely on sales ranking. Approval/certifications must have been in place prior to the bid date. The prime contract shall either be approved themselves, or shall use approved subcontractors to perform the work on this project.
- The contractor must submit a COVID-19 plan for review and approval prior to beginning work.
- The Owner will provide water for construction purpose if adequate for use. The contractor will be responsible for power, toilet facilities, and sanitary facilities. The contractor will provide a station for workers to wash their hands with soap and water.
- Refer to Section 016000, Item 1.03 for substitution requests. Substitution requests must come from an eligible Bidder. Substitutions not in accordance with this section will not be reviewed.
- Bidders should fully examine the Project Documents and existing site conditions prior to submitting their bid. If there are any questions regarding the design intent, or any errors or discrepancies in the drawings or documents are found, bidders should immediately notify the Designer to allow for correction or clarification in an addendum to all bidders. Addendum #1 will include the pre-bid meeting minutes and provide response to any unanswered questions. Addenda will be sent to each plan holder including eligible bidders, manufacturers, or subcontractors. The person attending the pre-bid meeting will receive such addenda unless a different contact person from that company has been requested.
- Only the underside of the deck of Roof Area B is to be painted.
- A mechanical contractor will be used to raise gas and liquid lines. Trademasters Services, Inc. currently services all equipment on the facility and they are familiar with the required scope of work. Contractors may contact Wayne Sheppard at 919-382-3330 (office), 919-730-4457 (cell), or by email at [wayne@trademastersnc.com](mailto:wayne@trademastersnc.com).
- A 5-Year Contractor's Warranty is required.
- Contracts typically take 2 weeks to execute.
- A walk through on the roof was conducted.

END OF ADDENDUM #1

*Attachments: Form of Proposal, Form of Bid Bond, Safety Questionnaire for Formal Bids, Sheet for Attachment of Living Wage Certification, Form of Construction Contract, Form of Performance Bond, and Form of Payment Bond*

# FORM OF PROPOSAL

Sportsplex Main Building Roof Replacement  
Orange County, Hillsborough, NC  
\_\_\_\_\_

Contract: \_\_\_\_\_  
Bidder: \_\_\_\_\_  
Date: \_\_\_\_\_

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The bidder further declares that he and his subcontractors have fully complied with NCGS 64, Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

The Bidder proposes and agrees if this proposal is accepted to contract with the  
***Orange County, a political subdivision of the State of North Carolina (Orange County)***

in the form of contract specified below, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of

**Sportsplex Main Building Roof Replacement**

in full in complete accordance with the plans, specifications and contract documents, to the full and entire satisfaction of

**Orange County and Atlas Engineering, Inc.**

with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and the contract documents, for the sum of:

**SINGLE PRIME CONTRACT:**

Base Bid: \_\_\_\_\_ Dollars(\$)

General Subcontractor:  
\_\_\_\_\_ Lic \_\_\_\_\_

Plumbing Subcontractor:  
\_\_\_\_\_ Lic \_\_\_\_\_

Mechanical Subcontractor:  
\_\_\_\_\_ Lic \_\_\_\_\_

Electrical Subcontractor:  
\_\_\_\_\_ Lic \_\_\_\_\_

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

## **UNIT PRICES**

Estimated quantities for each item below as defined in Section 012100, Paragraph 1.03.A of the Project Manual, shall be considered to have already been included within the base bid amount proposed above. The unit prices provided below shall be applied as appropriate, to compute the total value of changes in the scope of the work in the event that the quantity of actual work performed is more than or less than the estimated quantity. Unit prices quoted and accepted shall apply throughout the life of the contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of changes in the base bid quantity of the work all in accordance with the contract documents.

