



# **REQUEST FOR QUALIFICATIONS**

**RFQ #354-UT26-30**

**Project Title: On-Call Subsurface Utility Engineering (SUE) Services**

**Issue Date: May 22, 2026**

**Due Date: June 17, 2026, at 5:00 PM ET**

**Issuing Department: Utilities**

**Direct all inquiries concerning this RFQ to:**

Zach Rotstein, EI

Project Manager

Email: [zach.rotstein@carync.gov](mailto:zach.rotstein@carync.gov)

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# 1 INTRODUCTION

## 1.1 Purpose & Background

The Town of Cary is seeking one or more qualified firm(s) with which to contract for the following services:

The Town of Cary, hereafter referred to as the “Town”, is issuing this Request for Qualifications (RFQ) to solicit proposals from qualified firms, hereafter referred to as the “Professional”, to provide Subsurface Utility Engineering (SUE) services for the Town. The categories and scope of services for this RFQ are listed in Section 2. The Project is to establish the location of existing underground utilities within the proposed project limits of various construction projects in the planning, design, preconstruction, or construction phase. The SUE services required for these types of projects would be an on-call and as needed basis for two (2) years, with a two (2) year optional extension. At the sole discretion of the Town, one or more Professionals may be selected and awarded contracts under this RFQ. Contracts will be set up on a unit cost basis with individual task orders for each project. Task orders will be funded through existing Town projects or operational funds.

The Town reserves the right to cancel the program any time and create a new program as needed. Selected Professionals that do not meet the Town’s performance expectations, routinely decline opportunities to participate in projects offered through the program, or lose significant internal expertise submitted with their original RFQ response/Proposal may be dropped from the program. A Master Agreement for On-Call Subsurface Utility Engineering (SUE) Services will be the basis of the contract with associated Task Orders for each project which outlines a particular project’s scope of work (see Appendix III).

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 (NCeVP) at: <https://evp.nc.gov/>.

## 1.2 RFQ Timeline

Provided below is a list of the anticipated schedule of events related to this solicitation. The Town of Cary reserves the right to modify and/or adjust this schedule to meet the needs of the project. All times shown are Eastern Time (ET):

RFQ Process	Date and time
RFQ Advertisement Date	May 22, 2026
Deadline for written questions	June 3, 2026
Town Response to Questions (anticipated)	June 10, 2026
<b>Submittal Due Date and Time</b>	<b>June 17, 2026, 5:00 PM</b>

### 1.3 Questions

Requests for clarification and questions to this RFQ must be received by the Town not later than the date shown above in Section 1.2, entitled “RFQ Timeline”, for the submittal of written inquires. The Town will not entertain any further questions after the due date. All questions related to this solicitation must be submitted in writing (via email) to the following individual:

Contact Name	Email Address
Zachary Rotstein, EI	Zach.rotstein@carync.gov

Indicate “**RFQ #354-UT26-30 – Questions**” in the subject of the email. Questions submitted via telephone will not be answered.

The Firm’s failure to request clarification and submit questions by the date in the RFQ Timeline above shall be considered to constitute the Firm’s acceptance of all Town’s requirements. The Town shall issue addenda reflecting questions and answers to this RFQ, if any, which shall be posted to the [NCeVP Website](#). 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 RFQ, shall be considered authoritative or binding. Respondents shall be entitled to rely *only* on written material contained in an Addendum to this RFQ.

**It is important that all Respondents submitting to this RFQ periodically check the NCeVP website for any Addenda. It is the Respondent’s responsibility to ensure that all addenda have been reviewed and, if required, signed and returned.**

### 1.4 Submittal Requirements and Contact Information

Electronic responses ONLY will be accepted using the eBid button displayed on the NC IPS website. In order to submit proposals electronically, interested parties must be logged into IPS. Registration information is available at [NC Electronic Vendor Portal \(eVP\)](#). Proposals must be clearly marked with name of the submitting company, the RFQ number and RFQ title (i.e., **Company Name 354-UT26-30 On-Call SUE Services**).

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 1.2. 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 RFQ that cannot be met must be indicated in the proposal. Proposers must respond to the entire Request for Qualifications (RFQ). Any incomplete proposal may be eliminated from competition at the discretion of Cary.

It is the responsibility of the Firm to ensure that their response arrives at the designated location specified in this Section by the due date and time specified in Section 1.2 RFQ Timeline.

### **1.5 Rights to Submitted Material**

All proposals and supporting materials, as well as correspondence relating to this RFQ, shall become the property of the Town. The content of all submittals will be held confidential until the selection of the firm is made. Proposals will be reviewed by the Evaluation Team, as well as other Town staff and members of the general public who submit public record requests. Any proprietary data must be clearly marked. In submitting a Proposal, each Prospective Proposer agrees that the Town may reveal any trade secret materials contained in such response to all Town staff and Town officials involved in the selection process and to any outside consultant or other third party who serves on the Evaluation Team or who is hired by the Town to assist in the selection process. Proposals marked entirely as “confidential”, “proprietary”, or “trade secret” will be considered non-responsive and will be removed from the evaluation process.

