



REQUEST FOR PROPOSALS

RFP # 354-UT25-06

Project Title: 2025 to 2029 Wastewater Flow Monitoring and Data Analysis

Issue Date: July 25, 2024

Due Date: August 30, 2024 at 2:00 PM ET

Issuing Department: Utilities

Direct all inquiries concerning this RFP to:

Lynn Brilz, P.E.

Sewer Rehabilitation Program Manager

Email: lynn.brilz@carync.gov

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1 REQUEST FOR PROPOSALS

1.1 Introduction

Cary is soliciting proposals to provide flow monitoring and data analysis for its wastewater collection system, including thirty-three (33) permanent flow monitors, seven (7) rain gauges and web-based data hosting and monitoring.

A detailed scope of services is provided in Section 3 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.ng.gov/solicitations/>.

1.2 Purpose and Background

Cary's wastewater collection system comprises approximately 1,000 miles of sewer lines ranging in size from 8 inches to 60 inches in diameter and over 28,000 manholes and serves the Towns of Cary, Morrisville, the Wake County portion of Research Triangle Park and the RDU International Airport. Cary maintains a flow monitoring network to evaluate the performance and capacity of the wastewater collection system, calibrate the collection system hydraulic model, and plan for Capital Improvement Projects.

The selected service provider will replace 33 existing flow monitors and seven (7) rain gauges with new flow monitors and rain gauges. The new flow monitors and rain gauges will transmit flow and rainfall data through cellular communication to a cloud-based monitoring application, providing remote access on a "near real-time" basis.

The contract for wastewater flow monitoring and data analysis shall be for an initial period of eighteen months, with an effective date established upon execution of the agreement, with an option to extend the agreement for up to a total of 4 additional one-year terms.

1.3 Notice to Vendors Regarding RFP Terms and Conditions

It shall be the Vendor's responsibility to read the Instructions, the Town's terms and conditions, 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 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 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, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether specific language proposed as a modification is acceptable to or will be considered by the Town. Identification of objections or exceptions to the Town’s terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.

1.4 RFP Response Timeline

The RFP process shall adhere to the following schedule:

RFP Process	Date and time	
RFP posted	July 25, 2024	
Pre-Proposal Conference (if Applicable)	N/A	N/A
Proposers Written Questions Due	August 16, 2024	2:00 PM
Town Responses to Proposers questions	August 23, 2024	2:00 PM
Proposal Submission Deadline	August 30, 2024	2:00
Contract Award	TBD	TBD
Contract Effective Date	TBD	TBD

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

1.5 Pre-Proposal Conference/Site Visit

A proposal conference is not planned for this solicitation.

1.6 Proposal Questions

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date. The Town will not entertain any further questions after the due date. Written questions shall be emailed to lynn.brilz@carync.gov by the date and time specified above. Vendors should enter “RFP #354-UT25-06: Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

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

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

1.7 Proposal Submission Requirements and Contact Information

Submittal Requirements and Contact Information

Electronic responses ONLY will be accepted using the eBid button displayed on the eVP website. 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. The Town reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the proposal. Proposers must respond to the entire Request for Proposals (RFP). Any incomplete proposal may be eliminated from competition at the discretion of the Town.

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

1.8 Rights to Submitted Material

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

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

2 PROPOSALS

Responses must follow the format outlined herein and limited to a maximum of forty (40) pages, including the cover letter. The Town may reject as non-responsive at its sole discretion any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

1. Cover Letter/Letter of Intent

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 five (5) references (including contact persons and telephone numbers) for which similar work has been performed shall be included, and the list shall include all similar contracts performed by the Proposer in the past three years. The evaluators will randomly select at least three of these references, but 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. The evaluators may check all public sources to determine whether Proposer has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts for similar contracts were not listed, the evaluators may contact the public entities to make inquiry into Proposer's performance of those contracts and the information obtained may be considered in evaluating Proposer's proposal.

3. 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 deliverable and the schedule for accomplishing each shall be included.

4. 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.

5. Cost Proposal

All costs including personnel, travel and subsistence costs, office costs, etc. shall be included in the respective items on the cost proposal sheet in Part 4 of this RFP. No additional costs will be considered for payment, unless negotiated and approved in advance.

