



REQUEST FOR PROPOSALS

RFP #354-TMO25-33

Consulting Services for the Co-Creation of a Downtown Business Alliance

Issue Date: March 14, 2025

Due Date: June 27, 2025, at 12:00 PM ET

Issuing Department: Town Manager's Office

Direct all inquiries concerning this RFP to:

Brittany Edwards

Assistant Director of Administrative Services

Email: brittany.edwards@carync.gov

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1 REQUEST FOR PROPOSALS

1.1 Introduction

Cary is seeking proposals from qualified organizations and experienced consultants to collaborate with stakeholders and develop a framework for a potential Downtown Business Alliance focused on fostering collaboration, resource sharing, and advocacy among small businesses and residents in its thriving downtown area. With a strong local economy and a vibrant business community, Cary aims to document a proposed structure that will support the growth, collaboration, and long-term success of its downtown businesses.

1.2 Purpose and Background

Downtown Cary, North Carolina, is a vibrant and thriving area celebrated for its robust economy and commitment to smart growth and development. At the heart of this flourishing community lies the newly completed Downtown Cary Park, a stunning seven-acre space designed for recreation, cultural events, and community gatherings. This park, a vision 20 years in the making, symbolizes Cary's dedication to thoughtful planning and community enhancement. Combining historic charm with modern amenities, downtown Cary serves as a dynamic hub for businesses and residents, fostering inclusivity and growth.

Project Objective: The selected consultant will work closely with Town officials, local businesses, and other stakeholders to:

- Recommend a framework for a sustainable Downtown Business Alliance.
- Foster communication and coordination between small business owners and residents.
- Develop a governance structure and strategic priorities for the alliance.
- Outline an approach for advocacy, marketing, and future economic development initiatives.

Scope of Work: The consultant will be responsible for the following tasks:

1. Community Assessment

- **Understand the Local Landscape:** Research the existing downtown business ecosystem, including its demographics, economic trends, and key stakeholders.
- **Identify Challenges and Opportunities:** Gather insights on the specific needs and priorities of the businesses within the area.
- **Review Existing Resources:** Evaluate current initiatives, partnerships, or organizations that support the business community.

2. Stakeholder Engagement

- **Facilitate Initial Meetings:** Organize listening sessions or focus groups with business owners, community leaders, and town officials to gather input and establish rapport.
- **Build Relationships:** Develop trust and a clear understanding of the goals and concerns of all parties involved.
- **Ensure Inclusivity:** Involve a diverse range of businesses, including solo operators, legacy businesses, and new entrants, to ensure broad representation.

3. Define the Vision and Mission

- **Align with Community Values:** Work with stakeholders to craft a shared vision and mission that reflects the character and aspirations of the downtown area.

- **Set Preliminary Goals:** Outline initial objectives that are achievable and resonate with the business community.
- 4. Alliance Framework Development**
 - **Determine Structure:** Recommend a governance model, membership tiers, and decision-making processes tailored to the alliance's needs.
 - **Designate Roles:** Identify key leadership positions and roles for the Alliance.
- 5. Strategic Plan Creation**
 - **Focus on Immediate Priorities:** Identify short-term goals and actionable steps to demonstrate early success.
 - **Outline Long-Term Goals:** Propose a roadmap for sustainable growth and development aligned with the downtown's smart growth vision.
- 6. Report and Refine**
 - **Deliver Findings and Recommendations:** Present initial research, proposed structures, and strategies to stakeholders for review and feedback.
 - **Iterate Based on Feedback:** Refine plans to ensure alignment with the community's vision and priorities.

Deliverables:

- Community needs assessment report
- Framework and governance model for the Downtown Business Alliance
- Strategic plan for the Alliance (1-3 year outlook)
- Roadmap for implementation
- Final presentation to Town leadership and stakeholders

Desired Qualifications:

- Proven experience in economic development, business alliance creation, or similar initiatives.
- Expertise in stakeholder engagement, strategic planning, and organizational development.
- Familiarity with the needs of small businesses and downtown economic ecosystems.
- Strong facilitation, communication, and project management skills.
- Ability to build consensus and foster collaboration among varied interest groups.

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	Friday, March 14, 2025	
Proposers Written Questions Due	Friday, May 9, 2025	11:00 AM
Town Responses to Proposers questions	Friday, May 30, 2025	5:00 PM
Proposal Submission Deadline	Friday, June 27, 2025	12:00 PM

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

1.5 **Proposal Questions**

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date. The Town will not entertain any further questions after the due date. Written questions shall be emailed to brittany.edwards@carync.gov by the date and time specified above. Vendors should enter "RFP #354-TMO25-33: 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.

1.6 Proposal Submission 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). An incomplete proposal may be eliminated from consideration at the discretion of Cary.

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

Proposers are cautioned not to make changes to any of the term and conditions in this solicitation. Doing so may render their proposal unacceptable and unresponsive for award. Question and inquiries must be made in writing as outlined in Section 1.

1.7 Rights to Submitted Material

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under North Carolina law) shall become the property of 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. Cary may reject as non-responsive at its sole discretion any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. 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. Not to exceed two pages.

2. Corporate Background and Experience

This section shall include background information on the organization and should give details of experience with similar projects. A list of three (3) references (including contact persons and telephone numbers) for which similar work has been performed shall be included, and the list shall include all similar contracts performed by the Proposer in the past five years. 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

The Cost Proposal shall be submitted and contain:

- Personnel costs (including hourly rates and total hours)
- Travel and Subsistence Expenses
- Subcontractor Costs (if any)
- Other Costs (e.g., office expenses)
- TOTAL COST: A total not to exceed cost representing the maximum amount for all work to be performed must be clearly indicated under this heading.

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
- 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. Proposals will be received electronically from each responsive Vendor and must be submitted by the date and time specified on the RFP cover sheet. Late submissions will not be considered.

Proposals will be reviewed after the submission deadline. Interested parties should note that cost details are subject to further evaluation for completeness and accuracy and may not fully indicate a Vendor's pricing position.

At the evaluator's discretion, Vendors may be invited to provide oral presentations or participate in discussions to clarify or expand upon their proposals. However, such invitations are not guaranteed, so proposals should be complete and reflect the most favorable terms.

Proposals will be evaluated based on completeness, content, relevant experience, the qualifications of the Vendor and its team, and cost, as outlined in Section 2.2 EVALUATION CRITERIA.

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

Upon review of the responses, the Town may select, at its sole discretion, one or more Proposers deemed most qualified to undertake.

A recommendation will be presented to a Town Manager designated committee for approval to negotiate a contract. Price quoted must be held firm until December 1, 2025. 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 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 one year, beginning on the date of contract award (the "Effective Date").

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

2.6 Invoices

- a) Invoices must be submitted to the Town of Cary 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 COST PROPOSAL/EXECUTION OF PROPOSAL

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

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

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Date _____

4 REFERENCES

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

OFFEROR: _____

CITY, STATE, ZIP: _____

Reference # 1

Agency or Firm Name: _____

Business Address _____

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

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

Email Address: _____

Reference # 2

Agency or Firm Name: _____

Business Address _____

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

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

Email Address: _____

Reference # 3

Agency or Firm Name: _____

Business Address _____

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

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

Email Address: _____

INSTRUCTIONS TO 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 must actually be 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 Contractor's 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. Contractor 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, Contractor consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Contractor's signature as if actually signed by Contractor in writing. Contractor also agrees that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. Contractor acknowledges and agrees that delivery of a copy of this Agreement or any other document contemplated hereby, through the electronic signature application, will have the same effect as physical delivery of the paper document bearing an original written signature.