### **1.6 Communications**

All communications of any nature regarding this RFQ with any Town staff, elected Town officials, evaluation committee members are strictly forbidden from the time the solicitation is publicly posted until award. Questions must be submitted in writing to the individual designated in Section 1.3 prior to the deadline provided in Section 1.2. Violation of this provision may result in the Firm’s proposal being removed from consideration.

### **1.7 Lobbying**

By responding to this solicitation, the Firm certifies that it has not and will not pay any person or firm to influence or attempt to influence an officer or employee of the Town or the State of North Carolina, or any elected official in connection with obtaining a contract as a result of this RFQ.

### **1.8 Gifts and Favors**

Contractor shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. §14-234, N.C.G.S. §133-1, and N.C.G.S. §133-32

### **1.9 Proposer Expenses**

The Town of Cary will not be responsible for any expenses incurred by any Firm in the development of a response to this Request for Qualifications or any other activities associated with this procurement including but not limited to any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to Town of Cary and/or its representatives. Further, the Town of Cary shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended Firm even if the awarding authority for each entity has formally accepted a recommendation.

### **1.10 Proposer Acceptance**

Submission of any proposal indicates a Proposer’s acceptance of the conditions contained in this RFQ unless clearly and specifically noted otherwise with the proposal. The Town of Cary has the sole discretion and reserves the right to cancel this RFQ, and to reject any and all proposals, to waive any and all informalities and/or irregularities, if it

is deemed to be in the Town's best interests to do so. The Town of Cary reserves the right to accept or reject any or all of the items in the proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual Firms if it is deemed in the Town of Cary's best interest. Moreover, the Town of Cary reserves the right to make no selection if proposals are deemed not in the best interest of the Town of Cary.

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## 2 QUALIFICATIONS PACKAGE

Responses must follow the format outlined below. The Town may reject as non-responsive at its sole discretion any submittal that does not provide complete and/or adequate responses or departs in any substantial way from the required format. Total proposal length shall be limited to twenty (20) total .pdf pages. The forms in the appendix do not count toward the page limit.

### 2.1 Request for Qualifications Required Document Format

Responses should be divided into sections, listed sequentially as follows:

#### Section 1: Cover Letter

Provide an introduction letter summarizing the unique qualifications of your Firm to meet the needs of this project. This letter should be presented on the Firm's official letterhead and signed by an authorized representative who has the authority to enter into a contract with the Town on behalf of the Firm. Include the name, title, address, telephone and email address of the individual who serves as the point of contact for this solicitation.

#### Section 2: Corporate Background and Experience

Include background information on the Firm and provide detailed information regarding the Firm's experience with similar projects. Provide a list of all similar on-call contracts performed in the last five (5) years that your firm has been a part of, accompanied by detailed summaries of representative projects and at least three references, including contact persons, firm, telephone number and email address.

Include the total amount invoiced for each listed project, the length of the project, and list of personnel involved in the project who are also proposed for the subject project named in this solicitation. Failure to provide a list of all similar contracts in the specified period may result in the rejection of the Firm's proposal. The evaluation team reserves the right to contact any or all listed references, and to contact other public entities regarding past performance on similar projects.

#### Section 3: Project Understanding, Approach and Schedule

Provide a comprehensive narrative, outline, and/or graph demonstrating the Firm's understanding and approach to accomplishing a task order as outlined in the Scope of Work section of this RFQ. Include discussion of proposed methodologies, techniques, and procedures for each work item included in the task order. Provide a breakdown and description of tasks assigned per team member. Describe the hierarchy of the management of the task order. Describe quality control methods to be used during completion of the task order and provide suggestions for any additional services which may enhance the value and/or affect the overall economy and effectiveness of the task order.

Include a proposed time schedule for completion of the key tasks in each phase and the method and person responsible to assure that the time schedule and the Town's budget will be met.

## **Section 4: Team Experience and Certifications/Qualifications**

Identify the Project Manager for the firm who shall coordinate providing services under this Agreement. The Project Manager shall be the primary point of contact to initiate work

under the Agreement with the necessary authority to execute agreements and negotiate compensation.

Provide an Organizational Chart of the project team specifying the dedicated Project Manager, key personnel, and sub-consultants assigned to the team and the availability of backup personnel that will support this Project.

Include a brief summary identifying roles and responsibilities and general qualifications (i.e., professional registrations, certifications and/or licenses) of each team member (including sub-consultants) in disciplines appropriate to the Project, as well as education, availability to work on this Project, experience, years of experience (with current firm and other firms). Please do not list firm staff not directly working on the Project team. If more than one Project Manager or team is desired, please include this information and describe why this is necessary and how it is anticipated to work.

### **2.2 Hourly Rates**

This solicitation is being issued in accordance with NCGS 143-64.31, otherwise known as the Mini-Brooks Act, and therefore price cannot and will not be a determining factor in the selection of the successful contractor. One copy of the hourly rates for all proposed project personnel should be uploaded as a separate electronic submission with the same naming style as noted in Section 1.4 (i.e., **Company Name 354-UT26-30 Hourly Rates**). Appendix I is provided for this purpose if needed.