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:

- Cover letter / Letter of Intent
- Team Organization, References (Past Experience)
- Project Understanding and Approach
- Web-Based Data Management System & Data Visualization
- Cost Proposal

2.3 Proposal Evaluation Process

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

The Town will conduct a One-Step evaluation of Proposals:

Proposals will be received from each responsive via the North Carolina electronic Vendor Portal (eVP) at <https://evp.ng.gov/solicitations/>.

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

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 Vendor's pricing position.

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

Following the initial review and evaluation of proposals, the Town intends to schedule interviews with two or three firms, at the Town's discretion, prior to completing the selection process.

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

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

2.4 Final Selection

Proposals will be reviewed after opening and will be ranked in order of choice. A recommendation will then be presented to the Town Manager for approval to negotiate a contract with the #1 choice and, if unsuccessful, to then pursue negotiations with the #2 choice. All Proposers will be notified of their standing immediately following Town's decision. Price quoted must be held firm for 90 days after the RFP is due. The Town reserves the right to make an award without further discussion of the proposal submitted. The Town shall not be bound or in any way obligated until both parties have executed a contract. The Town also reserves the right to delay the award of a contract or to not award a contract. The RFP may be awarded by individual task or total proposal, whichever is most advantageous to the Town of Cary.

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

2.5 Contract Term

The Contract shall have an initial term of eighteen (18) months, beginning on the date of contract award (the "Effective Date").

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

Unit costs may be adjusted annually as part of the contract renewal process to account for changes in labor and expenses, upon mutual agreement of the revised costs.

2.6 Invoices

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

2.7 Notice to Proposers Regarding RFP Terms and Conditions

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

3 SCOPE OF SERVICES

A. General

Cary's wastewater collection system includes a flow monitoring network comprised of 33 permanent flow monitors and seven (7) rain gauges, all of which are owned by Cary. Cary is soliciting proposals to replace its current network.

The scope of services shall include the following:

- Furnishing and installing new flow monitors and rain gauges at existing locations. All equipment to be furnished shall be owned and maintained by the Contractor. All existing equipment to be removed shall become the property of the Contractor upon installation of replacement equipment.
- Maintain cellular communication capabilities for all equipment, including cellular charges, hardware and ancillary equipment as needed.
- Provide web-based data management system for alarming and hosting of near real time and historic data.
- Review flow monitoring data for quality assurance and provide monthly summaries and analysis of data in Excel format.
- Data shall be recorded at maximum 15-minute intervals and pushed to the Web-based data management system on an hourly basis to enable retrieval by Cary's API for use in other software applications. All data collected shall be stored and accessible throughout the duration of the contract.

B. Equipment

The new flow monitors shall be ADS Triton+, ISCO Duratracker, or Hach FL900 Series. All necessary software and equipment shall be included, such as a portable flow logger, low-profile submerged depth/velocity (AV) sensor and an analyzer module.

New rain gauges shall be tipping bucket rain gauges capable of measuring rainfall in increments of 0.01 inches up to a rate of five (5) inches per hour, recorded in 15-minute intervals and shall include data logger, base station, software and all ancillary equipment required for complete installation and remote data access. Data shall be accessible by remote login to a Web-Based Data Hosting and Management Site. The site may be stand-alone or the same site for utilized for management and reporting of wastewater flow data. Equipment shall be a HOBO Rain Gauge by Onset or approved equal.

Permanent power is not available at any of the existing flow monitoring or rain gauge locations. The contractor shall provide all necessary hardware and software needed to transmit data wirelessly through cellular modems.

C. Maintenance

The contractor shall be responsible for all installation, calibration, maintenance and repair/replacement of flow monitors and rain gauges throughout the duration of the contract. Flow monitor and rain gauges shall be visited at least monthly to ensure proper functioning of equipment and data accuracy.

D. Web-Based Data Access & Management

The web-based data management system shall include dashboard access to graphics and tabular data for each monitoring site. The data management system shall allow for the export of data in CSV format for review and analysis in support of engineering studies, long-range planning efforts, and periodic review of collection system performance. All data shall be the property of the Town

of Cary. Backup copies of raw data shall be maintained by the Contractor throughout the duration of this contract and provided to the Town upon request.

