



REQUEST FOR PROPOSALS

RFP #354-FN26-23

Project Title: Independent Auditor to Provide External Auditing Services

Issue Date: March 26, 2026

Due Date: April 28, 2026 at 5:00 PM ET

Issuing Department: Finance

Direct all inquiries concerning this RFP to:

Dr. Dara Shoffner

Assistant Finance Director

Email: FinancialAuditRFP@carync.gov

Table of Contents

1	REQUEST FOR PROPOSALS	2
1.1	Introduction	2
1.2	Purpose and Background	2
1.3	Notice to Vendors Regarding RFP Terms and Conditions	2
1.4	RFP Response Timeline	3
1.5	Pre-Proposal Conference/Site Visit	3
1.6	Proposal Questions	4
1.7	Proposal Submission Requirements and Contact Information	4
1.8	Audit Contract and Payment of Services	5
1.9	Rights to Submitted Material	5
2	PROPOSALS	5
2.1	Request for Proposal Document	9
2.2	Evaluation Criteria	9
2.3	Proposal Evaluation Process	10
2.4	Final Selection	10
2.5	Contract Term	11
2.6	Invoices	11
2.7	Notice to Proposers Regarding RFP Terms and Conditions	11
3	SCOPE OF SERVICES	11
3.1	Annual Audit	11
3.2	Major Events Compliance Audit	13
4	AUDITOR REQUIREMENTS	13
5	TOWN STAFF ASSISTANCE AND RESOURCES	15
6	DESCRIPTION OF TOWN SYSTEMS AND FINANCIAL INFORMATION	15
7	COST PROPOSAL/EXECUTION OF PROPOSAL	16
8	REFERENCES	18
	INSTRUCTIONS TO VENDORS	19
	TOWN OF CARY PRINCIPAL CONTRACT	22

1 REQUEST FOR PROPOSALS

1.1 Introduction

Cary, North Carolina invites qualified independent auditors who have sufficient governmental accounting and auditing experience in performing an audit in accordance with the specifications outlined in this Request for Proposal (RFP) to submit a proposal.

There is no expressed or implied obligation for Cary to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

The specific details shown herein shall be considered minimum unless otherwise shown. The specifications, terms and conditions included with this RFP shall govern in any resulting contract(s) unless approved otherwise in writing by Cary. Bidder consents to personal jurisdiction and venue in a state court of competent jurisdiction in Wake County, North Carolina.

1.2 Purpose and Background

Cary is a thriving community in the heart of the Triangle area of North Carolina between Raleigh and the renowned Research Triangle Park (RTP). Cary is well positioned in the Triangle area of North Carolina and shares its eastern border with Raleigh and is adjacent to the RTP, with Durham and Chapel Hill nearby. The Triangle area is repeatedly ranked among the top regions in the country to live and work, to find a home and start a business, and to raise a family and retire.

Cary operates under a council-manager form of government with four of the six council seats elected by single-member districts and two council seats elected as at-large representatives. The mayor and council members all serve four-year terms, with the council seats serving staggered terms. Cary has its jurisdiction in Wake, Chatham, and Durham counties. Cary is currently home to approximately 192,000 residents and continues to be a growing community. Cary citizens are well educated, and many are employed in technology. SAS, one of the world's largest privately held software companies is based in Cary along with Epic Games, the world's largest gaming company, so citizens have high expectations for government efficiency and services via technology. Cary citizens, along with their elected representatives, also expect Cary staff to maintain focus on the community's livability, vibrancy, diversity, and sustainability.

Cary's vision and goals were set out in 2017 and then updated in 2024 in the [Imagine Cary Community Plan](#).

Cary's 2026 [Budget in Brief](#) includes more details on priorities and execution of the Imagine Cary Community Plan as they pertain to its \$420.3 million operating budget and \$90.7 capital budgets.

Information about how Cary manages its finances is summarized in the Introductory Section of the [Annual Comprehensive Financial Report](#).

Other facets of Cary values, planning, projects, and operations can be found at www.CaryNC.gov.

1.3 Notice to Vendors Regarding RFP Terms and Conditions

It shall be the Vendor's responsibility to read the Instructions, the Town's terms and conditions contained within the Town's Principal Contract, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications

herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in [Section 1.6 Proposal Questions](#). If the Town determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The Town may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Principal Contract that have been addressed during the question submission period. Other than through this process, the Town rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor’s proposal. This applies to any language appearing in or attached to the document as part of the Vendor’s proposal that purports to vary any terms and conditions or Vendors’ instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor’s proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that Vendor is prepared to enter into a contract in the form of the Principal Contract should Town selects Vendor’s proposal and that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor’s proposal as nonresponsive.**

If a Vendor desires modification of the terms and conditions of this solicitation, including any term or condition contained in the Principal Contract, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether specific language proposed as a modification is acceptable to or will be considered by the Town. Identification of objections or exceptions to the Town’s terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.

1.4 RFP Response Timeline

The RFP process shall adhere to the following schedule:

RFP Process	Date and time	
RFP posted	March 26, 2026	11:00 AM
Pre-Proposal Conference (if Applicable)	March 31, 2026	11:00 AM
Proposers Written Questions Due	April 9, 2026	5:00 PM
Town Responses to Proposers questions	April 14, 2026	5:00 PM
Proposal Submission Deadline	April 28, 2026	5:00 PM
Contract Award	May 14, 2026	3:00 PM
Contract Effective Date	By May 31, 2026	

Note: All times shown as Eastern Time (ET).

1.5 Pre-Proposal Conference/Site Visit

A NON-MANDATORY PRE-PROPOSAL CONFERENCE will be held virtually on March 31, 2026 at 11:00 AM ET. All proposers are encouraged to attend the PRE-PROPOSAL CONFERENCE held via WebEx (meeting details provided below). The pre-proposal conference will include an overview presentation of the RFP Scope, Schedule, and general process. Following the presentation, prospective proposers can ask questions related to the RFP or the overall process.

Prospective Proposers are encouraged to submit written questions in advance. A summary of all questions and answers will be posted as an addendum, located under the RFP number being modified.

It is the Proposer's responsibility to ensure that all addenda have been reviewed and, if required, signed and returned.

Meeting Details

Join from the meeting link

[354-FN26-23 Pre-Proposal Conference](#)

1.6 **Proposal Questions**

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date. The Town will not entertain any further questions after the due date. Written questions shall be emailed to FinancialAuditRFP@carync.gov by the date and time specified above. Vendors should enter "RFP #354-FN26-23: Questions" as the subject for the email. Question submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Vendor Question
RFP Section, Page Number	Vendor question ...?

Questions received prior to the submission deadline date, the Town's response, and any additional terms deemed necessary by the Town will be posted in the form of an addendum to the North Carolina Electronic Vendor Portal (eVP), <https://evp.nc.gov/solicitations>, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any Town personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this RFP.

1.7 **Proposal Submission Requirements and Contact Information**

Electronic responses ONLY will be accepted through the eVP website. Interested parties must be logged in to submit proposals electronically. Registration information is available at NC Electronic Vendor Portal evp.nc.gov (eVP). Proposals must be clearly marked with the name of the submitting company, the RFP number, and RFP title. Proposers must submit one (1) *electronic version, submitted as a viewable and printable Adobe Portable Document File (PDF), on or before the submittal due date and time provided in Section 1.4* . Submissions that do not comply with the stated submission method will be deemed non-responsive.

The Town reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the proposal. Proposers must respond to the entire Request for Proposals (RFP). An incomplete proposal may be eliminated from consideration at the discretion of Cary.

Proposals must follow the format as defined in [Section 2 PROPOSALS](#).

1.8 Audit Contract and Payment of Services

The official template contract provided by the Local Government Commission (LGC) must be utilized, which includes accessing and using their electronic portal for submission. An additional engagement letter or detailed contract can accompany this official contract. The contract, as well as all requests for payments related to the financial and single audit must also be approved by the LGC. Interim invoices will be paid when due upon the LGC's approval. The final invoice will not be paid until the financial statements, single audit, and management letter (if applicable) have been reviewed by the LGC.

Base fee quotes provided shall be considered fixed with the exception of additional single audit testing if required. If additional work is required and approved by mutual agreement in writing, the average hourly rates included with the fee quotation will be used in conjunction with the recommended proposal/scope of work.

1.9 Rights to Submitted Material

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under North Carolina law) shall become the property of the Town when received and the entire proposal shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by North Carolina law.

The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this Request for Proposal.

2 PROPOSALS

Responses must follow the format outlined herein. The Town may reject as non-responsive at its sole discretion any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

1. Cover Letter/Letter of Intent
 - a. Introduction letter with intent as it may pertain to the Request for Proposal.
2. Scope
 - a. Clearly describe the scope of services that will be offered to Cary. Please address items listed in [Section 3 Scope of Services](#).
 - b. Provide separate descriptions for the financial audit and the single audit.
3. Audit Approach
 - a. Clearly describe your firm's approach to conducting the examination (include use of statistical sampling, automated processes and internal control testing methods).

Describe how you would approach the audit in order to accomplish the scope requirements. In addition, describe the type of audit program used (tailor-made, standard government or standard commercial).

- b. Estimate length of time onsite to complete fieldwork. This includes estimating and including the number of job hours on the Fee Quote template. Specifically comment on the audit timeline and how Cary can assist in expediting the audit. Estimate the beginning and ending dates of the engagement. The planned use of specialists should be identified. Specify the organization of the audit team and the approximate percentage of time spent on the audit by each member.
 - c. Describe the procedures to be followed in the technical review of the workpapers, financial statements, and audit reports. Identify management and partner and management staff who will provide the technical review.
 - d. Comment on your expectations relative to the audit time schedule and Town staff assistance in expediting the audit. Provide a tentative schedule for completing the audit within the specified deadlines of the RFP.
4. Profile of the Firm
- a. State whether your firm is regional, national or international.
 - b. Give the location of the office responsible for the proposed services and the number of partners, supervisory staff, seniors and other professional staff employed at that office. Include the number of staff members with local government experience.
 - c. Identify the specific persons (minimally, the engagement partner and manager) who will work on Cary's audit and designate the individual who will be the primary contact for the firm. Resumes for each person to be assigned to the audit must be included, and specific government experience must be indicated. Staff continuity is a priority for Cary. Cary must be notified of any changes in key audit personnel prior to annual renewal of contract within the multi-year period to assess continuity concerns. Provide statistics on your firm's turnover rate and your policy on audit team continuity for your clients.
 - d. Describe the range of services provided by the responsible office in the governmental area, such as audit, accounting or management advisory services. You should include activities which demonstrate your firm's commitment to governmental practice.
 - e. Note if your firm is an equal opportunity employer. Cary encourages vendors to have a diverse and inclusive team involved. In addition, Cary invites and encourages participation in this procurement process by minority women business enterprises (MWBE) in accordance with North Carolina General Statute 143-129.
 - f. Include a copy of your firm's most recent peer review report including letter of comments (if received).

- g. Describe the firm's Statement of Policy and Procedures regarding Independence under Government Auditing Standards (Yellow Book). Provide a copy of the firm's Statement of Policy and Procedures.
- h. Describe any regulatory action taken by any oversight body against the proposing audit organization or local office.

5. Governmental Experience

- a. Provide information on your firm's background and experience auditing governmental units.
- b. List the top three governmental clients of your firm, emphasizing those managed by the office that will perform Cary's audit. Also list names, addresses and telephone numbers of client officials that can be contacted for references.
- c. Cary has received the GFOA Certificate of Achievement for Excellence in Financial Reporting since 1985. Comment on your firm's ability to assist Cary in its participation in this program, including your office's specific experience with other entities who have earned this recognition.
- d. List any specific training or experience your firm has related to new pronouncements.
- e. For staff that are assigned to Cary's engagement, note if they are members of GFOA (national and local) and if they have attended any GFOA professional development conferences or seminars.
- f. Comment on your knowledge of and relationship with the NC Local Government Commission and the University of North Carolina School of Government in Chapel Hill.

6. Additional Data

Please include any other information considered pertinent to this proposal. Examples include; involvement in national, state and other organizations, publications of your firm (directories, articles, or simple newsletters may be included, but should not be voluminous), in-house governmental training information.

Proposers are encouraged to identify and describe any additional services, not specifically requested in this RFP, that they believe would provide value to the Town of Cary. Such services should be clearly described, including the anticipated benefits, scope, and any associated costs.

7. Cost Proposal

- a. Submit fee quotes on the "Audit Fee Prices" form ("the form") provided in Exhibit A.
- b. Submit separate quotes for each section (financial audit, single audit, compliance audit) on the form.