### **2.3 Qualifications Package Documents**

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

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### **3 PROPOSAL EVALUATION**

#### **3.1 Evaluation Criteria**

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

- Corporate Background and Experience
- Project Understanding, Approach and Schedule
- Team Experience and Certifications/Qualifications

#### **3.2 Final Selection**

Proposals will be reviewed after opening and will be ranked in order of choice, at which point contract negotiations will begin with the most qualified firm. If negotiations are unsuccessful, the Town will then pursue negotiations with the next most qualified firm.

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 general conditions and specifications of the RFQ, including the Contractor's fee proposal, and/or written correspondence applicable to the RFQ, may become part of the contract documents. Failure of the awarded Contractor to perform as represented may result in contract cancellation.

#### **3.3 Notice to Proposers Regarding RFQ 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 RFQ, and to comply with all requirements and specifications provided herein. Proposers are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFQ.

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## 4 SCOPE OF SERVICES

Awarded Contractor shall provide services, all as set forth in this RFQ and more particularly described in this Section 4.

The specific Scope of Services are described in this section. The selected Professional(s) shall confirm their ability to provide all the following scope of services as part of their Proposal.

**Designating – Quality Level B:** Determine the existence and horizontal location of underground utilities using surface geophysical techniques.

- Coordinate with utility providers in researching the location of existing facilities. Secure all record drawings, plats, maps, and other necessary information as supplied by the utility providers. To the extent practicable, obtain information as to the age, size, material properties, and general condition of the subsurface utilities.
- Designate, record, and mark the horizontal location of existing underground utilities.
- Determine and inform the Town of the approximate depth of all existing utilities as determined by subsurface utility designating techniques when readings appear valid.
- Identify and resolve any discrepancies between information provided by utility providers and utility locations identified by Subsurface Utility Engineering work.
- Maintain horizontal accuracy of +/- 1.5 feet in the marking of lines.
- Provide recommendations for subsequent, more detailed investigation when deemed necessary by the Town.

**Locating – Quality Level A:** Determine the precise horizontal and vertical position, size, condition, material, and other characteristics of underground utilities at critical points using vacuum excavation or other comparable means.

- Obtain and review plans furnished by the Town of Cary showing areas requiring locating (test holes) sites within the project limits.
- Neatly cut and remove existing paving within the cut area not to exceed 225 square inches. Excavate using a method enabling vertical and horizontal exploration through this cut.
- Excavate test holes in such a manner as to prevent any damage to the wrappings, coatings, or other protective coverings present on underground utilities.
- Be responsible for any damage to existing utilities, pavement, or other surface features caused by the excavation.
- Backfill with approved material around the utility up to the ground surface or pavement subgrade.
- Furnish, install, and color code a permanent above ground marker (i.e., P.K. nail, peg, steel pin, or hub) directly above the centerline of the structure and record the elevation of the marker. Occasionally, the Town may require a 3M

- marker ball to be placed within 2-ft of the surface. The Town will either provide the marker balls or negotiate to include them.
- All horizontal and vertical data shall meet topographic survey standards in accordance with 21 NCAC 56.
  - Provide the following test hole information on a certification form to the Town:
    - a. Elevation of top and/or bottom of utility tied to datum of the furnished plan, accurate to +/- 0.05 feet (15 millimeters).
    - b. Elevation of existing grade over utility test hole.
    - c. Horizontal location referenced to project coordinate datum.
    - d. Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
    - e. Utility structure material compositions and condition.
    - f. Identification of benchmarks used to determine elevations.
    - g. Pavement thickness and type.
    - h. Soil type and site conditions.
  - All completed locating services shall be certified by a professional land surveyor of the firm. The Professional shall be responsible for the assurance of all information presented to the Town.
  - Provide additional surveying, at an hourly rate, of edge of pavement, curb line, etc. in the vicinity of SUE utility locations if requested by the Town.
  - Provide a permanent restoration of the pavement within the limits of the original cut at the time of the backfill. The Professional shall be responsible for maintaining the integrity of the pavement restoration for 1 year.
  - Provide complete cleanup of work site.

### **General Requirements and Deliverables:**

- Provide all necessary equipment and support personnel, including surveying capability, to secure the data in the prescribed format appropriate to the associated quality level.
- Professional shall provide all traffic control and maintenance required to perform the work. Traffic control and maintenance shall be performed in accordance with Federal Highway Administration's Manual of Uniform Traffic Control Devices (MUTCD), the North Carolina supplement thereto as prepared by the North Carolina Department of Transportation (NCDOT), and the requirements of the jurisdiction having authority. Professional shall notify the Town of Cary Traffic Management Center and Public Works Department in advance of lane closures.
- Professional shall obtain all necessary permits from the NCDOT and/or local jurisdictions prior to commencing work within the public rights-of-way. Copies of such permits shall be provided to the Town of Cary. Any permit fees shall be a reimbursable cost included in the Professional's invoice to the Town.
- For any work required on private property, Professional shall obtain written permission from the property owner for the Professional and the Town of Cary to enter the premises.