### **GENERAL CONTRACT:**

No. 1	<u>Metal Deck Restoration</u>	<u>(sq.ft.)</u>	Unit Price (\$) _____
No. 2	<u>Metal Deck Replacement</u>	<u>(sq.ft.)</u>	Unit Price (\$) _____
No. 3	<u>Metal Deck Repair</u>	<u>(sq. ft.)</u>	Unit Price (\$) _____
No. 4	<u>Wood Blocking Replacement</u>	<u>(bd.ft.)</u>	Unit Price (\$) _____
No. 5	<u>Plywood Replacement</u>	<u>(sq.ft.)</u>	Unit Price (\$) _____
No. 6	<u>5/8" Gypsum Board replacement</u>	<u>(sq.ft.)</u>	Unit Price (\$) _____
No. 7	<u>Additional Walk Tread Installation</u>	<u>(ln. ft.)</u>	Unit Price (\$) _____
No. 8	<u>Rubber Paver</u>	<u>(ea.)</u>	Unit Price (\$) _____
No. 9	<u>Tapered Insulation</u>	<u>(bd. ft.)</u>	Unit Price (\$) _____

The bidder further proposes and agrees hereby to commence work under this contract on a date to be specified in a written order of the designer and shall fully complete all work thereunder within the time specified in the Supplementary General Conditions Article 23. Applicable liquidated damages amount is also stated in the Supplementary General Conditions Article 23.

## **MINORITY BUSINESS PARTICIPATION REQUIREMENTS**

*Provide with the bid* - Under GS 143-128.2(c) the undersigned bidder shall identify **on its bid** (Identification of Minority Business Participation Form) the minority businesses that it will use on the project with the total dollar value of the bids that will be performed by the minority businesses. **Also** list the good faith efforts (Affidavit **A**) made to solicit minority participation in the bid effort.

**NOTE:** A contractor that performs all of the work with its own workforce may submit an Affidavit (**B**) to that effect in lieu of Affidavit (**A**) required above. The MB Participation Form must still be submitted even if there is zero participation.

*After the bid opening* - The Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low bidder, the bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

An Affidavit (**C**) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the 10% goal established. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort and Affidavit **D** is not necessary;

**\* OR \***

If less than the 10% goal, Affidavit (**D**) of its good faith effort to meet the goal shall be provided. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations

and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

**Note:** Bidders must always submit **with their bid** the Identification of Minority Business Participation Form listing all MB contractors, vendors and suppliers that will be used. If there is no MB participation, then enter none or zero on the form. Affidavit A or Affidavit B, as applicable, also must be submitted with the bid. Failure to file a required affidavit or documentation with the bid or after being notified apparent low bidder is grounds for rejection of the bid.

# Proposal Signature Page

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The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of \_\_\_\_\_

\_\_\_\_\_  
(Name of firm or corporation making bid)

WITNESS:

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

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

Name: \_\_\_\_\_  
Print or type

Title \_\_\_\_\_  
(Owner/Partner/Pres./V.Pres)

Address \_\_\_\_\_

ATTEST:

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

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

License No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

Email Address: \_\_\_\_\_

(CORPORATE SEAL)

Addendum received and used in computing bid:

Addendum No. 1 \_\_\_\_\_ Addendum No. 3 \_\_\_\_\_ Addendum No. 5 \_\_\_\_\_ Addendum No. 7 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_ Addendum No. 6 \_\_\_\_\_ Addendum No. 8 \_\_\_\_\_

**FORM OF BID BOND**

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_

\_\_\_\_\_ as principal, and \_\_\_\_\_, as surety, who is duly licensed to act as surety in North Carolina, are held and firmly bound unto Orange County, a political subdivision of the State of North Carolina through as obligee, in the penal sum of \_\_\_\_\_ DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

WHEREAS, the said principal is herewith submitting proposal for \_\_\_\_\_ and the principal desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by G.S. 143-129.1

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

## Contractor's Safety Record Information

The Contractor's safety record shall be reviewed and evaluated in addition to other quality and performance criteria as part of bid evaluation process. Failure to provide the requested information and documentation may result in rejection of your bid as non-responsive.

Accordingly, all bidders must submit the following information regarding their safety record.