Of primary importance to the Owner is data visualization and the ability to quickly and accurately view, extract or generate data, graphs, and charts as an indicator of collection system performance. **Respondents to this RFP are encouraged to demonstrate the data visualization capabilities of the data management system being proposed.** Additionally, proposals should discuss the ability of the data management system to provide access to data on a continuous *or near-continuous* basis and the ability to modify the frequency at which data is recorded and/or pushed to the web-based data management site.

The Contractor shall provide training to Town staff on the use of the software. This shall include one full day of onsite instruction at a designated Town of Cary facility. The contractor shall be available for technical support throughout the duration of the contract. Proposals should identify any licenses required and any limitations on the number of users that may access the data through the Web-Based Data Management System.

E. Data Analysis & Reporting

The contractor shall designate a project manager to serve as the primary point of contact to assist in troubleshooting data anomalies, addressing questions regarding flow trends, calibration of flow monitors or any questions pertaining to the successful performance of this contract.

Monthly data summaries shall be prepared in Excel Spreadsheet format. The summary shall include any corrections made to raw data and any data which is corrected must be flagged in a separate column indicating that it is assumed or corrected data. In addition, the summary shall include an explanation for any missing data, including equipment malfunction or monitors that have been temporarily removed to accommodate maintenance or construction activities. For meters with contributing upstream flow monitor basins, a flow balance shall be conducted monthly to compare the cumulative upstream flows with the measured flows at that respective flow monitoring site.

Since its inception, Cary's Wastewater Flow Monitoring Program has included analysis of flow data as prescribed by the 2005 Town of Cary Wastewater Master Plan Recommendations prepared by Hazen and Sawyer. Monthly reports are currently provided in Excel format including the following metrics for each site:

- ADF, Average Daily Flow
- ABF, Average Base Flow, established during periods of dry weather.
- ASF, Average Daily Sanitary Sewer Flow, determined by calculation:
 - $ASF = ABF - GWI$
- GWI, Non-Rainfall Groundwater Infiltration, estimated by analysis of early morning flows when the sanitary sewer contribution is very low. The Wastewater System Master Plan estimated early morning sewer flows by utilizing a factor of 12% of average daily sewer flow during dry weather conditions to estimate minimum sanitary flow (MSF). The difference between the early morning flows and the MSF represents an approximate estimate of GWI. GWI can also be determined empirically with the following equation.
 - $GWI = ABF - ((ABF - MBF)/0.88)$
- MSF, Minimum Sanitary Flow, by calculation, $MSF = 0.12 * ASF$.
- MBF, Minimum Base Flow, by calculation, $MBF = MSF + GWI$.
- Ratio of MBF/ABF.

- Ratio of GWI/ABF.
- Rainfall Amount and Intensity.
- Rainfall Dependent Infiltration/Inflow, (RDI/I), directly resulting from rainfall.
 - $RDI/I = \text{Total Flow Volume} - ABF$
- Peak RDI/I, maximum difference between the ABF and Total Flow hydrographs.
- PHF, Peak Hour Flow
- Peaking Factor = PHF/ADF
- Peak 15-minute Flow Depth
- Peak 15-minute Flow Velocity
- Peak 15-minute Flow Volume
- Current Full Pipe Capacity
- Total Monthly Flow
- Ratio of GWI/Inch-Diameter Miles of Upstream Contributing Sewer Mains for each meter basin.

The contractor shall continue to provide this information monthly via Excel, Power BI, or other approved format to maintain continuity of data. Additionally, Cary is currently working with a consultant to develop a new Wastewater Collection System Master Plan, which may result in a change to the way Minimum Sanitary Flow (MSF) and subsequently, Non-Rainfall Groundwater Infiltration (GWI) is calculated. Changes in the analysis and presentation of data will be implemented in conjunction with an annual renewal of this agreement as part of the contract renewal process.

F. Flow Monitor Uptime

The contractor shall be prepared to implement and manage a network of wastewater flow monitors and rain gauges with a 95% uptime of reliable data. Uptime shall be determined by the number of 15-minute flow data points divided by the total number of 15-minute intervals in the month. Accompanying each monthly invoice, the contractor shall provide a summary of the uptime for each device.

