



REQUEST FOR PROPOSALS

RFP # 354-UT26-06

Project Title: Residuals & Biosolids Materials Management

Issue Date: September 15, 2025

Due Date: Oct 22, 2025, at 5:00 p.m. ET

Issuing Department: Utilities

Direct all inquiries concerning this RFP to:

Betsy Drake

Water Utility Engineering Manager

Email: betsy.drake@carync.gov

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1 REQUEST FOR PROPOSALS

The Town of Cary (Cary) is seeking one or more qualified firm(s) with which to contract services for the environmental management, hauling and disposal of the following residuals products from Cary's utility operations.

Cary/Apex Water Treatment Facility

- Drinking water treatment residuals in the form of dewatered cake

Cary's Wastewater Treatment Facilities

- Biosolids dryer off-specification and non-pelletized heat-dried biosolids
- As needed, temporary dewatered cake biosolids from Western Wake Regional WRF and/or South Cary Water Reclamation Facility.

The proposal shall include management, hauling and disposal of all forms (dried off-specification/non-pelletized biosolids; dewatered water treatment residuals, and dewatered biosolids cake as available by prospective service providers). While Cary is interested in innovative disposal methods including Beneficial Reuse, it is not required for disposal management practices for this services contact. Firms offering innovative disposal methods should include them, and other disposal services such as landfilling, as part of your services portfolio in the proposal.

Services will be provided on an as-needed basis through a Basic Services Agreement with not-to-exceed cost ceilings for each service at each facility.

A detailed scope of services is provided in Section 4 of this solicitation. Information related to this solicitation, including any addenda, will be posted to the North Carolina Electronic Vendor Portal (eVP) at: <https://evp.nc.gov/solicitations>.

1.1 Purpose and Background

Services will be on an on-call and as-needed basis, with certain services being required on a regular basis. Services will be funded through Cary facility operating budgets.

Cary has no obligation to provide selected firms with any work here under and does not guarantee the issuance of any work orders under the awarded Service Agreement. Selected firms that do not meet Cary's performance expectations, routinely decline work orders, or lose significant manpower or other capabilities submitted with this original RFQ response may not be provided the opportunity for additional work under their respective contract.

Facility Information:

Cary Apex Water Treatment Facility

The Cary/Apex Water Treatment Facility (CAWTF) is a potable surface water treatment facility owned by Cary and the Town of Apex and is located at 1400 Wimberly Road in western Wake County. The facility is managed and operated by Cary. The facility's current permitted treatment capacity is 56 MGD and serves as a regional water supply providing drinking water to residents of Cary, Apex, and Morrisville, as well as the Wake County portion of Research Triangle Park

and the RDU Airport. The CAWTF is currently treating approximately 23-MGD of finished drinking water.

The raw water source for the CAWTF is Jordan Lake. The facility utilizes a combination of chemical and physical treatment processes, and primary solids removal coagulants, which include aluminum sulfate and polymers. More information about our drinking water treatment process can be found in Cary's Annual Water Quality Report posted online.

Waste residuals from the CAWTF are generated through solids removal blow-down and filter backwashes. Cary manages residuals handling and treatment on-site at the CAWTF through the final dewatering process. Residuals are then thickened and dewatered by centrifuges. Dewatered cake requires hauling and ultimately disposal or optional beneficial reuse by a third-party provider.

South Cary Water Reclamation Facility

The South Cary Water Reclamation Facility (SCWRF) is a wastewater treatment facility owned and operated by Cary and is located at 4000 West Lake Road, Apex, NC. The facility has a permitted wastewater treatment capacity of 12.8 MGD. The SCWRF typically treats approximately 5.5-MGD.

The facility utilizes a thermal biosolids drying facility for long-term management of the biosolids from the North and South Cary water reclamation facilities. Liquid residuals from both facilities are blended in aerated holding tanks, dewatered via centrifuge, and then thermally dried resulting in a pelletized Class A Exceptional Quality product. Periodically scheduled and unscheduled maintenance activities performed at the drying facility require having provisions in place for temporary managing of biosolids with processing to dewatered cake. South Cary utilizes high-speed centrifuges to dewater residuals, using liquid emulsion polymer and flocculate waste particles, and produces cake material in the range of 15 – 20% total solids. The dewatered cake material has not met any pathogen reduction or vector attraction requirements, as set forth by 40 CFR Part 503, and is therefore considered unclassified biosolids. The SCWRF generates approximately 3,500 dry tons per year of pelletized biosolids.

Note: The disposal or marketing of the above-mentioned SCWRF dried pelletized Class A Exceptional Quality product, generated from this site is not a component of this request for proposals, nor should it be provided as a service in the Vendor's proposal. ONLY the management, transportation and disposal of dewatered cake materials should be considered for this proposal.

Western Wake Regional Water Reclamation Facility

The Western Wake Regional Water Reclamation Facility (WWRWRF) is a wastewater treatment facility co-owned by Cary and Apex, and is located at 3500 Reclamation Road, New Hill, NC. The facility is managed and operated by Cary. WWRWRF has a treatment capacity of 18 MGD and currently treats approximately 8-MGD.

