

COUNTY OF ORANGE  
 FINANCE AND ADMINSTRATIVE SERVES – PURCHASING  
 PO BOX 8181  
 HILLSBOROUGH, NORTH CAROLINA 27278  
**ORANGE COUNTY BID NO. 367-OC5429**  
 July 24, 2024

ATTENTION:

**INTERESTED VENDORS**

Orange County requests your competitive quotation to furnish the item(s) listed below for the Orange County Efland Community Center Renovations in Efland, NC.

A mandatory site visit is scheduled for Friday, **August 16, 2024**, at 11:00 am at the Orange County Efland Community Center at 117 Richmond Rd. Mebane, NC. By submission of a bid, the contractor acknowledges he/she fully understands the extent of the project.

Please transmit this quotation via email to the Orange County Purchasing Agent- [jamaro@orangecountync.gov](mailto:jamaro@orangecountync.gov) copying Alan Dorman at [adorman@orangecountync.gov](mailto:adorman@orangecountync.gov) no later than **August 30, 2024, at 2:00 PM**

Item #	Commodities/Goods or Services
1	This work consists of enclosing the rear patio along with interior bathroom renovations and associated electrical, plumbing, HVAC, and other works as detailed in the attached plans numbered A0-FA2 at the Efland Community Center.  SUBMIT PRICING ON ATTACHMENT A
Will any people working on this job make less than the current adopted Orange County Living Wage Yes _____ No _____ If yes, the lowest hourly wage to be paid to any employee shall be: \$ _____ / Hour	
<b>**SEE ATTACHED INSTRUCTIONS TO BIDDERS**</b>	

License \_\_\_\_\_ (if applicable)

FIRM NAME \_\_\_\_\_

BY \_\_\_\_\_

(Proposal must be signed in writing)

ADDRESS \_\_\_\_\_

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

\_\_\_\_\_

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

EMAIL: \_\_\_\_\_

**COUNTY OF ORANGE**  
**FINANCE AND ADMINISTRATIVE SERVICES – PURCHASING**  
**PO BOX 8181 □ 131 WEST MARGERET LANE**  
**HILLSBOROUGH, NORTH CAROLINA 27278**  
**Instructions to Bidders**

1. All bids and proposals shall be for furnishing apparatus, supplies, materials, equipment, and/or work and services in accordance with the applicable plans and specifications prescribed by Orange County. Plans and/or specifications may be obtained at Orange County's website <https://www.orangecountync.gov/Bids.aspx>
2. Orange County reserves the right to:
  - award to the lowest responsible bidder that is responsive,
  - to reject any or all bids,
  - And to waive minor informalities.
3. The successful bidder shall comply fully with the requirements of General Statutes, Section 143-129 and 143-131, as amended. This is an informal range; therefore, there will not be a formal opening. Results will be made available after the award.
4. In the event of default by any contractor or vendor Orange County may procure from other sources whatever service or item is being bid on and holds the contractor responsible for any excess cost occasioned thereby.
5. Payment by electronic funds transfer is due thirty days after completion and inspection unless otherwise specifically provided; subject to any discounts allowed.
6. North Carolina sales and use tax shall be included in the bid amount.
7. Bids shall be submitted **via email to** [jamaro@orangecountync.gov](mailto:jamaro@orangecountync.gov) copying Alan Dorman at [adorman@orangecountync.gov](mailto:adorman@orangecountync.gov).
8. Proposals received after the opening date and time shall not be considered.
9. Bids must be signed and submitted on the attached form to the proposal.
10. The successful contractor shall be responsible for obtaining all permits and inspections.
11. The successful contractor shall be required to agree to and sign the Orange County Construction Agreement under \$250,000 (copy attached). Among the items included in that agreement are the County's Insurance requirements and sales tax. Liquidated damages shall be in the amount of five hundred dollars per day.
12. All contractors are hereby notified that they must have proper licenses as required under the state laws governing their respective trades. General contractors are notified that Chapter 87, Article 1, General Statutes of North Carolina, will be observed in receiving and awarding general contracts. General contractors submitting bids on this project must have license classification for "Unlimited Building" or "Unclassified," required by the NC General Contractors Licensing Board under G.S. 87-1.
13. Please direct questions concerning this bid document to Jovana Amaro, Purchasing Agent, Orange County Finance and Administrative Services, via email at [jamaro@orangecountync.gov](mailto:jamaro@orangecountync.gov) copying [finance-purchasing@orangecountync.gov](mailto:finance-purchasing@orangecountync.gov). Please direct any questions about the scope, site visit, details of the work, or the proposal to Alan Dorman by email at [adorman@orangecountync.gov](mailto:adorman@orangecountync.gov).
14. A mandatory site visit is scheduled for Friday, August 16, 2024, at 11:00 am at the Orange County Efland Community Center at 117 Richmond Rd. Mebane, NC 27302. This is the only scheduled time for contractors to view the site. By submission of a bid, the contractor acknowledges he/she fully understands the extent of the project.
15. Critical updated information may be included in Addenda to this bid. It is important that all contractors proposing on this ITB periodically check the Orange County's website <https://www.orangecountync.gov/bids.aspx> for any Addenda that may be issued prior to the bid deadline. All contractors shall be deemed to have read and understood all information in this ITB and all Addenda thereto.
16. Business Registration: The firm selected under this RFP will be required to have an active business registration

