



REQUEST FOR PROPOSALS

RFP #354-UT27-02

Project Title: Biosolids Product Marketing & Beneficial Reuse

Issue Date: June 25, 2026

Due Date: July 22, 2026 at 5:00 PM ET

Issuing Department: Utilities

Direct all inquiries concerning this RFP to:

Zach Rotstein

Project Manager

Email: zach.rotstein@carync.gov

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1 REQUEST FOR PROPOSALS

1.1 Introduction

The Town of Cary is requesting proposals from qualified service providers for the provision of Biosolids Product Marketing & Beneficial Reuse Services which includes the hauling and purchase of dried biosolids from the South Cary Water Reclamation Facility and the Western Wake Regional Water Reclamation Facility. The proposal shall be for the provision of beneficial reuse for the weekly, routine management of biosolids pellets processed by these facilities.

1.2 Purpose and Background

South Cary Water Reclamation Facility

The South Cary Water Reclamation Facility (SCWRF) is owned and operated by the Town of Cary and is located at 4900 West Lake Rd., Apex, NC. The plant has a treatment capacity of 12.8 MGD and utilizes a biosolids drying facility for long-term management of the facility's biosolids. The facility utilizes an Andritz triple pass rotary drum dryer. The heat dried, pelletized product produced meets and exceeds EPA 503 criteria as Class A Exceptional Quality Biosolids. The facility has two 408 cubic yard silos for pellet storage and a certified truck scale located at the pellet loading facility.

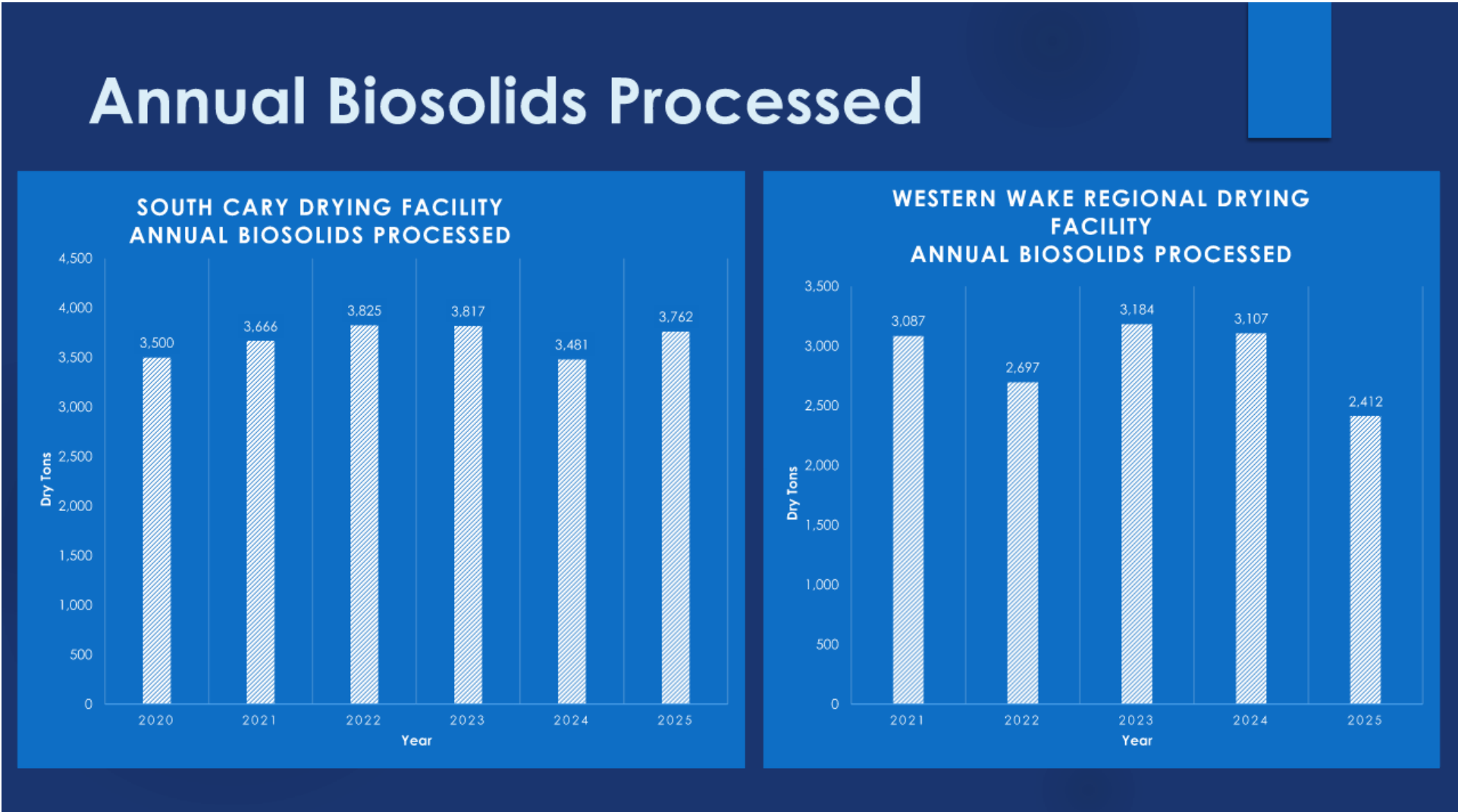


Western Wake Regional Water Reclamation Facility

The Western Wake Regional Water Reclamation Facility (WWRWRF) is co-owned by the Town of Apex and Town of Cary and is located at 3500 Reclamation Rd., New Hill, NC. The facility is managed and operated by the Town of Cary. The plant has a treatment capacity of 18 MGD and utilizes a biosolids drying facility for long-term management of the facility's biosolids. The facility operates Kruger BioCon belt dryers, a two-train configuration with pelletizer unit. The pelletized product produced meets and exceeds the EPA 503 criteria as Class A Exceptional Quality Biosolids. The facility has two 288 cubic yard silos for pellet storage.



The figure below shows the annual biosolids production at SCWRF & WWRWRF:



Refer to Appendix I – Product Labels for nutrient quantities.

The Town desires to beneficially reuse biosolids pellets generated at the South Cary Water Reclamation Facility (SCWRF) and the Western Wake Regional Water Reclamation Facility (WWRWRF) through their use as fertilizer products or fertilizer components that provide nutrient value for agricultural, turfgrass, and landscape applications. It is important to the owners of these facilities that the beneficial re-use of the biosolids pellets be a primary means for a viable end use option providing a long-term solution for the management of biosolids pellets.

As part of the submitted proposal, the vendor shall submit a plan for providing consistency and continuity of services related to the Scope of Services included herein

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 contained within the Town's Principal Contract, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in [Section 1.6 Proposal Questions](#). If the Town determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The Town may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Principal Contract that have been addressed during the question submission period. Other than through this process, the Town rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that Vendor is prepared to enter into a contract in the form of the Principal Contract if Town selects Vendor's proposal and that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

If a Vendor desires modification of the terms and conditions of this solicitation, including any term or condition contained in the Principal Contract, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether specific language proposed as a modification is acceptable to or will be considered by the Town. Identification of objections or exceptions to the Town's terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.

1.4 RFP Response Timeline

The RFP process shall adhere to the following schedule:

RFP Process		Date and time	
RFP posted		June 25, 2026	
Pre-Proposal Site Visit(s) (strongly encouraged)		To be scheduled by Vendor No later than July 8, 2026	
Proposers Written Questions Due		July 10, 2026	5:00 PM

Town Responses to Proposers' questions (anticipated)	July 15, 2026	5:00 PM
Proposal Submission Deadline	July 22, 2026	5:00 PM
Anticipated Contract Effective Date	August 31, 2026	

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

1.5 **Pre-Proposal Conference/Site Visit**

NOTE: All Proposers are encouraged to schedule a site visit(s) no later than July 8, 2026. A summary of all questions and answers will be posted on the internet as an addendum, located under the RFP # being modified. Site visits will be allowed from 9 a.m. – 3 p.m. no later than July 8, 2026. Proposers wishing to visit the individual sites or obtain samples of the biosolids projects should contact the following persons:

Josh Cummings
WWRWRF Plant Manager
Josh.cummings@carync.gov
(919) 810-1505

Jarrold Buchanan
SCWRF Plant Manager
Jarrod.buchanan@carync.gov
(919) 779-0697

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

1.6 **Proposal Questions**

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date. The Town will not entertain any further questions after the due date. Written questions shall be emailed to zach.rotstein@carync.gov by the date and time specified above. Vendors should enter "RFP #354-UT27-02: Questions" as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in the format shown below:

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

Questions received prior to the submission deadline date, 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), and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any Town personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this RFP.