For each device for which uptime requirements are not met, the amount due the Contractor for providing and maintaining a wastewater flow monitoring network (Pay Item 1) will be reduced, as follows:

<u>% of Monthly Uptime</u>	<u>% of Normal Monthly Amount Payable</u>
>= 95	100%
<95 and >=85	85%
<85 and >=75	70%
<75 and >=60	50%
<60	0%

Additionally, if a device has an uptime of less than 60%, no payment will be made for monthly analysis and reporting (Pay Item 4). For devices that have been removed to accommodate maintenance or construction activities performed by the Owner or outside contractors, payment will be made at 70% of the normal monthly amount for providing and maintaining flow monitors, and no payment will be made for monthly analysis and reporting (Pay Item 4).

G. Annual Data Summary Review

In addition to the monthly data analysis, the contractor shall summarize the flow monitoring data on an annual basis and make a presentation to Cary staff to discuss flow trends, inflow and infiltration analysis, and overall collection system performance.

H. Cost Proposal

Respondents to this request for proposals shall provide their proposed costs using the cost proposal form included in Section 4 of this Request for Proposals. A revised cost schedule may be submitted for negotiation prior to each one-year renewal period. Below is a description of the unit price items comprising the cost proposal form.

Item 1: *Provide and maintain a wastewater flow monitoring network consisting of thirty-three (33) area-velocity Flow Monitors.* This pay item is for all costs associated with maintaining each flow monitor on a per-month basis, as further described in this Request for Proposals, including equipment, wireless service, maintenance, parts, field visits and calibration. Payment will be reduced for each flow monitor not meeting the 95% uptime requirement in accordance with Paragraph F in this Section. (1 Flow Monitor x 1 Month = 1 Monitor-Month).

Item 2: *Provide and Maintain Tipping Bucket Rain Gauges:* Pay item is for all costs associated with providing and maintaining each rain gauge on a per-month basis, as further described in this Request for Proposals, including equipment, wireless service, parts, field visits and calibration. Payment will be reduced for each flow monitor not meeting the 95% uptime requirement in accordance with Paragraph F in this Section. (1 Rain Gauge x 1 month = 1 Gauge-Month)

Item 3: *Web-Based Data Management and Reporting Functions:* Pay item is for all costs associated with maintaining web-based data management and reporting functions for each site (Flow Monitor and Rain Gauge sites) on a per-month basis. (1 Site x 1 Month = 1 Site-Month).

Item 4: *Monthly Data Analysis & Reporting:* This item covers all costs for reviewing, analyzing and providing monthly summary reports for each flow monitor in Excel format, as described in this Request for Proposals. For sites where the flow monitor has been removed to accommodate maintenance, repair or rehabilitation activities, no payment will be made while the device is out of service. (1 Site x 1 Month = 1 Site-Month).

Item 5: *Contingency Item: Remove & Reinstall (or relocate) Flow Monitor.* This item shall cover all costs associated with removing a flow monitor and reinstalling it in the same or different location. Reinstallation may occur immediately after removal or at a later date as needed to accommodate sewer rehabilitation, sewer line cleaning or other maintenance-related activities. The price shall also include updating the device location in the web-based data management and reporting system. Removal and subsequent reinstallation of a flow monitor shall be counted as one unit for payment.

Item 6: *Contingency item: Temporary Flow Monitoring.* This item shall cover all costs for providing and installing a flow monitor in a temporary location and removal of the flow monitor and all associated components at the end of the temporary flow monitoring period. The cost for this item shall also include connection to the Web-Based Data Management System and Monthly Data Analysis & Reporting. (1 Temporary Flow Monitor x 1 Month = 1 Monitor-Month).

Item 7: Contingency Item: Unit Price for Flow-Monitoring Purchase: This item is for furnishing open-channel flow monitors (identical to the flow monitors to be provided and maintained by the Contractor) for purchase by the Town of Cary, except for antennae or any ancillary equipment required for remote access. The price shall be guaranteed for a period of one year after the effective date of the agreement and may include zero to six flow monitors.

