

Addendum #1

DATE: February 17, 2025
TO: Prospective Proposers
FROM: Eric Kulz
SUBJECT: RFQ On-Call Environmental, Science and Engineering Services
RFQ #354-SW25-30
Submitted Questions and Answers
Sample Master Services Agreement

The purpose of this addendum is to answer questions received during the open question and answer period. All other terms and conditions given in this Request for Proposals are in full force and effect.

QUESTIONS AND ANSWERS

Question: What companies currently hold the On-Call Environmental, Scientific and Engineering Services Contracts?

Answer: S&ME, SynTerra Corporation and GEI were awarded the 2022 on-call contracts.

Question: Does the Town use this contract consistently?

Answer: Task Orders are issued as needs arise, typically associated with a property acquisition or regulatory requirement. Eleven (11) Task Orders were issued over the current agreements three-year term.

Question: Will subconsultants be allowed for this opportunity?

Answer: Proposers may form teams of consultants to deliver the complete range of requested services. However, each master services agreement will be signed with a single lead contractor, who will serve as the primary point of contact for Cary.

Question: How many teams are usually selected for this on-call? Is this a single award contract? If not, how many awardees are anticipated?

Answer: Cary anticipates awarding to two providers for these agreements.

Question: Should we provide the Certificate of Insurance, as referenced in Section 2.1?

Answer: Include Certificates of Insurance in an attachment or addendum to your SOQ, COI's will not count toward the 20-page limit.

Question: Can a firm submit qualifications for specific tasks versus submitting all the tasks? Is the proposer required to bid on all Scopes of Services as provided in Section 4 – or is partial submittal allowed?

Answer: Per Section 1.5 of the RFQ, Proposers must respond to the entire Request for Qualifications. An incomplete proposal may be eliminated from consideration at the discretion of Cary.

Question: What is the duration of the contract term? What is the expected term for this contract? How long is this On-Call Master Services Agreement?

Answer: The contract term is two years, with the option available to Cary to extend the term for an additional year.

Question: In Section 2 of the RFQ Required Document Format, the terms "contracts" and "projects" appear to be used interchangeably. Could you specify how these terms should be distinguished? Is the town requesting a list of similar projects, similar contracts, or similar projects that fall under similar contracts?

Answer: Proposers should include information on completed projects that align with the service types outlined in Section 4, "Scope of Services," of the RFQ to showcase their technical expertise and experience in delivering the requested services. Additionally, proposers should highlight any experience providing services under an on-call or master services agreement (if applicable) and detail their experience in offering environmental science and engineering services to municipal or county governments.

Question: Do any Addenda issued or the Execution of Proposal form, Appendix I, or Appendix II count towards the 20-page limit?

Answer: None of the items listed count toward the 20-page limit.

Question: Where would you like us to put the "Execution of Proposal" page?

Answer: Include the Execution of Proposal in the body of your SOQ following Section 4 of the document, or attach following the cover letter.

Question: Please clarify Scope of Services anticipated for Solid and Hazardous Waste Management. Please clarify scope of services anticipated for UST and AST Consulting Services - Remediation? Cathodic Protection System installation/maintenance? Statistical Inventory Reconciliation? Integrity Testing? SPCC Inspection?

Answer: It is challenging to predict the specific services required for the next contract term. However, previous projects completed under these service areas have included UST system removals, UST system upgrades, subsurface soil and groundwater

assessments, the design of aboveground storage tank systems, and consultation on various solid and hazardous waste issues.

Question: Please clarify why Phase 1 Environmental Site Assessments are carried out by the ASTM E1527- 13 standards and not ASTM E 1527- 21.

Answer: Cary requires any Phase I Environmental Site Assessments completed under ASTM E 1527-21.

Question: Do you want the Hourly Rates uploaded to the eVP as a separate file or attached in an appendix? (2.2 Hourly Rates).