1.7 Proposal Submission Requirements and Contact Information

Electronic responses ONLY will be accepted through the eVP website. Interested parties must be logged in to submit proposals electronically. Registration information is available at [NC Electronic Vendor Portal](#) (eVP). Proposals must be clearly marked with name of the submitting company, the RFP number and RFP title. Proposers must submit one (1) *electronic version, submitted as a viewable and printable Adobe Portable Document File (PDF), on or before the submittal due date and time provided in Section 1.3.* Submissions that do not comply with the stated submission method will be deemed non-responsive. 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](#).

1.8 Rights to Submitted Material

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

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

2 PROPOSALS

Responses must follow the format outlined herein. The Town may reject as non-responsive at its sole discretion any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

1. Cover Letter/Letter of Intent

Introduction letter with intent as it may pertain to the Request for Proposal.

2. Corporate Background and Experience

This section shall include background information on the organization and should give details of experience with similar projects. A list of five (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 will randomly select at least three of these references, but the evaluators reserve the right to contact all the references listed, if information from the three references contacted warrant further inquiry. The failure to list all similar contracts in the specified period may result in the rejection of the Proposer's proposal. The evaluators may check all public sources to determine whether Proposer has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts for similar contracts were not listed, the evaluators may contact the public entities to make inquiry into Proposer's performance of those contracts and the information obtained may be considered in evaluating Proposer's proposal.

3. Project Understanding, Approach and Schedule

This section shall include, in narrative, outline, and/or graph form the Proposer's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

4. Team Organization, Experience and Certifications/Qualifications

This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project. The Proposer shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

5. Cost Proposal

The Cost Proposal shall be submitted and contain:

- Purchase price per dry ton of Class A Exceptional Quality Biosolids pellets. It is important to note that all production of thermally dried biosolids pellets for sale and distribution to prospective vendors will be provided in dry tons of Class A, Exceptional Quality biosolids pellets for distribution. There will be no subsequent modification of dry tonnage for moisture content as heat dried biosolids are greater than 90% dry content in accordance with EPA's 503 regulations. Prospective vendors shall plan accordingly that the dry tons of production are the dry tons for sale.

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. A panel of Town of Cary staff members will review the submitted proposals based on the criteria below and make a recommendation for award. This request for proposal does not commit the Town to award a contract or enter into an agreement, to pay costs incurred in the preparation of a response to this invitation, or to procure or contract for any services or supplies. The Town of Cary reserves the right to reject any or all proposals received as a result of this request for proposals, or to cancel this request in part or in its entirety, if it is deemed in the best interest of the Town to do so. Proposals will be evaluated based on the following criteria:

1. Firm experience/workload – Experience of the firm in similar work and record of successful results of that work. Also considered will be the firm's ability to take on additional work, demonstrated understanding of the Town's goals and purpose for this project, specific management approach and how the firm proposes to achieve the project's time goals, how well the firm's organizational structure shows sufficient depth for its present workload and this proposed project, and the firm's ability to offer the breadth and quality of services required for the project.
2. Experience of the personnel assigned to the project team – A firm provides the resources, but the individuals assigned to a project are how the job gets done. A review panel of TOC employees will give considerable weight to the individual qualifications of the project team members who will actually perform substantial amounts of the work on this project. Considerations will include qualifications of key personnel, project team member's

individual experience and qualifications, project manager's experience and qualifications, sub-professional's individual experience and other qualifications.

3. Response to the project objectives outlined in the RFP – This includes a demonstrated understanding of the scope of work and purpose of the project, a demonstrated ability and experience in Biosolids Product Marketing and Beneficial Reuse, and innovative suggestions that may increase the value of the project.
4. Schedule – The proposed schedule for performing the work for the project. If a contract is awarded, the selected firm must be in a position to begin work immediately and move promptly toward implementation and completion.
5. Competitiveness of Pricing – The review panel will consider pricing in the overall evaluation of the proposals.

Criteria	(a) Weight	(b) Score (0-3)	(a) x (b) Weighted Score
<u>Firm experience/workload</u>	0.20		
<u>Experience of personnel assigned to the project team</u>	0.10		
<u>Response to project objectives outlined in the RFP</u>	0.20		
<u>Schedule</u>	0.10		
<u>Competitiveness of Pricing</u>	0.40		
Final Score			

Score Points

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

2- Meets Expectation
3- Exceeds Expectation

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.

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

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

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

2.4 Final Selection

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

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

2.5 Contract Term

The Contract shall have an initial term of two (2) years, 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 three 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

1. The Town shall submit monthly to the Vendor, an invoice for all biosolids distributed to the Vendor.
2. Payment shall be made to the Town within thirty (30) calendar days of receipt of invoice.

2.7 Notice to Proposers Regarding RFP Terms and Conditions

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

3 SCOPE OF SERVICES

1. **Beneficial Reuse** – The Town desires for beneficial re-use of the biosolids pellets from SCWRF and WWRWRF. The Vendor shall provide all related blending, packaging, and storage prior to sale, must have three (3) months capability of off-site dry storage. Vendor shall market and sell the Town's biosolids pellets under their own approved product label.

The Town reserves the right to visit the Vendor's facility at any time to review the facility operation and how the Town's biosolids pellets are managed.

2. **Transportation and Loading** – Owner shall load and weigh all trucks. The Vendor shall provide all related transportation and unloading of the product. The Vendor shall provide weekly and reliable removal of biosolids pellets from the facility and all related coordination with the facility operations staff.

The Vendor shall ensure the trailers or containers used for these services are properly loaded per volume and weight requirements for the Department of Transportation. The Town shall not be subject to penalization by the Vendor for minimum or maximum loading provisions.

At each facility, the trailer to be loaded will be weighed prior to loading on a certified scale located at each facility. After loading the tractor trailer will be weighed again. The differential weight in tons will be recorded.



3. **Distribution and Marketing** – The Vendor shall provide all related marketing, selling, and distribution of the dried biosolids to the end user. Vendor shall have an active Fertilizer Reporting permit and a Distribution of Class A Residual permit.

The Town of Cary will reserve the right to direct market 20 percent of the annual production of biosolids pellets.

4. **Flexibility in hauling schedule** – Loading of dried biosolids from the SCWRF and WWRWRF will only be allowed weekdays 8 a.m. – 5 p.m. (no weekends or holidays). Any deviations from the load schedule must be approved 24 hours in advance.
5. **Trailers** – Trailers shall be relatively clean, and free of odors such that they do not create nuisance conditions at Town facilities. Trailers provided shall be capable of hauling up to approximately 22 to 25 dry tons of biosolids pellets.
6. **Responsiveness and schedule coordination** – The Vendor shall be able to adjust hauling schedules as needed within a 24-hour notice from SCWRF or WWRWRF staff. The Vendor shall provide a single point of contact for coordination of hauling schedules.
7. **Reporting** – The Vendor shall be responsible for reporting under the appropriate permit to the U.S. Environmental Protection Agency, N.C. Department of Agriculture and the N.C. Department of Environment and Natural Resources or other controlling legal authority.
8. **Additional Requirements**
 - a. Truck drivers shall always adhere to traffic regulations, including but not limited to:
 - i. Plant site speed limits of 15 mph or less
 - ii. Abiding by posted speed limits and maintaining safe driving speeds for road conditions
 - iii. Awareness of school zones near the SCWRF and at any other locations along the hauling routes
 - iv. Awareness of and adherence to roadway and bridge weight limits
 - b. Trucks and trailers must be maintained in good working order, without leakage, and in a good state of cleanliness. Trailers and containers shall be secured such that residuals spillage from

the vessels does not occur. The Vendor will be responsible for the clean-up and reporting of any spillage that occurs during transport.