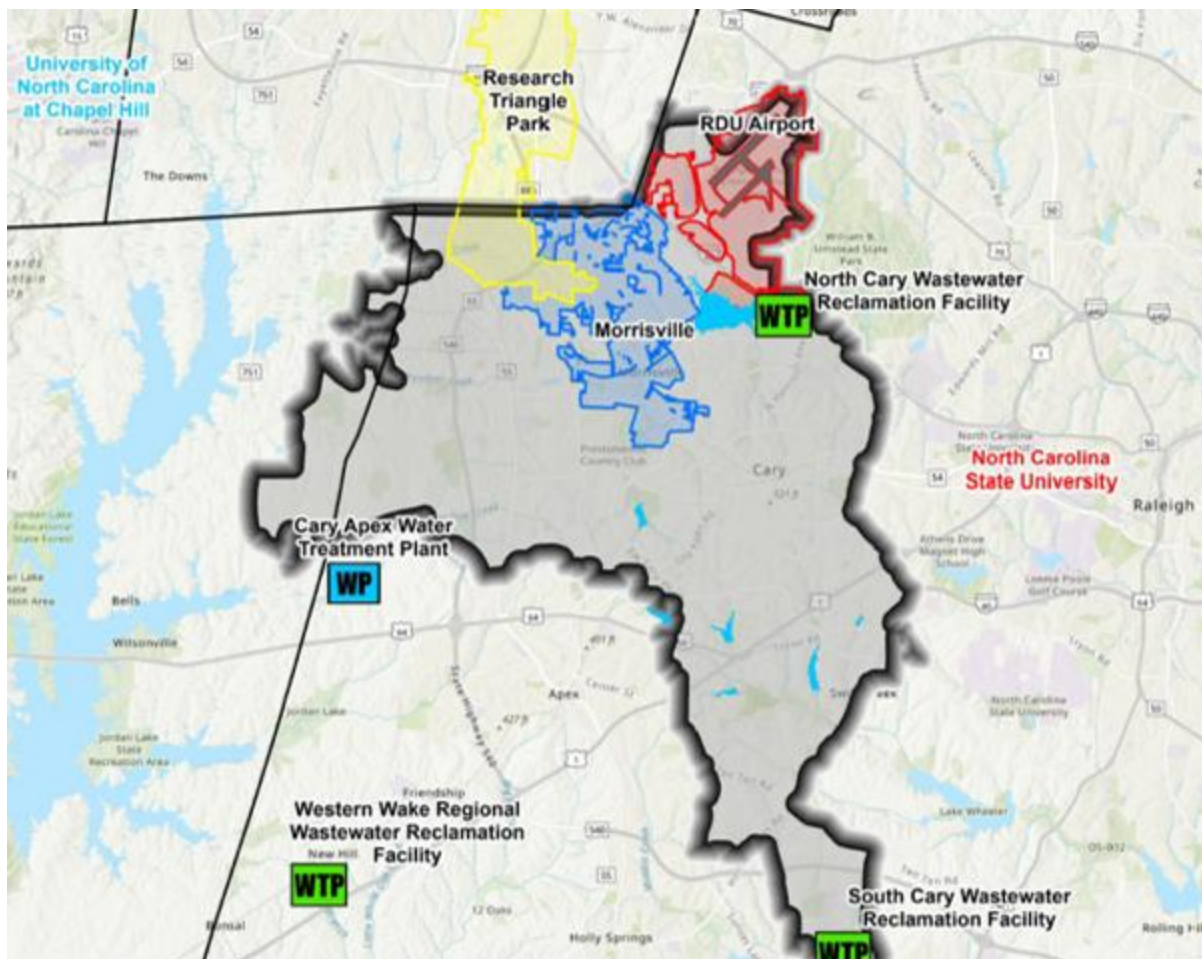
The facility utilizes a biosolids drying facility for long-term management of the facility's wastewater biosolids. The facility needs provisions in place for managing dewatered waste activated sludge from belt filter presses and sludge generated from cleanout of process tanks on an as-needed basis without interruption to the operations of the facility. The dewatered cake material ranges from 14 to 20% solids and has not met any pathogen reduction or vector

attraction requirements, as set forth by 40 CFR Part 503, and is therefore considered unclassified biosolids. The WWRWF generates approximately 18,000 wet tons at avg total solids of 16% of dewatered cake annually.

The facility also generates approximately 150 dry tons of non-pelletized and clean-out biosolids materials annually. The thermally treated heat dried product has a nutrient content of 5-2-0 (N-P-LK) fertilizer. The product meets and exceeds the EPA 503 criteria as a Class A Exceptional Quality Biosolids. The facility will need provisions in place for managing the non-pelletized and clean-out biosolid material from the WWRWF. Again, beneficial re-use is not required but a vendor may include it as a service/option for this material.

For the facilities listed above the service provider shall submit a plan for providing consistency and continuity of services for the RFP related to the Scope of Services included herein.

MAP – Locations of Water and Wastewater Treatment Facilities



1.2 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.

1.3 RFP Response Timeline

RFP Process	Date and time	
RFP posted	September 15, 2025	9:00 a.m.
Proposal Site-Visit Period	To be scheduled by Vendor no later than October 10	1:00 p.m.
Proposers Written Questions Due	October 10, 2025	5:00 p.m.
Town Responses to Proposers questions	October 15, 2025	5:00 p.m.
Proposal Submission Deadline	October 22, 2025	5:00 p.m.

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

1.4 Pre-Proposal Conference/Site Visit

NON-MANDATORY PREPROPOSAL SITE VISITS for all prospective Proposers are available between (September 17) and (October 10) at any of the Water or Wastewater Treatment sites listed below. Proposers are responsible for establishing contact and scheduling visits. Site contact information is below. Site visits provide an opportunity to become familiar with the site, solids handling equipment, truck loading areas, etc. While staff may informally answer questions during site visits, **ONLY** information provided in response to questions submitted during the formal question period shall be considered authoritative or binding.

Contacts For Site Visit(s):

- South Cary Water Reclamation Facility
 - Jarrod Buchanan – SCWRF Manager – (919) 779-0697
- Western Wake Regional Water Reclamation Facility
 - Josh Cummings – WWRWRF Manager – (919) 535-5640
- Cary/Apex Water Treatment Facility
 - Ryan Lambert – CAWTF Manager – (919) 481-5522

1.5 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. Cary will not entertain any further submitted questions after the due date. Written questions shall be emailed to *Betsy Drake* – betsy.drake@carync.gov by the date and time specified above. Vendors should enter “RFP #354-UT26-06: Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in the format shown below:

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

Questions received prior to the submission deadline date, Cary’s response, and any additional terms deemed necessary by Cary 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 Cary 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.