- c. Separate quotes must be submitted for each of the three years (FY 2026, FY 2027 & FY 2028) on the form.
 - d. Quotes for additional compliance testing must be included in the event additional federal, or state financial assistance is obtained. List the quote per additional program tested. This amount should not be in the base bid and should be noted on a separate line of the form. Ranges or “not to exceed” amounts can be submitted.
 - e. The firm’s travel expenses, as well as any other incidental expenses, must be included in the base quote and should not be separately listed. Cary will not directly reimburse for these types of expenses.
 - f. Note method of determining increase in fee quotes on a year-to-year basis within the initial three-year audit contract period, if applicable.
 - g. Note your method of determining fee quotes, which would be used in price negotiations after the initial three-year. List factors that you would use in determining any increases or decreases.
 - h. Fee quotes for this engagement are expected to approximate a reasonable cost estimate in conducting the audit and are not subject to change unless significant, unforeseen changes in scope occur. Although Cary cannot bind future decisions of Cary’s Council, it is anticipated that the firm selected to serve as Cary’s auditors will be retained for the entire three-year period.
- **TOTAL COST:** A total not to exceed cost representing the maximum amount for all work to be performed must be clearly indicated under this heading.

NOTE: A cost summary sheet is often helpful for evaluation. Make the format very clear so you are not "comparing apples and oranges".

2.1 Request for Proposal Document

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

2.2 Evaluation Criteria

This is not a bid. There will not be a public bid opening. Proposals will be evaluated based on the following criteria:

1. Prior governmental experience
2. Size and complexity of other government clients
3. Three references from other governmental units
4. Firm’s experience with maintaining personnel
5. Qualifications of personnel used on governmental audits
6. Technical qualifications for personnel assigned to the audit

7. Audit approach, including methodologies used in testing the financial statements
8. Staff training in governmental accounting
9. Participation in governmental associations
10. Fee quote

Cary reserves the right to reject any or all bids, waive technicalities, and to be the sole judge of suitability of the services for its intended use and further specifically reserves the right to make the award in the best interests of Cary. Failure to respond to any requirements outlined in this RFP may disqualify the bid.

A detailed description of the required proposal information is included in Exhibit A.

A description of Cary's systems and records is included in Exhibit B.

2.3 Proposal Evaluation Process

Cary review all Vendor responses to this RFP to confirm that they meet the specifications and requirements of the RFP.

Cary will conduct a One-Step evaluation of Proposals:

Proposals will be received from each responsive Vendor.

All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.

At their option, the evaluators may request oral presentations or discussion with any or all Vendors for the purpose of clarification or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Vendor and its staff, and cost. Specific evaluation criteria are listed in [2.2 EVALUATION CRITERIA](#), above.

Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the Town reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the Town.

2.4 Final Selection

Proposals will be reviewed after opening and will be ranked in order of choice. A recommendation will then be presented to management and Town Council. The recommendation is anticipated to be made to management in late April 2026, at which time the audit firm will be notified. The recommendation will then be presented to Town Council at their next meeting (May 2026) for final acceptance and approval. The selected audit firm is not required to be present at this meeting. Upon council approval, contracts can be initiated by the auditor and after Town approval will be processed by the auditor electronically and forwarded to the Local Government Commission for approval.

All Proposers will be notified of their standing following the Town's decision. Price quoted must be held firm for 90 days after the RFP is due. The Town reserves the right to make an award

without further discussion of the proposal submitted. The Town shall not be bound or in any way obligated until both parties have executed a contract. The Town also reserves the right to delay the award of a contract or to not award a contract. The RFP may be awarded by individual task or total proposal, whichever is most advantageous to the Town of Cary.

The general conditions and specifications of the RFP and the selected proposal, as amended by agreement between the Town and the selected Proposer including e-mail or written correspondence relative to the RFP, may become part of the contract documents. Failure of the awarded Contractor to perform as represented may result in elimination of the Contractor from competition or in contract cancellation or termination.

2.5 Contract Term

The Contract shall have an initial term of three (3) years, beginning on the date of contract award (the "Effective Date").

The Town shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of two additional one-year terms. The Town will give the Vendor written notice of its intent whether to exercise each option by a duly authorized amendment.

2.6 Invoices

- a) Invoices must be submitted to the Town of Cary Finance Department by email on the Contractor's official letterhead stationery and must be identified by a unique invoice number. All invoice backup reports and spreadsheets must be provided in electronic format.
- b) Invoices must bear the purchase order number to ensure prompt payment. The Vendor's failure to include the correct purchase order number may cause delay in payment.
- c) Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Vendor.

2.7 Notice to Proposers Regarding RFP Terms and Conditions

It shall be the Proposer's responsibility to read the Instructions, the Town's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Proposers also are responsible for obtaining and complying with all addenda and other changes that may be issued in connection with this RFP.

3 SCOPE OF SERVICES

3.1 Annual Audit

1. The audit of Cary's Annual Comprehensive Financial Report (ACFR) and the related systems shall be performed in accordance with the laws and regulations of the State of North Carolina, which include requirements for the minimum scope of Cary's audit. The audit firm shall comply with generally accepted auditing standards as required by the American Institute of Certified Public Accountants and Government Auditing Standards, issued by the Comptroller General of the United States. The audit firm shall apply auditing procedures necessary to render an

opinion as to the general-purpose financial statements, taken as a whole, in conformance with generally accepted accounting principles.

2. The scope of the audit and all fee quotes presented should include all approved and known pronouncements through the date of proposal submission. This includes but is not limited to Governmental Accounting Standards Board statements and Government Auditing Standards. Although some pronouncements will not be in effect until after the first year of the audit, quotes for future years should include pronouncements that will become effective during that contract period. The audit firm will be expected to advise appropriate Town staff on the applicability of accounting and reporting standards as they become effective.
3. The financial audit opinion will cover the financial statements for the governmental activities, the business-type activities, each major fund and the remaining fund information, which collectively constitutes the basic financial statements. The combining and individual financial statements, schedules, and related information are not necessary for fair presentation, but will be presented as additional analytical data. This supplemental information, as required by GASB 34, will be subjected to the tests and other auditing procedures applied in the audit of the basic financial statements, and an opinion will be given as to whether the supplemental information is fairly stated in all material respects in relation to the basic financial statements taken as a whole. The auditor shall express an opinion on the budgetary comparison information for the General Fund, the major funds, and any annually budgeted special revenue funds. An opinion will not be given on the Management Discussion and Analysis.

The working papers shall be retained and made available upon request for no less than three years from the date of the audit report.

The audit will also include the following:

- a. Pre-planning conference with Finance staff in April/May timeframe
 - b. Interim audit work prior to June 30th and/or prior to final close
 - c. Attendance at Town Council meeting in December for presentation of the financial statements by Town staff, including answering potential questions from Council.
 - d. Auditor reviews, comments, and the financial opinion should be submitted to Town staff October 31st.
4. As part of the financial audit (and included in fee quotation), the scope should cover testing the "Revenue Bond Statement of Revenues, Expenses, Debt Service, and Debt Service overage" as required as part of Cary's debt covenants related to all Revenue Bond Series. All deadlines and time requirements relating to the general audit apply to this area also.
 5. The compliance audits, in addition to the above requirements, shall comply with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards, 2018 revisions issued by the Comptroller General of the United States; and the U.S. Office of Management and Budget's (OMB) Uniform Guidance; and if applicable, the State Single Audit Implementation Act; and any other applicable laws and regulations. As part of the compliance audit, the auditor will participate and offer assistance where needed in the electronic compilation and approval of the Data Collection Form to the designated federal clearinghouse. It will be Cary's responsibility to submit ACFR as part of Cary's compilation.

6. For fee quote purposes, the scope of the single audit should cover testing of a minimum of three major federal programs and one major state program. In the event these numbers increase or decrease; audit fees will either be increased or decreased and mutually agreed upon in writing according to specific quotes per program that are to be included on the Audit Fee Quotation form (Exhibit C).

If circumstances arise during the audit that require work to be performed in excess of the original estimates, any additional costs will be negotiated prior to commencement of the work and an amended contract will be approved by Cary's Council and forwarded to the staff of the Local Government Commission (LGC) for approval.

7. The audit should encompass all funds and entity-wide activities as reported in the ACFR at June 30, 2026 and any additional funds or entity-wide activities that may be added after that date.
8. Cary participates in the Government Finance Officers Association (GFOA) Certificate of Excellence in Financial Reporting program. Cary has received the Certificate of Excellence for over forty years. The auditor will be expected to review the ACFR for submission for this program and offer assistance as needed in this process.
9. If required, the audit firm will issue a management letter or SAS 114 letter to Town Council after completion of the audit and assist management in implementing recommendations, as is practical. Town staff also requests that an informal letter be addressed to the Finance Director with any efficiency, internal control or accounting improvements that could be made based on the audit staff's observation during their fieldwork. All content must be discussed with the Assistant Finance Director prior to issuance.
10. Cary staff may require the auditor's guidance or input on the completion of certain schedules/documents as to proper format and content, so that they can be used in the audit process as well as for inclusion in Cary's financial statements. Guidance may be required for new note disclosures, all outstanding and effective authoritative standards, and other reporting requirements at June 30 year-end. Cost for providing these services should be included in your base fee quote and will not be considered extra for additional billings. In cases, however, where services requested would require a more in-depth scope and require work significantly above the original fee quote, such additional fees must be negotiated prior to commencement of work.

3.2 Major Events Compliance Audit

Cary has entered into a Grant Agreement with the North Carolina Department of Commerce under the North Carolina Major Events, Games and Attractions Fund in support of a qualifying major event hosted within the Town. As a condition of receiving grant funds, the Town is required to obtain an independent compliance audit performed by a Certified Public Accountant licensed in the State of North Carolina. The purpose of the audit is to examine and provide assurance on qualifying expenses incurred in North Carolina in connection with the Major Event and to verify compliance with the terms of the grant agreement, applicable statutes, and the Guidelines and Procedures for the Administration of the North Carolina Major Events, Games and Attractions Fund. The audit must be conducted in accordance with the compliance audit procedures and submitted to the North Carolina Department of Commerce as proof of performance.

See Exhibit B for guidance for conducting the Compliance Audit Under the North Carolina Major Events, Games, and Attractions Fund.

4 AUDITOR REQUIREMENTS

1. The audit firm is an independent contractor and will be wholly responsible for its services and the supervision of its employees and permitted subcontractors.
2. A planning meeting will be held each year to determine schedules that Cary will be responsible for preparing. Estimated timeframes will be established and interim audit work will be planned. Adequate notification will be given prior to any changes in estimated times.
3. Meeting the Local Government Commission's deadline is a high priority for Cary, and although Finance staff is responsible for the compilation of the financial statements, auditor reviews, comments, and the financial opinion should be turned in to Town staff by October 31 to make the LGC deadline of December 31. If Cary is unable to fulfill commitments outlined below, the time frame will be appropriately extended.
4. Audit staff is responsible for providing email and internet access during fieldwork at Town facilities. Although Wi-Fi is available in Town Hall, quality of service cannot be guaranteed.
5. The working papers shall be retained and made available upon request by Cary for no less than three years from the date of the audit report.
6. The auditor will acknowledge that that records in the custody of Town, as a North Carolina municipal corporation, are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to such a request.
7. The audit firm will be responsible for the security of sensitive information and private employee information that is in their possession and will hold this information with strict confidence. Audit staff are required to read Cary's Standard Procedure for Security of Sensitive Information and agree to take appropriate measures (as outlined in the procedure) to secure sensitive information with the goal of breach prevention. This sensitive and private information can only be used to complete required testing or for other uses specifically required by law. If a security intrusion has been detected by the auditor involving this information, audit staff will notify Cary immediately for Cary to implement their breach response plan. The audit firm will give Cary authority for their system(s) to be reviewed if a security intrusion has been detected.
8. If third-party service providers are used, the auditor must maintain internal policies, procedures and safeguards to protect the confidentiality of Cary's information and sensitive information (as defined by Cary's procedure on the security of sensitive information). Auditors must maintain confidentiality agreements with these providers to ensure that the providers have appropriate procedures in place to prevent the unauthorized release of information to others. In the event a confidentiality agreement cannot be secured, Cary must provide consent prior to the sharing of information with the provider. The auditor will remain responsible for any work provided by a third-party service provider.
9. It is expressly agreed and understood that the auditor shall not at any time publicly disseminate any information concerning the agreement or scope of work outlined in the

agreement without prior approval from Cary. Such approval will not be unreasonably withheld but may be given with certain stipulations, such as Town participation in the creation of the public product or Town review and the option to refuse ultimate release of the final product should it fail to meet Cary's standards and goals. Public dissemination includes but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, professional papers or presentations, news releases, articles, or other media products, and/or auditor business collateral pieces.

10. Either the manager or partner of the audit staff is required to attend the council meeting in which the ACFR is presented. Required communications to council can be delivered at this point, as well as general comments regarding the audit process and the results of the audit. Town staff will coordinate this presentation and determine the date and time of the meeting, typically held in December following the audit completion.