4 COST PROPOSAL/EXECUTION OF PROPOSAL

Item No.	Description	Qty	Unit	Unit Cost	Total Cost
1	Provide and maintain a wastewater flow monitoring network consisting of thirty-three (33) area-velocity Flow Monitors	396	Monitor-Month		
2	Provide and maintain tipping-bucket rain gauges.	84	Gauge-Month		
3	Web-based data management and reporting system	480	Site-Month		
4	Monthly Data Analysis & Reporting	396	Monitor-Month		
5	Contingency Item: Remove & Reinstall (or relocate) Flow Monitor	3	Each		
6	Contingency Item: Temporary Flow Monitoring	36	Monitor-Month		
7	Contingency Item: Unit Price for Flow Monitor Purchase	N/A	Monitor		N/A
Total Cost 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 _____

APPENDIX A – Existing Flow Monitor & Rain Guage Locations

Table 1: Existing Flow Monitor Locations

Site No.	Pipe Dia.	Manhole ID No.	General Location	Approx. Depth	Lat	Long
1	24"	SP76406067	Cary Parkway	8.2	35.80868	-78.78146
2	21"	SP77105046	Whisperwood Dr.	23.0	35.72661	-78.76324
3	48"	SP76505005	Lake Crabtree near Norwell Blvd.	13.9	35.83356	-78.79093
4	24"	SP77306002	Easement near Ivy Lane	10.1	35.77671	-78.74972
5	21"	SP76212011	Near SE Cary Pkwy & Thurston Dr.	10.2	35.74667	-78.7647
6	30"	SP76218013	East of Regency Parkway	13.2	35.72978	-78.78871
7	21"	SP76317090	SW Cary Parkway at Carmel Ct.	4.5	35.75573	-78.79504
8	30"	SP74519001	Behind Claret Ln.	15	35.81686	-78.84128
9	18"	SP76217018	Near Regency Park Amphitheatre	11.7	35.72888	-78.79435
10	12"	SP76107025	Lochmere Golf Course	9.5	35.7263	-78.77568
11	30"	SP74416061	Prestonwood Country Club	13.2	35.79346	-78.83466
12	30"	SP76506006	Near Weston Parkway	10.5	35.83127	-78.78515
13	24"	SP74416001	Bridle Creek Dr.	12.9	35.79379	-78.83965
14	30"	SP72514108	Ashdown Forest Ln. near Yates Store Rd.	17.3	35.8214	-78.9179
15	48"	SP66912026	Serene Forest Dr.	9.7	35.66147	-78.76845
16	36"	SP75513002	Easement at Crabtree Crossing Pkwy.	11.2	35.81894	-78.82528
17	24"	SP77106002	Lily Atkins Rd.	12.9	35.72483	-78.75407
18	42"	SP72612010	Green Level Church Road	16.9	35.85251	-78.90005
22	20"	SP75513042	Morrisville Square Way & Morrisville Carpenter Rd.	8.3	35.81994	-78.82755
23	24"	SP75510031	Wake County Soccer Fields at Aviation Parkway	11.7	35.82448	-78.82034
24	16"	SP75506026	Aviation Parkway	15.7	35.83123	-78.81574
25	42"	SP75507012	Near Lake Crabtree at Evans Rd	10.4	35.83155	-78.81004
26	36"	SP72308009	Green Level Church Road	9.4	35.77692	-78.90341
27	18"	SP76507041	North Cary Water Reclamation Fac.	13.8	35.83766	-78.78006
28	10"	SP77409088	Carriage Woods Dr.	8.3	35.80053	-78.75765
29	16"	SP72509007	Beckingham Loop	12.7	35.83116	-78.92514
30	48"	SP72307007	West Cary PS at Green Level West Rd.	21.1	35.77719	-78.9111
31	42"	SP77110008	Near Swift Creek PS at Holly Springs Rd	21.8	35.71836	-78.75524
32	30"	SP76108014	Lochmere Golf Course	17.1	35.72392	-78.77016
33	12"	SP76107104	Kildaire Farm Rd near Lochmere Golf Course	16.3	35.72566	-78.77708
34	54"	SP76506005	Lakeside View Ct.	26.65	35.83361	-78.78612
37	36"	SP72105005	Richardson Rd (south of Olive Chapel Rd, Apex, NC)	13.85	35.72191	-78.92489
54	54"	SP72217007	North of Olive Chapel Rd (Apex, NC)	16.25	35.73107	-78.92568