The following definitions shall apply to this section:

"DART incident rate" – Acronym for "Days Away, Restrictions and Transfers". The DART incident rate may be used to show the relative level of injuries and illnesses within a firm compared to the industry. It is based only on those injuries and illnesses severe enough to warrant "Days Away, Restrictions and Transfers". The DART incident rate is calculated using OSHA's Form 300 and the following formula:

$$\frac{((\text{Number of entries in column H (days away from work)} + \text{column I (job transfer or restriction)}) \times 200,000) / (\text{Number of hours worked by all employees})}{\text{Number of hours worked by all employees}} = \text{DART Incident rate.}$$

"EMR" – Acronym for "Experience Modification Rate," is an indicator of a contractor's past safety performance, widely used by the insurance industry as an equitable means of determining premiums for workers' compensation insurance. The rating system considers the average workers' compensation losses for a given firm's type of work and amount of payroll and predicts the dollar amount of expected losses to be paid by that employer in a designated rating period, usually three years. The rating is based on comparison of firms doing similar types of work, and the employer is rated against the average expected performance in each work classification. Losses incurred by the employer for the rating period are then compared to the expected losses to develop an experience rating.

"OSHA" – Acronym for the Federal Occupational Health and Safety Administration. The term "OSHA" as used in this Policy also refers to any state or local agency having jurisdictional authorization to enforce worker safety requirements and assess fines or warnings for violation of worker safety standards.

1. OSHA DART Incident Rate. Provide the bidder's DART Incident Rate calculated from OSHA's Form 300 for the last three years and the other required information shown in the example table below. *The bidder must attach all supporting documentation and calculations including certified OSHA forms.*

YEAR	CONTRACTOR DART INCIDENT RATE	INDUSTRY DART INCIDENT RATE	INDUSTRY FIELD AND CODE

2. Experience Modification Rate (EMR). Provide the bidder's most recent Experience Modification Rate (EMR) based on insurance claims history. *The bidder must provide the source of the EMR information and contact information of insurer entity providing the EMR.*

YEAR	CONTRACTOR EMR	INDUSTRY FIELD AND CODE	NAME AND CONTACT INFO FOR EMR INFORMATION

3. Answer the following OSHA Specific Questions:

(a) Within the last 2 years, has the bidder received any citations classified by OSHA as being (1) serious, (2) willful and/or (3) repeat violations where your company operates?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, attach a copy of each such citation and violation.

(b) Has the bidder experienced any work-related fatalities within the last five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(c) Has the bidder had any citations issued by OSHA as a result of work related fatalities within the past 5 years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(d) Is the bidder under investigation for any work-related fatalities?

Yes \_\_\_\_\_ No \_\_\_\_\_

(e) If your answer is “yes” to 3(b), (c) or (d), provide a copy of the citation(s), list of number(s) of fatalities and documented explanation of the fatality.

4. Safety Plan:

(a) Does the company have a written safety program that includes responsibility for all aspects of safety management?

Yes \_\_\_\_\_ No \_\_\_\_\_

(b) Does the company have a written plan for safety training of new employees and ongoing training of existing employees?

Yes \_\_\_\_\_ No \_\_\_\_\_

(c) Does the company have documented evidence of safety training that they have conducted?

Yes \_\_\_\_\_ No \_\_\_\_\_

(d) If the company has employees with limited English ability, does the company have a written plan for ensuring that their employees understand the training they are being given?

Yes \_\_\_\_\_ No \_\_\_\_\_

(e) Do all supervisors have an appropriate documented level of OSHA training (e.g., a minimum of 30 hour OSHA construction safety training)?

Yes \_\_\_\_\_ No \_\_\_\_\_

(f) Do employees have documented basic OSHA 10 hour construction safety training?

Yes \_\_\_\_\_ No \_\_\_\_\_

(g) Does the company have a documented Hazard Communication Program?