5 TOWN STAFF ASSISTANCE AND RESOURCES

1. Cary staff will coordinate with audit staff with the goal of providing all necessary financial and compliance information (trial balance with adjusting journal entries in final form) for all funds by the 3rd week in September. Cary expects to deliver a draft ACFR report to the audit staff by October 1st. If Cary is unable to provide schedules/documents by the agreed upon time, the above time frame will be appropriately extended and coordinated between Town staff and audit staff. Certain sections of the ACFR may be completed and submitted prior to the October 1st date to aid in testing.
2. All financial statements, schedules, and notes to the financial statements (except the Schedule of Findings and Questioned Costs, Corrective Action Plan and Summary, and the Schedule of Prior Year Audit Findings in the compliance section) will be drafted by Finance staff. This includes rate covenant compliance schedules.
3. To the extent possible, Town staff will prepare schedules and ensure supporting documentation is available as part of the audit effort. All journal entries will be prepared by Town staff. A journal entry and schedule checklist are prepared annually and utilized throughout the audit. This checklist will be available during the audit planning time period.
4. Town staff prepares financial statement schedules using a third-party software that is linked into Excel spreadsheets. A trial balance is created from our main Oracle Fusion Cloud Financial Systems software is the basis for all of the financial statements. A trial balance file in a Excel format will be provided to the audit staff.
5. Numerous analytic reviews of expenditures and revenues will be prepared by Town staff as a part of the audit effort.
6. Space will be made available for audit staff fieldwork.

6 DESCRIPTION OF TOWN SYSTEMS AND FINANCIAL INFORMATION

1. For a general overview and general financial information of Cary, the past three year's ACFR's can be accessed on Cary's website at <https://www.carync.gov/services-publications/plans-publications-reports/financial-reports>.
2. Cary utilizes a variety of banking services, most of which are conducted electronically. Services include, but are not limited to:
 - a. investment safekeeping
 - b. on-line banking
 - c. lockbox & ebox
 - d. positive pay (check fraud prevention)
 - e. automatic reconciliation
 - f. direct deposit for payroll and accounts payable
 - g. direct draft for utility billing
 - h. on-line and in-house merchant services (credit card acceptance)
 - i. use of procurement cards for small purchases (including e-payables services)
 - j. check printing services ("disbursement outsourcing")
3. Bank reconciliations are performed on a monthly basis for approximately 9 bank accounts, which include a detailed reconciliation of deposits and disbursements. Other balance sheet account reconciliations are also performed on a monthly basis, such as accounts receivable.
4. Cary has numerous cash collection sites that include payments for utility bills, permits, development fees, parks and recreation fees and police citations. Credit card payments are accepted, including on-line receipts.
5. Cary utilizes several methods for paying vendors electronically, which include procurement cards (through Bank of America), e-payables (through Bank of America), ACH, and wire.
6. The operating system for the financial system is Oracle. Cary uses Oracle Fusion Cloud. Cary partners Oracle with Central Square Public Sector Software (Naviline) for modules such as building permits, payroll and utility billing.
7. Cary uses Microsoft Excel and Word for preparing most documents and spreadsheets. Adobe and SpreadSheet Server (an Excel add-on) are also used to help prepare the financial statements. Cary also uses other software packages such as SAS Software and Cognos in order to prepare certain schedules and compile information that may be utilized during the audit.
8. Records are maintained on a modified accrual/budgetary basis throughout the year and are converted to full accrual at the end of the year by Town staff. Full accrual conversion funds are maintained within the general ledger to assist in this conversion and maintain historical information.

7 COST PROPOSAL/EXECUTION OF PROPOSAL

By submitting this proposal, the potential contractor certifies the following:

- This proposal is signed by an authorized representative of the firm.

- The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
- All labor costs, direct and indirect, have been determined and included in the proposed cost.
- The potential contractor has read and understands the conditions set forth in this RFP to include TOC general conditions/service terms, any addenda, and all attached exhibits and agrees to them with no exceptions.

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Date _____

8 REFERENCES

Offeror **must** supply (3) three Governmental Agency or Private Company references for which governmental financial audit services have been performed during the past (5) five years. Offerors are cautioned to provide accurate reference information. References will be checked during the evaluation period.

OFFEROR: _____

CITY, STATE, ZIP: _____

Reference # 1

Agency or Firm Name: _____

Business Address _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: (____) _____ **Fax Number:** (____) _____

Email Address: _____

Reference # 2

Agency or Firm Name: _____

Business Address _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: (____) _____ **Fax Number:** (____) _____

Email Address: _____

Reference # 3

Agency or Firm Name: _____

Business Address _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: (____) _____ **Fax Number:** (____) _____

Email Address: _____

INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether it appears in these Instructions to Vendors or elsewhere in this RFP document.
2. **ACCEPTANCE AND REJECTION:** The Town reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
3. **BASIS FOR REJECTION:** The Town reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the Town, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the Town.
4. **EXECUTION:** Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract, the order of precedence shall be (high to low): (1) The Principal Contract Terms, (2) RFP Terms, (3) Instructions in INSTRUCTIONS TO VENDORS, and (4) Vendor's Proposal.
6. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and, in the spaces, provided in this document. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection without further consideration.
7. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the Town will maintain confidential trade secrets that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.
8. **COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Vendor agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the using or issuing

agency, or any other representative therein, concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the Town directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFP. Vendors not in compliance with this provision may be disqualified, at the option of the Town, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.

9. **WITHDRAWAL OF PROPOSAL**: A Proposal may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of Proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). A withdrawal request must be on Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of Proposals shall be allowed only for good cause shown and in the sole discretion of the Town.
10. **INFORMAL COMMENTS**: The Town shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the Town during the competitive process or after award. The Town is bound only by information provided in this RFP and in formal Addenda issued through the eVP website.
11. **COST FOR PROPOSAL PREPARATION**: Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the Town will not reimburse any Vendor for any costs incurred prior to award.
12. **VENDOR'S REPRESENTATIVE**: Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
13. **SUBCONTRACTING**: Unless expressly prohibited, a Vendor may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describe what work it plans to subcontract and that Vendor includes in its proposal all information regarding employees, business experience, and other information for each proposed subcontractor that is required to be provided for Vendor itself.
14. **INSPECTION AT VENDOR'S SITE**: The Town reserves the right to inspect, at a reasonable time, the equipment/item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary, for the Town determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

EXHIBIT A
AUDIT FEE PRICES
(Per Year)

	FY2026	FY2027	FY2028
Base Charge			
Financial Audit			
Single Audit			
Compliance Audit (Exhibit B)			
Total			
Estimated Hours			
Financial Audit			
Single Audit			
Compliance Audit			
Charge per program for additional single audit or compliance testing			
Charge per additional service			
Service:			
Service:			
Service:			
Service:			

Basis/methodology of fee quote:

Basis for determining fee quotes, which would be used in price negotiations after the initial three-year contract. List factors that you would use in determining any increases or decreases.

EXHIBIT B

Guidance for Conducting the Compliance Audit Under the North Carolina Major Events, Games and Attractions Fund

In this Exhibit B, the North Carolina Department of Commerce (“Department”) supplements its Guidelines and Procedures (“Guidelines”) for the Administration of the North Carolina Major Events, Games and Attractions Fund (“Program”) with non-exclusive guidance on audit procedures and the subsequent report. See N.C. Gen. Stat. § 143B-437.114.

B.1 THE CPA’S ROLE

The role of the independent North Carolina-licensed CPA in conducting the audit procedures under the Program is to examine the actual qualifying expenses that the Major Event has incurred in North Carolina and then provide assurance on these expenses through a report to the Department.

For purposes of the Guidelines, an “independent” CPA is one within the definition of N.C. Gen. Stat. § 97-165(3) who has no direct financial interest in the Major Event and whose compensation for the audit is not derived in any part from the outcome of the audit, including whether any specific claimed qualifying expenses in fact qualify.

The audit must be performed in accordance with generally accepted auditing standards as set forth in Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). Additionally, the CPA should have sufficient knowledge of accounting principles and practices generally recognized in the esports events industry.

B.2 IDENTIFYING QUALIFYING AND NON-QUALIFYING EXPENSES

The CPA’s duty to identify actual qualifying expenses for the Major Event includes a responsibility to identify specific expenses that the Site Selection Organization and/or Local Organizing Committee has claimed as qualifying but which, in the course of the audit, the CPA determines do not qualify.

For example, the Site Selection Organization and/or Local Organizing Committee may submit to the CPA a receipt for the rental of goods. If, upon investigation, the CPA determines the goods were not both rented from a person with a physical location in the State and actually rented at an in-State location belonging to the person, then the CPA should specifically identify the transaction as non-qualifying in its audit.

Similarly, if an Applicant submits receipts for payments of compensation or wages on which North Carolina withholding taxes were not remitted, the CPA should specifically identify such payments as non-qualifying in the audit.

B.3 DOCUMENTS THE CPA SHOULD REVIEW IN COMPLETING THE AUDIT PROCEDURES

The following is a non-exclusive list of documents to which the CPA should obtain access and review during the course of completing the audit:

A detailed explanation of the Applicant's business activities in North Carolina throughout the course of the event, including a listing of all State locations at which the Major Event took place.

A detailed schedule of all claimed qualifying non-payroll expenses in North Carolina. The schedule should include the name, address, and business location of the relevant lessor, retailer, or vendor, as applicable. The schedule should also include the price of any claimed qualifying expenses and a description of the nature of such expenses.

For the period covering the claimed qualifying expenses, detailed payroll schedules from the Site Selection Organization and/or Local Organizing Committee, any payroll company, and any loan-out company registered to do business in North Carolina for all work performed on the Major Event in North Carolina. The schedules must be run on a pay-period basis, which will usually be weekly. They cannot be run on a summary-period basis.

For any individual working on the Major Event in North Carolina during the period covering the claimed qualifying expenses, copies of all North Carolina withholding tax returns filed by the relevant Applicants, any payroll company, and any loan-out company registered to do business in North Carolina.

Any other information that the relevant Applicant or CPA deems necessary to substantiate a claimed qualifying expense.

B.4 QUALIFYING EXPENSES

B.4.1 Qualifying Expenses

Qualifying expenses are the sum of the amounts listed in this subdivision, substantiated pursuant to subsection (d), and spent in this State by the Applicants in connection with a Major Event.

Goods and services leased or purchased in this State from a North Carolina vendor qualify. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the Major Event is completed.

Goods and services include the cost of tangible and intangible property used for, and services performed primarily and customarily in the planning, promoting, and hosting of the Major Event and other direct costs of the Major Event in accordance with generally accepted major events industry practices.

Goods and services exclude costs of financing for the Major Event, bonding related to the Major Event, and insurance coverage obtained on the Major Event.

Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes qualify.

Payments made to a loan-out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under Article 4 of Chapter 105.

Employee fringe contributions, including health, pension, and welfare contributions, qualify.

Per diems, stipends, and living allowances paid for work being performed in the State qualify.

Items that fulfill obligations of an endorsing local government or the State to a Site Selection Organization under a games support contract or event support contract may also be considered qualifying expenses.

B.4.2 Taxes

Other than withholding taxes, taxes paid—whether federal, local, or state—are never qualifying expenses.

The CPA should carefully examine documents supporting a claimed qualifying expense for any taxes charged, including fuel taxes, sales taxes, and lodging taxes, and remove them from the pool of qualifying expenses.

Qualifying Expenses “In Connection With” a Major Event

The Department considers otherwise qualifying expenses incurred up to 12 months prior to the Major Event and up to 60 days after the Major Event to be expenses incurred “in connection with” the Major Event.

However, in no circumstances will an expense incurred prior to the date of the Grant Award be considered a qualifying expense.

For qualifying expenses attributable to real property improvements, the expenses must be directly attributable to the event and must not include routine upkeep or maintenance costs.

B.4.3 Qualifying Payments for Goods and Services in North Carolina

a. Goods

The applicable Applicant must make the payment for goods to a business with a physical location in North Carolina. The fact that the business charged North Carolina sales tax is not necessarily evidence that the business has a physical location in the State.

Even if the Applicant rents goods from a business with a physical location in North Carolina, if the goods are utilized outside the State for a portion of the rental period, only a prorated amount of the rental price qualifies.

If a North Carolina retailer orders equipment from outside the State but the Applicant picks it up from the retailer in North Carolina, the purchase may still qualify as a qualifying expense.

b. Services

Services do not have to be rendered by a North Carolina resident or by an individual with a physical location in the State as long as the services are actually rendered within the State.

Payments to a shipping company (such as FedEx, DHL, or UPS) are qualifying expenses if the shipping services are obtained from a North Carolina location of the shipping company.

If goods are delivered into North Carolina from an out-of-state location, the shipping services charge does not qualify because it is not considered to have been rendered within the State.

CPAs may encounter mixed transactions involving goods brought from outside the State but used for services performed inside the State. For example, if an out-of-state caterer brings its mobile kitchen and food from outside North Carolina and charges the Applicant for both the use of these items and food-preparation services rendered in the State, only the food-preparation services qualify.

c. Goods used and services performed primarily in pre- and post-event activities are qualifying expenses. Financing and insurance costs may not be claimed as qualifying expenses.

d. The cost of the CPA's compliance audit and preparation of the report is not a qualifying expense because those services would not customarily be performed in association with the Major Event.

B.5 QUALIFYING COMPENSATION, WAGES, OR PAYMENTS

If a payment is made for wages or compensation to an individual for whom no withholding taxes have been remitted, the payment is not a qualifying expense.

The only exception is if the CPA determines, after reviewing N.C. Gen. Ch. 105, Art. 4A and applying the IRS independent contractor test and guidance by the North Carolina Department of Revenue, that the payment represents compensation to a true independent contractor.