- All work shall be performed in accordance with ASCE Standard 38-02: Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.
- All technical memoranda, reports, and certifications shall be submitted in electronic form to the Town in read-only MS-Windows compatible format (including both .pdf and HTML formats). All utility information obtained by SUE shall be delivered to the Town in CAD-generated drawings and shall be provided on electronic media downloadable onto an AutoCAD-based system compatible with the Town's current AutoCAD version.
- Work to be performed will be authorized by task orders issued by the Town of Cary specific to the applicable project, and shall be invoiced accordingly, such that it can be tied to a specific Town of Cary project. The contract will not guarantee the amount of work, if any, available under the contract.

The Town of Cary requires that all work conducted for and on behalf of its residents be performed in a courteous and professional manner and that the rights and needs of the residents be recognized at all times. Adherence to this philosophy may be a factor in determining the quantity of SUE work to be performed by the Professional

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## 5 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 potential contractor has read and understands the conditions set forth in this RFQ to include any addenda, and all attached exhibits and agrees to them with no exceptions.

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_



**APPENDIX II**  
**References**

Offeror **must** supply at least (3) three Governmental Agency or Private Company references for which Subsurface Utility Engineering 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:** \_\_\_\_\_

**Reference #4**

**Agency or Firm Name:** \_\_\_\_\_

**Business Address** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Phone Number:** (\_\_\_\_) \_\_\_\_\_ **Fax Number:** (\_\_\_\_) \_\_\_\_\_

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

**Reference #5**

**Agency or Firm Name:** \_\_\_\_\_

**Business Address** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Phone Number:** (\_\_\_\_) \_\_\_\_\_ **Fax Number:** (\_\_\_\_) \_\_\_\_\_

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

**APPENDIX III**  
**Sample Master Services Agreement Template**

**MASTER AGREEMENT  
FOR  
ON-CALL PROFESSIONAL SERVICES FOR \_\_\_\_\_**

This Master Agreement for On-Call DESIGNER Services for \_\_\_\_\_ (“Agreement” or “Master Agreement”), is made by and between the Town of Cary (hereafter, “Town”) and \_\_\_\_\_, a professional \_\_\_\_\_ with a partner or principal registered in North Carolina as a licensed \_\_\_\_\_ and with offices in North Carolina (hereafter, “DESIGNER”).

**RECITALS**

WHEREAS, the Town is procuring “on-call” professional \_\_\_\_\_ services; and

WHEREAS, Town issued a “Request for Qualifications, \_\_\_\_\_” dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“RFQ”);  
and

WHEREAS, DESIGNER was one of several \_\_\_\_\_ firms responding to RFQ with a Proposal entitled \_\_\_\_\_ and dated \_\_\_\_\_ (“Proposal”) and is willing to serve as one of Town’s professional \_\_\_\_\_ on an “on-call” basis for each project authorized under this Agreement.

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  
PURPOSE, EFFECTIVE DATE AND SCOPE OF SERVICES**

- 1.1 The purpose of the Town’s ‘on call’ process is to secure more than one \_\_\_\_\_ professional to provide professional on-call \_\_\_\_\_ services. The purpose of this Agreement is to provide the basic terms and conditions by which DESIGNER will provide its services to the Town, as the need for DESIGNER’S services may arise, and in accordance with the standards and requirements as described herein, in Attachment A, and in each Task Order (“Services” or “Basic Services”). The Recitals are incorporated into Agreement.
- 1.2 This Agreement shall be effective upon execution by both parties (“Effective Date”) and shall have a term of two (2) years (*modify as necessary with extension options - i.e. “This Agreement may be renewed on an annual basis up to two (2) additional years. Any extension to this Agreement shall be made by written amendment provided neither party to the Agreement is in default and both Parties desire to extend the term.”*)
- 1.3 Town hereby engages DESIGNER to provide ‘on-call \_\_\_ services’ and DESIGNER agrees to perform such services for projects (“Projects”) as may be set forth in subsequent,

fully executed task orders (“Task Order”). Projects shall commence and terminate as provided in the applicable Task Order(s) and shall be performed in accordance with any schedule contained in the applicable Task Order (sometimes, “Milestone Dates”). If one or more Task Orders are executed and undertaken but not completed prior to the termination of this Master Agreement, then and in that event this Master Agreement shall continue as to incomplete Projects until such time as the last of Projects undertaken hereunder is satisfactorily completed. The process for executing Task Orders is set forth in Article 2.

- 1.4 The Town has no obligation to provide DESIGNER with any work hereunder and does not guarantee the issuance of any minimum number of Task Orders under this Agreement.
- 1.5 DESIGNER represents and agrees that now and continuing for the term of Agreement, DESIGNER:
  - 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 Town;
  - c. shall act in accordance with generally accepted standards of DESIGNER’S practice applicable to the locality; and shall comply with this Agreement, applicable Task Orders, and with all applicable federal, state and local laws, ordinances, codes, rules and regulations (collectively “Laws and Regulations”);
  - d. 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 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 or an applicable Task Order, time being of the essence;
  - f. shall work in good faith with Town to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Services; and
  - g. the individual(s) signing Agreement have the right and power to do so and bind DESIGNER to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