Yes \_\_\_\_\_ No \_\_\_\_\_

5. Required Written Explanation of Safety Record. If the bidder has any of the following: (a) DART incident rate greater than its industry average, (b) an EMR greater than 1.0, (c) answered “yes” to any of the OSHA Specific Question above, or (d) answered “no” to any of the Safety Plan questions, the bidder shall provide the County, in its bid, a detailed written explanation of its safety record and the reasons why such safety history is NOT representative of its future performance and what specific actions it has taken to improve its overall safety record. Failure to provide a written explanation of its safety record pursuant to this paragraph may be deemed as non-responsive by the County.

## Sheet for Attaching Living Wage Certification

**NORTH CAROLINA**

**CONSTRUCTION AGREEMENT OVER \$250,000**

**ORANGE COUNTY**

THIS CONSTRUCTION AGREEMENT (hereinafter called "Agreement"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter called the "Contractor"), and Orange County, a political subdivision of the State of North Carolina, (hereinafter called the "County," "Orange County," or "Owner").

**WITNESSETH:**

That the Contractor and the Owner, for the consideration herein named, agree as follows:

**1. CONTRACT DOCUMENTS; PRIORITY**

The Contract Documents consist of this Agreement, the General Conditions which are fully incorporated in this Agreement, the Request for Proposals, designer approved communications and/or field orders, the Proposal, Construction Documents and Drawings and Written Specifications. The Contract Documents form the Contract. In the event of any inconsistency between or among the Contract Documents the Contract Documents shall be interpreted in the following order of priority:

- a. This Agreement and incorporated General Conditions attached as Exhibit 1.
- b. Designer approved and stamped construction documents and drawings and written specifications.
- c. Designer approved communications and/or field orders.
- d. Request for Proposals and addenda thereto.
- e. Proposal.

**2. SCOPE OF WORK**

The Contractor shall furnish and deliver all of the materials, and perform, and be fully responsible for all of the Work required by this Agreement within the time period stipulated in a written Notice-to-Proceed to be executed by the Contractor and Owner and in accordance with the following enumerated documents, which are made a part hereof as if fully contained herein:

- a. Construction Drawings prepared by \_\_\_\_\_ (Sheet \_\_\_\_\_ dated \_\_\_\_\_)
- b. Written specifications prepared by the Designer.
- c. \_\_\_\_\_ proposal dated \_\_\_\_\_, 20\_\_\_\_ which fully describes the work to be performed, such work (hereinafter called the "Work").

- d. Related documents listed under Section 2 above.

**3. TERM AND SCHEDULING**

- a. The Contractor agrees to commence work pursuant to the written Notice-to Proceed.
- b. The Contractor agrees to complete substantially all Work included by \_\_\_\_\_, 20\_\_\_\_\_.
- c. Time is of the essence with respect to all dates specified in the Contract Documents as Completion Dates.
- d. The Contractor shall perform the Work in the time, manner and form required by the Contract Documents and as stipulated in a written Notice-to-Proceed to be executed by the Contractor and Owner.

**4. STANDARD OF CARE AND DUTIES OF CONTRACTOR**

- a. The Contractor shall exercise reasonable care and diligence in performing the Work in accordance with the generally accepted standards of this type of Contractor practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Contractor is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work.
- b. The Contractor shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety, intended performance or configuration.
- c. Contractor shall be responsible for all Contractor, Subcontractor, and Sub-subcontractor errors or omissions, in the performance of the Agreement together with the errors and omissions of any agent or employee of the Contractor or any Subcontractor or Sub-subcontractor. Contractor shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the Owner.
- d. Contractor is an independent contractor of Owner. Any and all employees of the Contractor engaged by the Contractor in the performance of any work or services required of the Contractor under this Agreement, shall be considered employees or agents of the Contractor only and not of the Owner, 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 Contractor.
- e. Contractor shall at all times remain in compliance with all applicable local, state, and federal laws, rules, and regulations including but not limited to all state and federal non-discrimination laws, policies, rules, and regulations and the Orange County Non-Discrimination Policy and Orange County Living Wage Policy (each policy is incorporated herein by reference and may be viewed at [http://www.orangecountync.gov/departments/purchasing\\_division/contracts.php](http://www.orangecountync.gov/departments/purchasing_division/contracts.php)). Any violation of the Orange County Non-Discrimination Policy is a breach of this Agreement and County may immediately terminate this Agreement without further obligation on the part of the County. This paragraph is not intended to limit and does not limit the definition of breach to discrimination.
- f. If activities related to the performance of this Agreement require specific licenses,

certifications, or related credentials Contractor 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.