- c. The Vendor must review driving and criminal records of each driver to assure that drivers are competent and maintain good driving records. The Vendor shall provide to the Town their plan and schedule for conducting these checks. Drivers must meet all DOT requirements.
- d. The Town of Cary reserves the right to request that drivers not adhering to safe practices and following all applicable policies and procedures be prohibited from Biosolids hauling activities for the Town of Cary products.
- e. Hauling routes between Town facilities and the compost facility must be pre-approved by the Town. The Vendor's primary hauling routes shall be mapped and included as part of the proposal.
- f. Congested areas such as shopping centers and residential neighborhoods shall be avoided and not included as part of proposed routes. Stopping on major roads or in sensitive community areas shall not be allowed.
- g. Vendor shall make every effort to avoid nuisance conditions to the community. Odor and noise mitigation measures shall be taken as needed. Use of jake brakes near plant sites and in adjacent neighborhoods will not be allowed.
- h. Town facilities are secure sites and entrance/exit procedures shall be adhered to at all times.
- i. Maps of the site-specific internal routes for trucks to make the most efficient access into and out of the facilities are attached.
- j. Vendor will have access only to specified locations on-site.

4 COST PROPOSAL/EXECUTION OF PROPOSAL

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

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

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Date _____

5 REFERENCES

Offeror **must** supply (3) three Governmental Agency or Private Company references for which similar 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) The Principal Contract Terms, (2) RFP Terms, (3) Instructions in INSTRUCTIONS TO VENDORS, and (4) Vendor's Proposal.
6. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and, in the spaces, provided in this document. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection without further consideration.
7. **MINORITY WOMEN BUSINESS ENTERPRISES (MWBE):** The Town invites and encourages participation in this procurement process by minority women business enterprises (MWBE) in accordance with North Carolina General Statute 143-129.
8. **DIVERSITY AND INCLUSION:** The Town encourages vendors to have a diverse and inclusive project team involved in all aspects of this project.
9. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the Town will maintain confidential trade secrets that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and

cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

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

APPENDIX I – PRODUCT LABELS

ENVIRO GEMS

7 - 5 - 0

ENVIRO GEMS 7-5-0 is a high-quality natural fertilizer ideal for turf, landscaping, and agricultural applications. It is an excellent source of slow-release nitrogen and phosphate.

Directions For Use

Flower and Ornamental Garden Beds: Apply at 20 pounds per 1,000 sq. ft. of garden area around the base of plant materials. Apply **ENVIRO GEMS** onto the soil surface or incorporate it into the soil before planting.

Turf Areas: Apply 40 pounds per 1,000 sq. ft. of turf area as a pre-plant fertilizer and incorporate into the soil. Apply **ENVIRO GEMS** using a conventional fertilizer spreader. Apply **ENVIRO GEMS** at 20 pounds per 1,000 sq. ft. to established turf areas on a quarterly basis.

Agricultural crops: Application rate should be based on crop nitrogen and phosphorous requirements of the crop and soil test results.

STORAGE: This product should be kept dry during storage. Spills should be swept up and reused. Keep away from children and pets.

Guaranteed Analysis

Total Nitrogen (N).....	7.0%
6.9%.....Water Insoluble Nitrogen*	
0.10%...Water Soluble Nitrogen.....	
Available Phosphate (P ₂ O ₅).....	5.0%**
Iron (Fe).....	2.0%

Derived from biosolids.

*6.9% Slowly available nitrogen from biosolids

**4.75% Slowly available phosphate from biosolids

Manufactured By

Town of Cary, North Carolina
400 James Jackson Ave.
Cary, NC 27513
Brand ID 94745

South Cary Water Reclamation Facility Location - 4900 West Lake Road, Apex, NC 27502 - 919-779-0697

Product is supplied in bulk form and sold 'by the ton'. Weigh tickets are supplied to assure purchase volumes.

Town of Cary ENVIRO GEMS is a pelletized residuals material originating from the biological treatment of wastewater. **ENVIRO GEMS** is produced as a "Class A – Exceptional Quality" wastewater treatment residual product under the requirements of 40 CFR 503. Applications of **ENVIRO GEMS** should be made in accordance with approved application methods and it shall not be applied to flooded, frozen, or snow-covered areas. **ENVIRO GEMS** shall be stored, and application operations shall be conducted in such a way as to prevent runoff from the application and/or storage site(s) to any surface water and shall not be applied within a 10-foot buffer area around any water wells, streams, lakes, rivers and/or natural uncontrolled drainage ways.

Application of Town of Cary ENVIRO GEMS is prohibited in accordance with the provisions specified below related to Application Information. The Town of Cary accepts no liability for improper applications or uses of Town of Cary ENVIRO GEMS.

ENVIRO GEMS

5.5 - 5 - 0

ENVIRO GEMS 5.5-5-0 is a high-quality natural fertilizer ideal for turf, landscaping and agricultural applications. It is an excellent source of slow-release nitrogen and phosphate.

Directions For Use

Flower and Ornamental Garden Beds: Apply at 20 pounds per 1,000 sq. ft. of garden area around the base of plant materials. Apply **ENVIRO GEMS** onto the soil surface or incorporate it into the soil before planting.

Turf Areas: Apply 40 pounds per 1,000 sq. ft. of turf area as a pre-plant fertilizer and incorporate into the soil. Apply **ENVIRO GEMS** using a conventional fertilizer spreader. Apply **ENVIRO GEMS** at 20 pounds per 1,000 sq. ft. to established turf areas on a quarterly basis.

Agricultural crops: Application rated should be based on crop nitrogen and phosphorous requirements of the crop and soil test results.

STORAGE: This product should be kept dry during storage. Spills should be swept up and reused. Keep away from children and pets.

Guaranteed Analysis

Total Nitrogen (N).....	5.5%
5.4%.....Water Insoluble Nitrogen*	
0.1%.....Water Soluble Nitrogen	
Available Phosphate (P ₂ O ₅).....	5.0%**
Iron (Fe).....	4.0%

Derived from biosolids.

* 5.4% Slowly available nitrogen from biosolids

**4.75% Slowly available phosphate from biosolids

Manufactured By

Town of Cary, North Carolina
400 James Jackson Ave.
Cary, NC 27513
Brand ID 94744

Western Wake Regional Reclamation Facility Location – 3500 Reclamation Rd., New Hill, NC 27562 – 919-535-5640

All product is supplied in bulk form, and sold 'by the ton'. Weigh tickets are supplied to assure purchase volumes.

Town of Cary ENVIRO GEMS is a pelletized residuals material originating from the biological treatment of wastewater. **ENVIRO GEMS** is produced as a "Class A – Exceptional Quality" wastewater treatment residual product under the requirements of 40 CFR 503. Applications of **ENVIRO GEMS** should be made in accordance with approved application methods and it shall not be applied to flooded, frozen, or snow-covered areas. **ENVIRO GEMS** shall be stored and application operations shall be conducted in such a way as to prevent runoff from the application and/or storage site(s) to any surface water and shall not be applied within a 10-foot buffer area around any water wells, streams, lakes, rivers and/or natural uncontrolled drainage ways.

Application of Town of Cary ENVIRO GEMS is prohibited in accordance with the provisions specified below related to Application Information. The Town of Cary accepts no liability for improper applications or uses of Town of Cary ENVIRO GEMS.

ENVIRO GEMS

5 - 4 - 0

ENVIRO GEMS 5-4-0 is a high-quality natural fertilizer ideal for turf, landscaping and agricultural applications. It is an excellent source of slow-release nitrogen and phosphate.

Directions For Use

Flower and Ornamental Garden Beds: Apply at 20 pounds per 1,000 sq. ft. of garden area around the base of plant materials. Apply **ENVIRO GEMS** onto the soil surface or incorporate it into the soil before planting.

