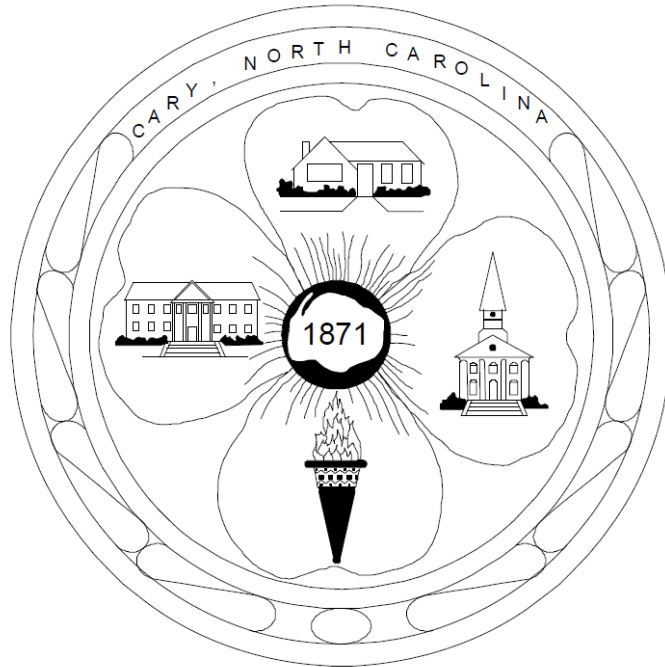


REQUEST FOR PROPOSALS

for

***Walnut Street (SR 1313) Improvements Project:
Environmental Planning and Design***

for the Town of Cary, North Carolina



Proposal Deadline: Thursday, February 23, 2012 at 4:00 p.m. EDT

TABLE OF CONTENTS

INTRODUCTION.....	1
SCOPE OF SERVICES.....	1
CONTENT AND FORMAT OF PROPOSAL PACKAGE	6
GENERAL PROVISIONS	7
SUBMITTALS	8
METHOD OF EVALUATION	8
ANTICIPATED SCHEDULE	9
MINIMUM REQUIREMENTS FOR CONTRACT EXECUTION.....	9
APPENDIX A. Sample Agreement for Professional Services	
APPENDIX B. Responses to Questions Submitted for RFP - Walnut Street (SR 1313) Bridge Area Improvement Project Environmental Planning And Design	

REQUEST FOR PROPOSALS - ENGINEERING

WALNUT STREET (SR 1313) IMPROVEMENTS PROJECT ENVIRONMENTAL PLANNING AND DESIGN

TOWN OF CARY

INTRODUCTION

The Town of Cary is soliciting Proposals for planning, environmental, design, and engineering services, for proposed improvements of Walnut Street (SR 1313) from US 1/64 southbound ramps/Donaldson Drive to Piney Plains Road (SR 1423).

The Town is considering widening the current Walnut Street bridge section on the north side over US 1/64 to improve roadway geometry, add a 10-foot multiuse trail, and potentially provide an additional westbound lane along the Walnut Street corridor. The proposed multiuse trail would start on the eastside of Buck Jones Road near Best Import Motors, south to Walnut Street, east along the north side of the Walnut Street bridge, transition to the south side of Crossroads Boulevard and along Caitboo Avenue, and crossing the existing parking lots of Red Lobster and Chick-fil-a restaurants before crossing Walnut Street to the east side of Piney Plains Road. The project may also include: traffic signal upgrades; pavement marking/stripping revisions; new sidewalks segments to fill gaps along Walnut Street; pedestrian and bicycle enhancements including crossings, and ADA wheelchair ramp retrofits within the project area; and intersection improvements at Buck Jones Road (SR 1315).

These environmental and design services are part of the Capital Area Metropolitan Planning Organization (CAMPO) FY2012-13 Locally Administered Projects Program, and are funded in part with Surface Transportation Program-Direct Apportionment/Planning (STP-DA) funds.

SCOPE OF SERVICES

The Town of Cary is seeking a qualified, experienced Consultant team to assist in providing preliminary engineering, traffic projections and analysis, roadway and bridge design, and the National Environmental Policy Act (NEPA) analysis and documentation for the proposed improvements. These services will be performed during different phases of the project. The Consultant will be expected to coordinate with Town of Cary and North Carolina Department of Transportation (NCDOT), staff for review and provide guidance during the analysis and recommendations process. Upon completion of the preliminary engineering and environmental documentation, the Consultant's services may be extended to include the final design of the proposed widening.

A general study area is shown in **Figure 1**. The limits of the project study area will be finalized in coordination with the Town and NCDOT.

Figure 2 shows the project area with 2010 aerial orthophotography to illustrate approximate property boundaries and properties.

The study area is located in western Wake County, within Cary's town jurisdiction. The area consists of the Walnut Street corridor from US 1/64 southbound ramps/Donaldson Drive south