with the North Carolina Secretary of State.

17. **Minority Business Participation Requirements:** Orange County has established a ten percent (10%) minority business participation goal for the total monetary value of this project.

*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.

*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, an 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. 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.

18. The following forms are required to be returned with your bid package.

- Contractor Signed Bid Forms
- Living Wage Contractor Policy
- E-Verify Affidavit
- Orange County Nondiscrimination Certification
- Supplemental Vendor Information: Historically Underutilized Businesses
- Minority Business Participation Forms

**Attachment A**

**Bid Proposal Form: Orange County Efland Community Center**

The contractor agrees to furnish all materials, labor, and any other supplies or equipment necessary to complete the above work, for the sum of:

- \$ \_\_\_\_\_ Labor
- \$ \_\_\_\_\_ Materials
- \$ \_\_\_\_\_ Total BID
- \$ \_\_\_\_\_ Add alternate 1: Added space to the north of the covered patio enclosure (Sheet A6)
- \$ \_\_\_\_\_ Add alternate 2: Paint the exterior of the existing building (noted on Sheet A4)
- \$ \_\_\_\_\_ Add alternate 3: Enclose the existing niche off the stage to create a storage closet (noted and shown on Sheet A4)

- All work must be completed within **120** days of the project start date (approx. October 1, 2024)
- (Anticipated completion date January 31, 2025).
- Contractor is willing to participate in the County’s “DocuSign” digital contracting process and enter into a standard contract with the County.
- No proposal may be withdrawn after the scheduled closing time and date for the receipt of Bids for a period of (60) sixty days.

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

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

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

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

Address \_\_\_\_\_

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

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

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

Addendum(s) received and used in computing bid: (Check or date beside each addendum your firm using for computing your 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 \_\_\_\_\_

**Checklist for Items to be returned with the bid.**  
**All items listed below must be returned with your bid package.**

- Contractor's Completed and Signed Form of Proposal
- Living Wage Contractor Policy
- E-Verify Affidavit
- Orange County Nondiscrimination Certification
- Supplemental Vendor Information: Historically Underutilized Businesses
- MB Participation Forms



# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_

(Name of Bidder)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

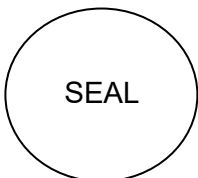
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

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

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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

My commission expires \_\_\_\_\_

# State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

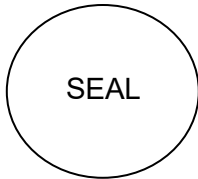
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

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

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

My commission expires \_\_\_\_\_



# State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of \_\_\_\_\_

**(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.  
 This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of \_\_\_\_\_ I do hereby certify that on the \_\_\_\_\_  
 (Name of Bidder)

\_\_\_\_\_ (Project Name)  
 Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

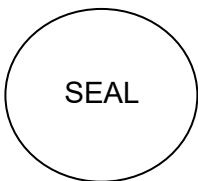
\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



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

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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

My commission expires \_\_\_\_\_

# State of North Carolina AFFIDAVIT D – Good Faith Efforts

County of \_\_\_\_\_

**(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of \_\_\_\_\_ I do hereby certify that on the \_\_\_\_\_  
(Name of Bidder)

Project ID# \_\_\_\_\_ (Project Name) Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

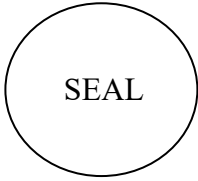
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

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

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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

My commission expires \_\_\_\_\_

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Section I:	General Government and Administration
Policy 10.0:	Living Wage Contractor Policy
Reviewed by:	County Attorney/County Manager
Approved by:	County Manager
Original Effective Date:	April 21, 2016
Revisions:	August 1, 2016

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### **Policy Statement**

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

### **Purpose**

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

### **Applicability**

Applies to all Orange County contracts and purchases.