If the CPA identifies wages or compensation without withholdings, the payor may remit the withholdings, thereby converting the payment into a qualifying expense.

Payroll companies or Applicants must remit taxes on payments to out-of-state loan-out companies that are not registered to do business in North Carolina.

Only the first \$140,000 of each individual's compensation and wages may count toward the qualifying expenses total.

B.6 QUALIFYING PAYMENTS FOR EMPLOYEE FRINGE BENEFIT CONTRIBUTIONS

To qualify, the payment must relate exclusively to compensation or wages for work performed in connection with the Major Event and in North Carolina.

The CPA must determine whether the payment is for an “employee.” Under the statute, an employee is defined as a person employed for consideration whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.

If qualified, fringe benefits may include health insurance, pension contributions, and other employee benefits. The CPA must ensure these payments are not federal or state tax payments.

B.7 QUALIFYING PAYMENTS FOR PER DIEMS, STIPENDS, AND LIVING ALLOWANCES

Per diems, stipends, and living allowance payments qualify if they represent payments for work actually performed in North Carolina.

The CPA may need to review hotel receipts, event schedules, and related documents to determine whether the individual receiving the payment was working in North Carolina on the applicable date.

These payments may appear in petty cash receipts or accounts payable invoices rather than payroll reports.

B.8 THE COMPLIANCE AUDIT REPORT

The CPA’s Audit Report is a public record governed by N.C. Gen. Ch. 132, including the confidentiality exceptions contained therein.

The report must be submitted to the Department and the Partnership in two hard copies and in electronic form.

The report should include a Cost Report of Qualifying Expenses broken out by:

- Goods
- Services
- Wages/compensation/payments with withholdings remitted
- Employee fringe benefit contributions
- Per diems, stipends, and living allowances

If requested, Applicants must make available to the Department and designated State officials the documentation described in Section B.3 and any additional documentation supporting the CPA’s conclusions.

The report should also note whether any non-qualifying expenditures were identified.

B.9 ADDITIONAL INFORMATION

The CPA shall provide any additional information requested by the Department.

TOWN OF CARY PRINCIPAL CONTRACT

Any Vendor whose proposal is selected by Town shall be expected to enter into the following Principal Contract with Town. As stated in section 1.3 of this RFP, any Vendor who submits a response to this RFP certifies by making said submittal that it has reviewed this Principal Contract and are, at the time of submittal, are prepared to enter into this Principal Contract should its proposal be selected. Also as stated in section 1.3, VEndro should use the question procedure described in section 1.6 to address any questions Vendor has about the Principal Contract prior to making its submittal. Notwithstanding anything to the contrary contained in Contractor’s Proposal, the terms and conditions of the Principal Contract and the RFP, if any, apply and take precedence and control over inconsistent, ambiguous or contrary terms and conditions in Proposal. However, if Proposal imposes a more stringent standard or obligation on Contractor then the more stringent standard or obligation shall apply.

Principal Contract Terms

These Principal Contract Terms (the “Contract” or “PCT”) are entered into as of the “Effective Date” by and between the Contractor identified below (“Contractor”) and the Town of Cary, a North Carolina municipal corporation (“Cary”). Contractor and Cary are referred to individually as a “Party” and collectively as the “Parties.”

SIGNATURES

Contractor and Cary hereby agree to be bound by the following contractual terms contained within these PCT and its Attachments:

Contractor:

Town of Cary:

By:

By:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

Deputy Finance Officer

Date

TERMS

1. Parties

Contractor

Legal Name: _____

Mailing Address: _____

Primary Contact: _____

Email: _____

Phone: _____

Cary

Primary Contact: _____

Mailing Address: _____

P.O. Box 8005
Cary, NC 27512-8005

Email: _____

Phone: _____

2. Type of Services:

- Professional or Consulting Services
- On-call Professional or Consulting Services
- Goods or Purchase Order
- Technology Agreement (Software, hardware, technology support services)
- Temporary Personnel
- PRCR Instructor/Entertainer Agreement
- Other: _____

3. Term of Contract (also see Paragraph 9):

Effective Date:

Actual date: _____

Date of last signature execution

Length of Term: _____ [months/years]

Renewal Term, if applicable:

- None
- 1 year renewal extension at Cary's option
- 2 year renewal extension at Cary's option
- 3 year renewal extension at Cary's option
- Other _____

4. Total Contract Amount: \$ _____

5. **Contract Amount to be expended during current fiscal year: \$ _____**

6. **Payment Terms/Schedule (also see Paragraph 12):**

- No more often than Monthly, 30 days after invoice
- Lump sum paid at _____ (event or milestone)
- As set forth in SOW

7. **Attachments to this Principal Contract Terms Sheet**

- Attachment A: SOW (General)
- Attachment B: Insurance Provisions (minimum insurance requirements)
- Attachment C: Public Records Indemnification
- Attachment D: Information Technology Services Terms and Conditions (IF APPLICABLE)
- Attachment E: Reimbursable Expenses (IF APPLICABLE)

8. Scope. Contractor shall perform or provide the services, goods, or other bargained-for benefits (“Services”) as described in the PCT, the attached Scope of Work (“SOW”), any additional or amended SOWs executed by the Parties pursuant to the PCT, and/or any duly-executed written amendment (“Amendment”) to the PCT. Cary has no obligation to execute any SOW, Amendment, or additional agreement with Contractor.

9. Term; Termination; Suspension.

- a. The term of the PCT shall begin as of the Effective Date, and, unless sooner terminated in accordance with the provisions in this PCT, shall end following the Length of Term indicated herein (the “Initial Term”). At Cary’s option, the PCT may be extended as indicated in paragraph 2 (the “Renewal Term”, and, together with the Initial Term, “Term”) by written notice.
- b. Cary may order Contractor in writing to suspend, delay, or interrupt all or any part of the Services for the convenience of Cary. In the event Contractor believes that any suspension, delay, or interruption of the Services ordered by Cary may require an extension of the Term or an increase in the level of staffing by Contractor, it shall so notify Cary and propose an amendment to this Contract, which shall be effective only upon the written approval of Cary. A suspension, delay, or interruption of the Services requested by Cary shall not terminate the PCT.
- c. The PCT or any individual SOW may be terminated by Cary and for its convenience upon ten (10) days’ written notice to Contractor.
- d. After thirty (30) days’ written notice to the other party of its material breach of the PCT or any individual SOW, the PCT or any individual SOW may be terminated by the noticing Party, provided that the other party has not taken all reasonable actions to remedy the breach.
- e. Upon termination of the PCT or any individual SOW for any reason, Contractor shall be paid that portion of its fees and expenses that it has earned for Services satisfactorily completed to the date of termination under the PCT or applicable SOW, as appropriate, less any costs or expenses incurred or anticipated to be incurred by Cary due to breach or errors, omissions, or mistakes of Contractor.
- f. In the event of termination for the convenience of Cary or by reason of a material breach by Cary of the PCT or any individual SOW, Contractor shall be paid that portion of the total compensation for the PCT or individual SOW, as appropriate, that it has

- earned to the date of termination, plus an amount equal to (i) five percent (5%) of total compensation earned to date of termination; or (ii) Contractor's unearned total compensation, whichever is less; less any costs or expenses incurred or anticipated to be incurred by Cary due to breach or errors, omissions, or mistakes of Contractor. The Parties intend that these liquidated damages constitute compensation, and not a penalty. Contractor expressly agrees that harm caused by Cary under this Section 9(f) would be impossible or very difficult to accurately estimate, and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise. Contractor further expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination. Payment of damages under this Section 9(f) is Cary's sole liability and entire obligation and Contractor's exclusive remedy for any Cary breach.
- g. Termination of any individual SOW shall not result in termination of the PCT or any other pending or ongoing SOW, unless expressly set forth in the notice of termination associated with such terminated SOW. Notwithstanding the Length of Term that may be indicated herein, the PCT shall remain in effect until the completion of the last SOW then in effect under the PCT.
 - h. Upon expiration or termination of the PCT for any reason, Contractor shall promptly comply with any and all terms for the dissolution of the PCT that may be contained in any applicable SOW and the following general terms:
 - i. Deliver to Cary all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Contractor in the course of performing the Services and expend such additional effort as may be necessary to provide to Cary professionally certified and sealed reports and such other information and materials as may have been accumulated by Contractor in the performance of the PCT, whether completed or in process.
 - ii. Return to Cary all Cary-owned property, equipment, or materials in its possession or control, including, but not limited to, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Cary's Confidential Information as defined in Paragraph ____ of the PCT, or, upon Cary's written request, permanently delete all of Cary's Confidential Information from its computer systems.
 - iii. Remove any Contractor-owned property, equipment, or materials located on Cary property.
 - iv. Provide reasonable cooperation and assistance to Cary upon Cary's written request in transitioning to an alternate provider, if applicable.
 - v. On a pro rata basis, repay all sums paid in advance for any Services which have not been provided.
 - vi. At Cary's discretion, complete any other termination requirements.
10. Responsibilities of Contractor. Contractor represents and warrants that it is fully qualified, skilled, and capable of performing the Services in a fully competent, professional, and timely manner; shall provide Services in accordance with industry standards; shall use best efforts and exercise reasonable care and diligence in performing Services and shall act in the best interest of Cary; is qualified to do business in North Carolina and will make all necessary filings and perform other actions required to remain in good standing with the North Carolina Secretary of State; and possesses or shall acquire all qualifications, licenses, and certifications necessary to provide Services. Contractor shall be responsible for all errors, omissions, or mistakes in performance of Services and shall correct at no additional cost to Cary any and all errors, omissions, or mistakes. In addition to any other

damages that may be due to Cary, Contractor shall reimburse Cary for the aggregate cost to Cary for all errors, omissions, and mistakes of Contractor or any breach of the PCT by Contractor. Contractor shall be responsible for all applicable taxes, license fees, or the like required to provide Services. It is mutually agreed that time is of the essence in performing under the PCT. Contractor shall expedite and accelerate its efforts as necessary to perform in accordance with the PCT at no additional cost to Cary, if Cary reasonably determines that Contractor is behind schedule. Contractor further represents that, prior to accepting any agreement that is funded by Federal funds, Contractor:

- a. Is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal Government agency and not included in the Excluded Parties List System;
 - b. Has not, within a three-year period preceding the Effective Date, been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and
 - c. Is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.
11. Responsibilities of Cary. Cary has designated a Primary Contact in Paragraph 1 who shall coordinate performance and who shall be available during working hours as often as may be reasonably required to communicate decisions and to furnish information. Cary shall examine documents submitted by Contractor and shall make reasonable efforts to render timely decisions pertaining thereto so as to not unduly delay the orderly progress of performance.
12. Compensation. Fees for the Services performed in conjunction with the PCT shall not exceed the Total Contract Amount specified herein unless otherwise changed by Amendment. Cary shall pay Contractor in accordance with the Payment Schedule in the applicable SOW.

Invoices shall be submitted by Contractor no more than monthly for all Services rendered by Contractor during the month prior or as specified in the applicable SOW. Approved, uncontested invoices shall be paid within thirty (30) days of receipt by Cary. Cary shall contest submitted invoices to which it disagrees within thirty (30) days of receipt. The Parties shall endeavor to reconcile any disputed invoices within the same thirty (30) day period. Cary shall have the right to deduct from payments to the Contractor any costs or damages incurred, or which may be incurred, by Cary as a result of the Contractor's failure to perform in accordance with the PCT, following reasonable notice and opportunity to

cure such nonperformance by Contractor. For prompt payment all invoices must include the Purchase Order Number. Submit invoices to TOWN OF CARY, PO BOX 3052, OREM, UT 84057 or electronically to Submit.Invoices@carync.gov as a PDF attachment. Invoices not submitted following these instructions will result in delayed payment.

Accounting records of Contractor's compensation for Services (and Reimbursable Expenses, if permitted under an SOW) shall be maintained by Contractor in accordance with generally accepted accounting practices and shall be available for inspection and copying by Cary at mutually convenient times for a period of three (3) years after termination of the PCT unless a longer period is required by law.