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

1.6 Proposal Submission Requirements and Contact Information

Submittal 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 Porta evp.nc.gov (eVP). Proposals must be clearly marked with 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 1.3.* Submissions that do not comply with the stated submission method will be deemed non-responsive. Cary 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](#).

Respondents are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render a Respondent's proposal unacceptable and unresponsive for award. Question and inquiries must be made in writing as outlined in Section 1.

Attempts to submit a proposal other than through eVP website via facsimile (FAX) machine, telephone, or electronic means, including but not limited to email, in response to this RFP shall NOT be accepted.

1.7 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 Cary 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.

Cary 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. Cary 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. Total proposal length shall be limited to 25 total pdf pages. Proposal responses shall be organized in the following manner:

1. **Cover Letter/Letter of Intent**
Introduction letter with intent as it may pertain to the Request for Proposal.
2. **Corporate Background and Experience**
This section shall include background information on the organization and should give details of experience with similar projects. A list of three (3) references (including contact persons and telephone numbers) for which similar work has been performed shall be included. The evaluators reserve the right to contact all the references listed, if information from the three references contacted warrant further inquiry. The failure to list all similar contracts in the specified period may result in the rejection of the Proposer's proposal.
3. **Financial Statement**
Cary reserves its rights to review financial statements of the short-listed firms to ensure financial stability of the selected firms prior to executing a contract.
4. **Project Understanding, Approach and Schedule**
This section shall include, in narrative, outline, and/or graph form, the Proposer's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverables and the schedule for accomplishing each shall be included.
5. **Team Organization, Experience and Certifications/Qualifications**
This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project. The Proposer shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.
6. **Cost Proposal**
The Cost Proposal shall be submitted and contain the following for each service type, material and facility:
 - Trailer Rental (per month)
 - Transportation Fee (per load)
 - Material Disposal Fee (per wet ton)

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:

A panel of Cary Staff Members will review the submitted proposals based on the criteria below and make a recommendation for award. This request for proposals does not commit Cary to award a contract or enter into an agreement, to pay costs incurred in the preparation of a response to the invitation, or to procure or contract for any services or supplies. Cary reserves the right to reject any or all proposals received as a result of this request for proposal, or to cancel this request in part or in its entirety, or to award multiple contracts for some or all the services identified in the Scope of Services, as deemed in the best interests of Cary to do so. Cary reserves its rights to review financial statements of selected firms to evaluate the firm’s financial stability prior to executing a contract.

1. Firm experience / workload – Experience of the firm in similar work and record of successful results of that work. Consideration of the firm’s ability to take on additional work demonstrated understanding of Cary’s goals and purpose for this work, and the firm’s ability to offer the breadth and quality of services required for the project.
2. Experience of Personnel Assigned to Project Team - Considerations will include qualifications and experience of key personnel, project team members, project managers, and sub-professional individuals identified.
3. Response to the project objectives outlined in the RFP – This includes a demonstrated understanding of the scope of work and purpose of the project, a demonstrated ability and experience in residuals and biosolids management, disposal, beneficial reuse, and innovative suggestions that may further benefit Cary’s materials management program
4. Schedule – The proposed schedule for performing the work for this project. If any contract(s) are awarded, the selected firm(s) must be in a position to begin work upon contract execution and move promptly toward implementation and completion.
5. Competitiveness of Pricing – The review panel will consider pricing in the overall evaluation of the proposals.

Criteria	Percentage Per Criteria	Score Points	Weighted Score
Firm Experience/Workload	10		
Experience of the personnel assigned to project team	10		
Response to objectives outlined in the RFP	30		
Competitiveness of Pricing	50		

Score Points

0- Missing or Does Not Meet Expectation
 1- Partially Meets Expectation

2- Meets Expectation
 3- Exceeds Expectation

2.3 Proposal Evaluation Process

Cary shall review all Proposer 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 through the eVP website.

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 that date and time, the package containing the proposals from each responding firm will remain sealed and opened at time of review. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Proposer's pricing position.

At their option, the evaluators may request oral presentations or discussion with any or all Proposer for the purpose of clarification or to amplify the materials presented in any part of the proposal. Proposers 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 Proposer.

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

Proposers are cautioned that this is a request for offers, not an offer or request to contract, and Cary 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 Cary.

At their option, evaluators may select more than one Proposer for negotiation, award and contract execution for individual or combined services described in the scope of work.

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 the Town Manager or designee for approval to negotiate a contract with the one or more vendors for the services identified in their proposed scope of work. All Proposers will be notified of their standing immediately following Cary's decision. Price quoted must be held firm for 90 days after the RFP is due. Cary reserves the right to make an award without further discussion of the proposal submitted. Cary shall not be bound or in any way obligated until both parties have executed a contract. Cary 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 Cary.

The general conditions and specifications of the RFP and the selected proposal, as amended by agreement between Cary 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"). Funding for work orders initiated under the contract will come from the respective facility's approved operating budget in each fiscal year.

Cary 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 (2) additional one-year terms. Cary will give the Vendor written notice of its intent whether to exercise each option by a duly authorized amendment.

2.6 Notice to Proposers Regarding RFP Terms and Conditions

It shall be the Proposer's responsibility to read the Instructions, the Cary'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 are responsible for obtaining and complying with all addenda and other changes that may be issued in connection with this RFP.

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3 SCOPE OF SERVICES

1. **Management and Disposal of Dewatered Water Treatment Residuals, Dewatered Cake Biosolids, Non-Pelletized Dried Biosolids, and Dried Biosolids from Dryer Clean-out** – Proposer shall submit methods for disposal of the above referenced materials. Proposers are **not required** to provide services for each class of material but must clearly indicate which materials are included in their proposals. Including options for innovative disposal methods or beneficial reuse of the material is encouraged but not required. Proposers may include multiple methods in their proposals. Methods proposed may not interfere with continuity of operation at Cary facilities.
2. **Loading and Transportation of Non-Pelletized Biosolids and Dried Biosolids from Dryer Clean-Outs from WWRWRF.** – Contractor shall provide services for loading and transportation of the above referenced material. Proposals shall include delivery of containers to the site, loading of material into the container, transport of the container to the disposal site, and emptying of the container at the disposal site. Trucks and containers shall be provided by the Proposer. The ability to provide reliable removal services will be considered in the proposal evaluation. Proposer may assume 2 to 3 pick-ups per month for estimation purposes.