### **Policy**

#### 10.1 Living Wage

10.1.1 Orange County is committed to providing its employees with a living wage and encourages all contractors and vendors doing business with Orange County to pursue the same goal. Orange County's living wage is as reflected in the adopted Orange County Budget and as that budget document is amended from time to time. To the extent possible, Orange County recommends that contractors and vendors seeking to do business with Orange County provide a living wage to their employees.

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

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

**SUBMIT WITH PROPOSAL**

STATE OF NORTH CAROLINA

AFFIDAVIT

ORANGE COUNTY

\*\*\*\*\*

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

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
  - a. YES \_\_\_\_\_, or
  - b. NO \_\_\_\_\_
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

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

\_\_\_\_\_  
Signature of Affiant  
Print or Type Name: \_\_\_\_\_

State of North Carolina, \_\_\_\_\_ County

Signed and sworn to (or affirmed) before me, this the \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_

Notary Public

||  
||  
(Affix Official/Notarial Seal)

## **SUBMIT WITH PROPOSAL**

### **ORANGE COUNTY NONDISCRIMINATION CERTIFICATION**

The undersigned bidder or proposer hereby certifies and agrees that the following information is correct:

1. In preparing its enclosed bid or proposal, the undersigned bidder or proposer has considered all bids and proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in Section 12-52 of the Orange County Non-discrimination Ordinance.
2. Without limiting any other remedies that Orange County may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for Orange County to reject the bid or proposal submitted with this certification, and terminate any contract awarded based on such bid or proposal. It shall also subject the bidder or proposer to disqualification from participating in county contracts or bid processes for up to two years.
3. As a condition of contracting with Orange County, the undersigned bidder or proposer agrees to promptly provide to Orange County all information and documentation that may be requested by Orange County from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information constitutes grounds for Orange County to reject the bid or proposal and to terminate, without penalty to Orange County, any contract awarded on such bid or proposal. All such information and documentation shall be maintained for a period of three years after the expiration of the contract.
4. As part of its bid or proposal, the undersigned bidder or proposer shall provide to Orange County a list of all instances within the past ten years where a complaint was filed or pending against bidder or proposer in a legal or administrative proceeding alleging that bidder or proposer discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.
5. As a condition of submitting a bid or proposal to Orange County the undersigned bidder or proposer agrees to comply with the Orange County Non-discrimination Ordinance. Falsification of this certification shall constitute a violation of the Orange

County Non-Discrimination Ordinance and shall be grounds for rejection of the bid or proposal or termination of an existing contract, without fault or further obligation to Orange County.

6. As a condition of submitting a bid or proposal to Orange County the undersigned bidder or proposer agrees that Orange County may consider the information submitted as part of this certification in its determination of the responsibility of the undersigned bidder or proposer. The undersigned bidder or proposer, as the case may be, waives the right to challenge the rejection of a bid or proposal when such rejection is based, in its entirety, on information submitted as part of this certification.

The bidder or proposer certifies the undersigned has full authority to sign on its behalf.

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

\_\_\_\_\_  
Printed Name and Title

On behalf of \_\_\_\_\_

\_\_\_\_\_  
Company or Corporate name

# SUBMIT WITH PROPOSAL

## Supplemental Vendor Information: HISTORICALLY UNDERUTILIZED BUSINESSES

**Company Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the County invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFP/RFQ. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330. The Vendor shall respond to question #1 and #2 below.