## **ARTICLE 2 COMMENCEMENT OF SERVICES**

- 2.1 Services for a project shall be undertaken by DESIGNER only after execution by both parties of a Task Order. Each Task Order shall include a “scope of work” for that particular Project prepared by Town outlining the required Services and parameters to be included in the work and such other materials and requirements as Town may deem necessary. Unless specifically excluded by a Task Order, all requirements of this Agreement are deemed to be incorporated into every Task Order. In addition, each Task Order shall include the fixed fee total compensation for Services (or other method of compensation as may be agreed upon by the parties), Project schedule including date by which Services shall be completed, and all

deliverables to be delivered. If DESIGNER proposes to use subcontractors for a portion of its Services, Task Order shall also include information about such subcontractor(s). Each Task Order shall be considered an integral part of this Agreement and subject to the terms and conditions hereof. The scope of work for each Project shall be the Basic Services as defined herein and as further supplemented by terms of Task Order.

- 2.2 DESIGNER hereby authorizes the following to execute Task Orders and represents and warrants that these individuals and/or positions have the right and power to bind DESIGNER to the obligations set forth in an executed Task Order:

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If no names or position titles are listed above, then the only individuals authorized to execute a Task Order are those that can otherwise bind the company to execute contracts.

- 2.3 DESIGNER may begin work on a Project upon written execution of Task Order by Town and DESIGNER, unless the Task Order requires that work commence only upon a notice to proceed from Town. The time allowed for DESIGNER to complete its work for each Project shall be specified in the applicable Task Order.
- 2.4 In consideration of Services performed under any Task Order, Town shall pay DESIGNER compensation as specified in Task Order. Payment shall be made as provided in Article 4.1. Unless specifically designated and described in Task Order, there are no separately reimbursable expenses.

### **ARTICLE 3 RESPONSIBILITIES OF PROFESSIONAL**

3.1 Standard of Care.

3.1.1 DESIGNER 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 DESIGNER are in accordance with all Laws and Regulations and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay the design or construction activities of the Project.

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

3.1.3 In addition to any other damages that might be due to Town hereunder in connection with the breach of this Agreement (as supplemented by Task Orders) by DESIGNER,

DESIGNER shall reimburse Town for costs, damages, and expenses that are the result of errors, omissions, or delays of DESIGNER, including those of DESIGNER'S subcontractors.

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

- 3.2 Key Personnel and Subcontractors. The DESIGNER and the DESIGNER'S subcontractors for the Project, along with their key project personnel, should be listed in each Task Order. No changes in DESIGNER'S personnel or subcontractors designated in Task Order as those who will provide Services shall be permitted except with the prior written consent of Town, 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 DESIGNER provides any Services through the use of subcontractors, DESIGNER shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, DESIGNER'S contracts with subcontractor(s) shall include a provision that, in the event this Agreement or a Task Order is terminated for cause by Town, Town may take assignment of such contract of DESIGNER with their subcontractor. If Town notifies DESIGNER in writing that any person on the Project providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again provide Services except with the prior written consent of Town. No automatic term or Milestone Date extension will be granted for replacement of such personnel or subcontractors.
- 3.3 Taxes, Permits and Licenses. Unless otherwise provided, DESIGNER is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

## **ARTICLE 4 COMPENSATION FOR SERVICES**

### 4.1 Compensation for Basic Services.

4.1.1 The total contract amount for all Task Orders executed pursuant to this Agreement shall not exceed \$ \_\_\_\_\_ over the \_\_\_ year term of this Agreement, unless changed by duly authorized written amendment. Compensation for DESIGNER'S Services for each specific Project shall be as set forth in applicable Task Order. Projects suitable for this on-call Master Agreement will have an anticipated cost of no greater than \$ \_\_\_\_\_. There shall be no reimbursable expenses unless explicitly permitted by the applicable Task Order.

4.1.2 Payment shall be made within thirty (30) days of receipt by Town of an acceptable invoice upon completion of the Project or each of the phases or tasks as set forth in Task Order. All invoices must include a Purchase Order Number. Submit invoices to Town of Cary, PO BOX 3052, Orem, UT 84057 or electronically via email with pdf attachment to

[TownofCaryAP@iPayables.com](mailto:TownofCaryAP@iPayables.com). Invoices not submitted following these instructions will result in delayed payment.

4.1.3 Invoices shall be in form and substance acceptable to the Town. In the event the Town finds any part of an invoice not to be acceptable, it shall identify to the DESIGNER the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. The Town shall have the right to deduct from payments to the DESIGNER any costs or damages incurred, or which may be incurred, by the Town as a result of the DESIGNER'S failure to perform Services on any portion of a Task Order following reasonable notice and opportunity to cure such nonperformance by DESIGNER.

4.2 Compensation for Additional Services. Additional Services shall be as set forth in a Task Order or Written Amendment to this Agreement. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to Town. In the event the Town finds any part of an invoice not to be acceptable, it shall identify to the DESIGNER the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. Town shall have the right to deduct from payments to DESIGNER any costs or damages incurred, or which may be incurred, by Town as a result of DESIGNER'S failure to perform any Service, following reasonable notice and opportunity to cure such nonperformance by DESIGNER. If the Task Order or Written Amendment does not specify method of compensation, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

4.3 Accounting Records and Other Records. Accounting records of DESIGNER'S compensation for Services and Additional Services shall be maintained by DESIGNER in accordance with generally accepted accounting practices and shall be available for inspection and copying by Town at mutually convenient times for a period of three (3) years after termination of this Agreement.