Table 2: Existing Rain Gauge Locations

Rain Gauge No.	Site Description	Address
1	North Cary Water Reclamation Facility	1900 Old Reedy Creek Road
2	South Cary Water Reclamation Facility	4900 West Lake Road
3	Kit Creek Pump Station	11305 Green Level Church Road
4	Former Kensington Pump Station Site	10899 Penny Road
5	Fire Station No. 4	1401 Old Apex Road
6	Cary Town Hall	316 North Academy Street
7	West Cary Pump Station	3905 Green Level West Road

5 REFERENCES

Offeror **must** supply (3) three Governmental Agency or Private Company references for which wastewater flow monitoring and data analysis services have been performed during the past three 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 VENDORS

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

10. **COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Vendor agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative therein, concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the Town directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFP. Vendors not in compliance with this provision may be disqualified, at the option of the Town, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.
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 Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of Proposals shall be allowed only for good cause shown and in the sole discretion of the Town.
12. **INFORMAL COMMENTS:** The Town shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the Town during the competitive process or after award. The Town is bound only by information provided in this RFP and in formal Addenda issued through the eVP website.
13. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the Town will not reimburse any Vendor for any costs incurred prior to award.
14. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
15. **SUBCONTRACTING:** Unless expressly prohibited, a Vendor may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describe what work it plans to subcontract and that Vendor includes in its proposal all information regarding employees, business experience, and other information for each proposed subcontractor that is required to be provided for Vendor itself.
16. **INSPECTION AT VENDOR'S SITE:** The Town reserves the right to inspect, at a reasonable time, the equipment/item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary, for the Town determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

TOWN OF CARY STANDARD TERMS AND CONDITIONS

Notwithstanding anything to the contrary contained in Contractor's Proposal or in base contract, the following terms and conditions and the RFP, if any, apply and take precedence and control over inconsistent, ambiguous or contrary terms and conditions in Proposal or Base Contract. However, if Proposal or Contract imposes a more stringent standard or obligation on Contractor then the more stringent standard or obligation shall apply.

1. Definitions. For the purpose of this Standard Terms and Conditions ('Standard Terms'), the following definitions apply together with definitions contained in the body of these Standard Terms.

Base Contract – means the contract to which this is attached together with RFP and Proposal (if any).

Contract – means Base Contract together with this Standard Terms and Conditions ('ST&C').

Contractor's Services or Services – mean all products and services to be provided by Contractor under Contract.

Proposal – means Contractor's proposal as accepted by Town.

RFP – means an 'invitation to bid', 'request for quotes', 'request for proposals,' or the like.

2. Contractor Representations and Warranties. By executing Contract, Contractor represents and warrants that now and continuing for the term of Contract:

- a. Contractor is fully qualified, skilled and capable of performing Services in a fully competent, professional and timely manner; shall exercise reasonable care and diligence in performing Services; shall act in accordance with generally accepted standards of Contractor's practice throughout the U.S.; and shall comply with Contract and with all applicable federal, state and local laws, ordinances, rules and regulations (collectively 'Laws and Regulations');
- b. Contractor 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 licenses and certifications;
- c. Contractor shall perform all Services in a timely manner in accordance with all schedules for the project or required under Contract, time being of the essence;
- d. Contractor 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 Contract;
- e. The individuals signing Contract 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.

3. Deliverables; Taxes. If Services include the delivery of deliverables to Town, Contractor shall submit to Town all deliverables, including reports, technical memoranda, testing protocol, designs, drawings, specifications, electronic databases and the like (collectively 'Deliverables') in electronic form in read-only MS-Windows compatible format (including pdf 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. Materials provided in PDF format must be screen-reader friendly and contain alternate text tags of no more than 34 characters for all graphics.

Unless otherwise provided, Contractor is responsible for all applicable taxes and license fees and shall acquire all licenses and permits as required by Laws and regulations.

4. Ownership of Documents and Copyright/Town Seal. All Deliverables and other works developed in the performance of this Contract ('Documents') shall be and become the property of Town and may be used on any other project without additional compensation to Contractor, provided that such other use shall be at the risk of the Town. If not provided to Town earlier, Contractor shall turn over to the Town in good unaltered condition, reproducible of all Documents within seven (7) days after Contract termination. Unless specifically agreed otherwise by Town, copyrights (if any) in Documents created under this Contract belong to Town. Town shall have a non-exclusive license to use Documents for which Contractor, or another, may own the copyright, if any. Contractor shall not use the seal of the Town of Cary.