FIGURE 1. General Study Area

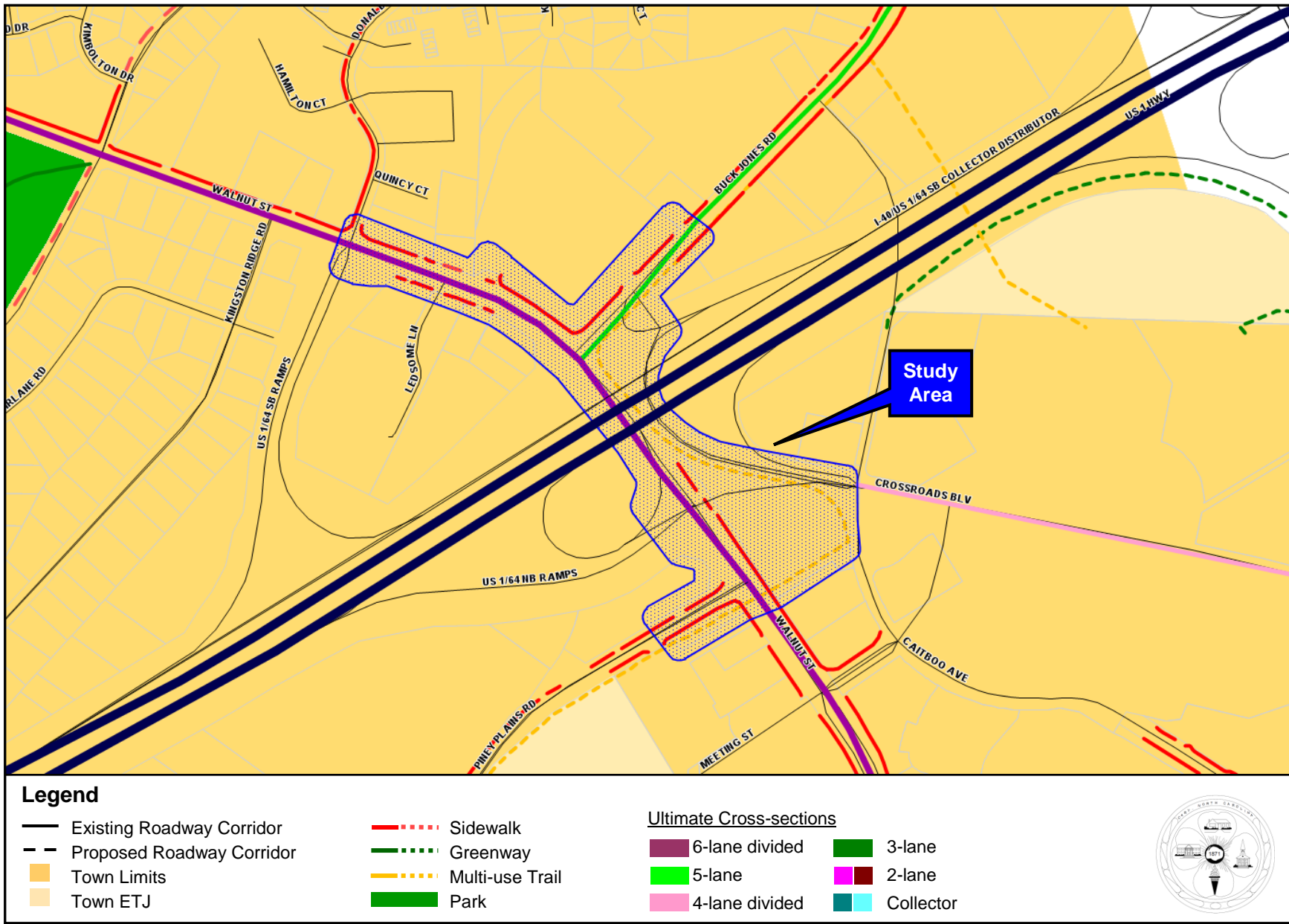
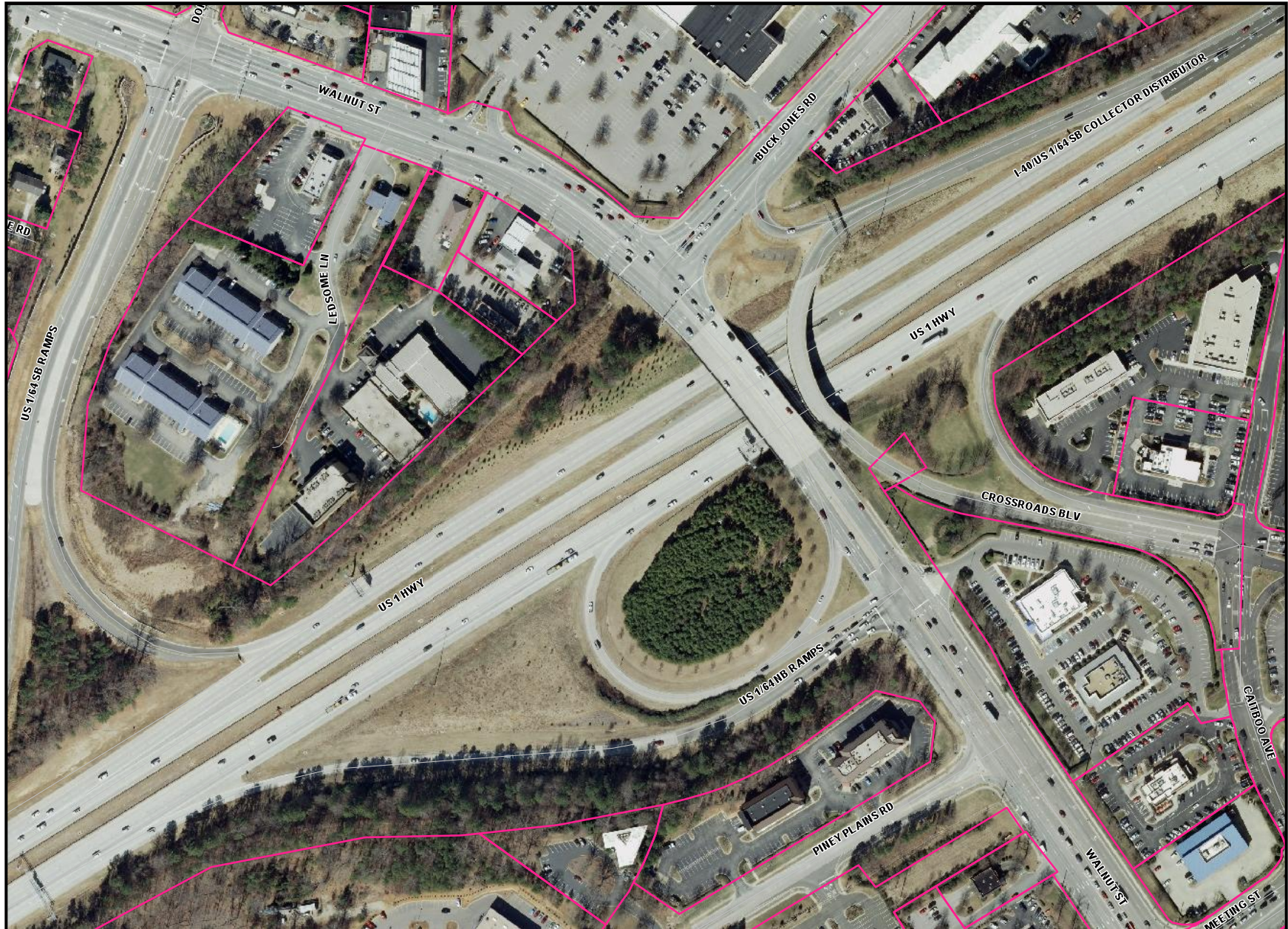