Turf Areas: Apply 40 pounds per 1,000 sq. ft. of turf area as a pre-plant fertilizer and incorporate into the soil. Apply **ENVIRO GEMS** using a conventional fertilizer spreader. Apply **ENVIRO GEMS** at 20 pounds per 1,000 sq. ft. to established turf areas on a quarterly basis.

Agricultural crops: Application rated should be based on crop nitrogen and phosphorous requirements of the crop and soil test results.

STORAGE: This product should be kept dry during storage. Spills should be swept up and reused. Keep away from children and pets.

Guaranteed Analysis

Total Nitrogen (N).....	5.0%
4.9%.....Water Insoluble Nitrogen*	
0.1%.....Water Soluble Nitrogen	
Available Phosphate (P ₂ O ₅).....	4.0%**
Iron (Fe).....	1.5%

Derived from biosolids.

* 4.5% Slowly available nitrogen from biosolids

**4.75% Slowly available phosphate from biosolids

Manufactured By

Town of Cary, North Carolina
400 James Jackson Ave.
Cary, NC 27513
Brand ID 48669

Western Wake Regional Reclamation Facility Location – 3500 Reclamation Rd., New Hill, NC 27562 – 919-535-5640

All product is supplied in bulk form, and sold 'by the ton'. Weigh tickets are supplied to assure purchase volumes.

Town of Cary ENVIRO GEMS is a pelletized residuals material originating from the biological treatment of wastewater. **ENVIRO GEMS** is produced as a "Class A – Exceptional Quality" wastewater treatment residual product under the requirements of 40 CFR 503. Applications of **ENVIRO GEMS** should be made in accordance with approved application methods and it shall not be applied to flooded, frozen, or snow-covered areas. **ENVIRO GEMS** shall be stored and application operations shall be conducted in such a way as to prevent runoff from the application and/or storage site(s) to any surface water and shall not be applied within a 10-foot buffer area around any water wells, streams, lakes, rivers and/or natural uncontrolled drainage ways.

Application of Town of Cary ENVIRO GEMS is prohibited in accordance with the provisions specified below related to Application Information. The Town of Cary accepts no liability for improper applications or uses of Town of Cary ENVIRO GEMS.

ENVIRO GEMS

5 - 2 - 0

ENVIRO GEMS 5-2-0 is a high-quality natural fertilizer ideal for turf, landscaping and agricultural applications. It is an excellent source of slow-release nitrogen and phosphate.

Directions For Use

Flower and Ornamental Garden Beds: Apply at 20 pounds per 1,000 sq. ft. of garden area around the base of plant materials. Apply **ENVIRO GEMS** onto the soil surface or incorporate it into the soil before planting.

Turf Areas: Apply 40 pounds per 1,000 sq. ft. of turf area as a pre-plant fertilizer and incorporate into the soil. Apply **ENVIRO GEMS** using a conventional fertilizer spreader. Apply **ENVIRO GEMS** at 20 pounds per 1,000 sq. ft. to established turf areas on a quarterly basis.

Agricultural crops: Application rated should be based on crop nitrogen and phosphorous requirements of the crop and soil test results.

STORAGE: This product should be kept dry during storage. Spills should be swept up and reused. Keep away from children and pets.

Guaranteed Analysis

Total Nitrogen (N).....	5.0%
4.9%.....Water Insoluble Nitrogen*	
0.1%.....Water Soluble Nitrogen	
Available Phosphate (P ₂ O ₅).....	2.0%**
Iron (Fe).....	1.5%

Derived from biosolids.

* 4.5% Slowly available nitrogen from biosolids

**4.75% Slowly available phosphate from biosolids

Manufactured By

Town of Cary, North Carolina
400 James Jackson Ave.
Cary, NC 27513
Brand ID 54272

Western Wake Regional Reclamation Facility Location – 3500 Reclamation Rd., New Hill, NC 27562 – 919-535-5640

All product is supplied in bulk form, and sold 'by the ton'. Weigh tickets are supplied to assure purchase volumes.

Town of Cary ENVIRO GEMS is a pelletized residuals material originating from the biological treatment of wastewater. **ENVIRO GEMS** is produced as a "Class A – Exceptional Quality" wastewater treatment residual product under the requirements of 40 CFR 503. Applications of **ENVIRO GEMS** should be made in accordance with approved application methods and it shall not be applied to flooded, frozen, or snow-covered areas. **ENVIRO GEMS** shall be stored and application operations shall be conducted in such a way as to prevent runoff from the application and/or storage site(s) to any surface water and shall not be applied within a 10-foot buffer area around any water wells, streams, lakes, rivers and/or natural uncontrolled drainage ways.

Application of Town of Cary ENVIRO GEMS is prohibited in accordance with the provisions specified below related to Application Information. The Town of Cary accepts no liability for improper applications or uses of Town of Cary ENVIRO GEMS.

APPENDIX II - SAMPLE AGREEMENT

(Town of Cary anticipates executing this sample agreement, or an agreement substantially like this.)

Any Vendor whose proposal is selected by Town shall be expected to enter into the following Principal Contract with Town. As stated in section 1.3 of this RFP, any Vendor who submits a response to this RFP certifies by making said submittal that it has reviewed this Principal Contract and are, at the time of submittal, are prepared to enter into this Principal Contract should its proposal be selected. Also as stated in section 1.3, Vendor should use the question procedure described in section 1.6 to address any questions Vendor has about the Principal Contract prior to making its submittal. Notwithstanding anything to the contrary contained in Contractor's Proposal, the terms and conditions of the Principal Contract and the RFP, if any, apply and take precedence and control over inconsistent, ambiguous or contrary terms and conditions in Proposal. However, if Proposal imposes a more stringent standard or obligation on Contractor then the more stringent standard or obligation shall apply.

Principal Contract Terms

These Principal Contract Terms (the "Contract" or "PCT") are entered into as of the "Effective Date" by and between the Contractor identified below ("Contractor") and the Town of Cary, a North Carolina municipal corporation ("Cary"). Contractor and Cary are referred to individually as a "Party" and collectively as the "Parties."

SIGNATURES

Contractor and Cary hereby agree to be bound by the following contractual terms contained within these PCT and its Attachments:

Contractor:

Town of Cary:

By:

By:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

Deputy Finance Officer

Date

TERMS

1. Parties

Contractor

Legal Name: _____

Mailing Address: _____

Primary Contact: _____

Email: _____

Phone: _____

Cary

Primary Contact: _____

Mailing Address: _____

P.O. Box 8005
Cary, NC 27512-8005

Email: _____

Phone: _____

2. Type of Services:

- ☐ Professional or Consulting Services
- ☐ On-call Professional or Consulting Services
- ☐ Goods or Purchase Order
- ☐ Technology Agreement (Software, hardware, technology support services)
- ☐ Temporary Personnel
- ☐ PRCR Instructor/Entertainer Agreement
- ☐ Other: _____

3. Term of Contract (also see Paragraph 9):

Effective Date: _____

☐ Actual date: _____

☐ Date of last signature execution

Length of Term: _____[months/years]

Renewal Term, if applicable:

- ☐ None
- ☐ 1 year renewal extension at Cary's option
- ☐ 2 year renewal extension at Cary's option
- ☐ 3 year renewal extension at Cary's option
- ☐ Other _____

4. Total Contract Amount: \$ _____

5. **Contract Amount to be expended during current fiscal year: \$ _____**

6. **Payment Terms/Schedule (also see Paragraph 12):**

- ☐ No more often than Monthly, 30 days after invoice
- ☐ Lump sum paid at _____ (event or milestone)
- ☐ As set forth in SOW

7. **Attachments to this Principal Contract Terms Sheet**

- ☐ Attachment A: SOW (General)
- ☐ Attachment B: Insurance Provisions (minimum insurance requirements)
- ☐ Attachment C: Public Records Indemnification
- ☐ Attachment D: Information Technology Services Terms and Conditions (IF APPLICABLE)
- ☐ Attachment E: Reimbursable Expenses (IF APPLICABLE)

8. Scope. Contractor shall perform or provide the services, goods, or other bargained-for benefits ("Services") as described in the PCT, the attached Scope of Work ("SOW"), any additional or amended SOWs executed by the Parties pursuant to the PCT, and/or any duly-executed written amendment ("Amendment") to the PCT. Cary has no obligation to execute any SOW, Amendment, or additional agreement with Contractor.