- g. The Contractor shall supervise and direct the Work efficiently and with the Contractor's best skill and attention. Except as specifically set forth in the Contract Documents the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, and for safety precautions and programs in connection with the Work. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- h. The Contractor shall appoint a competent Project Manager with general authority to manage the Project for the Contractor. The Contractor shall also keep on the Project at all times during the Work of the Contractor a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Designer or by the Owner if a Designer is not retained for the Project.
- i. If, in the opinion of the Designer, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, such Subcontractor shall be replaced by the Contractor with no increase in the Contract Price if and when directed by the Designer.
- j. The Contractor shall attend all progress conferences and all other meetings or conferences. The Contractor shall be represented at these progress conferences by a representative having the authority of the Project Manager and by such other representatives as the Designer may direct.
- k. Costs and expenses of providing samples for and assistance in any testing shall be borne by the Contractor. Any Work in which untested materials are used without approval or written permission of the Owner and/or Designer shall be removed and replaced at Contractor's expense.
- l. The Contractor shall obtain all necessary permits including all permits required to complete the Work in compliance with local, state, and/or federal law.

## **5. PAYMENT & TAXES**

- a. The Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, and the Contractor hereby agrees to perform all of the Work for a sum not-to-exceed        Dollars (\$        ). Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the Owner's Representative, generally the Designer if a Designer is retained on the Work, a Request for Payment for work done during the previous calendar month.
  - (i) The Request for Payment shall be in form of a standardized invoice or AIA Document G702-703 appropriately addressed to Owner's Representative at        and shall show substantially the value of work done during the previous calendar month.
  - (ii) The amount due for payment shall be ninety-five percent (95%) of the value of work completed since the last Request for Payment and this amount shall be paid by the

Owner on or before the last business day of the month. Owner shall retain five percent (5%) (the "Retainage").

- (1) Upon Owner's Representative's certification that fifty percent (50%) of the Work has been satisfactorily completed Retainage shall be reduced to two and one half percent (2½%).
  - (2) Upon Owner's Representative's certification that ninety percent (90%) of the Work has been satisfactorily completed Retainage may be discontinued. Retainage may be discontinued, at Owner's Discretion, so long as work continues to be completed satisfactorily and on schedule.
- (iii) Final payment shall not be due to the Contractor until thirty (30) days after Final Completion of the Work, including punch list work, has been satisfactorily (as determined by the County) completed and an appropriate Affidavit, Indemnification, and Release as required in Section 8(d) below has been received by Owner.
- b. Should Owner reasonably determine that Contractor has failed to perform the Work related to a Request for Payment, Owner, at its discretion may provide the Contractor ten (10) days to cure the breach. Owner may withhold the accompanying payment without penalty until such time as Contractor cures the breach.
- (i) Should Contractor or its representatives fail to cure the breach within ten (10) days, or fail to reasonably agree to such modified schedule, Owner may immediately terminate this Agreement in writing, without penalty or incurring further obligation to Contractor.
  - (ii) This section shall not be interpreted to limit the definition of breach to the failure to perform the Work related to a Request for Payment.
- c. The Contractor has included in the Contract Price and shall pay all taxes assessed by any authority on the Work or the labor and materials used therein. It shall be the Contractor's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of its subcontractors.
- d. Should the Owner receive notice that the Contractor has failed to pay a Subcontractor for the Work performed related to a Request for Payment, Owner shall have the authority to withhold payment of the disputed amount until parties resolve their dispute. Failure to pay the Contractor pursuant to this section of the Agreement shall not be deemed to be a breach of the Agreement.