FIGURE 2. Existing Conditions (2010 Aerial Orthophotography)



to Piney Plains Road and includes the Buck Jones Road, Crossroads Blvd., and US 1/64 northbound ramp approaches.

All work must be described in the proposal with a demonstrated understanding of how this project will be developed consistent with NCDOT and Town policies.

Task I: Preliminary Engineering

The Consultant will develop a traffic forecast and prepare a traffic capacity analysis for the Opening Year and Design Year conditions for the roadways and intersections included in the study area. Supplemental traffic information may be from the Town from recent traffic counts and traffic analysis reports to produce the report. Access to these study materials will be made available by the Town of Cary and CAMPO.

The study should include the following elements:

- 1. Traffic Forecast and Operations Analysis:** The Consultant will prepare traffic projections and forecasts for opening and design years and evaluate traffic operations in the study area. The Consultant will perform roadway section and intersection analyses using latest versions of Highway Capacity Software, Synchro, and CORSIM as appropriate. Results are to include recommendations for turn lanes and requirements at all intersections.
- 2. NEPA Environmental Evaluation:** The Consultant will perform an environmental evaluation consistent with the NEPA process to assess onsite and adjacent features that may present concerns for the Town. The Consultant will use findings to avoid natural, environmental, and historic features in design process. The NEPA methodology should be followed if applicable; otherwise the Consultant should propose alternative evaluation to be utilized.
- 3. Issue Identification and Conceptual Designs:** The Consultant will conduct field work and research to identify opportunities and constraints concerning the project. Upon review of issues with the Town, the Consultant will prepare and present concepts (horizontal only) for the bridge widening and other study area improvements addressing the design issues.
- 4. Functional Plans:** Based on feedback from conceptual design phase, the Consultant will provide up to three (3) functional roadway plans to include horizontal and vertical alignments using best available information; including, but not limited to topography and aerial photography GIS data. The Consultant will prepare preliminary plan and profile and typical sections. The Consultant will identify existing and proposed R/W, property lines, and easements.
- 5. Preliminary Cost Estimate:** The Consultant will estimate right-of-way and construction costs for necessary work to implement the proposed improvements.
- 6. Selection of Roadway/Bridge Design:** Recommend preferred design configuration based on operations, physical and environmental impacts, and cost considerations.

Technical Memoranda and Reports: The Consultant will provide the Town of Cary and the NCDOT with a traffic analysis and preliminary design report containing a technical memoranda, supporting graphics and documentation for each scenario in the study that adhere to NCDOT requirements and guidelines. These submittals will be reviewed by Town of Cary and NCDOT staff and returned to the Consultant to make any updates and corrections. The technical memoranda will include a brief description of the specific scenario and any alternatives analyzed in it, and will also include appropriate tables, charts, and graphics to describe any results and recommendations made by the Consultant. The final report will contain a detailed description of the methodologies used by the Consultant, final results from all analyses with

supporting graphics, and any pertinent information from these analyses that may affect environmental studies.

Meetings: The Consultant will meet with the Town of Cary, CAMPO, and NCDOT for a Project Kickoff Meeting to further define details related to the tasks described above, define the project study area, collect additional data, and outline expectations and processes related to the project schedule. The Consultant will also meet informally with Town of Cary at regular intervals to discuss project progress and project schedule when needed.

The Consultant will conduct formal Project Progress Meetings with Town of Cary, CAMPO, and NCDOT staff for the purpose of presenting submittal information.

Finally, the Consultant will meet with the Town of Cary, CAMPO, and NCDOT to submit the final report and discuss changes, additions, and deletions made from previous submittals reviewed by the agencies.

Task II: NEPA Environmental Documentation

The Town anticipates a Categorical Exclusion will be required to permit and construct the project, based on a preliminary review of potential impacts.

If needed, the Consultant will conduct a scoping meeting with NCDOT and the appropriate agencies to discuss the project and determine the appropriate NEPA or other permitting requirements and documentation.

The Consultant shall conduct environmental planning analysis and prepare an appropriate environmental document and related documentation for the proposed widening to comply with NEPA regulations, as applicable.