1) Is Vendor a Historically Underutilized Business?  **Yes**  **No**

2) Is Vendor Certified with North Carolina as a Historically Underutilized Business?  **Yes**  **No**

If so, state HUB classification:

\_\_\_\_\_



**ORANGE COUNTY**

**NORTH CAROLINA**

**DISPUTE RESOLUTION RULES AND PROCEDURES FOR ORANGE COUNTY DESIGN, BUILDING  
CONSTRUCTION, RENOVATION, AND REPAIR PROJECTS**

**RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES**

**A. Purpose of Mandatory Settlement Conferences.** Pursuant to G.S. §143-128(f1) and 143-135.26(11), these Rules are promulgated to implement a mediated settlement program designed to focus the parties' attention on settlement rather than on claim preparation and to provide an opportunity for orderly settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

**B. Initiating the Dispute Resolution Process**

1. Any party to a County public construction contract (referred to herein generally as the "Contract") governed by Article 8. Ch. 143 of the General Statutes and identified in G.S. § 143-128(f1) and who is a party to a dispute arising out of the Contract and the construction process in which the amount in controversy is at least \$15,000 may submit a written request to the County for mediation of the dispute.
2. Prior to submission of a written request for mediation to the County, the party requesting mediation should give notice of any and all claims in accordance with their respective contracts, obtain decisions on the claims as required or allowed by their respective contracts, and attempt to resolve the dispute according to the terms and conditions in their respective contracts. The Mediator may adjourn any mediated settlement conference if the Mediator believes, in his or her sole discretion, that the parties have not satisfied all of the terms and conditions of their respective contracts and that doing so will enhance the prospects for a negotiated settlement.

**C. Condition Precedent to Litigation.** Before any party to a Contract may commence a civil action against the County seeking remedies for breach or non-performance of the Contract by the County, said party must first initiate the dispute resolution process under these rules and attend and participate in good faith in the mediated settlement conference.

**RULE 2. SELECTION OF MEDIATOR**

**A. Mediator Listing.** A List of Mediators acceptable to the County is maintained by the County Attorney and that list is incorporated by reference into these Rules.

**B. Selection of Mediator.** The party requesting mediation shall select a Mediator from the List of Mediators and shall file, with the County, a Notice of Selection of Mediator within 21 days of the request for mediation. Such notice shall state the name, address, and phone number of the Mediator selected. If

the Mediator selected is not available or declines to participate for any reason, the requesting party shall select another person from the List of Mediators. If the party requesting mediation does not select and designate a mediator within 21 days of the request for mediation, the County shall have the right in its absolute discretion to appoint a mediator from its List of Mediators.

**C. Disqualification of Mediator.** Any party may request replacement of the Mediator for good cause. Nothing in this provision shall preclude Mediators from disqualifying themselves.

### **RULE 3. THE MEDIATED SETTLEMENT CONFERENCE**

**A. Where Conference is to be Held.** Unless all parties and the Mediator otherwise agree, the mediated settlement conference shall be held in county seat of Orange County. The Mediator shall be responsible for reserving a place, making arrangements for the conference, and giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons or entities required to attend.

**B. When Conference is to be Held.** The mediation shall be completed within 90 days after selection of the Mediator unless all parties to the mediation agree to a different schedule.

**C. Request to Accelerate or Extend Deadline for Completion.** Any party or the Mediator may request the County to accelerate or extend the deadline for completion of the conference. Such request shall state the reasons the acceleration or extension is sought and shall be served by the moving party upon the other parties and the Mediator. Objections to the request must be promptly communicated to the County and to the Mediator.

The County, with the concurrence of the designated Mediator, may grant the request by adjusting the time for completion of the conference.

**D. Recesses.** The Mediator may recess the mediation conference at any time and may set times for reconvening. If the Mediator determines the time and place where the conference is to reconvene before the conference is recessed, no further notice is required to persons present at the conference.

**E. Project Delay.** The mediated settlement conference that results from a construction contract dispute shall not be cause for the delay of the construction project.

### **RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS**

#### **A. Attendance.**

1. All parties to the dispute must designate an official representative to attend the mediation.
2. "Attendance" means physical attendance, not by telephone or other electronic means. Any attendee representing a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
3. Attorneys representing parties may attend the mediation, but are not required to do so.

4. Sureties and insurance company representatives are required to physically attend the mediation unless the Mediator and all of the other parties to the mediation excuse their attendance or consent to their attendance by telephone or other electronic means.

5. The parties who attend a duly scheduled mediation conference shall have the right to recover their share of the Mediator's compensation from any party or parties who fail to attend the conference without good cause.

**B. Finalizing Agreement.** If an agreement is reached in the conference, the terms of the agreement shall be confirmed in writing and signed by all parties.

**C. Payment of Mediation Fee:** Mediation Fees charged by the Mediator shall be paid in accordance with G.S. § 143-128(f1).

**D. Failure to Compensate Mediator.** Any party's failure to compensate the Mediators in accordance with G.S. § 143-128(f1) shall subject that party to a withholding by the County of said amount of money from the party's payment or any other moneys owed by that party to the County.