Answer: Per Section 2.2 of the RFQ, a copy of the hourly rates for all proposed project personnel must be uploaded to eVP as a separate file. . The personnel/positions and hourly rates provided should reflect the staff members assigned to projects under the resulting contract and listed in the proposals submitted for Task Orders.

Question: Section 2.2: hourly rates – should be uploaded as a separate file using same naming format as RFQ as described in Section 1.6. Section 1.6 is entitled Rights to Submitted Material. It is assumed we are to refer to Section 1.5, which only has one naming format for deliverable of the RFQ response. Are we supposed to put anything in the subject line that differentiates the hourly rates from the RFQ response or upload two files with the same subject line?

Answer: Label submittal per Section 1.5 as follows: **Your Company Name 354-SW25-30 On-Call Environmental, Scientific and Engineering Services – Statement of Qualifications** and **Your Company Name 354-SW25-30 On-Call Environmental, Scientific and Engineering Services – Hourly Rates**.

Question: Section 4: Team Firm, Experience and Certification/Qualifications: Can we list the direct point of contact that will be assigned to your Contract, or do we need to list every team member down to the field technicians and administrators?

Answer: Firms must list an adequate number of team members along with their qualifications and certifications to demonstrate that your firm has the technical personnel with the required expertise to provide the services outlined in the RFQ.

SAMPLE MASTER SERVICES AGREEMENT

Attachment A to this Addendum is a sample master services agreement.

ATTACHMENT A

**MASTER AGREEMENT
FOR
ON-CALL PROFESSIONAL SERVICES FOR _____**

This Master Agreement for On-Call Professional Services for Environmental, Science and Engineering Services (“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, “PROFESSIONAL”).

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, PROFESSIONAL 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 PROFESSIONAL will provide its services to the Town, as the need for PROFESSIONAL’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 PROFESSIONAL to provide ‘on-call _____ services’ and PROFESSIONAL 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 PROFESSIONAL with any work hereunder and does not guarantee the issuance of any minimum number of Task Orders under this Agreement.
- 1.5 PROFESSIONAL represents and agrees that now and continuing for the term of Agreement, PROFESSIONAL:
 - 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 PROFESSIONAL’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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL to the obligations set forth in an executed Task Order:

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 PROFESSIONAL may begin work on a Project upon written execution of Task Order by Town and PROFESSIONAL, unless the Task Order requires that work commence only upon a notice to proceed from Town. The time allowed for PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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. PROFESSIONAL shall reimburse Town for the aggregate cost to Town for all errors and omissions of PROFESSIONAL.

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

3.1.4 PROFESSIONAL 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 PROFESSIONAL is behind schedule.

3.2 Key Personnel and Subcontractors. The PROFESSIONAL and the PROFESSIONAL'S subcontractors for the Project, along with their key project personnel, should be listed in each Task Order. No changes in PROFESSIONAL'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 PROFESSIONAL provides any Services through the use of subcontractors, PROFESSIONAL shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, PROFESSIONAL'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 PROFESSIONAL with their subcontractor. If Town notifies PROFESSIONAL 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, PROFESSIONAL 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 PROFESSIONAL'S Services for each specific Project shall be as set forth in applicable Task Order. 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 electronically via email with pdf attachment toSubmit.invoices@carync.gov. 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 PROFESSIONAL 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 PROFESSIONAL any costs or damages incurred, or which may be incurred, by the Town as a result of the PROFESSIONAL'S failure to perform Services on any portion of a Task Order following reasonable notice and opportunity to cure such nonperformance by PROFESSIONAL.

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 PROFESSIONAL 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 PROFESSIONAL any costs or damages incurred, or which may be incurred, by Town as a result of PROFESSIONAL'S failure to perform any Service, following reasonable notice and opportunity to cure such nonperformance by PROFESSIONAL. 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 PROFESSIONAL'S compensation for Services and Additional Services shall be maintained by PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL.