## **ARTICLE 5 RESPONSIBILITIES OF TOWN**

5.1 With Respect to Task Orders under this Agreement, Town shall:

5.1.1 Provide full information to DESIGNER as to its requirements for each Project.

5.1.2 Designate in writing one or more persons to act as Town representative to coordinate the work of each Project with DESIGNER.

## **ARTICLE 6 INSURANCE**

6.1 Insurance. DESIGNER and DESIGNER'S permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense during the term and for three years after the termination of this Contract insurance for the following: protection from claims under

Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of DESIGNER'S employees or subcontractors as required by state law; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; 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 Town 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 Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to DESIGNER'S performance under this Contract.

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

The DESIGNER 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 the Town.

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

*Insurers*

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

*Additional Insured Status*

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

*Notice of Cancellation*

Each policy shall provide that the Town 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, DESIGNER shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

*Primary*

DESIGNER'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 Town, its agents or agencies, it being the intention of the parties that the insurance policies shall protect Town 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 Contract. The Town's review or acceptance of certificates of insurance shall neither relieve DESIGNER 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 Contract.

Certificate Holder address should read:

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

*Special Risks or Circumstances*

The Town 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 7  
DAMAGES AND REMEDIES**

**7.1 Services, Reimbursement, and Deductions.**

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

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

7.2 Indemnities.

7.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, DESIGNER shall indemnify and hold Town, 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) (collectively, "Claim(s)"), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by DESIGNER of any term or condition of this Agreement, Written Amendment or any Task Order; (b) any breach or violation by DESIGNER of any applicable Law or Regulation; or (c) 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 DESIGNER or its derivative parties (as defined in N.C.G.S. 22B-1 as it exists on the date of this Agreement) is a proximate cause of the Claim. This indemnification shall survive the termination of this Agreement.

7.2.2 Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, DESIGNER shall indemnify and hold Town, its officers and employees harmless from and against all Claims, by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights ("IP Indemnity"), except with respect to designs, processes or products of a particular manufacturer expressly required by the Town in writing. If DESIGNER 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 DESIGNER shall be responsible for such loss unless such information is promptly given to the Town. If and to the extent this IP Indemnity is not permitted by Laws and Regulations, DESIGNER agrees that any Claims that would have been subject to the IP Indemnity are subject to the General Indemnity provisions of paragraph 7.2.1.

7.3 Non-Exclusivity of Remedies/No Waiver of Remedies. A party's 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.

7.4 Waiver of Damages. DESIGNER 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 8  
AMENDMENTS TO AGREEMENT**

- 8.1 Changes in the Basic Services. Changes to this Agreement or changes in any Task Order including entitlement to additional compensation or a change in duration or any other term of this Agreement or a Task Order shall be made only by a Written Amendment to this Agreement or a Task Order Amendment executed by both parties. Town may, without invalidating a Task Order, make written changes in Scope of Services by preparing and executing a Task Order Amendment for review and execution by DESIGNER. Within three (3) days of receipt of such Task Order Amendment, DESIGNER shall notify Town in writing of any change contained therein that DESIGNER believes significantly increases or decreases Services and request an adjustment in compensation with respect thereto. If Task Order Amendment significantly increases or decreases Scope of Services, the compensation may be equitably adjusted.

**ARTICLE 9  
TERMINATION AND SUSPENSION**

- 9.1 Termination for Convenience of Town. This Agreement and/or any Task Order hereunder may be terminated without cause by Town and for its convenience upon ten (10) days written notice to DESIGNER.
- 9.2 Other Termination. After ten (10) days written notice to the other party of its material breach of the Agreement or a Task Order, this Agreement and/or any Task Order may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.
- 9.3 Compensation After Termination.

9.3.1 In the event of termination of any Task Order for the convenience of Town, DESIGNER shall be paid that portion of its fees and expenses that it has earned under said Task Order to the date of termination, plus five percent (5%) (i) of its Compensation for such Task Order undertaken but not yet completed, or (ii) of its unearned Compensation for such Task Order undertaken but not yet completed, whichever is less, less any costs or expenses incurred or anticipated to be incurred by Town due to errors or omissions of DESIGNER. Upon receiving notice of termination, DESIGNER shall immediately terminate any ongoing Services it is to provide under the applicable Task Order.

9.3.2 In the event of termination by reason of a material breach of a Task Order by Town, DESIGNER shall be entitled to the same compensation as it would have received had Town terminated the Task Order for convenience, and DESIGNER 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.

9.3.3 In the event of termination by reason of a material breach of a Task Order by DESIGNER, DESIGNER 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 Town due to errors or omissions of DESIGNER or by reason of DESIGNER'S breach of the Task Order.

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

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

9.5 Suspension.

9.5.1 Town may order DESIGNER in writing to suspend, delay or interrupt all or any part of the Services for the convenience of Town.