Containers shall be weighed on a certified scale located at the WWRWRF before and after loading to determine the quantity removed. Weight tickets shall be provided by WWRWRF staff. Proposer shall ensure that the total weight of the truck and container do not exceed requirements of the NC Department of Transportation and shall indemnify the Cary from any penalties related thereto.

3. **Transportation of Dewatered Water Treatment Residuals and Dewatered Cake Biosolids** – Contractor shall provide regular hauling of dewatered residuals from the CAWTF, and temporary hauling on an as-needed basis of dewatered cake biosolids from the SCWRF and WWRWRF.). Proposals shall include delivery of container to the site, loading of material into the container, transport of the container to the disposal site, and emptying of the container at the disposal site. Trucks and containers shall be provided by the Contractor. The ability to provide reliable removal services will be considered in the proposal evaluation.

The CAWTF generates approximately eight (8) to sixteen (16) - 24-ton loads of dewatered cake weekly. The centrifuges typically operate Monday through Friday and generate a cake dryness of approximately 20 to 24%. Contractor shall provide an empty trailer for each morning's start-up of the centrifuges. Contractor shall provide additional empty trailers as needed throughout the day. Generally, the facility fills two trailers per day when centrifuges are operating. Trailers shall be approximately 8' X 40' in size and capable of hauling 24 wet tons of dewatered residuals.

The SCWRF generates approximately ten (10) to fifteen (15) loads of dewatered cake weekly when the biosolids dryer is off-line, at a cake dryness of approximately 15% to 18%. Contractor shall provide empty trailers as needed when dryer is off-line.

The WWRWRF generates approximately eighteen (18) to twenty (20) loads of dewatered cake weekly when the biosolids dryer is off-line, with a cake dryness of approximately 14% – 18%. The facility also performs clean-outs on its process tanks periodically, resulting in an estimated one hundred, fifty (150) dry tons of sludge generated annually.

Containers shall be weighed on a certified scale located at each site before and after loading to determine the quantity removed. Weight tickets will be provided by Cary staff. Proposer shall ensure that the total weight of the truck and container do not exceed requirements of the NC Department of Transportation and shall indemnify the Cary from any penalties related thereto.

4. Hauling schedule

Hauling of residuals from Cary facilities is generally between 7:00 a.m. and 5:00 p.m., Monday through Friday. However, occasionally the operational needs of a facility require centrifuge operations on extended daily schedules or on weekends. More than two trailers a day are also occasionally required. Schedules may require flexibility to meet operational requirements or during unscheduled shutdowns. Contractor shall commit to providing transportation and disposal services when requested so that continuity of operation is maintained.

- 5. Trailers, Containers and Rolloff Dumpsters** – containers shall be provided for all sites. Containers shall be approximately 8' X 40' in size and capable of hauling up to approximately 24 wet tons of materials.

All trailers, containers and rolloff dumpsters shall be relatively clean and free of odors such that they do not create a nuisance condition at Cary facilities or impact surrounding properties.

Contractor shall provide a tractor, on a temporary basis, should the need arise for moving the residual trailers within the CAWTF site. Additionally, when trailers are provided for the loading of biosolids at the SCWRF and WWRWRF, Contractor shall provide a tractor for moving the biosolids trailers on the site for the duration of services needed.

- 6. Responsiveness and schedule coordination** – Contractor shall adjust hauling schedules as needed with 24-hour notice from CAWTF, SCWRF, or WWRWRF staff. Contractor shall provide a single point of contact for coordination of hauling schedules.
- 7. Reporting** – Contractor shall be responsible for reporting under the appropriate permit to the U.S. Environmental Protection Agency, N.C. Department of Agriculture, the N.C. Department of Environment Quality and/or other regulatory authority for the collection, hauling and disposal of materials listed herein.

ADDITIONAL REQUIREMENTS:

- Contractor shall be required to meet Cary's required insurance provisions as outlined in Cary's Standard Basic Services Agreement (see attached). Additional information regarding insurance requirements may be obtained by contacting Cary's Risk Management Coordinator, Ms. Precious Seabrooks by phone (919) 462-3977 or by email at precious.seabrooks@carync.gov.
- Truck drivers shall always adhere to all traffic regulations, including but not limited to:

- Facility on-site speed limits of 15 mph.
- Abiding by posted speed limits and maintaining safe driving speeds for road and weather conditions.
- Awareness of school zones near the SCWRF and at any other locations along the hauling routes.
- Awareness of posted speed limits within and in proximity to neighborhood areas along approved hauling routes.
- Awareness of and adherence to roadway and bridge weight limits.
- Trucks and trailers must be maintained in good working order, without leakage, and in a good state of cleanliness. Vessels shall be secured such that material spillage from the vessel does not occur. Contractor shall be responsible for the clean-up of any spillage that occurs during transport at no cost to Cary.
- Contractor shall review driving and criminal records of each driver to assure that drivers are competent and maintain good driving records. Contractor shall provide their plan and schedule for conducting these checks to Cary. Drivers must meet ALL DOT requirements.
- Cary reserves the right to request that drivers NOT adhering to safe practices and following ALL applicable policies and procedures be prohibited from materials hauling and activities.
- Hauling routes between Cary facilities and disposal facilities must be pre-approved by Cary. Proposer's primary hauling routes shall be mapped and included as part of the proposal.
- Congested areas such as shopping centers and residential neighborhoods shall be avoided and, where possible, not included as part of proposed routes. Stopping on major roads or in sensitive community areas shall not be allowed.
- Contractor shall make every effort to avoid nuisance conditions in the community. Odor and noise mitigation measures shall be taken as needed. Use of engine brake or "jake" brake near facility sites in in the adjacent neighborhoods will not be allowed.
- Cary facilities are secured sites and entrance/exit procedures shall be adhered to at all times.