Reports and Permits: The Consultant will provide the Town of Cary with an environmental document containing supporting graphics and documentation that adhere to NCDOT and NEPA requirements and guidelines, as applicable. These submittals will be reviewed by Town of Cary and NCDOT staff and returned to the Consultant to make any updates and corrections. Consultant shall also identify in the proposal the anticipated environmental permits, authorizations, impacts, and concerns necessary to meet all applicable local, state, and federal regulatory agency needs as necessary to get environmental permits in hand. The Consultant will be expected to work with the Town of Cary through the environmental permitting process.

Meetings and Public Involvement: The Consultant will advise the Town of necessary meetings with review agencies and be responsible for the coordination of and presentation at meetings with review agencies.

The Consultant will meet with the Town of Cary, CAMPO, and NCDOT to submit final report results and discuss changes, additions, and deletions made from previous submittals reviewed by the agencies.

The Consultant will conduct the appropriate public involvement activities including public meetings and hearings to fulfill NEPA requirements for the project.

Task III: Design Services

Based on the results of Tasks I and II, project schedule, and funding, the Town may authorize the Consultant to develop design plans for the proposed improvements. The design services for Task III may include, but not be limited to:

- location surveying
- geotechnical investigations
- roadway design plans
- structure design plans
- pavement designs
- cross sections
- hydraulic design
- erosion control design
- sidewalk design
- utility relocation & construction plans
- traffic signal/ITS design
- traffic control plans
- pavement marking & signing plans
- cost estimates/quantities
- easement, right-of-way, & final map preparations
- contract document preparation
- final bid documents
- final construction plans

Consultant shall coordinate design activities with Town of Cary and NCDOT officials as well as with any development plans that may be under consideration within the study area.

Ongoing Services / Public Involvement and Participation

The Consultant will coordinate with the Town of Cary and NCDOT throughout the project to acquire data, discuss issues related to traffic analysis, design, or environmental evaluation, evaluate potential future needs alternative strategies, provide preliminary inputs to the analyses, and to make timely changes and updates to analyses based on project design changes.

The Consultant will develop a Public Involvement Participation Plan for each Phase on the project to outline the anticipated and appropriate public involvement activities and materials needed to complete the Phase and project, including coordination, preparation of information, facilitation, and attendance at public information meetings, stakeholder meetings, charrettes, and public hearings; newsletters; project website/web log (“blog”); and project surveys.

CONTENT AND FORMAT OF PROPOSAL PACKAGE

All Proposals shall adhere to the following format and include, as a minimum, the noted information. The proposal should be no longer than 25 pages total in length (8 1/2” x 11” letter size format; double-sided preferred; fold-out 11” X 17” counted as 2 pages) and presented in a well-organized, well-formatted, and concise manner. Cover/title sheet, table of contents, blank pages, tabs, insurance statement, and NCDOT RS-2 forms will be excluded from the page count. The length of each section and order of the information is left to the discretion of the Consultant. The proposal shall be suitably bound with tabs separating the following sections:

Introductory Letter

- Firm name, contact person, address and telephone number.
- No tab is needed for this section.
- Included in the page count

Project Approach

- Provide a detailed, task-based description of how firm will approach this project by phase. This project approach may include additional suggestions that are not specifically requested in this request, but are considered necessary to ensure the highest degree of safety, constructability, value engineering, and operation.

Schedule & Work Load

- Provide a proposed 16-month (or shorter) schedule, directly related and identified to tasks in the proposal, the method to assure that the schedule is met, and the person responsible for assuring the schedule is met. Schedule shall include time frames for reviews and other functions outside the Consultants control as a separate line item from the task oriented schedule. If the Consultant believes such a schedule to be unrealistic, provide a short explanation with reasonings to lengthen the schedule, as well as an appropriate schedule proposed for the project.
- Provide information relative to the availability of each team member to perform the work requested in the RFP
- Indicate the percentage of overall project time each team member is estimated to be directly working on an assigned project (percentages should sum to 100%)

Project Team

- Indicate Project Manager and summarize related experience (with present firm and others), including office location, clients, education, and registration.
- Provide a Hierarchy of Project Management. Include an organizational chart indicating office location.
- Indicate Project Team and personnel working directly on this project. Provide a summary of each individual's position, education, registrations, and related experience with present firm (including client and project location). Identify sub-consultants.

Related Experience

- List most recent studies and design, as related to the scope of services, performed by project team members.
- Provide a client contact (phone and email) for each project listed.
- Indicate previous experience working as a Consultant for the Town on past projects. Please include brief project statement, primary Town department and staff responsible for project, and whether the project was completed within scope, budget, and time-frame.

Appendix

- Insurance statement: Provide a statement that the firm will provide insurance requirements as specified in "Minimum Requirements for Contract Execution"
- Submit listing of all known Small Professional Service Firms (SPSF) that are anticipated to participate in the performance of the identified work. The participation shall be submitted on the NCDOT's Prime Form RS-2 and/or Subconsultant Form RS-2 as an appendix and will be excluded from the 25-page limit.

GENERAL PROVISIONS

The primary and/or subconsultant firm(s) shall be pre-qualified by NCDOT to perform roadway design, traffic capacity analysis, bridge design, environmental documentation, and project planning for highway projects at a minimum.

The selected firm will report directly to the Town of Cary. The selected firm is to administer the contract and to ensure that all work is performed in accordance with the contract requirements.

The selected firm will be responsible for providing engineers, technicians, and subconsultants with the appropriate skills and qualifications to ensure contract compliance. The firm will be directly responsible for oversight of the project for the Town.