9. Term; Termination; Suspension.

- a. The term of the PCT shall begin as of the Effective Date, and, unless sooner terminated in accordance with the provisions in this PCT, shall end following the Length of Term indicated herein (the "Initial Term"). At Cary's option, the PCT may be extended as indicated in paragraph 2 (the "Renewal Term", and, together with the Initial Term, "Term") by written notice.
- b. Cary may order Contractor in writing to suspend, delay, or interrupt all or any part of the Services for the convenience of Cary. In the event Contractor believes that any suspension, delay, or interruption of the Services ordered by Cary may require an extension of the Term or an increase in the level of staffing by Contractor, it shall so notify Cary and propose an amendment to this Contract, which shall be effective only upon the written approval of Cary. A suspension, delay, or interruption of the Services requested by Cary shall not terminate the PCT.
- c. The PCT or any individual SOW may be terminated by Cary and for its convenience upon ten (10) days' written notice to Contractor.
- d. After thirty (30) days' written notice to the other party of its material breach of the PCT or any individual SOW, the PCT or any individual SOW may be terminated by the noticing Party, provided that the other party has not taken all reasonable actions to remedy the breach.
- e. Upon termination of the PCT or any individual SOW for any reason, Contractor shall be paid that portion of its fees and expenses that it has earned for Services satisfactorily completed to the date of termination under the PCT or applicable SOW, as appropriate, less any costs or expenses incurred or anticipated to be incurred by Cary due to breach or errors, omissions, or mistakes of Contractor.
- f. In the event of termination for the convenience of Cary or by reason of a material breach by Cary of the PCT or any individual SOW, Contractor shall be paid that portion of the total compensation for the PCT or individual SOW, as appropriate, that it has

earned to the date of termination, plus an amount equal to (i) five percent (5%) of total compensation earned to date of termination; or (ii) Contractor's unearned total compensation, whichever is less; less any costs or expenses incurred or anticipated to be incurred by Cary due to breach or errors, omissions, or mistakes of Contractor. The Parties intend that these liquidated damages constitute compensation, and not a penalty. Contractor expressly agrees that harm caused by Cary under this Section 9(f) would be impossible or very difficult to accurately estimate, and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise. Contractor further 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. Payment of damages under this Section 9(f) is Cary's sole liability and entire obligation and Contractor's exclusive remedy for any Cary breach.

- g. Termination of any individual SOW shall not result in termination of the PCT or any other pending or ongoing SOW, unless expressly set forth in the notice of termination associated with such terminated SOW. Notwithstanding the Length of Term that may be indicated herein, the PCT shall remain in effect until the completion of the last SOW then in effect under the PCT.
 - h. Upon expiration or termination of the PCT for any reason, Contractor shall promptly comply with any and all terms for the dissolution of the PCT that may be contained in any applicable SOW and the following general terms:
 - i. Deliver to Cary all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Contractor in the course of performing the Services and expend such additional effort as may be necessary to provide to Cary professionally certified and sealed reports and such other information and materials as may have been accumulated by Contractor in the performance of the PCT, whether completed or in process.
 - ii. Return to Cary all Cary-owned property, equipment, or materials in its possession or control, including, but not limited to, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Cary's Confidential Information as defined in Paragraph ____ of the PCT, or, upon Cary's written request, permanently delete all of Cary's Confidential Information from its computer systems.
 - iii. Remove any Contractor-owned property, equipment, or materials located on Cary property.
 - iv. Provide reasonable cooperation and assistance to Cary upon Cary's written request in transitioning to an alternate provider, if applicable.
 - v. On a pro rata basis, repay all sums paid in advance for any Services which have not been provided.
 - vi. At Cary's discretion, complete any other termination requirements.
10. Responsibilities of Contractor. Contractor represents and warrants that it is fully qualified, skilled, and capable of performing the Services in a fully competent, professional, and timely manner; shall provide Services in accordance with industry standards; shall use best efforts and exercise reasonable care and diligence in performing Services and shall act in the best interest of Cary; 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 or shall acquire all qualifications, licenses, and certifications necessary to provide Services. Contractor shall be responsible for all errors, omissions, or mistakes in performance of Services and shall correct at no additional cost to Cary any and all errors, omissions, or mistakes. In addition to any other

damages that may be due to Cary, Contractor shall reimburse Cary for the aggregate cost to Cary for all errors, omissions, and mistakes of Contractor or any breach of the PCT by Contractor. Contractor shall be responsible for all applicable taxes, license fees, or the like required to provide Services. It is mutually agreed that time is of the essence in performing under the PCT. Contractor shall expedite and accelerate its efforts as necessary to perform in accordance with the PCT at no additional cost to Cary, if Cary reasonably determines that Contractor is behind schedule. Contractor further represents that, prior to accepting any agreement that is funded by Federal funds, Contractor:

- a. Is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal Government agency and not included in the Excluded Parties List System;
 - b. Has not, within a three-year period preceding the Effective Date, been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and
 - c. Is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.
11. Responsibilities of Cary. Cary has designated a Primary Contact in Paragraph 1 who shall coordinate performance and who shall be available during working hours as often as may be reasonably required to communicate decisions and to furnish information. Cary shall examine documents submitted by Contractor and shall make reasonable efforts to render timely decisions pertaining thereto so as to not unduly delay the orderly progress of performance.
12. Compensation. Fees for the Services performed in conjunction with the PCT shall not exceed the Total Contract Amount specified herein unless otherwise changed by Amendment. Cary shall pay Contractor in accordance with the Payment Schedule in the applicable SOW.

Invoices shall be submitted by Contractor no more than monthly for all Services rendered by Contractor during the month prior or as specified in the applicable SOW. Approved, uncontested invoices shall be paid within thirty (30) days of receipt by Cary. Cary shall contest submitted invoices to which it disagrees within thirty (30) days of receipt. The Parties shall endeavor to reconcile any disputed invoices within the same thirty (30) day period. Cary shall have the right to deduct from payments to the Contractor any costs or damages incurred, or which may be incurred, by Cary as a result of the Contractor's failure to perform in accordance with the PCT, following reasonable notice and opportunity to

cure such nonperformance by Contractor. 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 as a PDF attachment. Invoices not submitted following these instructions will result in delayed payment.

Accounting records of Contractor's compensation for Services (and Reimbursable Expenses, if permitted under an SOW) shall be maintained by Contractor in accordance with generally accepted accounting practices and shall be available for inspection and copying by Cary at mutually convenient times for a period of three (3) years after termination of the PCT unless a longer period is required by law.

13. Insurance. During the term and for a period of three years after the termination of the PCT, Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense insurance as required by applicable law or regulation and as outlined in the attached Insurance Addendum to the PCT and as needed to ensure that it can meet its obligations under the PCT. All insurance policies (except Workers Compensation, Cyber and Professional Liability) shall name Cary, its elected officials, officers, employees, agents, and volunteers as an additional insured. Requirements regarding types and minimum limits of insurance coverage and other provisions specific to the PCT are attached hereto. Cary reserves the right to modify the applicable insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
14. State and Federal Funds. Contractor shall work in good faith with Cary to meet requirements imposed by the Federal or State government or other funding entity if grants or other sources of Federal or State funding are used to fund any portion of Services. If the source of funds for the PCT is Federal funds, the following Federal provisions apply (as applicable) unless a more stringent State or local law or regulation is applicable: Employment Eligibility Verification (FAR 52.222-54), Whistleblower protections (41 U.S.C. 265 and 10 U.S.C. 2408), and the following federal provisions listed in 2 C.F.R. Part 200, Appendix II: 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. § 200.323); Record Retention Requirements (2 CFR § 200.334); Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216); Domestic Preferences for Procurements (2 C.F.R. § 200.322).
15. Indemnification.
 - a. Indemnification; General. To the fullest extent permitted by applicable laws and regulations, Contractor shall indemnify, protect, defend, and hold harmless Cary, its elected officials, officers, employees, agents, and volunteers (collectively, "Cary Indemnitees") from and against any and all claims, costs, civil penalties, fines, losses, liabilities, injuries (including death), demands, damages (including but not limited to all professionals' fees and charges and all court or other dispute resolution costs), actions, causes of action, suits, proceedings, judgments, and expenses, including reasonable attorneys' fees, court costs, and other legal expenses and including,

without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency, or similar proceeding, and other legal expenses (collectively and separately, "Claims") by whomsoever brought or alleged, arising out of, resulting from, or in connection with:

- i. Any breach by Contractor of any term or condition of the PCT or applicable SOW;
 - ii. Any breach or violation by Contractor of any applicable law or regulation; or
 - iii. Any other cause resulting from any negligent, reckless, or intentional act or failure to act by Contractor under the PCT. If N.C.G.S. § 22B-1 applies to the PCT, then Contractor shall indemnify Cary Indemnitees from 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 Contractor or its derivative parties (as defined in N.C.G.S. § 22B-1 as it exists on the Effective Date) is a proximate cause of the Claim.
- b. Indemnification; Intellectual Property. Contractor shall indemnify, protect, defend, and hold harmless Cary Indemnitees from and against any and all Claims arising out of, related to, or resulting from any claim, action, or proceeding by a third party alleging that any deliverables or work product created or reduced to practice by or on behalf of Contractor in connection with providing the Services, or any use of such deliverables or work product, infringes, misappropriates, or otherwise violates any intellectual property right (including, without limitation, any patent, copyright, trademark, or trade secret) or other proprietary right of any third party.
- c. Indemnification; Procedures. Cary shall give Contractor written notice of any matters giving rise to a claim for indemnification; provided, however, that the failure of Cary to give notice as provided herein shall not relieve Contractor of its obligations under this Paragraph 15 or of any liability that Contractor may have to Cary, but in no event shall Contractor be liable for any losses that result directly from a delay in providing written notice, which delay materially prejudices the defense of a related third-party claim. Each notice should contain a description of the third-party claim and the nature and amount of the related loss(es) (to the extent that the nature and amount of the loss(es) are known at the time). Cary shall furnish promptly to Contractor copies of all papers and official documents received in respect of any loss(es). Contractor's duty to defend applies immediately, regardless of whether Cary has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any third-party claim.

This Indemnification Paragraph 15 shall survive the termination of the PCT.

16. No Consequential or Indirect Damages. Except for Contractor's indemnification obligations hereunder or any liability arising out of Contractor's negligence, willful misconduct, violation of law, or infringement or misappropriation of intellectual property rights, in no event shall either Party be liable to the other for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost revenues, or diminution in value, arising out of, relating to, or in connection with any breach of the PCT, regardless of whether such damages were foreseeable, whether said Party was advised of the possibility of such damages, and the legal or equitable theory upon which the claim is based.

17. Public Records, Confidential Information, and Dissemination of Information. Contractor acknowledges that records in the custody of Cary are public records and subject to public records requests. Cary may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification of Cary by Contractor pursuant to the attached Public Records Indemnification Agreement, Cary will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of initial disclosure by Contractor, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1) (“Contractor Confidential Information”). If Contractor does not provide the required indemnification within ten (10) days of notice that Cary has received a public record request, then such record shall be deemed to not be Contractor Confidential Information and Contractor hereby agrees and consents that Cary may release such record.

If Contractor, its employees or subcontractors, becomes aware of or has access to confidential records or information or information of Cary that is protected from disclosure by Federal or State law (“Cary Confidential Information”), Contractor, its employees and subcontractors, shall not disclose any such Cary Confidential Information. All of the information which Contractor obtains and/or develops in the performance of the PCT is also Cary Confidential Information and shall not be disclosed or used for any purpose other than in the performance of the Services. Contractor may disclose Cary Confidential Information if it is required to do so by applicable statute, rule, regulation, or judicial or administrative process or order, provided, however, that Contractor shall promptly notify Cary of any such requirement so that Cary may seek an appropriate protective order.

Cary takes efforts to assure that accurate information about Cary is disseminated such that neither the public trust nor the public’s perception of Cary’s impartiality is compromised. Contractor, mindful of those efforts and the terms of the PCT, agrees that it shall not publicly disseminate any information concerning the PCT, Services, or Cary Confidential Information without prior written approval from Cary. Any approval given by Cary may be given with certain stipulations, such as Cary participation in the creation of the public product or Cary review and the option to refuse public release of the final product(s) should such product(s) fail to meet Cary’s standards and goals. Publicly disseminate means, but is not limited to, electronic, video, audio, photographic, or hard copy materials serving as, in whole or part, advertising, social media posts, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or Contractor’s business collateral pieces. Notwithstanding the foregoing, Contractor may list Cary as a reference in response to requests for proposal and may identify Cary as a customer in presentations to potential customers. Contractor may not use Cary’s trademarked materials (including, without limitation, Cary’s logo in its various forms) unless approved in writing by Cary; such approved use must be in compliance with the guidelines outlined at <https://brand.carync.gov/>.

18. Documents and Deliverables. Cary shall be granted, at no additional cost, ownership of all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases, written materials, work papers, manuals, and other documents or instruments identified as ‘Deliverables’ herein (if applicable), as described herein or with more particularity in an applicable SOW, or which, by their nature, are designed to be delivered to Cary under the PCT (collectively, “Deliverables”). Contractor shall turn over to Cary in good unaltered condition, reproducibles as described

in this Paragraph of all Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after termination if the PCT is terminated for any reason. Contractor may retain one set of Deliverables for its records.

Cary is and will be the sole and exclusive owner of all right, title, and interest in and to all Deliverables and associated work product, including all intellectual property rights therein. Contractor acknowledges and agrees that any and all work product that may qualify as “work made for hire” as defined in the Copyright Act of 1976 (17 U.S.C. § 101) is hereby deemed “work made for hire” for Cary and all copyrights therein shall automatically and immediately vest in Cary. In the event Contractor creates Deliverables or work product that requires a license, Contractor will convey with the ownership of Deliverables or work product, a perpetual license required for the operation or use of the Deliverables or work product.

In the event of termination of the PCT for whatever reason, should Cary use Deliverables for completion of Services, Cary shall, to the extent allowed by law and covered by insurance, indemnify and hold Contractor harmless from and against any cost, expense, damage, or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Cary in connection with Cary’s improper use (or misuse) of Deliverables to complete the Services.

Deliverables may be used by Cary for any reason not related to the PCT or applicable SOW without additional compensation to the Contractor. Such use of Deliverables by Cary for other projects shall be at the full risk of Cary and Cary shall indemnify and hold Contractor harmless, to the extent allowed by law and covered by insurance, from and against any costs, expense, damage, or claim arising out of the loss of life, personal injury, or damage to tangible property occasioned wholly or in part by any act or omission by Cary in connection with Cary’s improper use (or misuse) of Deliverables for other projects.

Unless an applicable SOW states differently, Contractor shall provide all Documents and Deliverables in electronic form to Cary in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). In addition, all drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. All Deliverables (draft and final) intended for presentation on Cary’s website must be provided in a manner and format compatible, consistent, and in compliance with the U.S. Department of Justice’s current accessibility requirements applicable to local government websites and all Cary technology standards, including but not limited to such material must be provided in screen readable PDF or HTML versions, be screen-reader friendly, and contain alternate text tags of no more than 34 characters. In the event that Contractor notices any errors in electronic data provided to the Cary under this Contract, Contractor shall immediately notify Cary, and if Contractor provided such electronic data, Contractor shall immediately replace same with correct versions thereof.

19. Assignment. The PCT shall bind Contractor and its successors and permitted assigns. Contractor shall not assign or transfer its rights or interest in the PCT (including the right to payment), nor shall Contractor delegate its duties under the PCT, without Cary’s written consent, which Cary may grant or withhold in its sole discretion. Cary’s consent shall not release Contractor of any obligation under the PCT and Contractor and permitted assigns

shall be subject to all of Cary's defenses. Any attempt to assign the PCT without the prior written approval of Cary shall be void.