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4 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 _____

5 REFERENCES

Offeror **must** supply (3) three Governmental Agency or Private Company references for which Residual & Biosolid Materials Management services have been performed during the past (5) five years. Offerors are cautioned to provide accurate reference information. References will be checked during 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 PROPOSERS

1. **READ, REVIEW AND COMPLY**: It shall be the Proposer'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 appearing in these Instructions to Proposers or elsewhere in this RFP document.
2. **ACCEPTANCE AND REJECTION**: Cary reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Proposer, 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**: Cary 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 Cary, 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 Cary.
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 PROPOSERS, and (4) Proposer's Proposal.
6. **INFORMATION AND DESCRIPTIVE LITERATURE**: Proposer shall furnish all information requested and, in the spaces, provided in this document. Further, if required elsewhere in this proposal, each Proposer 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. **MINORITY WOMEN BUSINESS ENTERPRISES (MWBE)**: Cary invites and encourages participation in this procurement process by minority women business enterprises (MWBE) in accordance with North Carolina General Statute 143-129.
8. **DIVERSITY AND INCLUSION**: Cary encourages Proposers to have a diverse and inclusive project team involved in all aspects of this project.
9. **CONFIDENTIAL INFORMATION**: To the extent permitted by applicable statutes and rules, Cary will maintain confidential trade secrets that the Proposer 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 Proposer, 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 Proposer 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 Proposer 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. Proposers are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

- 10. COMMUNICATIONS BY PROPOSERS:** In submitting its proposal, the Proposer agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the use or issuing agency until after the award of the Contract or cancellation of this RFP. All Proposers 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 Cary directly contacts the Proposer(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Proposer shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Proposer to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Proposer'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. Proposers not in compliance with this provision may be disqualified, at the option of Cary, from the Contract award. Only communications with the using agency or issuing agency authorized by this RFP are permitted.
- 11. 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 Proposer's letterhead and signed by an official of the Proposer authorized to make such request. Any withdrawal request made after the opening of Proposals shall be allowed only for good cause shown and in Cary's sole discretion.
- 12. INFORMAL COMMENTS:** Cary shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of Cary during the competitive process or after award. Cary is bound only by information provided in this RFP and in formal Addenda issued through the eVP website.
- 13. COST FOR PROPOSAL PREPARATION:** Any costs incurred by Proposer in preparing or submitting offers are the Proposer's sole responsibility; Cary will not reimburse any Proposer for any costs incurred prior to award.
- 14. PROPOSER'S REPRESENTATIVE:** Each Proposer 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.
- 15. SUBCONTRACTING:** Unless expressly prohibited, a Proposer 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 Proposer includes in its proposal all information regarding employees, business experience, and other information for each proposed subcontractor that is required to be provided for Proposer itself.
- 16. INSPECTION AT PROPOSER'S SITE:** Cary reserves the right to inspect, at a reasonable time, the equipment/item, plant, or other facilities of a prospective Proposer prior to Contract award, and during the Contract term as necessary, for Cary's 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.

AGREEMENT FOR CONTRACTED SERVICES TEMPLATE

This Agreement for Contracted Services (“Agreement”) is made by and between the Town of Cary, a North Carolina municipal corporation (hereafter, “Cary”) and _____, a [corporation] [limited liability corporation] [other – fill in] (hereafter, “Contractor”).

RECITALS

WHEREAS, Cary desires to procure a contractor to perform services; and

WHEREAS, Cary has completed necessary steps for retention of (Type of Service Provided) under applicable Cary policies; and

WHEREAS, Cary has agreed to engage the Contractor, and the Contractor has agreed to contract with Cary, for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

ARTICLE 1

EFFECTIVE DATE AND SCOPE OF SERVICES

- 1.1 The Recitals are incorporated into Agreement. This Agreement shall be effective upon execution by both parties (“Effective Date”).
- 1.2 This Agreement is for _____ services to be provided by Contractor with respect to the Project known as _____, located in the Town of Cary, North Carolina, and generally consisting of _____. Contractor shall provide all services including reports and other deliverables as described herein and in Attachment A, attached hereto and incorporated herein by reference (“Basic Services”). Contractor shall also provide Additional Services as may from time-to-time be agreed upon by written amendment to this Agreement (“Written Amendment”). Basic Services and Additional Services are collectively referred to as “Contractor Services” or “Services.”
- 1.3 Basic Services shall commence after Effective Date and Contractor’s receipt of a Notice to Proceed from Cary and shall be performed in accordance with any schedule contained in Agreement (sometimes “Milestone Dates”).
- 1.4 The term of this Agreement shall be for a period beginning on Effective Date and ending on [date] and/or [written acceptance of the completed Services by Cary] and/or [successful completion of any required correction period by the Contractor].

- 1.5 Contractor represents and agrees that now and continuing for the term of Agreement, Contractor:
- a. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
 - b. shall exercise reasonable care and diligence, and shall act in the best interest of Cary;
 - c. shall act in accordance with generally accepted standards of Contractor's practice applicable to the locality; and shall comply with this Agreement and with all applicable federal, state and local laws, ordinances, codes, rules and regulations (collectively 'Laws and Regulations');
 - d. possesses all necessary qualifications, licenses and certifications;
 - e. shall perform in a timely manner and in accordance with all Milestone Dates or other schedules required under this Agreement, time being of the essence;
 - f. shall work in good faith with Cary to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Project; and,
 - g. shall assure that the individual(s) signing Agreement 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.

ARTICLE 2 RESPONSIBILITIES OF CONTRACTOR

2.1 Standard of Care

2.1.1 Contractor shall assure that all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases, and other documents and all deliverables ("Documents and Deliverables") prepared by Contractor are in accordance with all Laws and Regulations.