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

9.5.3 A suspension, delay or interruption of a Project or Task Order shall not terminate this Agreement or the applicable Task Order; 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 10 OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

10.1 Ownership of Documents and Deliverables. Town 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 Town under this Agreement. DESIGNER shall turn over to Town in good unaltered

condition, reproducibles as described in Section 11.8 of all Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after completion of Project or after termination if this Agreement is terminated for any reason. DESIGNER may retain one set of Deliverables for its records.

- 10.2 Termination. In the event of termination, for whatever reason, should Town use Documents or Deliverables for completion of the Project, Town shall, to the extent allowed by law and covered by insurance, indemnify and hold DESIGNER 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 Town or a contractor in connection with Town's improper use (or misuse) of Documents and Deliverables.
- 10.3 Other Projects. Documents and Deliverables may be used by Town for any reason not related to a Project undertaken pursuant to a Task Order without additional compensation to the DESIGNER. Such use of Documents and Deliverables by Town for other projects shall be at the full risk of Town and Town shall indemnify and hold DESIGNER 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 Town, its agents or employees, in connection with Town's improper use (or misuse) of Documents and Deliverables.

## **ARTICLE 11 ADDITIONAL PROVISIONS**

- 11.1 Dissemination of Information. Town takes efforts to assure that accurate information about the Town is disseminated such that neither the public trust nor the public's perception of Town impartiality is compromised. DESIGNER, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of Town. Any approval by Town may be given with certain stipulations, such as Town's participation in the creation of the public product or Town's review and the option to refuse ultimate release of the final product should it fail to meet the Town'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 DESIGNER'S business collateral pieces. Notwithstanding the foregoing, the parties agree that DESIGNER may list Town as a reference in response to requests for proposal and may identify the Town as a customer in presentations to potential customers.
- 11.2 Limited Assignment/Delegation. This Agreement shall bind DESIGNER and its successors and permitted assigns. DESIGNER shall not assign or transfer its rights or interest in Agreement (including the right to payment), nor shall DESIGNER delegate its duties under Agreement, without the Town's written consent, which the Town may grant or withhold in its sole discretion. The Town's consent shall not release DESIGNER of any obligation under Agreement and DESIGNER and permitted assigns shall be subject

to all of Town's defenses. Any attempt to assign Agreement Task Order without the prior written approval of Town shall be void. If DESIGNER utilizes approved subcontractors, DESIGNER shall be responsible for the scheduling, completeness, quality, accuracy, and timeliness of all their work. Town has the right to request that any subcontractor be replaced due to unsatisfactory performance.

- 11.3 Governing Law. The parties acknowledge Agreement is a "business contract" subject to the provisions of N.C.G.S. Chapter 1G and agree that 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 Agreement shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to 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 19 'Notice' or on any officer of the Contractor.
- 11.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Town 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 DESIGNER shall participate in the Town's dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.
- 11.5 Entire Agreement; Amendments to Agreement. 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"). 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.
- 11.6 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.
- 11.7 Conduct. Town has adopted a Mission Statement and Statement of Values. To support these values, Town 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, DESIGNER 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.
- 11.8 Protocol for Documents and Deliverables. DESIGNER shall provide all Documents and Deliverables in electronic form to the Town 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 Town 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 DESIGNER notices any errors in electronic data provided to the Town under this Agreement, DESIGNER shall immediately notify Town, and if DESIGNER provided such electronic data, DESIGNER shall immediately replace same with correct versions thereof.

- 11.9 Notice. Whenever any provision of this Agreement or a Task Order requires the giving of written notice, unless otherwise provided in a particular Task Order, notice will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the Town, or to the Project Manager, or equivalent position, or officer/member of the entity that is the DESIGNER, if to the DESIGNER, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the Town's or DESIGNER'S address. The date of said notice shall be the date of such delivery or mailing.

The notice address for the Town shall be:

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

The notice address for the DESIGNER shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 11.10 Gifts and Favors. DESIGNER 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.
- 11.11 Independent Contractor. DESIGNER is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by DESIGNER to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of DESIGNER only. DESIGNER 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.

- 11.12 Public Records. DESIGNER acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by DESIGNER, the Town 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). DESIGNER shall make Town aware of any public records requests made in regard to Services or this Agreement.
- 11.13 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, its Attachments, and any Task Order hereunder 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 DESIGNER than in the Agreement, its Attachments, or a Task Order, the Other Standards shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of this Agreement, its Attachments, or a Task Order and the Other Standards.
- 11.14 Electronic Version of Agreement. Town may convert a signed original of this Agreement and any Task Order hereunder to an electronic record pursuant to an approved North Carolina Department of Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record shall be deemed for all purposes to be an original signed Agreement or Task Order.
- 11.15 Verification of Work Authorization. DESIGNER, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.
- 11.16 No Third-Party Beneficiaries. There are no third-party beneficiaries to Agreement.
- 11.17 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.
- 11.18 Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by NCGS 159-28) has been affixed and signed by the Town of Cary finance officer or deputy finance officer.
- 11.19 Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Town’s police powers or regulatory authority.
- 11.20 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 8:00a.m. until 5:00p.m. Eastern Standard Time.