Should the County fail to compensate the Mediator, it shall hereby be subject to a civil cause of action from the Mediator for the County's portion of the Mediator's total fee as required by G.S. § 143-128(f1).

## **RULE 5. AUTHORITY AND DUTIES OF MEDIATORS**

### **A. Authority of Mediator.**

1. Control of Conference. The Mediator shall at all times be in control of the conference and the procedures to be followed.

2. Private Consultation. The Mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

3. Scheduling the Conference. The Mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and Mediator. In the absence of agreement, the Mediator shall select the date for the conference.

4. Determining good cause for a party's failure to appear at a scheduled mediation conference.

### **B. Duties of Mediator.**

1. The Mediator shall define and describe the following at the beginning of the conference:

a. The process of mediation.

b. The difference between mediation and other forms of conflict resolution.

c. The costs of the mediated settlement conference.

d. That the mediated settlement conference is not a trial, the Mediator is not a judge, and the parties retain their legal rights if they do not reach settlement; however, the

Mediator will advise all parties that failure to appear at mediation without good cause may result in imposition of sanctions and may be asserted as a bar to lawsuits by claimants who have failed to exhaust this administrative remedy.

e. The circumstances under which the Mediator may meet and communicate privately with any of the parties or with any other person.

f. Whether and under what conditions communications with the Mediator will be held in confidence during the conference.

g. The inadmissibility of conduct and statements as provided by G.S. §7A-38.1(1).

h. The duties and responsibilities of the Mediator and the participants.

i. That any agreement reached will be reached by mutual consent.

2. Disclosure: The Mediator has a duty to be impartial and to advise all participants of any possible bias, prejudice or partiality.

3. Declaring Impasse: The Mediator may determine at any time during the mediation conference that an impasse exists and that the conference should end.

4. Reporting Results of Conference. The Mediator shall submit a written report to the County and the other parties within 10 days of the conference stating whether or not the parties reached an agreement. The Mediator's report shall indicate the absence of any party from the mediated settlement conference without permission or good cause.

5. Scheduling and Holding the Conference. It is the duty of the Mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. The Mediator shall strictly observe deadlines for completion of the conference unless said time limit is changed by agreement of the parties.

#### **RULE 6. COSTS AND COMPENSATION OF THE MEDIATOR**

The Parties shall compensate the Mediator for mediation services at the rate proposed by the Mediator and agreed to by the parties at the time the Mediator is selected. The Parties shall be jointly responsible for the Mediator's costs and expenses subject to Rule 4.C. above. Each Party is responsible for its own costs and expenses, including reasonable attorneys' fees, related to the Mediation.

#### **RULE 7. RULE MAKING**

These Rules may be amended by the County at any time. Amendments will not affect mediations where claims or requests for mediation have been filed at the time the amendment takes effect.

#### **RULE 8. DEFINITIONS**

A. "County" shall mean Orange County North Carolina.

B. "Project Designer" is that person or firm stipulated as project designer in the Contract Documents for the project.

**C.** “Claim” is a demand or assertion by a party seeking adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the parties to a Contract involved in the County’s building construction renovation and repair projects arising out of or relating to the Contract or the construction process. Claims must be initiated by a written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**D.** “Good Cause” generally includes any circumstance beyond the control of a party, which prevents that party from meeting obligations. When good cause is asserted as an excuse for a party’s failure to appear at a mediation conference or to otherwise comply with the requirements of these Rules, the Mediator, in his or her sole discretion, will determine whether good cause exists to excuse the party’s failure to appear or otherwise comply with these rules.

#### **RULE 9. TIME LIMITS**

**A.** Any time limit provided for by these Rules may be waived or extended at the sole discretion of the County, if no Mediator has been selected, and at the discretion of the County with concurrence of the Mediator if a Mediator has been selected.

# Orange County Minimum Insurance Coverage Requirements

Note: An Exception or Waiver of Minimum Coverage may only be granted at the discretion and approval of Risk Management based on assessment of risk posed to the county.