The selected firm will be notified by the Town and will enter into contract negotiations for receiving this work.

SUBMITTALS

Each firm is invited to submit one (1) electronic (PDF preferred) and six (6) bound hard copies (we prefer three-ring loose leaf binders) of their Proposal, by 4:00 PM on **Thursday, February 23, 2012** to Bob Shultes, PE, Town of Cary Engineering, 316 N. Academy St., Cary, NC 27513 / P.O. Box 8005, Cary, NC 27512-8005. Proposals submitted after the deadline will not be considered. The proposal packages should be enclosed in a sealed envelope or box marked: **REQUEST FOR PROPOSALS – Walnut Street Improvement Project**. The electronic copy may be emailed to bob.shultes@townofcary.org if less than 10MB in size or included in the proposal package as a CD, DVD, or USB flash drive. Facsimile copies will not be accepted.

All proposal packages and materials submitted hereunder become the exclusive property of the Town of Cary.

Questions regarding this RFP should be directed to Bob Shultes via email at bob.shultes@townofcary.org through February 8. Questions submitted by deadline will be answered and published by February 15. Questions submitted after the deadline will not be considered.

The Town of Cary reserves the right to reject any responses to this RFP that do not meet the selection criteria, to waive minor irregularities, and to conduct discussions with any or all respondents. The Town accepts no financial responsibility for any costs or expenses incurred by any entity in responding to this RFP. All submissions may be kept by the Town and may be disclosed to third parties at the Town's discretion.

METHOD OF EVALUATION

All Proposals will be evaluated based on the following criteria:

1. Qualifications of Project Team Members.
2. Qualifications of Sub-Consultant Members of Project Team.
3. Project Approach and Additional Suggestions/Innovations.
4. Team Workload and Ability to Meet Schedule.
5. Related Experience of Project Manager.
6. Related Experience of Project Team.
7. Ability to Understand, Innovate Upon, and Complete the Scope of Work.
8. Past Performance on Projects with the Town of Cary, and with Clients on Related Projects.

A committee of Town Staff will evaluate proposals submitted in response to this request, and up to four (4) consultants/teams may be asked to interview with the committee before a decision on

a preferred consultant is made. The firms asked to be interviewed should be available for interviews approximately two weeks from the notification. Notification will also be sent to firms not selected.

After reviewing proposals, if firms are equal on the evaluation review, then those qualified firms with proposed Small Professional Service Firms (SPSF) participation (see Statement on following page) will be given priority consideration.

ANTICIPATED SCHEDULE

The Town anticipates approval of the selected Consultant after interviews in early March 2012 and to provide a Notice to Proceed in early June 2012 after a scope and fee are finalized.

The Consultant must demonstrate the ability and resources to complete the project by September 30, 2013 (16-month study period). If the Consultant believes the completion date to be unrealistic, please provide a short explanation of reasonings in the “Schedule & Work Load” section of the proposal.

MINIMUM REQUIREMENTS FOR CONTRACT EXECUTION

A professional services agreement will be negotiated with the selected Consultant based on the proposed scope of work outlined in their proposal. Appendix A is the Town’s standard professional services agreement that will serve as a basis for any contract with the selected firm/consultant.

Prohibited Contract Terms. In no event shall there be any of the following unless Town’s express prior written agreement is obtained: (i) any limitation on, or disclaimer of, implied or express warranties or the liability of Contractor; (ii) any limitation on damages, including a limitation on consequential damages; (iii) any requirement for arbitration or for mandatory mediation; (iv) any requirement that Town officials or employees keep information confidential or any requirement that records be kept confidential by the Town, unless the requirement for confidentiality meets the requirements of the Public Records Law.

Engineering Credentials. Any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Registration for Professional Engineers and Land Surveyors. Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the NC Board of Registration for Professional Engineers and Land Surveyors. The Engineers performing the work and in responsible charge of the work must be registered Professional Engineers in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Proposal. The Consultant must have the financial ability to undertake the work and assume the liability. The firm must have an adequate accounting system to identify costs chargeable to the project.

Conflict of Interest Statement. It is the policy of the Town of Cary that the conduct of officers, directors, project managers, and all other persons acting as its representatives should be at all times in the best interests of the Town, its members, and the general public. In performing their duties, Town representatives should not be influenced by desire for personal gain. Conflict of

interest is defined as a situation in which professional judgment or behavior concerning a primary interest (in this case the integrity of Town) has been improperly influenced by a different interest (such as for financial gain). The prompt disclosure of possible conflicts of interest or of those situations where such a perception could reasonably be anticipated to arise helps to avoid injury to an agreed upon primary interest.

Firm(s) selected for these advertised services shall become aware of and comply with state laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. 14-234, N.C.G.S 133-1, and N.C.G.S. 133-2.

Firm(s) selected for Planning and Design Services by the Town will be required to disclose any conflicts of interest for 18 months prior to the submission of the Proposal package to the Town.

STATEMENT ON SPSF PARTICIPATION

The Town and NCDOT encourage the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

As stated in the evaluation section, if firms are equal on the evaluation review, those qualified firms with proposed SPSF participation will be given priority consideration. Even though specific SPSF goals are not established for this project, the Town and NCDOT are committed to the NCDOT's 2011 annual aspirational goal for Disadvantaged Business Enterprises (DBE) participation of 13.4% in federally funded projects, and to annual aspirational goals for Minority Business Enterprises (MBE) of 8.1% and Women's Business Enterprises (WBE) participation of 8.0% on State funded projects.

The Consultant, subconsultant, and subfirm shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.