2.1.2 Contractor shall be responsible for all errors or omissions in Documents and Deliverables and shall correct at no additional cost to Cary any and all errors, omissions, discrepancies, ambiguities, mistakes, or conflicts in the Documents and Deliverables. Contractor shall reimburse Cary for the aggregate cost to Cary for all errors and omissions of Contractor.

2.1.3 In addition to any other damages that might be due to Cary hereunder in connection with the breach of this Agreement by Contractor, Contractor shall reimburse Cary for costs, damages, and expenses that are the result of errors, omissions, or delays of Contractor, including those of Contractor's subcontractors.

2.1.4 Contractor shall expedite and accelerate its efforts as necessary to perform in accordance with this Agreement at no additional cost to Cary, if Cary reasonably determines that Contractor is behind schedule.

- 2.2 Key Personnel and Subcontractors. No changes in Contractor’s personnel or subcontractors designated in Attachment A as those who will provide Services shall be permitted except with the prior written consent of Cary, which consent shall not be unreasonably withheld. Such replacement personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. If Contractor provides any Services through the use of subcontractors, Contractor shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, Contractor’s contracts with subcontractor(s) shall include a provision that, in the event this Agreement is terminated for cause by Cary, Cary may take assignment of such contract of Contractor with their subcontractor. If Cary notifies Contractor in writing that any person on the Project appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with the prior written consent of Cary. No automatic term or Milestone Date extension will be granted for replacement of such personnel or subcontractors.
- 2.3 Taxes, Permits and Licenses. Unless otherwise provided, Contractor is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

**ARTICLE 3
COMPENSATION FOR SERVICES**

3.1 Compensation for Basic Services.

The Total Fixed Fee for Basic Services, which is a not to exceed contract amount, is [insert \$ written in words] (\$ total contract amount) unless changed by duly authorized written amendment.

(If there is a breakdown of payment (monthly, milestones etc) it can be placed here to reference an attachment)

Payments for Services that have been satisfactorily completed will be made by Cary within thirty (30) calendar days of receipt of an acceptable Invoice. In the event Cary finds any part of an Invoice not to be acceptable, it shall identify to the Contractor the part or parts which are not acceptable and shall pay the part or parts of the Invoice which are acceptable. 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 the Services, following reasonable notice and opportunity to cure such nonperformance by Contractor. **For prompt payment all invoices must include the Purchase Order Number. Submit invoices electronically to Submit.Invoices@carync.gov as a PDF attachment. Invoices not submitted following these instructions will result in delayed payment.**

- 3.2 Compensation for Additional Services. Additional Services shall be as set forth in Written Amendment. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by Cary within thirty (30) calendar days of

receipt of an invoice that is in form and substance acceptable to Cary. In the event Cary finds any part of an invoice not to be acceptable, it shall identify to the Contractor the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. Cary shall have the right to deduct from payments to Contractor any costs or damages incurred, or which may be incurred, by Cary as a result of Contractor's failure to perform any Service, following reasonable notice and opportunity to cure such nonperformance by Contractor. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

- 3.3 Reimbursable Expenses. There are no reimbursable expenses.

[OPTIONAL use only if the parties agree that there are reimbursable expenses:]

Reimbursable expenses are set forth on Attachment A. Cary shall reimburse such expenditures up to amounts authorized by Cary to the extent such expenses are reasonable and actually incurred by Contractor. Contractor shall not be entitled to any mark-up on actual expenses incurred.

- 3.4 Accounting Records and Other Records. Accounting records of Contractor's compensation for Services and Additional Services (and Reimbursable Expenses, if permitted under this Agreement) 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 this Agreement.

ARTICLE 4 RESPONSIBILITIES OF CARY

- 4.1 Cooperation and Coordination. In addition to being responsible for the duties set forth as duties or responsibilities of Cary, Cary may designate, in writing, a person to act as project manager who shall coordinate the project work and who shall be available during working hours as often as may be reasonably required to render decisions within guidelines established by the Town manager and to furnish information. Cary shall examine documents submitted by Contractor and shall make reasonable efforts to render timely decisions pertaining thereto so as not to unduly delay the orderly progress of Contractor's Services.

ARTICLE 5 INSURANCE

- 5.1 Insurance. Contractor and Contractor's permitted subcontractors shall purchase and maintain during the term and for three years after the termination of this Agreement insurance for protection from claims under workers' or workmen's compensation acts including bodily injury, sickness, disease or death of any of Contractors' employees or subcontractors as required by state law; Commercial General Liability Insurance (including contractual liability and completed operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or related to bodily injury

and to real and personal property; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury or death, and property damage when vehicles are used in performance of work or coming onto Cary premises; Cyber Liability Insurance (if applicable) covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional/Errors & Omissions Liability Insurance (if applicable) covering professional services and claims arising out of or related to Contractor's performance under this Agreement.

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 per occurrence
Professional Liability (if applicable)	\$1,000,000 per claim

The 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.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

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.

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.

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 this agreement.

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Cary, its agents or agencies, 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.

Verification of Coverage

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement. 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 this Agreement.

Certificate Holder address should read:

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

Special Risks or Circumstances

Cary reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**ARTICLE 6
DAMAGES AND REMEDIES**

6.1 Services, Reimbursement, and Deductions.

6.1.1 Contractor shall reimburse Cary for costs, damages, and expenses, including reasonable attorney's fees and expert's fees incurred by Cary if such costs, damages, and expenses are the result of any error, omission, or delay of, or failure by Contractor to perform as required by Agreement.

6.1.2 In addition to any other remedies available to Cary, Cary shall have the right to deduct from payments to the Contractor any costs, damages, and expenses, including reasonable attorney's fees, that have been or may be incurred by Cary as a result of Contractor's failure to perform as required by Agreement.