Coverage	Low Risk Profile	Standard Risk Profile	High Risk Profile	Specialty	Encroachment	Premises Lease
<b>Commercial General Liability</b>  Products/Completed Operation Explosion, Collapse & Underground (XCU)	\$1,000,000/\$2,000,000 Per accident  As above	\$1,000,000/\$2,000,000  As Above If any, Limit to be determined.	\$1,000,000/\$2,000,000  As above If any, TBD.	\$1,000,000*  As Above If any, TBD.	\$1,000,000	\$1,000,000
<b>Automobile Liability</b>	\$1,000,000 (CSL) Per occurrence	\$1,000,000*	\$1,000,000*	\$1,000,000*	N/A	N/A
<b>**Workers' Compensation</b>	Statutory	Statutory	Statutory	Statutory	N/A	Statutory
<b>**Employer's Liability</b>	100/500/100	500/500/500*	500/500/500	500/500/500*	N/A	100/500/100
** Waiver of Subrogation on WC	Required if available	Required if available	Required	Required	N/A	N/A
<b>Umbrella Liability</b>	\$1,000,000	\$2,000,000	\$2,000,000+	\$9,000,000+	N/A	N/A
<b>Professional Liability <i>may</i></b> be required on a risk profile depending on nature of services provided by contract. Coverage required for professional service such as accountant, attorney, architect, design, engineering, health care and most consultants.	\$1,000,000 per occurrence	\$1,000,000	TBD	TBD	N/A	N/A
<b>Sexual Misconduct (Sexual Abuse/Molestation) <i>may</i></b> be required for contractors working directly one-on-one with children and elderly or in overnight sheltering capacities.	\$1,000,000/\$2,000,000	\$1,000,000/\$2,000,000	TBD	TBD	N/A	TBD
<b>Cyber Liability <i>may</i></b> be required for contractors having access to personal identifying information, and/or computer networks.	\$1,000,000/\$2,000,000	TBD	TBD	TBD	N/A	
<b>Environmental/Pollution Liability</b> required if demolition, use of	N/A	\$1,000,000	\$1,000,000+*	\$1,000,000+*	N/A	N/A

# Orange County Minimum Insurance Coverage Requirements

Note: An Exception or Waiver of Minimum Coverage may only be granted at the discretion and approval of Risk Management based on assessment of risk posed to the county.

hazardous material or environmentally sensitive						
<b>Fidelity Bond</b> (loss of money or other property due to dishonest acts). Only for contracts such as Banking, Janitorial, Fundraising, TPA's and similar, ETA	TBD	Amount depends on exposure to loss	TBD	TBD	N/A	N/A
<b>Other Coverage</b> As required	TBD	TBD	TBD	TBD	N/A	N/A
<b>Bid, Performance &amp; Payment Bonds</b>	TBD	TBD	TBD	TBD	N/A	N/A

\*A combination of Umbrella/Excess and primary limit may be used to provide coverage for the amount shown.

\*\* Workers' Compensation is required if the contractor/vendor has employees. Owner Waiver is acceptable for a Sole Proprietor.

**SAMPLE CONTRACT (DO NOT FILL OUT)**

[Departmental Use Only]  
TITLE  
FY

**NORTH CAROLINA**

**CONSTRUCTION AGREEMENT UNDER \$250,000.00**

**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").

W I T N E S S E T H:

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 Request for Proposals, Proposal, Construction 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.
- b. Designer Approved Bulletins and Field Orders.
- c. Request for Proposals and addenda thereto.
- d. Proposal.

**2. SCOPE OF WORK**

The Contractor shall furnish and deliver all of the materials, and perform 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 project engineer.
- c. \_\_\_\_\_ proposal dated \_\_\_\_\_, 20\_\_\_\_ which fully describes the work to be performed. Such work will hereafter be called the "Work".
- d. Related documents listed under Section 1 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 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.
- e. It is expressly understood that the Owner will employ other contractors to perform work as a part of the Project whose work will be performed simultaneously and sequentially with the performance of the Work by the Contractor. It shall be necessary for the Contractor to coordinate its activities with such other contractors, particularly with respect to access to work areas, storage of materials and other common facilities.
- f. Should the Owner determine that the Contractor is behind schedule Owner may require, at no additional cost to the Owner, the Contractor to expedite and accelerate its efforts, including providing additional resources and working overtime, as necessary, to perform the Work in accordance with the approved project schedule.

#### **4. STANDARD OF CARE**

- a. The Contractor shall exercise reasonable care and diligence in performing the Work in accordance with the highest 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 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 errors or omissions caused by its employees, agents, contractors, or assigns in the performance of the Agreement. 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. If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Contractor represents that it 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.