The Consultant, at the time the Proposal is submitted, shall submit a listing of all known SPSF firms that are anticipated to participate in the performance of the identified work. The participation shall be submitted on the NCDOT's Prime Form RS-2 and/or Subconsultant Form RS-2 as an appendix and will be excluded from the 25-page limit. Form RS-2 forms may be accessed on the NCDOT website at <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

The SPSF must be qualified with the Department to perform the work for which they are listed.

Real-time information about firms doing business with the NCDOT and firms that are SPSF certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory/> in the address bar of your web browser.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm.

If a conflict of interest is not disclosed by the Consultant and a conflict of interest is determined by the Town of Cary to exist at a later time, the Consultant will not be compensated for their prior work and will be required to reimburse the Town of Cary for any payments received. The Consultant would be immediately dismissed from the contract.

Changes in Personnel. Changes to personnel on project team(s), particularly a project manager, are to be avoided wherever possible. The Consultant must request in writing to the Town for all changes to project team members. The Town will consider requests and may accept the new personnel changes, or may deny the request and consequently, the Consultant may no longer be considered for Planning and Design Services with the Town.

APPENDIX A. Sample Agreement for Professional Services

AGREEMENT FOR PROFESSIONAL SERVICES

By and Between

THE TOWN OF CARY, as OWNER,

and

dated as of

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services ('Agreement'), made as of the ____ day of _____, 20__, by and between the Town of Cary (hereafter, "Town") and _____, a professional ____ firm with a partner or principal registered in North Carolina as a licensed ____ and with offices in North Carolina (hereafter, "Professional").

RECITALS

WHEREAS, Town issued a 'Request for Proposals entitled ____ dated _____ ('RFP') and

WHEREAS, Professional responded to such request with a Proposal entitled ____ and dated _____ ('Proposal'); and

WHEREAS, Town chose Professional to provide professional services for Town and Professional desires to provide such services.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

ARTICLE 1 EFFECTIVE DATE AND SCOPE OF SERVICES

- 1.1 The Recitals are incorporated into Agreement. This Agreement shall be effective upon execution by both parties ('Effective Date').
- 1.2 This Agreement is for professional ____ services to be provided by Professional with respect to the Project known as _____, located in the Town of Cary, North Carolina, and generally consisting of _____. Professional shall provide all services including reports and other deliverables as described herein and in Attachment A, attached hereto and incorporated herein by reference ('Basic Services'). Professional shall also provide Additional Services as may from time-to-time be agreed upon by written amendment to this Agreement ('Written Amendment') at the rates, if any, specified in Attachment A. Basic Services and Additional Services are collectively referred to as 'Professional Services' or 'Services.'
- 1.3 Basic Services shall commence after Effective Date and Professional's receipt of a Notice to Proceed from Town and shall be performed in accordance with any schedule contained in Agreement ('Milestone Dates').
- 1.4 Professional represents and agrees that now and continuing for the term of Agreement, Professional:
 - a. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
 - b. shall exercise reasonable care and diligence, and shall act in the best interest of Town;
 - c. shall act in accordance with generally accepted standards of Professional's practice throughout the U.S.; and shall comply with this Agreement and with all applicable federal, state and local laws, ordinances, codes, rules and regulations (collectively 'Laws and Regulations');
 - d. possesses all necessary qualifications, licenses and certifications;

- e. shall perform in a timely manner and in accordance with all Milestone Dates or other schedules required under this Agreement, time being of the essence,
- f. shall work in good faith with Town to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Project, and
- g. the individual(s) signing Agreement have the right and power to do so and bind Professional to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

ARTICLE 2
RESPONSIBILITIES OF PROFESSIONAL

2.1 Standard of Care

2.1.1 Professional shall assure that all drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases and other documents and all deliverables ('Documents and Deliverables') prepared by Professional are in accordance with all Laws and Regulations.

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

2.1.3 In addition to any other damages that might be due to Town hereunder in connection with the breach of this Agreement by Professional, Professional shall reimburse Town for costs, damages and expenses that are the result of errors, omissions or delays of Professional, including those of Professional's subcontractors.

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

2.2 Key Personnel and Subcontractors. No changes in Professional's personnel or subcontractors designated in Attachment A as those who will provide Services shall be permitted except with the prior written consent of Town, which consent shall not be unreasonably withheld. Such replacement personnel and subcontractors shall have the same or higher qualifications and experience as those being substituted. If Professional provides any Services through the use of subcontractors, Professional shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, Professional's contracts with subcontractor(s) shall include a provision that, in the event this Agreement is terminated for cause by Town, Town may take assignment of such contract of Professional with their subcontractor.

2.3 Taxes, Permits and Licenses. Unless otherwise provided, Professional is responsible for all applicable taxes and license fees and shall acquire all licenses and permits required by Laws and Regulations.

**ARTICLE 3
COMPENSATION FOR SERVICES**

3.1 Compensation for Basic Services.

The Total Fixed Fee for Basic Services, which is a ‘total’ fee that includes all costs and expenses, is \$____. As set forth in Attachment A, Basic Services have been divided into ‘phases’ or ‘tasks.’ The Total Fixed Fee for each phase or task is _____ or is as set forth in Attachment A.

Professional shall submit monthly to Town an Invoice for Services performed the previous month. The Invoice shall be in a form acceptable to Town and shall show all Services performed the previous month and the payment requested for those Services. The requested payment shall not exceed the ratio to the Total Fee for that phase or task that the completed Services bear to all the Basic Services required for that specific phase or task.