13. Insurance. During the term and for a period of three years after the termination of the PCT, Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense insurance as required by applicable law or regulation and as outlined in the attached Insurance Addendum to the PCT and as needed to ensure that it can meet its obligations under the PCT. All insurance policies (except Workers Compensation, Cyber and Professional Liability) shall name Cary, its elected officials, officers, employees, agents, and volunteers as an additional insured. Requirements regarding types and minimum limits of insurance coverage and other provisions specific to the PCT are attached hereto. Cary reserves the right to modify the applicable insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
14. State and Federal Funds. Contractor shall work in good faith with Cary to meet requirements imposed by the Federal or State government or other funding entity if grants or other sources of Federal or State funding are used to fund any portion of Services. If the source of funds for the PCT is Federal funds, the following Federal provisions apply (as applicable) unless a more stringent State or local law or regulation is applicable: Employment Eligibility Verification (FAR 52.222-54), Whistleblower protections (41 U.S.C. 265 and 10 U.S.C. 2408), and the following federal provisions listed in 2 C.F.R. Part 200, Appendix II: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.323); Record Retention Requirements (2 CFR § 200.334); Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R § 200.216); Domestic Preferences for Procurements (2 C.F.R § 200.322).
15. Indemnification.
 - a. Indemnification; General. To the fullest extent permitted by applicable laws and regulations, Contractor shall indemnify, protect, defend, and hold harmless Cary, its elected officials, officers, employees, agents, and volunteers (collectively, "Cary Indemnitees") from and against any and all claims, costs, civil penalties, fines, losses, liabilities, injuries (including death), demands, damages (including but not limited to all professionals' fees and charges and all court or other dispute resolution costs), actions, causes of action, suits, proceedings, judgments, and expenses, including reasonable attorneys' fees, court costs, and other legal expenses and including,

without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency, or similar proceeding, and other legal expenses (collectively and separately, "Claims") by whomsoever brought or alleged, arising out of, resulting from, or in connection with:

- i. Any breach by Contractor of any term or condition of the PCT or applicable SOW;
 - ii. Any breach or violation by Contractor of any applicable law or regulation; or
 - iii. Any other cause resulting from any negligent, reckless, or intentional act or failure to act by Contractor under the PCT. If N.C.G.S. § 22B-1 applies to the PCT, then Contractor shall indemnify Cary Indemnitees from any other cause resulting from any negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law, but only to the extent the fault of the Contractor or its derivative parties (as defined in N.C.G.S. § 22B-1 as it exists on the Effective Date) is a proximate cause of the Claim.
- b. Indemnification; Intellectual Property. Contractor shall indemnify, protect, defend, and hold harmless Cary Indemnitees from and against any and all Claims arising out of, related to, or resulting from any claim, action, or proceeding by a third party alleging that any deliverables or work product created or reduced to practice by or on behalf of Contractor in connection with providing the Services, or any use of such deliverables or work product, infringes, misappropriates, or otherwise violates any intellectual property right (including, without limitation, any patent, copyright, trademark, or trade secret) or other proprietary right of any third party.
- c. Indemnification; Procedures. Cary shall give Contractor written notice of any matters giving rise to a claim for indemnification; provided, however, that the failure of Cary to give notice as provided herein shall not relieve Contractor of its obligations under this Paragraph 15 or of any liability that Contractor may have to Cary, but in no event shall Contractor be liable for any losses that result directly from a delay in providing written notice, which delay materially prejudices the defense of a related third-party claim. Each notice should contain a description of the third-party claim and the nature and amount of the related loss(es) (to the extent that the nature and amount of the loss(es) are known at the time). Cary shall furnish promptly to Contractor copies of all papers and official documents received in respect of any loss(es). Contractor's duty to defend applies immediately, regardless of whether Cary has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any third-party claim.

This Indemnification Paragraph 15 shall survive the termination of the PCT.

16. No Consequential or Indirect Damages. Except for Contractor's indemnification obligations hereunder or any liability arising out of Contractor's negligence, willful misconduct, violation of law, or infringement or misappropriation of intellectual property rights, in no event shall either Party be liable to the other for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost revenues, or diminution in value, arising out of, relating to, or in connection with any breach of the PCT, regardless of whether such damages were foreseeable, whether said Party was advised of the possibility of such damages, and the legal or equitable theory upon which the claim is based.

17. Public Records, Confidential Information, and Dissemination of Information. Contractor acknowledges that records in the custody of Cary are public records and subject to public records requests. Cary may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification of Cary by Contractor pursuant to the attached Public Records Indemnification Agreement, Cary will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of initial disclosure by Contractor, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1) (“Contractor Confidential Information”). If Contractor does not provide the required indemnification within ten (10) days of notice that Cary has received a public record request, then such record shall be deemed to not be Contractor Confidential Information and Contractor hereby agrees and consents that Cary may release such record.

If Contractor, its employees or subcontractors, becomes aware of or has access to confidential records or information or information of Cary that is protected from disclosure by Federal or State law (“Cary Confidential Information”), Contractor, its employees and subcontractors, shall not disclose any such Cary Confidential Information. All of the information which Contractor obtains and/or develops in the performance of the PCT is also Cary Confidential Information and shall not be disclosed or used for any purpose other than in the performance of the Services. Contractor may disclose Cary Confidential Information if it is required to do so by applicable statute, rule, regulation, or judicial or administrative process or order, provided, however, that Contractor shall promptly notify Cary of any such requirement so that Cary may seek an appropriate protective order.

Cary takes efforts to assure that accurate information about Cary is disseminated such that neither the public trust nor the public’s perception of Cary’s impartiality is compromised. Contractor, mindful of those efforts and the terms of the PCT, agrees that it shall not publicly disseminate any information concerning the PCT, Services, or Cary Confidential Information without prior written approval from Cary. Any approval given by Cary may be given with certain stipulations, such as Cary participation in the creation of the public product or Cary review and the option to refuse public release of the final product(s) should such product(s) fail to meet Cary’s standards and goals. Publicly disseminate means, but is not limited to, electronic, video, audio, photographic, or hard copy materials serving as, in whole or part, advertising, social media posts, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or Contractor’s business collateral pieces. Notwithstanding the foregoing, Contractor may list Cary as a reference in response to requests for proposal and may identify Cary as a customer in presentations to potential customers. Contractor may not use Cary’s trademarked materials (including, without limitation, Cary’s logo in its various forms) unless approved in writing by Cary; such approved use must be in compliance with the guidelines outlined at <https://brand.carync.gov/>.

18. Documents and Deliverables. Cary shall be granted, at no additional cost, ownership of all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases, written materials, work papers, manuals, and other documents or instruments identified as ‘Deliverables’ herein (if applicable), as described herein or with more particularity in an applicable SOW, or which, by their nature, are designed to be delivered to Cary under the PCT (collectively, “Deliverables”). Contractor shall turn over to Cary in good unaltered condition, reproducibles as described

in this Paragraph of all Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after termination if the PCT is terminated for any reason. Contractor may retain one set of Deliverables for its records.

Cary is and will be the sole and exclusive owner of all right, title, and interest in and to all Deliverables and associated work product, including all intellectual property rights therein. Contractor acknowledges and agrees that any and all work product that may qualify as “work made for hire” as defined in the Copyright Act of 1976 (17 U.S.C. § 101) is hereby deemed “work made for hire” for Cary and all copyrights therein shall automatically and immediately vest in Cary. In the event Contractor creates Deliverables or work product that requires a license, Contractor will convey with the ownership of Deliverables or work product, a perpetual license required for the operation or use of the Deliverables or work product.

In the event of termination of the PCT for whatever reason, should Cary use Deliverables for completion of Services, Cary shall, to the extent allowed by law and covered by insurance, indemnify and hold Contractor harmless from and against any cost, expense, damage, or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Cary in connection with Cary’s improper use (or misuse) of Deliverables to complete the Services.

Deliverables may be used by Cary for any reason not related to the PCT or applicable SOW without additional compensation to the Contractor. Such use of Deliverables by Cary for other projects shall be at the full risk of Cary and Cary shall indemnify and hold Contractor harmless, to the extent allowed by law and covered by insurance, from and against any costs, expense, damage, or claim arising out of the loss of life, personal injury, or damage to tangible property occasioned wholly or in part by any act or omission by Cary in connection with Cary’s improper use (or misuse) of Deliverables for other projects.

Unless an applicable SOW states differently, Contractor shall provide all Documents and Deliverables in electronic form to Cary in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). In addition, all drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. All Deliverables (draft and final) intended for presentation on Cary’s website must be provided in a manner and format compatible, consistent, and in compliance with the U.S. Department of Justice’s current accessibility requirements applicable to local government websites and all Cary technology standards, including but not limited to such material must be provided in screen readable PDF or HTML versions, be screen-reader friendly, and contain alternate text tags of no more than 34 characters. In the event that Contractor notices any errors in electronic data provided to the Cary under this Contract, Contractor shall immediately notify Cary, and if Contractor provided such electronic data, Contractor shall immediately replace same with correct versions thereof.

19. Assignment. The PCT shall bind Contractor and its successors and permitted assigns. Contractor shall not assign or transfer its rights or interest in the PCT (including the right to payment), nor shall Contractor delegate its duties under the PCT, without Cary’s written consent, which Cary may grant or withhold in its sole discretion. Cary’s consent shall not release Contractor of any obligation under the PCT and Contractor and permitted assigns

shall be subject to all of Cary's defenses. Any attempt to assign the PCT without the prior written approval of Cary shall be void.

20. Key Personnel; Subcontractors. No changes in Contractor's Key Personnel or subcontractors designated in an SOW as those who will provide Services shall be permitted except with the prior written consent of Cary. Such replacement Key Personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. Contractor shall be responsible for the scheduling, completeness, quality, accuracy, and timeliness of all work by subcontractors. Contractor's contracts with subcontractor(s) shall include a provision that, in the event the PCT is terminated for cause by Cary, Cary may take assignment of such contract of Contractor with their subcontractor. Cary has the right to require that any personnel or subcontractor be replaced due to unsatisfactory performance and, if Cary notifies Contractor in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Cary, such person shall be removed from providing Services and shall not again provide Services except with the prior written consent of Cary. No extension of any milestone, Deliverable due date, or other deadline will be granted for such replacement.
21. Independent Contractor. Contractor is acting as an independent contractor, and not as an employee, partner, or agent of Cary. Contractor shall control the conditions, time, details, and means by which Contractor performs Services. Cary shall have the right to inspect the work of Contractor as it progresses solely for the purpose of determining whether Services are being performed in accordance with the PCT and any applicable SOW. Contractor has no authority to commit, act for or on behalf of Cary, or bind Cary to any obligation or liability. Contractor shall not be eligible for and shall not receive any employee benefits from Cary and shall be solely responsible for the payment of all taxes, FICA, Federal and State unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Contractor.
22. No Third-Party Beneficiaries. There are no third-party beneficiaries to the PCT or any SOW.
23. Nondiscrimination. To the extent permitted by law, neither Party, their officers, employees, contractors, agents, successors, or permitted assigns shall discriminate against any member of a protected class as defined by Federal, State, or local law, including Wake County Code of Ordinances Section 34.01.
24. Force Majeure. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached the PCT, for any failure or delay in fulfilling or performing any term of the PCT when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": actions or inactions of governmental authorities (excluding actions or inactions of governmental authorities taken in the normal course of their regulatory authority and actions taken by Cary as permitted by the PCT); acts of God; flood, fire, earthquakes, explosions, and other potential unforeseeable events related to disasters or catastrophes such as epidemics, pandemics, plagues, or quarantines (specifically excluding foreseeable delays or constraints caused by or related to public health emergencies

designated as such by the Centers for Disease Control); war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; embargoes or blockades in effect on or after the Effective Date; national or regional emergency; strikes or labor stoppages; or other similar events beyond the reasonable control of the Impacted Party and without its fault or negligence, and only to the extent that the event affects the Impacted Party's ability to perform under the PCT.

Notice of such Force Majeure Event shall be memorialized in writing by the Impacted Party and provided to the other Party pursuant to the requirements of the PCT and within five (5) days of the beginning of the Force Majeure Event(s). The notice shall describe the Force Majeure Event, the specific performances rendered delayed or impossible by the Force Majeure Event, and the efforts taken and to be taken by the Impacted Party to mitigate the impact of the Force Majeure Event on its duty to perform ("Initial Notice"). The Impacted Party shall prepare a business continuity plan within five (5) business days of the Initial Notice for review and approval by the other Party. The business continuity plan shall include any specific terms as relevant to any then-ongoing Services to be rendered and any available remedies or mitigation of effects, which such business continuity plan may provide and require the Parties' agreement as to the modification of the scope of work under any SOW, including contractual price adjustments or increases due to the conditions surrounding the particular Force Majeure Event. In the event the Parties are unable to agree upon the terms of said business continuity plan for an SOW, the Parties shall cooperate in good faith to promptly implement the provisions of Paragraph 9 of the PCT with respect to that particular SOW. The Impacted Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting the specific performance noticed and to complete its performance in as timely a manner as is reasonably possible. In no event shall the delayed performance be longer than the duration of the noticed Force Majeure Event without the written approval of all Parties. Upon removal of the cause affecting the delay or nonperformance, the Impacted Party shall resume performance of its obligations under the PCT within a mutually agreeable amount of time, as agreed to in the business continuity plan or any amendments thereto.

25. Emergencies. If any Federal, State, or local state(s) of emergency are put into effect, or when a public health emergency has been declared, Contractor shall comply with all guidance and recommendations of the Centers for Disease Control, the State of North Carolina, any applicable county, or Cary acting in its regulatory capacity unless mutually agreed to in writing by Cary and Contractor.
26. Waiver. No waiver by any Party of any of the provisions of the PCT shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the PCT, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the PCT shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27. Compliance with Applicable Law; Conduct. Contractor and its officers, employees, agents, and subcontractors shall comply fully with all applicable Federal and State laws and regulations, including but not limited to Article 2, Chapter 64, of the North Carolina General Statutes regarding verification of work authorization; and laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. § 14-234. These laws and regulations shall not be deemed to be the exclusive laws and regulations applicable to the terms of the PCT.