20. Key Personnel; Subcontractors. No changes in Contractor's Key Personnel or subcontractors designated in an SOW as those who will provide Services shall be permitted except with the prior written consent of Cary. Such replacement Key Personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. Contractor shall be responsible for the scheduling, completeness, quality, accuracy, and timeliness of all work by subcontractors. Contractor's contracts with subcontractor(s) shall include a provision that, in the event the PCT is terminated for cause by Cary, Cary may take assignment of such contract of Contractor with their subcontractor. Cary has the right to require that any personnel or subcontractor be replaced due to unsatisfactory performance and, if Cary notifies Contractor in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Cary, such person shall be removed from providing Services and shall not again provide Services except with the prior written consent of Cary. No extension of any milestone, Deliverable due date, or other deadline will be granted for such replacement.
21. Independent Contractor. Contractor is acting as an independent contractor, and not as an employee, partner, or agent of Cary. Contractor shall control the conditions, time, details, and means by which Contractor performs Services. Cary shall have the right to inspect the work of Contractor as it progresses solely for the purpose of determining whether Services are being performed in accordance with the PCT and any applicable SOW. Contractor has no authority to commit, act for or on behalf of Cary, or bind Cary to any obligation or liability. Contractor shall not be eligible for and shall not receive any employee benefits from Cary and shall be solely responsible for the payment of all taxes, FICA, Federal and State unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Contractor.
22. No Third-Party Beneficiaries. There are no third-party beneficiaries to the PCT or any SOW.
23. 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.
24. Force Majeure. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached the PCT, for any failure or delay in fulfilling or performing any term of the PCT when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": actions or inactions of governmental authorities (excluding actions or inactions of governmental authorities taken in the normal course of their regulatory authority and actions taken by Cary as permitted by the PCT); acts of God; flood, fire, earthquakes, explosions, and other potential unforeseeable events related to disasters or catastrophes such as epidemics, pandemics, plagues, or quarantines (specifically excluding foreseeable delays or constraints caused by or related to public health emergencies

designated as such by the Centers for Disease Control); war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; embargoes or blockades in effect on or after the Effective Date; national or regional emergency; strikes or labor stoppages; or other similar events beyond the reasonable control of the Impacted Party and without its fault or negligence, and only to the extent that the event affects the Impacted Party's ability to perform under the PCT.

Notice of such Force Majeure Event shall be memorialized in writing by the Impacted Party and provided to the other Party pursuant to the requirements of the PCT and within five (5) days of the beginning of the Force Majeure Event(s). The notice shall describe the Force Majeure Event, the specific performances rendered delayed or impossible by the Force Majeure Event, and the efforts taken and to be taken by the Impacted Party to mitigate the impact of the Force Majeure Event on its duty to perform ("Initial Notice"). The Impacted Party shall prepare a business continuity plan within five (5) business days of the Initial Notice for review and approval by the other Party. The business continuity plan shall include any specific terms as relevant to any then-ongoing Services to be rendered and any available remedies or mitigation of effects, which such business continuity plan may provide and require the Parties' agreement as to the modification of the scope of work under any SOW, including contractual price adjustments or increases due to the conditions surrounding the particular Force Majeure Event. In the event the Parties are unable to agree upon the terms of said business continuity plan for an SOW, the Parties shall cooperate in good faith to promptly implement the provisions of Paragraph 9 of the PCT with respect to that particular SOW. The Impacted Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting the specific performance noticed and to complete its performance in as timely a manner as is reasonably possible. In no event shall the delayed performance be longer than the duration of the noticed Force Majeure Event without the written approval of all Parties. Upon removal of the cause affecting the delay or nonperformance, the Impacted Party shall resume performance of its obligations under the PCT within a mutually agreeable amount of time, as agreed to in the business continuity plan or any amendments thereto.

25. Emergencies. If any Federal, State, or local state(s) of emergency are put into 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, any applicable county, or Cary acting in its regulatory capacity unless mutually agreed to in writing by Cary and Contractor.
26. Waiver. No waiver by any Party of any of the provisions of the PCT shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the PCT, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the PCT shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27. Compliance with Applicable Law; Conduct. Contractor and its officers, employees, agents, and subcontractors shall comply fully with all applicable Federal and State laws and regulations, including but not limited to Article 2, Chapter 64, of the North Carolina General Statutes regarding verification of work authorization; and laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. § 14-234. These laws and regulations shall not be deemed to be the exclusive laws and regulations applicable to the terms of the PCT.

Contractor's officers, employees, agents, and subcontractors who come onto Cary property to perform Services shall comply with the same health and safety requirements that Cary has implemented for its employees through ordinance, policy, procedure, directive of the Cary Manager, or other means (collectively, "Health and Safety Requirements"), as may be amended or enacted from time to time.

Additionally, These to the extent consistent with the terms and conditions of the PCT, Contractor agrees to support and abide by the applicable policies and elements of *Working with the Town of Cary*, available at <https://www.carync.gov/>. To the extent consistent with the terms the PCT, Contractor agrees to support and abide by the applicable policies contained therein.

28. Further Assurances. The Parties agree that they will cooperate to execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as the relevant Party reasonably requests from time to time in order to effectuate the provisions and purposes of the PCT.
29. No Waiver of Immunity. Nothing in the PCT shall be construed to mandate purchase of insurance by Cary pursuant to N.C.G.S. § 160A-485 or to in any way waive Cary's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent, or employee of Cary shall be subject to any personal liability by reason of the execution of the PCT or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute the PCT in their official capacities only, and not in their individual capacities. This Paragraph shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
30. Severability. If any provision of the PCT is held as a matter of law to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the PCT shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent, provided that both Cary and Contractor preserve the substantial benefits of the terms bargained for in the PCT.
31. Survival. Termination of the PCT, for whatever reason, shall not terminate a Party's representations and warranties nor nullify any indemnity hereunder. All representations, indemnifications, and other terms and conditions of the PCT which by their nature should survive the PCT's termination shall survive its expiration or termination, including, but not limited to, the provisions of Paragraphs 13, 14, 15, 16, 17, 18, 29, 32, and 33.
32. Jurisdiction. The PCT is made in the State of North Carolina and shall be governed by the substantive provisions of North Carolina law without regard to conflict of laws provisions. The Parties agree that any legal action or proceeding with respect to the PCT shall be

brought exclusively in the State courts of Wake County, North Carolina. Contractor consents to the personal jurisdiction of such courts, agrees to accept service of process by certified or registered mail, and hereby waives any jurisdictional or venue defenses otherwise available to it.

33. Performance of Government Functions. Nothing contained in the PCT shall be deemed or construed so as to restrict or inhibit Cary's police powers or regulatory authority.
34. Notice. Each Party shall deliver all Amendments, notices, schedules, attachments, appendices, requests, consents, claims, demands, waivers, and other communications under the PCT (collectively, "Notice") in writing and addressed to the other Party at the addresses set forth herein (or to such other address that the receiving Party may designate from time to time in accordance with this Paragraph). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid), or upon confirmation of receipt when sent via facsimile or email. Except as otherwise provided in the PCT, a Notice is effective only upon receipt by the receiving party or three (3) days after deposit in the United States mail or other service and if the party giving the Notice has complied with the requirements of this Paragraph.
35. Complete Contract; Amendment; Inconsistency. The PCT, including and together with any related and duly executed and acknowledged SOWs, Amendments, schedules, attachments, and appendices, constitutes the final, complete, and exclusive understanding between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements between the Parties as to the subject of the PCT, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). This Contract may be amended only by written amendment signed by both Parties. Neither Party may amend, or seek to amend, the PCT by clickthrough agreement. The Parties have not relied upon any promises, warranties, or undertakings other than those expressly set forth in the PCT. Unless otherwise (a) expressly agreed in writing and signed after the date of this agreement by both Parties, or (b) expressly provided in the PCT, any inconsistency between documents will be resolved in the following order of precedence: the PCT; the applicable SOW; the applicable Amendment.
36. Execution. The Contractor represents and warrants that the individual(s) signing the PCT 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. The PCT may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Electronic signature is a valid method of execution. Cary may convert a signed original of the PCT to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources (or successor agency) approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the PCT shall be deemed for all purposes to be an original signed PCT. If required by N.C.G.S. § 159-28, the PCT is not deemed fully executed and is not effective until the Preaudit Certificate as required by that statute has been affixed and signed by the Cary finance officer or deputy finance officer.