Payments will be made by Town within thirty (30) calendar days of receipt of an acceptable invoice. In the event Town finds any part of an invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. The Town shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by Town as a result of the Professional’s failure to perform on any phase or task.

3.2 Compensation for Additional Services. Additional Services shall be as set forth in Written Amendment. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to Town. In the event the Town finds any part of an invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. Town shall have the right to deduct from payments to Professional any costs or damages incurred, or which may be incurred, by Town as a result of Professional’s failure to perform any Service. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

3.3 Reimbursable Expenses. Reimbursable expenses are set forth on Attachment A. Town shall reimburse such expenditures up to amounts authorized by Town to the extent such expenses are reasonable and actually incurred by Professional. Professional shall not be entitled to any mark-up on actual expenses incurred.]

3.4 Accounting Records and Other Records. Accounting records of Professional’s compensation for Services and Additional Services (and Reimbursable Expenses, if permitted under this Agreement) shall be maintained by Professional in accordance with generally accepted accounting practices and shall be available for inspection and copying by Town at mutually convenient times for a period of three (3) years after termination of this Agreement.

**ARTICLE 4
RESPONSIBILITIES OF TOWN**

- 4.1 Cooperation and Coordination. In addition to being responsible for the duties set forth as duties or responsibilities of Town in RFP, Town may designate, in writing, a person to act as project manager who shall coordinate the project work and who shall be available during working hours as often as may be reasonably required to render decisions within guidelines established by the Town manager and to furnish information. Town shall examine documents submitted by Professional and shall make reasonable efforts to render timely decisions pertaining thereto.

**ARTICLE 5
INSURANCE**

- 5.1 Insurance. Professional and Professionals permitted subcontractors shall purchase and maintain during the period of performance and for three years after the termination of this Agreement insurance for protection from claims under workers' or workmen's compensation acts; Comprehensive General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of Professionals' employees or subcontractors or any other person and to real and personal property; Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering bodily injury or death, and property damage; and Professional Liability Insurance (if applicable) covering personal injury, bodily injury and property damage and claims arising out of or related to Professional's performance under this Agreement.

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

Unless otherwise specified on Attachment B, minimum limits of insurance coverage are:

General Liability	\$1,000,000 per occurrence
Commercial Automobile Liability	\$1,000,000 CSL
Commercial Excess Liability / Umbrella Policy	\$1,000,000 per occurrence
Workers Comp	Statutory Limits
Employers Liability	\$ 500,000 per occurrence
Professional Liability	\$2,000,000 per occurrence

All insurance policies (except Worker's Compensation and Professional Liability) shall name Town as an additional insured party. Evidence of such insurance shall be furnished to the Town, together with evidence that each policy provides that the Town shall receive not less than thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, Professional shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein. Certificate of Insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement.

Insurance policies required hereunder shall include provisions or endorsements that:

- a) the insurer shall have no right of recovery or subrogation against Town, its agents or agencies, it being the intention of the parties that the insurance policies shall protect Town and be primary coverage for any and all losses covered by the policies;
- b) the clause “other insurance provisions” in a policy in which Town, its agents or agencies is named as an insured, shall not apply to such insured parties;
- c) the insurance companies issuing the policy or policies shall have no recourse against Town, its agents or agencies for the payment of any premiums or for assessments under any form of policy;
- d) any and all deductibles under the insurance policies shall be assumed by and be at the sole risk and expense of Professional;
- e) coverage shall be deemed to be in connection with this Agreement as revised by any Written Amendments; and
- f) coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Town and Professional.

ARTICLE 6 DAMAGES AND REMEDIES

6.1 Services, Reimbursement and Deductions.

6.1.1 Professional shall reimburse Town for costs, damages and expenses, including attorney’s fees and expert’s fees incurred by Town if such costs, damages and expenses are the result of any error, omission or delay of, or failure by Professional to perform as required by Agreement.

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

6.2 Indemnities.

6.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to professionals’ fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Professional of any term or condition of this Agreement or Written Amendment, (b) any breach or violation by Professional of any applicable Law or Regulation, or (c) any other cause resulting from any act or failure to act by Professional under this Agreement or Written Amendment, but

only to the extent caused by any negligence or omission of Professional. This indemnification shall survive the termination of this Agreement.

6.2.2 Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to all professionals' fees and charges and all court or arbitration or other dispute resolution costs), by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Town in writing. If Professional has reason to believe the use of a required design, process or product is an infringement of a patent, copyright or other intellectual property, the Professional shall be responsible for such loss unless such information is promptly given to the Town.

6.3 Non-Exclusivity of Remedies/No Waiver of Remedies. A party's selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

6.4 Waiver of Damages. Professional shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any consequential damages.

ARTICLE 7 AMENDMENTS TO AGREEMENT

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

ARTICLE 8 TERMINATION AND SUSPENSION

8.1 Termination for Convenience of Town. This Agreement may be terminated without cause by Town and for its convenience upon ten (10) days written notice to Professional.

8.2 Other Termination. After ten (10) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

8.3 Compensation After Termination.

8.3.1 In the event of termination for the convenience of Town, Professional shall be paid that portion of its fees and expenses that it has earned to the date of termination, plus five percent (5%) of its Compensation for Basic Services earned to date or of its unearned Compensation for Basic Services, whichever is less, less any costs or expenses incurred or anticipated to be incurred by Town due to errors or omissions of Professional. Upon receiving notice of termination, Professional shall immediately terminate any ongoing Services it is to provide hereunder.