Contractor's officers, employees, agents, and subcontractors who come onto Cary property to perform Services shall comply with the same health and safety requirements that Cary has implemented for its employees through ordinance, policy, procedure, directive of the Cary Manager, or other means (collectively, "Health and Safety Requirements"), as may be amended or enacted from time to time.

Additionally, These to the extent consistent with the terms and conditions of the PCT, Contractor agrees to support and abide by the applicable policies and elements of *Working with the Town of Cary*, available at <https://www.carync.gov/>. To the extent consistent with the terms the PCT, Contractor agrees to support and abide by the applicable policies contained therein.

28. Further Assurances. The Parties agree that they will cooperate to execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as the relevant Party reasonably requests from time to time in order to effectuate the provisions and purposes of the PCT.
29. No Waiver of Immunity. Nothing in the PCT shall be construed to mandate purchase of insurance by Cary pursuant to N.C.G.S. § 160A-485 or to in any way waive Cary's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent, or employee of Cary shall be subject to any personal liability by reason of the execution of the PCT or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute the PCT in their official capacities only, and not in their individual capacities. This Paragraph shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
30. Severability. If any provision of the PCT is held as a matter of law to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the PCT shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent, provided that both Cary and Contractor preserve the substantial benefits of the terms bargained for in the PCT.
31. Survival. Termination of the PCT, for whatever reason, shall not terminate a Party's representations and warranties nor nullify any indemnity hereunder. All representations, indemnifications, and other terms and conditions of the PCT which by their nature should survive the PCT's termination shall survive its expiration or termination, including, but not limited to, the provisions of Paragraphs 13, 14, 15, 16, 17, 18, 29, 32, and 33.
32. Jurisdiction. The PCT is made in the State of North Carolina and shall be governed by the substantive provisions of North Carolina law without regard to conflict of laws provisions. The Parties agree that any legal action or proceeding with respect to the PCT shall be

brought exclusively in the State courts of Wake County, North Carolina. Contractor consents to the personal jurisdiction of such courts, agrees to accept service of process by certified or registered mail, and hereby waives any jurisdictional or venue defenses otherwise available to it.

33. Performance of Government Functions. Nothing contained in the PCT shall be deemed or construed so as to restrict or inhibit Cary's police powers or regulatory authority.
34. Notice. Each Party shall deliver all Amendments, notices, schedules, attachments, appendices, requests, consents, claims, demands, waivers, and other communications under the PCT (collectively, "Notice") in writing and addressed to the other Party at the addresses set forth herein (or to such other address that the receiving Party may designate from time to time in accordance with this Paragraph). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid), or upon confirmation of receipt when sent via facsimile or email. Except as otherwise provided in the PCT, a Notice is effective only upon receipt by the receiving party or three (3) days after deposit in the United States mail or other service and if the party giving the Notice has complied with the requirements of this Paragraph.
35. Complete Contract; Amendment; Inconsistency. The PCT, including and together with any related and duly executed and acknowledged SOWs, Amendments, schedules, attachments, and appendices, constitutes the final, complete, and exclusive understanding between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements between the Parties as to the subject of the PCT, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). This Contract may be amended only by written amendment signed by both Parties. Neither Party may amend, or seek to amend, the PCT by clickthrough agreement. The Parties have not relied upon any promises, warranties, or undertakings other than those expressly set forth in the PCT. Unless otherwise (a) expressly agreed in writing and signed after the date of this agreement by both Parties, or (b) expressly provided in the PCT, any inconsistency between documents will be resolved in the following order of precedence: the PCT; the applicable SOW; the applicable Amendment.
36. Execution. The Contractor represents and warrants that the individual(s) signing the PCT have the right and power to do so and bind Contractor to the obligations set forth herein and such individuals do so personally warrant that they have such authority. The PCT may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Electronic signature is a valid method of execution. Cary may convert a signed original of the PCT to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources (or successor agency) approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the PCT shall be deemed for all purposes to be an original signed PCT. If required by N.C.G.S. § 159-28, the PCT is not deemed fully executed and is not effective until the Preaudit Certificate as required by that statute has been affixed and signed by the Cary finance officer or deputy finance officer.

**ATTACHMENT A
STATEMENT OF WORK**

1. THIS STATEMENT OF WORK (“SOW”) adopts and incorporates by reference the terms and conditions of the Principal Contract Terms (“PCT”) which was entered into by and between Town of Cary (“Cary”) and Contractor identified herein and in the PCT (“Contractor”) (together, “Parties”) as it may be amended from time to time. This SOW is effective beginning on Effective Date identified below and will remain in effect through the Length of Term identified below, unless earlier terminated in accordance with the PCT. Transactions performed under this SOW shall be conducted in accordance with and be subject to the terms and conditions of this SOW, the PCT, and any applicable purchase order (“PO”). This SOW is not a PO. Capitalized terms used but not defined in this SOW shall have the meanings set out in the PCT. In the event that any terms of this SOW are ambiguous or contradictory to terms contained in the PCT, the PCT shall control.

2. General Terms.

Contractor Corporate Name	
Effective Date of SOW	
Length of Term of SOW	
Cary Contact	
Contractor Contact	

3. Services.

[Describe the project goals and deliverables in detail, including the relevant conditions and guarantees as outlined in the Request for Proposal, the Proposal submitted to Cary, or agreed to in subsequent communications intended to become part of this SOW. Use the Work Schedule and Deliverables and Payment Schedule tables below if those are helpful and appropriate for your project. Otherwise, be sure to include that type of information in the Services section. The length of this section will vary by project and may be short or may be several pages long is needed to fully and adequately describe the project.]

4. Work Schedule and Deliverables. The relevant milestones, dates, and terms associated with this SOW are as follows:

Line Item/Order of Performance	Deliverable Description	Completion Date	Acceptance Criteria
1			
2			
3			

5. Payment Schedule. All costs listed below are based on the scope and assumptions included in this SOW.

Services or Goods	Price	Payment/Invoice Schedule (e.g.: monthly, weekly, final/completion, upon acceptable work, per fee schedule)	Payment Terms (if other than 30 days from receipt of valid invoice) (e.g. up to NTE, 60 days)

Not To Exceed (NTE): \$ _____ (if applicable)

TOTAL: \$ _____

Reimbursable Expenses: There are no reimbursable expenses unless the box below is checked and Attachment E, Reimbursable Expenses, is attached.

Reimbursable Expenses Attachment included.

6. Key Personnel List (if applicable):

<u>Position</u>	<u>Name</u>

7. Subcontractors (if applicable):

<u>Subcontractor Corporate Name</u>	<u>Duties to be performed</u>

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this SOW.

[CONTRACTOR/COMPANY NAME]

By _____

Name:

Title:

Date:

TOWN OF CARY

By _____

Name:

Title:

Date:

This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

Deputy Finance Officer

Date

ATTACHMENT B

TOWN OF CARY SUPPLEMENTAL INSURANCE PROVISIONS

In addition to the Insurance obligations in Paragraph 6 of the Principal Contract Terms ("PCT"), the following designated supplemental insurance provisions are agreed to by the Contractor and the Town of Cary ("Cary") and are incorporated by reference into the PCT between the Parties. All of the following coverages are required unless specifically indicated otherwise.

Commercial General Liability Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations, and advertising and personal injury.

Workers Compensation Insurance / Employer's Liability Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, sickness, disease, or death of any of Contractor's employees or subcontractors as required by state law.

Commercial Automobile Liability Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage when vehicles are used in performance of work or coming onto Cary's premises and in the course of performing services pursuant to this Contract.

Not required per Cary Risk Manager.

Professional Liability/Errors & Omissions Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Professional Liability/Errors & Omissions Insurance covering claims arising out of or related to Contractor's performance under this Contract.

Not required per Cary Risk Manager.

Cyber Liability: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Cyber Liability Insurance covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs and regulatory fines.

Not required per Cary Risk Manager.

Additionally, the following provisions, as applicable, will apply to all required insurance coverage:

Coverage Required: Unless otherwise specified, minimum limits of insurance coverage are:

General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Commercial Automobile Liability	\$1,000,000 CSL
Commercial Excess/Umbrella Liability	\$1,000,000 per occurrence
Workers' Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident
Professional Liability	\$1,000,000 per claim
Cyber Liability	\$2,000,000 per claim and aggregate

Contractor may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to Cary.

By requiring such minimum insurance, Cary shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and, if it deems appropriate and/or prudent, shall maintain higher limits and/or broader coverage.

Additional Insured Status

All insurance policies (except Workers Compensation, Cyber, and Professional Liability) shall name Cary, its elected officials, officers, employees, and volunteers as an additional insured.

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Cary, its agents or agencies or insurers (if any), it being the intention of the Parties that the insurance policies shall protect Cary and be primary coverage for any and all losses covered by the policies.

Notice of Cancellation

Each policy shall provide that Cary shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal, or if a policy's limits are exhausted, Contractor shall procure substitute insurance so as to assure Cary that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

Contractor's insurance coverage shall be primary for any claims related to the PCT without contribution from Cary or its insurance coverages, if any.

Insurers

The minimum insurance ratings for any company insuring the Contractor shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, Cary may, at its option, require the Contractor to purchase insurance from a company whose rating meets the minimum standard. Contractor's insurance carrier(s) shall be authorized to do business in the State of North Carolina. If Contractor is unable to find an authorized carrier for any line of insurance coverage, Contractor shall notify Cary in writing.

Verification of Coverage: A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of the PCT. Cary's review or acceptance of certificates of insurance shall neither relieve Contractor of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in the PCT.

Certificate Holder address should read:

Town of Cary
PO Box 8005
Cary, NC 27512-8005

ATTACHMENT C

TEMPLATE PUBLIC RECORDS INDEMNITY AGREEMENT FORM

NOTE: THIS TEMPLATE PUBLIC RECORDS INDEMNIFICATION AGREEMENT IS BEING PROVIDED AS AN EXAMPLE OF THE FORM OF AGREEMENT THAT WILL BE REQUIRED TO BE EXECUTED BY CONTRACTOR PURSUANT TO PARAGRAPH _____ OF THE PRINCIPAL CONTRACT TERMS SHOULD CARY RECEIVE A PUBLIC RECORDS REQUEST TO WHICH CONTRACTOR'S CONFIDENTIAL INFORMATION IS RESPONSIVE. **DO NOT EXECUTE (SIGN) THIS FORM WHEN THE CONTRACT TO WHICH IT IS ATTACHED IS EXECUTED.**

Contractor acknowledges that records in the custody of Cary are public records and subject to public records requests. Cary may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Contractor, Cary will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a "trade secret" or "confidential" at the time of initial disclosure by Contractor, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1).

If a public record request is made on Cary for a record of Contractor that meets the requirements of Confidential Information, then Town shall notify Contractor. If Contractor, within ten (10) days of such notice, provides written notice to Cary that the requested information is Confidential Information entitled to be withheld from public inspection and copying ("PR Notice"); then Cary shall withhold such information from public access based upon Contractor's agreement to indemnify and hold Cary harmless from and against all loss, costs, and expenses, including attorneys' fees, that may be incurred for withholding. Contractor understands and acknowledges that Cary is subject to legal action and the imposition of attorney's fees if public records are wrongly withheld from disclosure. If Contractor does not provide PR Notice within ten (10) days of notice that Cary has received a public record request, then such record shall be deemed to be not Confidential Information and Contractor hereby agrees and consents that Cary may release such record pursuant to the public records request.

If Contractor provides PR Notice to Cary, Contractor represents and warrants that the specific identified information requested to be withheld are 'trade secrets' as such term is defined in Chapter 66, Article 24 of the North Carolina General Statutes (N.C.G.S. §66-152(3)) and such information is entitled to be withheld from public inspection and copying in accordance with Chapter 132, Public Records, of the North Carolina General Statutes (N.C.G.S. §132-1 et seq, specifically N.C.G.S. §132-1.2). Contractor understands and intends that Cary, its officers, agents and employees rely on such representations and warranties.

Contractor shall indemnify and hold Cary, its officers, agents and employees ('Indemnitees') harmless from and against any and all claims, losses, liabilities, costs, expenses, charges, penalties, fines and damages, including the assessment of attorneys' fees, arising from, or related to the withholding of records from inspection under the Public Records Act, Chapter 132 of the North Carolina General Statutes. Contractor shall be responsible for all expenses incurred by the Indemnitees in their defense of any claim, suit, or action within the scope of this indemnification and for all expenses and damages that might be assessed against the Indemnitees as a result of withholding such records or

information from public inspection. If a claim, suit, or action is threatened Indemnitees may demand that Contractor post a bond or other form of financial guarantee to guaranty and assure the satisfaction of this indemnification obligation.

ATTACHMENT D

INFORMATION TECHNOLOGY SERVICES TERMS AND CONDITIONS

If Contractor is providing IT Services, as that term is hereinafter defined, to Cary as part of the Services required by the Principal Contract Terms (“PCT” or “Contract”) into which this Attachment is incorporated, the following terms and conditions shall apply to the provision of those services.