- 11.21 Further Assurances. DESIGNER agrees that it will cooperate with Town and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as Town may reasonably request from time to time in order to effectuate the provisions and purposes of Agreement.
- 11.22 No Waiver of Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by Town pursuant to N.C.G.S. 160A-485 or to in any way waive Town'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 Town 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.
- 11.23 Federal Funds. DESIGNER 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); and Record Retention Requirements (2 CFR § 200.334); and 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).
- 11.24 Emergencies. Notwithstanding anything else in this Master Agreement, while federal, state, or local state(s) of emergency are in effect, or when a public health emergency has been declared, DESIGNER 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 Town and DESIGNER.

11.25 Electronic Signatures. DESIGNER acknowledges and agrees that the electronic signature application DocuSign may be used, at the sole election of the Town, 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, DESIGNER consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes DESIGNER'S signature as if actually signed by DESIGNER in writing. DESIGNER 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. DESIGNER 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:

- Attachment A – Basic Services; Hourly Rates
- Attachment B – Insurance Certificate
- Attachment C – RFQ Proposal
- Attachment D – Town of Cary RFQ and Addendum
- Attachment E – Town of Cary Task Order Template for Master Agreement

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

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

**DESIGNER (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; Hourly Rates

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

- the Town of Cary's Request for Proposals, entitled \_\_\_\_\_ Town of Cary Project \_\_\_\_\_, dated \_\_\_\_\_; and Sections \_\_\_\_/Pages \_\_\_\_ of DESIGNER'S Proposal entitled \_\_\_\_\_ and dated \_\_\_\_\_ further describe Basic Services.
  
- Basic Services are further described below.
  
- Hourly rates are listed below. The listed rates shall be utilized for development of each Task Order and may not be adjusted throughout the contract period without amendment to this Master Agreement.

SAMPLE

**Attachment B – Insurance Certificate**

*[Attach Insurance Certificate Provided by PROFESSIONAL prior to executing agreement]*

SAMPLE

**ATTACHMENT E – TASK ORDER TEMPLATE**

**TASK ORDER  
UNDER  
MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES  
Master Agreement Contract Number: (INSERT CCN#)**

This Task Order (“Task Order”), made as of by and between the Town of Cary (hereafter, “Town”) and \_\_\_\_\_ (“DESIGNER”).

**WITNESSETH**

WHEREAS, Town and DESIGNER entered into a Master Agreement for On-Call DESIGNER Services dated \_\_\_\_\_ and include all Amendments/Date and insert here (“Master Agreement”); and

WHEREAS, Town has determined it is in need of Services for \_\_\_\_\_ insert Project # and Title (“Project”), and DESIGNER desires to provide such Services.

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.

1. Recitals, Purpose and Effective Date. The Recitals and the Master Agreement are incorporated into this Task Order. Each party represents and warrants that it has in its possession and is familiar with the Master Agreement, and agrees that such does not need to be attached to this Task Order. The purpose of this Task Order is to set forth specific terms and conditions pursuant to which DESIGNER shall provide Services for the Project. The Project is further identified on Attachment 1 Scope of Work attached hereto and incorporated herein by reference. The Effective Date of this Task Order is the date on which it is executed by the last to execute this Task Order.
2. Commencement and Termination.
  - A. DESIGNER’S services on Project shall commence upon a Notice to Proceed issued by Town or as otherwise provided in Attachment 1.
  - B. If the Master Agreement terminates before the Services provided hereunder are completed, then and in that event the Master Agreement shall continue as to Project until such time as Project is satisfactorily completed.
3. Schedule, Milestone Dates. Project schedule, including date by which Services shall be completed, and all deliverables to be delivered is provided in Attachment 1.
4. Fee for Services.
  - A. The fixed fee total compensation for Basic Services is provided in Attachment 1.

B. The fee for Additional Services, if any, shall be determined as provided in Attachment 1, or, if not so provided, as provided in Agreement.

C. 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 [TownOfCaryAP@IPayables.com](mailto:TownOfCaryAP@IPayables.com) with PDF attachment. Invoices not submitted following these instructions will result in delayed payment.

5. Key Personnel and Use of Subcontractors.

A. DESIGNER'S key personnel, including any permitted subcontractors and their key personnel, are provided in Attachment 1.

B. No changes in DESIGNER'S key personnel, subcontractors, or key personnel of subcontractors designated in this Task Order as those who will provide Services shall be permitted except with the prior written consent of Town, which consent shall not be unreasonably withheld.

6. Insurance. DESIGNER represents and warrants that all insurance requirements set forth in Agreement continue to be met.

7. Amendment. This Task Order may be amended only by written amendment of the parties.

The Task Order and any documents incorporated below, represent the entire Task Order.

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

List Attachments here

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

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

**Designer -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 1 (Attach Contractor's SOW)**  
**SCOPE OF WORK**

The Project is \_\_\_\_\_

The Basic Services are \_\_\_\_\_

Project Schedule and Deliverables:

Fixed Fee Total Compensation for Basic Services:

Method of Determining Fee for Additional Services:

Key Personnel:

SAMPLE