ATTACHMENT A STATEMENT OF WORK

1. THIS STATEMENT OF WORK ("SOW") adopts and incorporates by reference the terms and conditions of the Principal Contract Terms ("PCT") which was entered into by and between Town of Cary ("Cary") and Contractor identified herein and in the PCT ("Contractor") (together, "Parties") as it may be amended from time to time. This SOW is effective beginning on Effective Date identified below and will remain in effect through the Length of Term identified below, unless earlier terminated in accordance with the PCT. Transactions performed under this SOW shall be conducted in accordance with and be subject to the terms and conditions of this SOW, the PCT, and any applicable purchase order ("PO"). This SOW is not a PO. Capitalized terms used but not defined in this SOW shall have the meanings set out in the PCT. In the event that any terms of this SOW are ambiguous or contradictory to terms contained in the PCT, the PCT shall control.

2. General Terms.

Contractor Corporate Name	
Effective Date of SOW	
Length of Term of SOW	
Cary Contact	
Contractor Contact	

3. Services.

[Describe the project goals and deliverables in detail, including the relevant conditions and guarantees as outlined in the Request for Proposal, the Proposal submitted to Cary, or agreed to in subsequent communications intended to become part of this SOW. Use the Work Schedule and Deliverables and Payment Schedule tables below if those are helpful and appropriate for your project. Otherwise, be sure to include that type of information in the Services section. The length of this section will vary by project and may be short or may be several pages long is needed to fully and adequately describe the project.]

4. Work Schedule and Deliverables. The relevant milestones, dates, and terms associated with this SOW are as follows:

Line Item/Order of Performance	Deliverable Description	Completion Date	Acceptance Criteria
1			
2			
3			

5. Payment Schedule. All costs listed below are based on the scope and assumptions included in this SOW.

Services or Goods	Price	Payment/Invoice Schedule (e.g.: monthly, weekly, final/completion, upon acceptable work, per fee schedule)	Payment Terms (if other than 30 days from receipt of valid invoice) (e.g. up to NTE, 60 days)

Not To Exceed (NTE): \$_____ (if applicable)

TOTAL: \$_____

Reimbursable Expenses: There are no reimbursable expenses unless the box below is checked and Attachment E, Reimbursable Expenses, is attached.

☐ Reimbursable Expenses Attachment included.

6. Key Personnel List (if applicable):

<u>Position</u>	<u>Name</u>

7. Subcontractors (if applicable):

<u>Subcontractor Corporate Name</u>	<u>Duties to be performed</u>

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this SOW.

[CONTRACTOR/COMPANY NAME]

By _____

Name:

Title:

Date:

TOWN OF CARY

By _____

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 B
TOWN OF CARY
SUPPLEMENTAL INSURANCE PROVISIONS

In addition to the Insurance obligations in Paragraph 6 of the Principal Contract Terms ("PCT"), the following designated supplemental insurance provisions are agreed to by the Contractor and the Town of Cary ("Cary") and are incorporated by reference into the PCT between the Parties. All of the following coverages are required unless specifically indicated otherwise.

Commercial General Liability Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations, and advertising and personal injury.

Workers Compensation Insurance / Employer's Liability Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, sickness, disease, or death of any of Contractor's employees or subcontractors as required by state law.

Commercial Automobile Liability Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense 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 Cary's premises and in the course of performing services pursuant to this Contract.

☐ Not required per Cary Risk Manager.

Professional Liability/Errors & Omissions Insurance: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Professional Liability/Errors & Omissions Insurance covering claims arising out of or related to Contractor's performance under this Contract.

☐ Not required per Cary Risk Manager.

Cyber Liability: Contractor and Contractor's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense Cyber Liability Insurance covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs and regulatory fines.

☐ Not required per Cary Risk Manager.

Additionally, the following provisions, as applicable, will apply to all required insurance coverage:

Coverage Required: Unless otherwise specified, 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
Cyber Liability	\$2,000,000 per claim and aggregate

Contractor may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to Cary.

By requiring such minimum insurance, Cary shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and, if it deems appropriate and/or prudent, shall maintain higher limits and/or broader coverage.

Additional Insured Status

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

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Cary, its agents or agencies or insurers (if any), it being the intention of the Parties that the insurance policies shall protect Cary and be primary coverage for any and all losses covered by the policies.

Notice of Cancellation

Each policy shall provide that Cary shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal, or if a policy's limits are exhausted, Contractor shall procure substitute insurance so as to assure Cary that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

Contractor's insurance coverage shall be primary for any claims related to the PCT without contribution from Cary or its insurance coverages, if any.

Insurers

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

Verification of Coverage: A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of the PCT. Cary's review or acceptance of certificates of insurance shall neither relieve Contractor of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in the PCT.

Certificate Holder address should read:

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

ATTACHMENT C

TEMPLATE PUBLIC RECORDS INDEMNITY AGREEMENT FORM

NOTE: THIS TEMPLATE PUBLIC RECORDS INDEMNIFICATION AGREEMENT IS BEING PROVIDED AS AN EXAMPLE OF THE FORM OF AGREEMENT THAT WILL BE REQUIRED TO BE EXECUTED BY CONTRACTOR PURSUANT TO PARAGRAPH _____ OF THE PRINCIPAL CONTRACT TERMS SHOULD CARY RECEIVE A PUBLIC RECORDS REQUEST TO WHICH CONTRACTOR'S CONFIDENTIAL INFORMATION IS RESPONSIVE. **DO NOT EXECUTE (SIGN) THIS FORM WHEN THE CONTRACT TO WHICH IT IS ATTACHED IS EXECUTED.**

Contractor acknowledges that records in the custody of Cary are public records and subject to public records requests. Cary may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Contractor, Cary will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a "trade secret" or "confidential" at the time of initial disclosure by Contractor, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1).

If a public record request is made on Cary for a record of Contractor that meets the requirements of Confidential Information, then Town shall notify Contractor. If Contractor, within ten (10) days of such notice, provides written notice to Cary that the requested information is Confidential Information entitled to be withheld from public inspection and copying ("PR Notice"); then Cary shall withhold such information from public access based upon Contractor's agreement to indemnify and hold Cary harmless from and against all loss, costs, and expenses, including attorneys' fees, that may be incurred for withholding. Contractor understands and acknowledges that Cary is subject to legal action and the imposition of attorney's fees if public records are wrongly withheld from disclosure. If Contractor does not provide PR Notice within ten (10) days of notice that Cary has received a public record request, then such record shall be deemed to be not Confidential Information and Contractor hereby agrees and consents that Cary may release such record pursuant to the public records request.

If Contractor provides PR Notice to Cary, Contractor represents and warrants that the specific identified information requested to be withheld are 'trade secrets' as such term is defined in Chapter 66, Article 24 of the North Carolina General Statutes (N.C.G.S. §66-152(3)) and such information is entitled to be withheld from public inspection and copying in accordance with Chapter 132, Public Records, of the North Carolina General Statutes (N.C.G.S. §132-1 et seq, specifically N.C.G.S. §132-1.2). Contractor understands and intends that Cary, its officers, agents and employees rely on such representations and warranties.

Contractor shall indemnify and hold Cary, its officers, agents and employees ('Indemnitees') harmless from and against any and all claims, losses, liabilities, costs, expenses, charges, penalties, fines and damages, including the assessment of attorneys' fees, arising from, or related to the withholding of records from inspection under the Public Records Act, Chapter 132 of the North Carolina General Statutes. Contractor shall be responsible for all expenses incurred by the Indemnitees in their defense of any claim, suit, or action within the scope of this indemnification and for all expenses and damages that might be assessed against the Indemnitees as a result of withholding such records or

information from public inspection. If a claim, suit, or action is threatened Indemnitees may demand that Contractor post a bond or other form of financial guarantee to guaranty and assure the satisfaction of this indemnification obligation.