## **6. NON-APPROPRIATION**

- a. Contractor acknowledges that Owner 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.
- b. In the event that public funds are unavailable and not appropriated for the performance of Owner's obligations under this Agreement, then this Agreement shall automatically expire without penalty to Owner immediately upon written notice to Contractor of the unavailability

and non-appropriation of public funds. It is expressly agreed that Owner 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.

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

## 7. NOTICES

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

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

Contractor:

## 8. MISCELLANEOUS

- a. Duties and Obligations imposed by the Contract Documents shall be in addition to any Duties and Obligations imposed by state, federal or local law, rules, regulations and ordinances.
- b. No act or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty granted them under the Contract Documents, nor shall any act or failure to act constitute any approval except as specifically agreed in writing.
- c. The Work shall be tested and inspected as required by the Contract Documents and as required by law. Unless prohibited by law the costs of all such tests and inspections related to state and federal codes such as ADA, Administrative, Electrical, Plumbing, Mechanical and Building Codes shall be borne by the Contractor. The costs for material and structural testing shall be conducted by an independent third party at the expense of the Owner. Delays related to any of the aforementioned tests and inspections shall not be grounds for delaying the completion of the work. If any such tests and inspections reveal deficiencies in the Work such that the Work does not comply with terms or requirements of the Contract Documents and/or the requirements of any code or law the Contractor is solely responsible for the cost of bringing such deficiencies into compliance with the terms of the Contract Documents and/or any code or law.
- d. Should the Designer, if a Designer is retained for the project involving the Work, or Owner reject any portion of the Work for failing to comply with the Contract Documents Contractor shall immediately, at Contractor's expense, correct the Work. Any such rejection may be made before or after substantial completion. If applicable, any additional expense borne by the Designer under this section shall be paid at Contractor's expense.
- e. 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.

- f. The Contractor shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the Owner.

**9. CONSEQUENTIAL DAMAGES**

- a. Owner and Contractor mutually waive any claim against each other for consequential damages. Consequential Damages include:
  - (i) Damages incurred by Owner for loss of use, income, financing, or business.
  - (ii) Damages incurred by Contractor for office expenses, including personnel, loss of financing, profit, income, business, damage to reputation, or any other non-direct damages.

**10. ENTIRE AGREEMENT**

All of the documents listed, referenced or described in this Agreement, the written Notice-to-Proceed, together with Modifications made or issued in accordance herewith are the Contract Documents, and the work, labor, materials, and completed construction required by the Contract Documents and all parts thereof is the Work. The Contract Documents constitute the entire agreement between Owner and Contractor. This Agreement may be amended only by written instrument signed by both parties. Modifications may be evidenced by facsimile signatures. If any provision of the Agreement or General Conditions shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

**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:**

**CONTRACTOR:**

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

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

*Printed Name and Title*

**ORANGE COUNTY—DEPARTMENT USE ONLY**

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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 and I as Department Director affirmatively state work on this project has not been initiated prior to execution of the agreement:

**Department Director's Signature** \_\_\_\_\_ Date: \_\_\_\_\_

Agreements for emergency services or repair are not subject to the above affirmation. If services related to this agreement have already begun or been completed please briefly describe the nature of the emergency condition that was addressed:

**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 Sherri Ingersoll upon completion: [singersoll@orangecountync.gov](mailto:singersoll@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: \_\_\_\_\_

## FORM OF PERFORMANCE BOND

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

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

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

Name of Contracting  
Body: \_\_\_\_\_

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

Project

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

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

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

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

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

Witness:

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

Attest: (Corporation)

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

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

(Corporate Seal)

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

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

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

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

Witness:

\_\_\_\_\_

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

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

Countersigned:

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

(Surety Corporate Seal)

**FORM OF PAYMENT BOND**

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

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

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

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

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

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

Witness:

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

Attest: (Corporation)

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

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

(Corporate Seal)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

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

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

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

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

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

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

(Surety Corporate Seal)

# Sheet for Attaching Power of Attorney

# Sheet for Attaching Insurance Certificates