- f. The Contractor is responsible for all physical damage to owned or rented machinery, tools, equipment, forms, and other items owned, rented or used by the Contractor and Subcontractor(s) in the performance of the Work including all of Owner's property in Contractor's care, custody, or control, and all such property while it is in transit.
- g. The Contractor is solely responsible for obtaining all permits necessary to complete the Work in compliance with all local, state, and federal laws.

## 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 architect if an architect 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%).
    - 1. 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 one hundred percent (100%) of the Work, including punch list work, has been satisfactorily (as determined by the County) completed and an appropriate affidavit as required in Section 7(c) 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.

## 6. INSURANCE AND BONDS

- a. Minimum requirements – Contractor 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://www.orangecountync.gov/departments/purchasing\\_division/contracts.php](http://www.orangecountync.gov/departments/purchasing_division/contracts.php)). If Owner’s Risk Manager determines additional insurance coverage is required such additional insurance shall be designated here (if no additional insurance required mark N/A as being not applicable). Contractor shall not commence construction work until such insurance is in effect and certification thereof has been received by the Owner's Risk Manager.
- b. Performance Bonds – Contractor shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising under any of the Contract Documents or related in any way to the Work. Contractor shall immediately furnish a copy of such bonds to any requesting person who appears to be a potential beneficiary of bonds covering payment obligations arising under any of the Contract Documents. This subsection 6(b) applies only to Contracts of fifty thousand dollars (\$50,000.00) or more where the total cost for the project is three hundred thousand dollars (\$300,000.00) or more.

## 7. INDEMNITY

- a. To the extent authorized by North Carolina law the Contractor shall indemnify, without limitation, and hold harmless to the maximum extent permitted by law the Owner and its agents and employees from and against any and all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance or nonperformance of the Work, provided that any such claim, damages, loss or expense (A) is attributable to bodily injury, sickness, disease or death or injury to, or destruction of, property, including the loss of use resulting therefrom; and (B) is caused in whole or in part by any breach of any provision of the Agreement or by any negligent or wrongful act or omission of the Contractor, any Subcontractor, or supplier of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The indemnification obligation under this paragraph shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' compensation acts, disability benefits acts or other employee benefit acts. It is the intent of this section that the Contractor shall indemnify the County to the maximum extent allowed by law.
- b. The Contractor shall indemnify and hold harmless Owner from any lien of whatever type through the purchase of appropriate bonds and insurance as designated in Section 6 above. In the event any such lien is filed against Owner’s property Contractor shall, through such bonds and insurance or at Contractors expense, defend Owner against all such claims of lien.
- c. Upon completion of the Work the Contractor shall execute an affidavit stating there are no unpaid debts for any work that has been done or materials that have been furnished to the

project prior to and as of the date of substantial completion and further stating that Contractor shall indemnify, save and protect Owner and Owner's lender, if any, harmless from and against any and all claims, liabilities, losses, damages, causes of action, and expenses (including court costs and reasonable attorney's fees related thereto) arising out of, in connection with, or resulting from any such debts and liens. Such indemnification shall be in a form and substance acceptable to Owner.

- d. By executing this Agreement Contractor agrees to abide by and be bound by the indemnification provisions herein.

## **8. DISPUTE RESOLUTION AND GOVERNING LAW**

- a. Any dispute with respect to any provision of, or the performance or non-performance of, this Agreement shall be subject to the Dispute Resolution Rules and Procedures for Orange County Design, Building Construction, Renovation, and Repair Projects. The 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).
- b. The laws of the State of North Carolina shall apply to the interpretation and enforcement of this Agreement. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement or the Contract shall be brought in the General Court of Justice of North Carolina sitting in Orange County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions.
- c. Notice of any claim by Owner or Contractor must be initiated by written notice to the other Party within thirty (30) days of the occurrence of the event giving rise to the claim or within thirty (30) days of the discovery of the event or condition giving rise to the claim, whichever is later.
  - i. Should any claim be made, regardless of whether such claim is made by Owner or Contractor, Contractor shall continue to faithfully and diligently perform the Work in such a manner as to meet all scheduled timelines. Any failure to faithfully and diligently perform the Work may be deemed, by the Owner, a breach of the Contract.
  - ii. If a claim is made such claim shall be made to the initial decision maker, if applicable, who may request more supporting data, reject the claim in whole or in part, approve the claim in whole or in part or advise the parties the claim is unable to be resolved.
  - iii. If a claim is made by the Owner the Owner may, but is not obligated to, notify the surety.