6.2 Indemnities.

- 6.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold Cary, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities, and damages (including but not limited to reasonable professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Contractor of any term or condition of this Agreement or Written Amendment, (b) any breach or violation by Contractor of any applicable Law or Regulation, or (c) any other cause resulting from any act or failure to act by Contractor under this Agreement or Written Amendment, but only to the extent caused by any negligence or omission of Contractor. This indemnification shall survive the termination of this Agreement.
- 6.2.2 Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold Cary, its officers and employees harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities, and damages (including but not limited to all professionals' fees and charges and all court or arbitration or other dispute resolution costs), by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes, or products of a particular manufacturer expressly required by Cary in writing. If Contractor has reason to believe the use of a required design, process, or product is an infringement of a patent, copyright or other intellectual property, the Contractor shall be responsible for such loss unless such information is given to Cary immediately upon becoming aware of such possible infringement. This indemnification shall survive termination of Agreement.
- 6.3 Non-Exclusivity of Remedies/No Waiver of Remedies. The selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power, or remedy accruing to a party shall impair any such right, power, or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power, or remedy may be exercised from time-to-time and as often as deemed expedient.
- 6.4 Waiver of Damages. Contractor shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead, or any consequential damages.

ARTICLE 7 AMENDMENTS TO AGREEMENT

- 7.1 Changes in the Basic Services. Changes in the Basic Services and entitlement to additional compensation or a change in duration or any other term of this Agreement shall be made only by a Written Amendment executed by both parties. Cary may, without invalidating Agreement, make written changes in Services by preparing and executing a Written Amendment for review and execution by Contractor. Within three (3) days of

receipt of such Written Amendment, Contractor shall notify Cary in writing of any change contained therein that Contractor believes significantly increases or decreases Services and request an adjustment in compensation with respect thereto. If Written Amendment significantly increases or decreases Services, the compensation may be equitably adjusted.

ARTICLE 8 TERMINATION AND SUSPENSION

8.1 Termination for Convenience of Cary. This Agreement may be terminated without cause by Cary and for its convenience upon ten (10) days written notice to Contractor.

8.2 Other Termination. After ten (10) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

8.3 Compensation After Termination.

8.3.1 In the event of termination for the convenience of Cary, Contractor shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of its Compensation for Basic Services earned to date or of its unearned Compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be incurred by Cary due to errors or omissions of Contractor. Upon receiving notice of termination, Contractor shall immediately terminate any ongoing Services it is to provide hereunder.

8.3.2 In the event of termination by reason of a material breach of the Agreement by Cary, Contractor shall be entitled to the same compensation as it would have received had Cary terminated the Agreement for convenience, and Contractor 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.

8.3.3 In the event of termination by reason of a material breach of the Agreement by Contractor, Contractor shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by Cary due to errors or omissions of Contractor or by reason of Contractor's breach of this Agreement.

8.3.4 Should this Agreement be terminated for any reason, Cary shall nevertheless have the right to require Contractor to (a) turn over to Cary all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to Cary reports and such other information and materials as may have been accumulated by Contractor in the performance of this Agreement, whether completed or in process. If Contractor provides such information as outlined above, Contractor shall be compensated in accordance with this Agreement.

8.4 Survival. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder.

8.5 Suspension

8.5.1 Cary may order Contractor in writing to suspend, delay, or interrupt all or any part of the Services for the convenience of Cary.

8.5.2 In the event Contractor believes that any suspension, delay, or interruption of the Services ordered by Cary may require an extension of the duration of Basic Services or an increase in the level of staffing by Contractor, it shall so notify Cary and propose an amendment to Agreement, which shall be effective only upon the written approval of Cary. In the event the duration of Basic Services is extended or shortened or the level of staffing by Contractor is increased or decreased, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

8.5.3 A suspension, delay or interruption of the Services shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

**ARTICLE 9
OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

9.1 Ownership of 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, and other documents or instruments identified as 'deliverables' herein or which, by their nature, are designed to be delivered to Cary under this Agreement. Contractor shall turn over to Cary in good unaltered condition, reproducibles as described in Section 10.8 of all Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after termination if this Agreement is terminated for any reason. Contractor may retain one set of Deliverables for its records.

9.2 Termination. In the event of termination, for whatever reason, should Cary use drawings or other Documents or Deliverables for completion of the Project, 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 or a Contractor in connection with Cary's improper use (or misuse) of Documents and Deliverables.

9.3 Other Projects. Documents and Deliverables may be used by Cary for any reason not related to this Project without additional compensation to the Contractor. Such use of Documents and 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, its agents or employees, in connection with Cary's improper use (or misuse) of Documents and Deliverables.

ARTICLE 10 **ADDITIONAL PROVISIONS**

- 10.1 Dissemination of Information. 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 impartiality is compromised. Contractor, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of Cary. Any approval by Cary may be given with certain stipulations, such as Cary's participation in the creation of the public product or Cary's review and the option to refuse ultimate release of the final product should it 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, sales promotion, professional papers or presentations, news releases, articles, or other media products including social media, and/or Contractor's business collateral pieces. Notwithstanding the foregoing, the parties agree that 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.
- 10.2 Limited Assignment/Delegation. This Agreement shall bind Contractor and its successors and permitted assigns. Contractor shall not assign or transfer its rights or interest in this Agreement (including the right to payment), nor shall contractor delegate its duties under this Agreement, 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 this Agreement and Contractor and permitted assigns shall be subject to all of Cary's defenses. Any attempt to assign this Agreement without the prior written approval of Cary shall be void. If Contractor utilizes approved subcontractors, Contractor shall be responsible for the scheduling, completeness, quality, accuracy and timeliness of all their work. Cary has the right to request that any subcontractor be replaced due to unsatisfactory performance.
- 10.3 Governing Law. The parties acknowledge this Agreement is a "business contract" subject to the provisions of N.C.G.S. Chapter 1G and agree that this Agreement and the rights and duties of the Parties shall be governed by the laws of the State of North Carolina, without regards to conflict of laws provisions. The Parties further agree that any dispute arising from this Agreement shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to this Agreement shall be brought exclusively in Wake County, North Carolina. Service of process may be effected by delivery by any method permitted under the N.C. Rules of Civil Procedure on the office or individual specified in Paragraph 10.9 "Notice" or on any officer of the Contractor.
- 10.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Cary otherwise agrees in writing. If and to the extent the Project is subject to the dispute resolution requirement of N.C.G.S. §143-128(f1), then Contractor

shall participate in Cary's dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.