ARTICLE 6 INSURANCE

6.1 Insurance. PROFESSIONAL and PROFESSIONAL’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 PROFESSIONAL’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 PROFESSIONAL’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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL to purchase insurance from a company whose rating meets the minimum standard. PROFESSIONAL’S insurance carrier(s) shall be authorized to do business in the state of North Carolina. If PROFESSIONAL is unable to find an authorized carrier for any line of insurance coverage, PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL any costs, damages, and expenses, including reasonable attorney's fees, that have been or may be incurred by Town as a result of PROFESSIONAL'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, PROFESSIONAL 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 PROFESSIONAL of any term or condition of this Agreement, Written Amendment or any Task Order; (b) any breach or violation by PROFESSIONAL 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, PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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, PROFESSIONAL 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. PROFESSIONAL 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 PROFESSIONAL. Within three (3) days of receipt of such Task Order Amendment, PROFESSIONAL shall notify Town in writing of any change contained therein that PROFESSIONAL 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 PROFESSIONAL.
- 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, PROFESSIONAL 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 PROFESSIONAL. Upon receiving notice of termination, PROFESSIONAL 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, PROFESSIONAL shall be entitled to the same compensation as it would have received had Town terminated the Task Order for convenience, and PROFESSIONAL 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 PROFESSIONAL, PROFESSIONAL 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 PROFESSIONAL or by reason of PROFESSIONAL'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 PROFESSIONAL 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 PROFESSIONAL in the performance of this Agreement and any Project or Task Order hereunder, whether completed or in process. If PROFESSIONAL provides such certified and sealed information as outlined above, PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL, 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 PROFESSIONAL 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. PROFESSIONAL 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. PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL. 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 PROFESSIONAL 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. PROFESSIONAL, 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 PROFESSIONAL’S business collateral pieces. Notwithstanding the foregoing, the parties agree that PROFESSIONAL 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 PROFESSIONAL and its successors and permitted assigns. PROFESSIONAL shall not assign or transfer its rights or interest in Agreement (including the right to payment), nor shall PROFESSIONAL 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 PROFESSIONAL of any obligation under Agreement and PROFESSIONAL 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 PROFESSIONAL utilizes approved subcontractors, PROFESSIONAL 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, PROFESSIONAL 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. PROFESSIONAL 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 PROFESSIONAL notices any errors in electronic data provided to the Town under this Agreement, PROFESSIONAL shall immediately notify Town, and if PROFESSIONAL provided such electronic data, PROFESSIONAL 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 PROFESSIONAL, if to the PROFESSIONAL, 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 PROFESSIONAL’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 PROFESSIONAL shall be:



11.10 Gifts and Favors. PROFESSIONAL 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. PROFESSIONAL is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted

subcontractors. All persons assigned by PROFESSIONAL to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of PROFESSIONAL only. PROFESSIONAL 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. PROFESSIONAL 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 PROFESSIONAL, 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). PROFESSIONAL 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 PROFESSIONAL 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. PROFESSIONAL, 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. PROFESSIONAL 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. PROFESSIONAL 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, PROFESSIONAL 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 PROFESSIONAL.
- 11.25 Electronic Signatures. PROFESSIONAL acknowledges and agrees that an electronic signature application 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 electronic signature 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. 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 electronic signature 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 Addenda
- 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 PROFESSIONAL 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.

PROFESSIONAL (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 PROFESSIONAL. Additionally:

the Town of Cary's Request for Proposals, entitled [REDACTED] Town of Cary Project [REDACTED], dated [REDACTED]; and Sections ____/Pages ____ of DESIGNER'S Proposal entitled [REDACTED] and dated [REDACTED] 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 _____ (“PROFESSIONAL”).

WITNESSETH

WHEREAS, Town and PROFESSIONAL entered into a Master Agreement for On-Call PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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. PROFESSIONAL’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 with PDF attachment. Invoices not submitted following these instructions will result in delayed payment.

5. Key Personnel and Use of Subcontractors.

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

B. No changes in PROFESSIONAL'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. PROFESSIONAL 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.

PROFESSIONAL -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