Definitions. For the purpose of this Attachment, the following definitions apply together with definitions contained in the body of this Attachment. Any capitalized terms used in this Attachment and not defined herein shall have the meanings ascribed to those terms in the PCT.

“Authorization Codes” – means passwords, IDs, or authorization codes.

“Business Continuation Plan” – means Contractor’s plan to address any unplanned interruption of the IT Services which will include the following objectives: (i) written disaster recovery plans for critical technology and infrastructure; (ii) proper risk controls to facilitate continued performance under the PCT and this Attachment in the event of a disaster; and (iii) establishing the capability to provide reasonably uninterrupted access to the IT Services during the disaster within the recovery time objectives approved by Cary.

“Cary Data” – means any information or data from Cary and includes, but is not limited to, electronic data and information submitted by or for Cary to the IT Services, excluding Content, and information that is collected, stored, transmitted, processed, or used, as well as information generated as a result of Cary’s use of the IT Services and Contractor’s provision of IT Services. As a point of clarity, Cary Data includes Cary Confidential Information, as defined in the PCT, and any account Authorization Codes issued to Contractor or Contractor Personnel for purposes of accessing Cary’s systems. Cary Data does not include Content.

“Content” – means information created by Contractor or obtained by Contractor from publicly available sources or third-party content providers and made available to Cary through the IT Services, or pursuant to the PCT or a Statement of Work, excluding Cary Data.

“Contractor Intellectual Property” – means intellectual property, including trade secrets, ideas and concepts, methodologies, techniques, templates, generic tools, processes, software, routines, algorithms, expressions, and data conceived, developed or reduced to practice by Contractor prior to or independent of the performance of the PCT, including modifications and derivative works, and excluding Cary Data.

“Documentation” – means the user manuals existing from time to time and all other documentation that is reasonably necessary for an end user to operate the IT Services, including but not limited to any documentation referenced in the PCT. Contractor shall provide Documentation that completely and accurately describes in all material respects the operation of the IT Services, and published user manuals for all updates and new releases of the IT Services.

“Improvements” – means bug fixes, corrections, modifications, upgrades, updates, enhancements, release notes, and all other changes to the IT Services or Documentation whether for the purpose of fixing an error or bug or to address other issues, or to otherwise enhance functionality.

“Intellectual Property Rights” – means patent rights, trademark rights, copyrights (including, rights in audiovisual works and moral rights), trade secret rights, and any and all other intellectual property rights of Cary or Contractor, including all current and future rights.

“IT Services” – means Information technology services consisting of the services, functions and responsibilities described in the PCT and any applicable Statement of Work, as they may evolve or be supplemented, enhanced, modified, or replaced.

“Security Breach” – means unauthorized disclosure of, use of, or access to Cary Data, or any other compromise of Cary Data.

“Specifications and Requirements” – means all definitions, descriptions, requirements, criteria, and performance standards relating to the IT Services which are set forth or referenced in the Documentation, an applicable SOW, or any other materials published by the Contractor or its licensors from time to time describing the functional and/or technical specifications with respect to all or any part of the IT Services.

“Statement of Work” or “SOW” – means each statement of work executed by Cary and Contractor (together with all exhibits, schedules, attachments, and other materials that are appended to, or incorporated by reference into the statement of work), that specifically refers to and is governed by the PCT.

“Work Product” – means the Deliverables and all other writings, technology, inventions, discoveries, processes, methods, ideas, concepts, research, proposals, and materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice by or on behalf of Contractor solely or jointly with Cary or others in the course of performing the Services or other work performed by or on behalf of Contractor in connection with the Services or the PCT at any time during the Term, and all printed, physical, and electronic copies and other tangible embodiments of any of the foregoing.

1. Provision of IT Services. Contractor will (a) make the IT Services and Cary Data available to Cary, (b) provide applicable support for the IT Services to Cary at no additional charge, and/or upgraded support if purchased as set forth in a SOW, (c) make the IT Services available 24 hours a day, 7 days a week and as may be provided in any support related documentation as referred to in Section 10, except for: (i) planned downtime (of which Contractors shall give advance electronic notice), and (ii) any unavailability caused by a Force Majeure Event as defined in the PCT, Internet service provider failure or delay, non-Contractor application, or denial of service attack.
2. Performance of IT Services. The IT Services will be performed and will perform in conformity with the Documentation and the Specifications and Requirements and any other terms, conditions, specifications, and requirements set forth in an applicable SOW. In addition:

- a. Contractor shall provide all training necessary for Cary to use the IT Services.
- b. Any required integration, support, or implementation services will be described in a Statement of Work.
- c. Contractor shall provide ninety (90) days' written notice to Cary prior to implementing any Improvements that materially and substantively affect the functionality of the IT Services or the delivery of services. If Contractor reduces, degrades, changes, or eliminates the Specifications and Requirements or functionality in the IT Services in any material way, Cary is entitled to immediately terminate the PCT without liability and Contractor shall return a pro rata portion of any prepaid fees relating to any unused portion of IT Services, in addition to any other rights and remedies under the PCT or at law.
- d. Nothing in this Attachment or the PCT precludes Cary from obtaining the same or similar IT Services from another contractor.
- e. In the event Contractor provides any third party software, including Open Source Software, or other intellectual property owned by a third party (the "**Third Party Software**"), to Cary in connection with the PCT or this Attachment for which Cary would be obligated to accept and be bound by any third party terms and conditions, Contractor shall: (1) specifically identify in writing all Third Party Software in the applicable Statement of Work; and (2) attach to the applicable Statement of Work written copies of all third party license agreements applicable to Cary.

3. Access to and Use of Content and Work Product.

- a. In the event Contractor is creating Work Product, as specifically identified in the SOW, Cary is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product, including all Intellectual Property Rights therein. Contractor acknowledges and agrees that any and all Work Product that may qualify as "work made for hire" as defined in the Copyright Act of 1976 (17 U.S.C. § 101) is hereby deemed "work made for hire" for Cary and all copyrights therein shall automatically and immediately vest in Cary. In the event Contractor creates Work Product that requires a license, Contractor will convey with the ownership of Work Product, a perpetual license required for the operation of the Work Product.
- b. Cary has the right to access and use Content. Contractor grants to Cary a fully paid, world-wide, non-exclusive license to use the Content and Documentation, which includes a license to use IT Services and all Intellectual Property Rights embedded in the Content, as well as any Improvements to the IT Services or the Content.
- c. Authorization Codes. Contractor shall provide any Authorization Codes that Cary will need to use the IT Services as contemplated in the PCT and in any applicable SOW, and in disaster recovery, development, emergency, user support and other technical environments and to obtain the full benefit of its license and other rights in the IT Services. Authorization Codes will be fully functional on all systems and all processing cores and will not expire unless and until the PCT and/or applicable SOW is terminated.
- d. Number of Users. Pursuant to the applicable SOW, Cary is entitled to increase or decrease the number of users on an as-requested basis at any time during the term of the PCT.
- e. Use by Contractors. Cary may allow access to the IT Services and Content by third-party contractors engaged by Cary to use, operate, implement, integrate, or modify the IT Services or Content on behalf of Cary.
- f. Outsourcing. Cary may also authorize a third party to use the IT Services, including Content and Cary Data, in connection with the outsourcing of one or more of Cary's information systems operations.

4. Cary Data. As between the parties, Cary owns all right, title, and interest (including, without limitation, all Intellectual Property Rights and proprietary rights) in and to Cary Data.
 - a. Rights of Access and Use. Cary has the right to use the IT Services to access and retrieve Cary Data at any time.
 - b. Security. Contractor shall provide a secure environment for receipt, storage, and transmission of Cary Data, including without limitation the use of end-to-end encryption, both for data in transit and at rest. All Cary Data must be stored in secure directories that require access authentication including support for multi-factor authentication. Contractor is responsible for any disclosure or dissemination of Cary Data and for costs, fines, and damages that Cary may incur resulting from the failure of Contractor's systems during the transmission of Cary Data.
 - c. Location. Contractor shall advise Cary of the facility in which Cary Data are stored and shall not relocate, store, or process Cary Data outside the continental United States, except with advance written consent of Cary. Contractor is responsible for costs, fines, and damages that Cary may incur if Contractor permits an unauthorized export.
 - d. Back-ups. In addition to the Business Continuation Plan, Contractor shall maintain a backup of Cary Data, for an orderly and timely recovery of Cary Data in the event that the IT Services are interrupted. Contractor shall perform daily backups. Full system backups and server image backups must be performed monthly. Monthly system images and Cary Data must be securely uploaded and stored off-site at a data management facility. Daily backups must be retained for at least thirty (30) days. Monthly backups must be retained for at least three (3) months.
 - e. License to Host Cary Data and Applications. Subject to the provisions of PCT and this Attachment, Cary grants Contractor, its affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Cary Data created by or for Cary using IT Services or for use by Cary with IT Services, as reasonably necessary for Contractor to provide the IT Services in accordance with the PCT and this Attachment and for no other purpose. Subject to the limited licenses granted herein, Contractor acquires no right, title or interest from Cary or Cary's licensors under the PCT and this Attachment in or to any of Cary Data. Contractor and Contractor personnel may not access, collect, store, transfer, or otherwise use Cary Data except in the interest and on behalf of Cary in the performance of the PCT and this Attachment. In addition to and not in limitation of the foregoing and for clarity, under no circumstances may Contractor sell Cary Data or use or permit the use of any Cary Data or any derivatives thereof in connection with any artificial intelligence, machine learning, or other similar or related software applications, whether or not such use would otherwise be permitted by the license granted hereby.
5. Termination Assistance, Cary Data Portability, and Deletion. Upon the expiration or termination of the PCT or if Contractor is the named debtor in any bankruptcy or insolvency proceeding or has made a general assignment for the benefit of its creditors, Contractor shall provide all reasonable and necessary assistance to Cary to allow for a smooth transition to Cary or its designee and promptly return to Cary all programs, reports, Cary Data, Confidential Information, flow diagrams, materials, and work in process generated as part of Cary's use of IT Services or the PCT. Upon request by Cary made within 30 days after the effective date of termination or expiration of the PCT, Contractor will make Cary Data available to Cary for export or download in commercially accessible formats. Contractor will not delete or destroy any Cary Data in its systems or otherwise in its possession or control, unless and until it has received written acknowledgment from Cary that Cary has exported or downloaded Cary Data

it requires. Contractor shall delete Cary Data upon written request of Cary and provide certification of destruction of Cary Data after Cary Data is received and validated by Cary.

6. Protection of Cary Data. Contractor will maintain appropriate administrative, physical, and technical safeguards sufficient for the protection of the security, confidentiality, and integrity of Cary Data. Those safeguards will include, but will not be limited to, appropriate measures for preventing access, use, modification, or disclosure of Cary Data by Contractor or Contractor personnel except (a) to provide the IT Services and prevent or address service or technical problems, (b) as compelled by law, or (c) as Cary expressly permits in writing.
 - a. If Contractor should receive any legal request or process seeking disclosure of Cary Data or be advised by counsel of any obligation to disclose Cary Data, Contractor shall (to the maximum extent allowed by applicable law) provide Cary with prompt prior notice of the request or advice so that Cary may seek a protective order or pursue other appropriate remedies to protect the information. Contractor shall furnish only that portion of Cary Data which is legally required to be furnished and, in consultation with Cary, shall use all reasonable efforts to ensure that Cary Data is maintained in confidence by the third party to whom it is furnished.
 - b. During the term of the PCT and thereafter, Contractor shall comply with all applicable laws that relate to the confidentiality, security and protection of personally identifiable information, customer information, electronic data privacy, trans-border data flow, or data protection.
7. Data Security Measures. Contractor shall establish and maintain a data security program that includes reasonable administrative, technical, and physical policies, procedures, and safeguards for the protection of Cary Data in the possession and control of Contractor and its representatives. Contractor's data security program shall be designed to protect (i) the security, integrity, availability, and confidentiality of Cary Data, (ii) against anticipated threats or hazards to the security of Cary Data, and (iii) protect against unauthorized access to Cary Data. Without limiting the generality of the foregoing, Contractor will take all reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to modify or access Contractor's systems or the information found therein without consent. Contractor will periodically test its systems for potential areas where security could be breached. Contractor's data security program shall be no less rigorous than (a) those maintained by Contractor for its own information of similar nature, and (b) industry standard best practices. Contractor shall: (1) process Cary Data only in accordance with the reasonable instructions of Cary, (2) protect Cary Data, (3) promptly notify Cary of any unauthorized or unlawful processing of Cary Data of which it becomes aware, (4) except as otherwise agreed, promptly delete, or at Cary's option, return Cary Data when no longer needed for the provision of the IT Services, and (5) not place Cary in breach of any applicable privacy laws or regulations.
8. Breach of Cary Data.
 - a. If Contractor discovers, suspects, or is otherwise made aware of (a) any Security Breach, or (b) any condition that is likely to result in Security Breach, Contractor shall (i) promptly report (but in no event more than twenty-four (24) hours following discovery or suspicion) the Security Breach or likely Security Breach to Cary, (ii) immediately, to the extent possible, secure the affected systems to prevent further or continuing breaches, (iii) promptly investigate such breach, perform a root cause analysis, and (iv) remediate the cause of such breach of security on Cary Data and provide Cary with reasonable assurances that such breach will not recur.