- 10.5 Entire Agreement; Amendments. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). This Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.
- 10.6 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
- 10.7 Conduct. Cary has adopted a Mission Statement and Statement of Values. To support these values, Cary has published *Working with the Town of Cary—A Guide for Temporary Employees, Contractors, Consultants, and Volunteers*. To the extent consistent with the terms and conditions of Agreement, Contractor agrees to support and abide by the policies and elements contained in the chapters titled 'Our Culture' and 'Working with the Media' in such publication.
- 10.8 Protocol for Documents and Deliverables. 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). All drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. In order to meet US Justice Department standards for Internet accessibility, all Deliverables (draft and final) intended for presentation on the Town of Cary's Web site must be provided in a manner and format compatible, consistent, and in compliance with all Cary technology standards. 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 Cary under this Agreement, Contractor shall immediately notify Cary, and if Contractor provided such electronic data, Contractor shall immediately replace same with correct versions thereof.
- 10.9 Notice. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to Cary, or to the Project Manager, or equivalent position, if to Cary, or to an officer/member of the entity that is the Contractor, if to the Contractor, or (ii) delivered or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to Cary's or Contractor's address. The date of receipt of said notice shall be the date of such delivery, in the case of delivery in person, or three days after deposit when sent by courier or mail.

The notice address for Cary shall be:

Department
Town of Cary
PO Box 8005 / 316 North Academy Street
Cary, NC 27512

The notice address for the Contractor shall be:

[Redacted]

- 10.10 Gifts and Favors. Contractor shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
- 10.11 Public Records; Confidential Records and Information. Contractor acknowledges that records made or received in connection with the transaction of public business 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). Contractor shall make Cary aware of any public records requests made in regard to Services or this Agreement. If Contractor, its employees or subcontractors, during provision of Services, becomes aware of or has access to confidential records or information otherwise protected from disclosure by Federal or State law (“Confidential Information”), Contractor, its employees and subcontractors, shall not disclose any such Confidential Information.
- 10.12 Resolving Discrepancies. Except as otherwise stated in Agreement, the provisions of Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively “Other Standards”), provided that if any of the Other Standards impose a more stringent standard or obligation upon Contractor than in the Agreement, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement and the Other Standard.
- 10.13 Electronic Version of Agreement. Cary may convert a signed original of this Agreement to an electronic record pursuant to an approved North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of this Agreement shall be deemed for all purposes to be an original signed Agreement.

- 10.14 Verification of Work Authorization. Contractor, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.
- 10.15 No Third Party Beneficiaries. There are no third party beneficiaries to Agreement.
- 10.16 Independent Contractor. Contractor is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by Contractor to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of Contractor only. Contractor shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. 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 the project and shall not again be employed on it except with the prior written consent of Cary. No extension to any "Milestone Date" or completion date will be granted for replacement of such personnel or subcontractors.
- 10.17 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.
- 10.18 Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. §159-28) has been affixed and signed by the Town of Cary finance officer or deputy finance officer.
- 10.19 Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit Cary's police powers or regulatory authority.
- 10.20 No Waiver of Immunity. Nothing in this Agreement 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 this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.
- 10.21 Further Assurances. Contractor agrees that it will cooperate with Cary and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as Cary may reasonably request from time to time in order to effectuate the provisions and purposes of Agreement.

- 10.22 Federal Funds. The Contractor shall make all necessary inquiries to correctly identify the source of funding for Agreement. If the source of funds for Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), unless a more stringent state or local law or regulation is applicable: 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. § 200.322); Record Retention Requirements (2 CFR § 200.334); Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216); and Domestic Preferences for Procurements (2 C.F.R. § 200.323).
- 10.23 Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. (2) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (3) References to a “Section” or “section” or “paragraph” shall mean a section or paragraph of this Agreement. (4) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (5) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (6) “Duties” includes obligations. (7) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (8) The word “shall” is mandatory. (9) The word “day” means calendar day. (10) Normal business hours means Monday through Friday from 8:00 a.m. until 5:00 p.m. Eastern Standard Time.
- 10.24 Emergencies. Notwithstanding anything else in this Agreement, while federal, state, or local state(s) of emergency are in 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, Wake County, or Chatham County, unless mutually agreed to by Cary and Contractor.
- 10.25 Electronic Signatures. Contractor acknowledges and agrees that the electronic signature application DocuSign may be used, at the sole election of Cary, to execute this Agreement and any associated documents. By selecting “I Agree,” “I Accept,” or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, Contractor consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Contractor's signature as if actually signed by Contractor in writing. Contractor also agrees that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. Contractor acknowledges and agrees that delivery of a copy of this

Agreement or any other document contemplated hereby, through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

Specifically incorporated into this Agreement are the following attachments, or if not physically attached, are incorporated fully herein by reference:

List Attachments here

In cases of conflict between this Agreement and any of the above incorporated attachments or references, the terms of this Agreement shall prevail.

Remainder of page left blank intentionally.

SAMPLE

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s), and Cary has executed with the signature of its Town Manager or Designee.

Contractor - Insert Name

By: _____
(signature)

Name: _____
(typed or printed name)

Title: _____

Date: _____

Town of Cary

By: _____
(signature)

Name: _____
(typed or printed 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 A – Basic Services/Scope of Services

Any services described in Agreement as Basic Services are Basic Services to be provided to Cary by Contractor. Additionally:

- the Town of Cary’s Request for Proposals, entitled [redacted] Town of Cary Project [redacted], dated [redacted]; and Contractor’s Proposal entitled [redacted] and dated [redacted] further describe Basic Services. ***Use if Applicable**
- Basic Services are further described below and in Contractor’s attached Proposal.

SAMPLE

**Attachment B –
Insurance Certificate**

[Attach Insurance Certificate Provided]

SAMPLE