5. Compensation, Default, Termination and Suspension.

- a. Compensation. Compensation shall be as set forth in Base Contract, and is the total price for all Services. Compensation shall be paid at completion of Services unless specifically provided otherwise. At completion of Services, or the relevant phase (if applicable) Contractor shall submit invoices showing all Services performed, and such other details as may be required by Contract. Town shall pay invoices for which it makes no objection within 30 days of receipt of invoice.
- b. Termination/Suspension for Convenience of the Town. Unless specifically provided otherwise, this Contract may be terminated without cause by the Town and for its convenience upon ten (10) days written notice to Contractor. Town may order Contractor in writing to suspend, delay or interrupt all or any part of Contractor's services for the convenience of Town.
- c. Termination after Breach. After seven (7) days written notice to the other party of its default or breach, this Contract may be terminated by the noticing party.
- d. Compensation after Termination. (a) In the event of termination for the convenience of the Town, Contractor shall be paid that portion of Compensation that it has earned to the date of termination, plus an amount equal to (i) five percent (5%) of Compensation earned to date of termination or (ii) Contractor's unearned Compensation, whichever is less, less any costs or expenses incurred or anticipated to be incurred by the Town due to errors or omissions of Contractor. (b) In the event of termination by reason of a material breach by the Town, Contractor shall be entitled to the same Compensation as it would have received had the Town terminated for convenience, and the 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. (c) In the event of termination by reason of a material breach by Contractor, Contractor shall be paid that portion of Compensation 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 Contractor or by reason of the Contractor's breach.

- e. Provide Complete Documents. Should Contract be terminated for any reason, Town shall, nevertheless, have the right to require Contractor to (a) turn over to Town all finished, or unfinished Documents and (b) perform such additional effort as may be necessary to providing professionally certified and sealed drawings and to delivering to Town such certified and sealed drawings with respect to any phase or item of the Contractors services, for which effort the Contractor shall be compensated in accordance with Contract.

6. Insurance. Contractor and Contractor’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 Contractor’s employees or subcontractors; 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; Cyber Liability 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 Contractor’s performance under this Contract.

Unless otherwise specified on Attachment 1, 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 Liability / Umbrella Policy	\$1,000,000 per occurrence
Workers Compensation	Statutory Limits
Employer’s Liability	\$500,000 each accident
Professional Liability	\$1,000,000 per claim
Cyber Liability	\$2,000,000 per claim and aggregate

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 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 Contractor 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 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 Town in writing.

Additional Insured Status

All insurance policies (except Workers Compensation 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, Contractor shall procure substitute insurance so as to assure Town 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 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 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 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.

7. Indemnification.

- a. General Indemnity. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town, its officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to 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 Contract, (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 Contract, but only to the

extent caused by any negligence or omission of Contractor. This indemnification shall survive the termination of Contract.

- b. Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town, its officers and employees, from and against all claims, costs, civil penalties, fines, losses, 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 Town in writing ('Town required design'). If Contractor has reason to believe the use of a Town required design is an infringement of an intellectual property right, Contractor shall be responsible for such loss unless such information is given to the Town immediately upon becoming aware of such possible infringement. This indemnification shall survive termination of Contract.

8. Prohibited Contract terms. In no event shall there be any of the following without Town's express prior written agreement: (i) any limitation on, or disclaimer of, implied or express warranties or the liability of Contractor; (ii) any limitation on damages, including a limitation on consequential damages; (iii) any requirement for arbitration or for mandatory mediation; (iv) any requirement that Town officials or employees keep information confidential or any requirement that records be kept confidential by the Town, unless the requirement for confidentiality meets the requirements of the Public Records Law (N.C.G.S. §132-1 et.seq.).

9. 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 Contract shall, for all purposes of this Contract, 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 Contract 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 Town notifies Contractor in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Town, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of Town. No extension to any "Milestone Date" or completion date will be granted for replacement of such personnel or subcontractors.

10. Public Records. Contractor acknowledges that that records in the custody of Town 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 Contractor, 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). If Contractor, its employees or subcontractors, during provision of Services, becomes aware of or has access to confidential records or information or information of the Town that is protected from disclosure by Federal or State law ("Confidential Information"), Contractor, its employees and subcontractors, shall not

disclose any such Confidential Information. Any definition of “confidential,” “confidential information,” “trade secret,” or the like contained in Base Contract is hereby disclaimed and deleted.