- b. Contractor shall mitigate, in a timely manner and to the extent practicable, any harmful effects of any Security Breach. Contractor shall cooperate with Cary in investigating and responding to any Security Breach, including, without limitation, observing any reasonable requests made by Cary to ensure compliance with applicable law, and providing any notices that Cary deems appropriate. Upon Cary's request, Contractor shall deliver to Cary a root cause assessment and future incident mitigation plan with regard to any Security Breach that sets out written details regarding Contractor's investigation and remediation of the Security Breach.
- c. To the extent any Security Breach is attributable to a breach by Contractor or Contractor personnel of Contractor's obligations under the PCT, and applicable law requires Cary, or other affected individuals be notified of a security incident involving Cary Data, Cary shall have the exclusive right to determine whether notice will come from Cary or Contractor. In any event, the content, timing, and other details of the notice are subject to Cary's approval, in Cary's sole discretion.
- d. Contractor shall bear the costs incurred in complying with its legal obligations relating to the Security Breach, and in addition to any other damages for which Contractor may be liable under the PCT and this Attachment, Contractor shall bear the following costs which may be incurred by Cary in responding to the breach, to the extent applicable: (a) the cost of providing notice to affected individuals, government agencies, credit bureaus, and other required entities (which may include, without limitation, print services, postage, and obtaining contact information for affected individuals); (b) the cost of providing affected individuals with credit monitoring services and identity theft mitigation services for a specific period to the extent Cary determines the incident could lead to a compromise of the affected individuals' credit or credit standing or identity theft, or if required by applicable law; (c) the cost of call center support for affected individuals; (d) forensics services; (e) fines imposed by credit card associations, merchant banks or financial account institutions and costs passed on by individual card companies, banks, and other financial institutions; (f) the cost of any other measures required under applicable law; and (g) any other losses for which Contractor would be liable under the PCT or this Attachment.
- e. Contractor shall defend and indemnify Cary and its affiliates, employees, officers and agents from and against any third-party claim that arises out of any data security breach involving Cary Data in Contractor's control or possession.

9. Audit and Environmental Control.

- a. Contractor shall use reasonable industry measures designed to protect the operating environment of the IT Services against unauthorized physical access and the threats of fire, power, temperature, humidity, and other physical forces. Contractor shall provide advance written notice of (a) material changes to the hosted environment or (b) any change that may result in degradation of services or functionality or which may expose Cary or Cary Data to risk.
- b. Contractor shall maintain antivirus protection software on all hosted systems. In the event viruses, worms, or similar problems are determined to have infected the Contractor-hosted system, Contractor shall use reasonable efforts to restore the system as quickly as reasonably possible.
- c. In the event of a service disruption to any platform of Contractor used to provide the IT Services, Contractor shall: (i) formally notify Cary of the service disruption and (ii) provide a Business Continuation Plan to Cary within five (5) days of the notification which shall include a detailed plan which demonstrates Contractor's actions to ensure its contractual obligations under the PCT are fulfilled.

- d. Contractor shall maintain complete and accurate records relating to its data security program and the security of Cary Data, during the term of the PCT and for two (2) years thereafter. Upon Cary's request, Contractor shall make these records, appropriate personnel, and other relevant materials available during normal business hours for inspection and audit by Cary or its third party designee, if Cary: (a) gives Contractor thirty (30) days' prior notice of any audit; (b) undertakes an audit no more than once per calendar year, except for good cause shown; and (c) conducts or causes to be conducted an audit in a manner designed to minimize disruption to Contractor's business.
 - e. During the term of the PCT, Contractor shall cause a SOC 2 Type II report (or equivalent report) covering security, availability, confidentiality, processing integrity, and privacy to be prepared at least annually by a leading contractor of these types of reports in respect of the IT Services. Upon Cary's request, Contractor shall provide Cary a copy of the report.
 - f. Upon Cary's request, Contractor shall provide to Cary a written summary of the results of the most recent vulnerability assessment, sufficient in scope and content to provide a fair representation of the level of risk associated with each vulnerability identified, within three (3) business days of the request.
 - g. Cary may conduct penetration testing of the IT Services and its environment(s) without advance notice.
10. Support Services. Contractor shall perform support (and enhanced support, only if applicable) so as to meet or exceed the service levels described in the applicable SOW or other documentation, such as a service level agreement, that sets forth the service levels to be provided by Contractor.
11. Contractor's Intellectual Property. Contractor retains exclusive title to Contractor Intellectual Property. In addition, Contractor retains the right to use any general knowledge, expertise, or know-how developed in the course of provision of Services under the PCT.
12. Contractor Warranties.
- a. Contractor warrants that during an applicable term (a) the PCT, any SOWs, and Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Cary Data and (b) Contractor will not materially decrease the overall security of the IT Services.
 - b. Contractor represents and warrants that during the term of the PCT and any renewal periods ("Warranty Period"), the Services will fully comply with the SOWs, and Documentation and all applicable Federal, State, and local laws and regulations, and that the functionality of the IT Services will not decrease. During this Warranty Period, the Contractor shall promptly either repair or replace any defective IT Service at no additional charge to Cary. If the Contractor is unable to totally cure any defective IT Service within thirty (30) days after receipt of notice from Cary, Cary shall have the right to immediately terminate the PCT by written notice to the Contractor, and Contractor shall return a pro rata portion of any prepaid fees relating to any unused portion of IT Services (including but not limited to any implementation, maintenance, and training fees), plus the reasonable incremental cost of any replacement service acquired by Cary. This remedy is without limitation of any other remedies Cary may have at law or under the PCT. Modification of the IT Services by Cary or its subcontractors will not eliminate the above warranty, except for defects that are directly caused by such modification.

- c. Contractor represents and warrants that neither the IT Services nor any Contractor Intellectual Property shall contain any Destructive Mechanisms that may cause or have potential to cause harm to Cary's Data and/or network(s). "**Destructive Mechanisms**" means computer code that: (i) is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the IT Services or Contractor Intellectual Property or any other software, firmware, hardware, computer system, or network (sometimes referred to as "viruses" or "worms"); (ii) would disable or impair the IT Services or Contractor Intellectual Property or any other software, firmware, hardware, computer systems, or networks in any way where such disablement or impairment is caused by the passage of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs," "time locks" or "drop dead" devices); (iii) would permit Contractor to access the IT Services or Contractor Intellectual Property or any other software, firmware, hardware, computer systems, or networks to cause such disablement or impairment (sometimes referred to as "traps," "access codes" or "trap door" devices); or (iv) which contains any other similar harmful, malicious, or hidden procedures, routines, or mechanisms which would cause such IT Services or Contractor Intellectual Property or other programs to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications or otherwise interfere with operations.
- d. Contractor represents and warrants that the Documentation is complete and accurately describes the IT Services in all material respects and enables users of the IT Services to fully utilize the IT Services for all purposes for which it is being acquired by Cary. The Contractor further represents and warrants that, for so long as support and maintenance services are provided to or purchased by Cary, the Documentation will be updated to reflect all new versions, releases, or modifications of the IT Services delivered to Cary, and such updated Documentation will be of equal or greater quality to the initial Documentation provided to Cary. Any such updated Documentation will be delivered at the same time as the new version, release, or modification to which the Documentation update applies.
- e. Contractor represents and warrants that (a) Contractor owns all right, title and interest in and to the IT Services and has full legal right to license all the Intellectual Property Rights necessary to grant any applicable licenses in the IT Services, (b) entering into and carrying out the terms and conditions of the PCT will not violate or constitute a breach of any agreement binding upon Contractor, and (c) as of the date on which Contractor delivers the IT Services (and also on the date of delivery of each Improvement), there is no claim or litigation regarding Contractor's ownership or the right to license all the Intellectual Property Rights necessary to grant any applicable licenses in the IT Services. Contractor represents and warrants there is no proceeding pending or (to the best of Contractor's knowledge) threatened against Contractor with respect to the IT Services or any component thereof alleging infringement or misappropriation of any patent, trademark, copyright, or any trade secret or other proprietary right of any person or entity.
- f. Contractor represents and warrants that neither the IT Services, Content, nor Contractor Intellectual Property or other materials provided by Contractor or Contractor personnel used in the provision of the IT Services do or will infringe upon any third party's confidentiality protections or Intellectual Property Rights. Contractor further represents and warrants that neither the IT Services, Content, nor Contractor Intellectual Property or other materials provided by Contractor or Contractor personnel do or will infringe upon any third party's confidentiality protections or Intellectual Property Rights when used by Cary; EXCEPT THAT THE FOREGOING WARRANTIES WILL NOT APPLY TO ANY INFRINGEMENT RESULTING SOLELY FROM CONTRACTOR'S USE OF TOOLS, INSTRUCTIONS, SPECIFICATIONS OR OTHER MATERIALS PROVIDED BY CARY TO

CONTRACTOR, OR WHERE THE INFRINGEMENT RESULTS SOLELY FROM ANY MODIFICATION BY CARY OR ANY THIRD PARTY WITHOUT CONTRACTOR'S PRIOR WRITTEN CONSENT.

- g. Contractor represents, warrants, and covenants that its performance and the IT Services to be provided hereunder shall comply with all applicable laws, rules and regulations related to privacy, confidentiality, consumer protection, electronic mail, and data security, including, as applicable, the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d) ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act of 2009 (42 U.S.C. §17935) ("**HITECH Act**"), the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("**ARRA**"), if applicable, the California Consumer Privacy Act of 2018 (Cal. Civ. Code. §1798.100 et seq.) ("**CCPA**") (and as amended from time to time, including the California Privacy Rights Act of 2020, when in effect),(collectively, the "**Privacy and Security Laws**").
- h. Contractor represents and warrants that IT Services complies with Section 508 of the Rehabilitation Act of 1973, as amended, and all other laws, rules, and regulations with respect to accessibility for individuals with disabilities, if applicable. If Cary receives a complaint or concern regarding the accessibility of the product or service, Contractor agrees to promptly respond and resolve such concerns. Contractor further agrees to indemnify and hold Cary harmless for any claims arising from the inaccessibility of its product or service.

ATTACHMENT E

REIMBURSABLE EXPENSES

Reimbursable expenses are permissible only as long as they are accrued consistent with this Attachment and identified in the Principal Contract Terms ("PCT") and Statement of Work (SOW).

Cary will reimburse actual and reasonable out-of-pocket expenses associated with travel related to the Services and such other actual and reasonable out-of-pocket expense in advance in writing and not to exceed amount of _____ dollars and 00/100 dollars (\$XXXX.XX). Mileage and tolls shall be invoiced at Internal Revenue Service (IRS)-approved rates. Out of town travel, airfare, hotel, ground transportation, and meal expenses will be billed at cost in accordance with the following guidance:

Approval and Expense Submission. Contractor will always verify with Cary for Cary specific policies and requirements before incurring travel expenses. If written approval is required by Cary, Contractor will obtain approval before incurring travel expenses and will use corporate discount numbers whenever possible. Contractor will submit for expense reimbursement within 30 days of the date the expense is incurred, which will include detailed receipts for all expenses over USD \$10.00. The following checked expenses are eligible for reimbursement.

- Air Travel. Contractor will make domestic and international airline reservations at the least expensive coach class airfare available which satisfies the business requirements of the trip (even if it is not a preferred airline). Travel time will be calculated based on the time from the departure airport to Cary office location or hotel, whichever is appropriate.
- Lodging. Cary will reimburse Contractor for the cost of reasonable accommodations when an employee is required to be away from home overnight on company business. When booking travel accommodations, Contractor employees will, (a) attempt to find nightly room rates no more than USD \$200, exclusive of tax; (b) present a detailed hotel/motel statement to Cary for reimbursement; (c) list hotel charges other than lodging and the associated taxes (i.e., Meal-Traveling, Telephone-Local) as separate expenses when they are submitted; and (d) limit reimbursable incidentals to reasonable amounts as approved by Cary. Movies in hotel rooms will not be reimbursable.
- Car Rental. The rental car standard is midsize; full size may be rented when business needs dictate. When booking rental cars, Contractor employees will, (a) charge all fees to a credit card; (b) not accept the refuel option; cars must be refueled before returning to the airport. Rental Company refueling charges will only be reimbursed in extreme cases, and employees will document the reason on the expense report.
- Meals. Reimbursement costs are limited to reasonable amounts but should not exceed USD \$50 per person per day without Cary written approval. When purchasing meals, Contractor employees will, (a) present to Cary for reimbursement credit card and detailed receipts from all establishments which accept credit cards; (b) present to Cary for reimbursement detailed receipts for all meals paid in cash; (c) pay tips fairly and in conjunction with the services received.

Tips included with qualified business meals are reimbursable up to a 20% maximum.

Phone Usage. Cary will not be required to reimburse Contractor for any personal, cellular or air phone usage unless Contractor employee receives prior approval in writing from Cary.