## **9. 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 or 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 or 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.

- c. In the event of a change in the Owner's statutory authority, mandate or mandated functions, by state 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.

## 10. 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:

## 11. 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 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 any code or law.
- d. Should the Architect, if an architect 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 Architect under this section shall be paid at Contractor's expense.
- e. 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.

- f. By executing this Agreement Contractor affirms that Contractor and any subcontractors of Contractor are and shall remain in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.
- g. By executing this Agreement Contractor certifies that Contractor has not been identified, and has not utilized the services of any agent or subcontractor identified, on the list created by the State Treasurer pursuant to G.S. 147-86.58.
- h. By executing this Agreement Contractor certifies that Contractor has not been identified, and has not utilized the services of any agent or subcontractor identified, on the list created by the State Treasurer pursuant to G.S. 147-86.81.
- i. The County has designated ( ) to act as the County's representative with respect to the Work and shall have the authority to render decisions within guidelines established by the County Manager 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.
- j. 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 Orange County 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.
- k. This Agreement together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the consent of the Parties to utilize electronic signatures and intent of the Parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.
- l. In the event of a breach by Contractor Owner has sole authority to determine the reasonableness of Contractor's actions to remedy such breach or complete the performance of its obligations.
- m. Upon request of the Owner, the Contractor shall submit to County all relevant documentation, including but not limited to, job cost records, to support its claims for final compensation and if such request is made final compensation shall not be due until all relevant documentation is received, reviewed, and approved by Owner.
- n. There are no third-party beneficiaries of this Agreement and nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto (and their respective successors, heirs and permitted assigns), any rights, remedies, or

obligations.

## **12. CONSEQUENTIAL AND LIQUIDATED 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.
- b. Liquidated damages shall be in accord with the Contract Documents. If the Contract Documents do not otherwise address liquidated damages, such damages shall be in the amount of five hundred dollars (\$500.00) per day.

## **13. TERMINATION OR SUSPENSION**

- a. The Owner may, without cause, order the Contractor to terminate, suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
  - i. If Owner issues a written order to delay, suspend, or interrupt the Work, and such order is not due to or as a result of any fault on the part of the Contractor or any subcontractor, the Contractor may recover a per diem amount of five hundred dollars (\$500.00) per day with a not-to-exceed limit of ten thousand dollars (\$10,000.00).
  - ii. In the event of termination by the Owner under this Agreement, the Contractor shall be entitled to receive its reasonable and documented direct costs incurred prior to the date Owner mails the notice of termination, including the cost of materials purchased for the Work, but only if such purchases cannot be canceled, or materials returned, or which material cannot reasonably be used by the Contractor on other work, and the cost of closing down the work in a safe and efficient manner.
  - iii. If Owner elects to suspend or terminate the contract pursuant to subparagraphs 13.a.i. or 13 a.ii. the sole remedy available to the Contractor are those listed in said subparagraphs and Contractor is not entitled to any right to further claims for any amount owed or disputed or for payment of damages alleged to have been sustained as a result of Owner's order to delay, suspend, or interrupt the Work.
- b. The Owner may, with cause, order the Contractor to suspend, delay or interrupt the Work in whole or in part for such period of time as the cause remains.
  - i. If Owner issues a written order to delay, suspend, or interrupt the Work, and such order is due to or as a result of any fault on the part of the Contractor or any subcontractor, the Owner may reduce payment at a per diem amount of five hundred dollars (\$500.00) per day for the full duration of the delay, suspension, or interruption.

- c. Contractor may terminate the Contract if, at the Owner's written direction, the Work is stopped for thirty (30) consecutive days through no act or fault of the Contractor, their agents or employees, or a subcontractor or their agents or employees or any other person performing work pursuant to the Contract Documents. Contractor may terminate the Contract if a Court or other Public authority having jurisdiction enters a lawful order that requires all work to be stopped and such stoppage lasts for thirty (30) consecutive days.
- d. Either party may terminate this Agreement upon notice to the other party that obligations pursuant to this Agreement are made impossible due to declarations of emergency by Orange County or by North Carolina due to events directly impacting Orange County. Both parties shall remain responsible for all payment and performance due up to the receipt of such notice, but shall have no further obligation or responsibility beyond that date provided the terminating party has taken all reasonable steps to complete the performance of its obligations.

**14. 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 shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

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

**ORANGE COUNTY**

**CONTRACTOR**

\_\_\_\_\_  
Signature  
County Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title