11. Entire Agreement; Amendments to Contract. This Contract 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”). Contract may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Contract by clickthrough agreement.

12. Dissemination of Information. The 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. Contractor, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning the Services without prior approval from Town. Any approval given by the Town may be given with certain stipulations, such as Town participation in the creation of the public product or Town review and the option to refuse ultimate release of the final product should it fail to meet 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, and/or Contractor’s business collateral pieces. Notwithstanding the foregoing, the parties agree that Contractor 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.

13. Limited Assignment/Delegation. This Contract shall bind Contractor and its successors and permitted assigns. Contractor shall not assign or transfer its rights or interest in Contract (including the right to payment), nor shall contractor delegate its duties under Contract, without the Town’s written consent, which the Town may grant or withhold in its sole discretion. The Town’s consent shall not release Contractor of any obligation under Contract and Contractor and permitted assigns shall be subject to all of Town’s defenses. Any attempt to assign Contract without the prior written approval of Town shall be void. If Contractor utilizes approved subcontractors, Contractor 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.

14. Governing Law. The parties acknowledge Contract is a “business contract” subject to the provisions of N.C.G.S. Chapter 1G and agree that Contract 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 Contract shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to Contract shall be brought exclusively in Wake County, North Carolina. Service of process on Contractor may be affected by delivery by any method permitted under the N.C. Rules of Civil Procedure and by the same method on the office or individual specified in Paragraph 19 ‘Notice’ or on any officer of the Contractor.

15. Severability. If any provision of Contract is held as a matter of law to be unenforceable, the remainder of Contract shall be enforceable without such provision.
16. Non-Exclusive Remedies/No Waiver. The selection of one or more remedies for breach shall not limit a party's right to invoke any other remedy available under Contract 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. Every right, power or remedy may be exercised from time-to-time and as often as deemed expedient.
17. Survival. All representations, indemnifications and other terms and conditions of Contract which by their nature should survive Contract termination shall survive its expiration or termination.
18. 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 Contract, 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.
19. Notice. All notices shall be in writing and delivered to the other party by personal delivery, commercially recognized overnight courier service, or prepaid U.S. certified mail, return receipt requested, addressed as follows:
to Contractor: To the Contractor's address provided in Contract, or as otherwise specified in writing to Town by Contractor.
to Town: Project Manager, Town of Cary, 316 N. Academy St., P.O. Box 8005, Cary, NC 27512-8005. Contractor shall specify Project Manager by full name, and shall include name of Project.
- Notice shall be effective upon the earlier of: (a) actual receipt; or (b) 3 days after deposit in the U.S. mail or other service. Each party is responsible for notifying the other of any change of address.
20. 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.
21. 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.
22. Dispute Resolution. If Services are performed in connection with a construction contract subject to N.C.G.S. § 143-128(f1), and a dispute arises with an amount in controversy that exceeds \$15,000.00 Contractor shall participate in the Town's dispute resolution process.

23. Electronic Version of Contract. Town may convert a signed original of the Contract to an electronic record pursuant to a 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 the Contract shall be deemed for all purposes to be an original signed Contract.

24. Verification of Work Authorization. Contractor, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

25. No Third-Party Beneficiaries. Unless otherwise explicitly stated, there are no third-party beneficiaries to Contract.

26. Pre-Audit Requirement. This Contract 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.

27. Performance of Government Functions. Nothing contained in this Contract shall be deemed or construed so as to restrict or inhibit the Town's police powers or regulatory authority.

28. Principles of Interpretation and Definitions. In this Contract, 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 Contract. (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 Contract. (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 Time.

29. Further Assurances. Contractor 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 Contract.

30. No Waiver of Immunity. Nothing in this Contract 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 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 Contract or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Contract 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.

31. Federal Funds. The Contractor shall make all necessary inquiries to correctly identify the source of funding for Contract. If the source of funds for Contract 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 § 200.324).

32. Emergencies. Notwithstanding anything else in this Contract, 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 Town and Contractor.

33. Electronic Signatures. Professional 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, Professional consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Professional's signature as if actually signed by Professional in writing. Professional 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. Professional 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.