8.3.2 In the event of termination by reason of a material breach of the Agreement by Town, Professional shall be entitled to the same compensation as it would have received had Town terminated the Agreement for convenience, and Professional expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

8.3.3 In the event of termination by reason of a material breach of the Agreement by Professional, Professional shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by Town due to errors or omissions of Professional or by reason of Professional's breach of this Agreement.

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

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

8.5 Suspension

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

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

8.5.3 A suspension, delay or interruption of the Services shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

**ARTICLE 9
OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

- 9.1 Ownership of Documents and Deliverables. Town shall be granted, at no additional cost, ownership of all Documents and Deliverables. Professional shall turn over to Town in good unaltered condition, reproducibles as described in Section 10.8 of all Documents and Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after termination if this Agreement is terminated for any reason. Professional may retain one set of Documents and Deliverables for its records.
- 9.2 Termination. In the event of termination, for whatever reason, should Town use drawings or other Documents or Deliverables for completion of the Project, Town shall indemnify and hold Professional harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Town or a Contractor in connection with Town's improper use (or misuse) of Documents and Deliverables.
- 9.3 Other Projects. Documents and Deliverables may be used by Town for any reason without additional compensation to the Professional. Such use of Documents and Deliverables by Town shall be at the full risk of Town.

**ARTICLE 10
ADDITIONAL PROVISIONS**

- 10.1 Dissemination of Information. Town takes efforts to assure that accurate information about the Town is disseminated such that neither the public trust nor the public's perception of Town impartiality is compromised. Professional, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of Town. Any approval by Town may be given with certain stipulations, such as Town's participation in the creation of the public product or Town's review and the option to refuse ultimate release of the final product should it fail to meet the Town's standards and goals. Publicly disseminate means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or Professional's business collateral pieces. Notwithstanding the foregoing, the parties agree that Professional may list Town as a reference in response to requests for proposal and may identify the Town as a customer in presentations to potential customers.
- 10.2 Limitation on Assignment. Each party binds itself, its successors, permitted assigns and legal representatives to the terms of this Agreement. Neither Town nor Professional shall assign or transfer its interest in this Agreement without the written consent of the other.
- 10.3 Governing Law. This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina.
- 10.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Town otherwise agrees in writing. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice

of North Carolina sitting in Wake County, North Carolina and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. If and to the extent the project is subject to the dispute resolution requirement of N.C.G.S. 143-128(f1), then Professional shall participate in the dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.

- 10.5 Extent of Agreement. This Agreement represents the entire and integrated agreement between Town and Professional and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by Written Amendment.
- 10.6 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
- 10.7 Conduct. Town has adopted a Mission Statement and Statement of Values. To support these values, Town has published Working with the Town of Cary—A Guide for Temporary Employees, Contractors, Consultants, and Volunteers. To the extent consistent with the terms and conditions of Agreement, Professional agrees to support and abide by the policies and elements contained in the chapters titled 'Our Culture' and 'Working with the Media' in such publication.
- 10.8 Protocol for Documents and Deliverables. Professional shall provide all Documents and Deliverables in electronic form to the Town in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). All drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. In order to meet US Justice Department standards for Internet accessibility, all Deliverables (draft and final) intended for presentation on the Town of Cary's Web site must be provided in a manner and format compatible, consistent, and in compliance with all Town technology standards. Such material must be provided in screen readable PDF or HTML versions, be screen-reader friendly and contain alternate text tags of no more than 34 characters. In the event that Professional notices any errors in electronic data provided to the Town under this Agreement, Professional shall immediately notify Town, and if Professional provided such electronic data, Professional shall immediately replace same with correct versions thereof.
- 10.9 Notice. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the Town, or to the Project Manager, or equivalent position, or officer/member of the entity that is the Professional, if to the Professional, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the Town's or Professional's address. The date of said notice shall be the date of such delivery or mailing.

The notice address for the Town shall be:

Engineering Department
Town of Cary
PO Box 8005 / 316 North Academy Street

Cary, NC 27512

The notice address for the Professional shall be:

- 10.10 Gifts and Favors. Professional shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
- 10.11 Public Records. Professional acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests. Professional shall make Town aware of any public records requests made in regard to Services or this Agreement.
- 10.12 Resolving Discrepancies. Except as otherwise stated in Agreement, the provisions of Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively 'Other Standards'), provided that if any of the Other Standards impose a more stringent standard or obligation upon Professional than in the Agreement, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement and the Other Standard.
- 10.13 Non-exclusive Remedies/No Waiver. The selection of one or more remedies for breach shall not limit a party's right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof.

IN WITNESS WHEREOF, Professional and Town, being duly authorized, have caused these presents to be signed in their names as of the day and year first above written, on the following pages.

Attachment A – Basic Services/Scope of Services

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

the Town of Cary's Request for Proposals, entitled _____ Town of Cary Project _____, dated _____; and Sections _____/Pages _____ of Professional's Proposal entitled _____ and dated _____ further describe Basic Services.

Basic Services are further described below.

[Negotiated Scope will be inserted here]

Milestone Dates, Key Personnel who will be providing Services and Compensation for Services may also be set forth in this Attachment.

Any services described as Additional Services shall be considered Additional Services to be provided in accordance with Agreement upon execution by Town of a Written Amendment specifying that such services shall be provided.

**Attachment B –
Insurance Requirements, if Different from that Provided in Agreement and Insurance
Certificate**

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

**APPENDIX B. Responses to Questions Submitted for RFP –
Walnut Street (SR 1313) Improvements Project Environmental
Planning and Design**

Proposers may submit questions to bob.shultes@townofcary.org by Wednesday, February 8, 2012.

Responses will be available on the Town of Cary website by Wednesday, February 15, 2012.