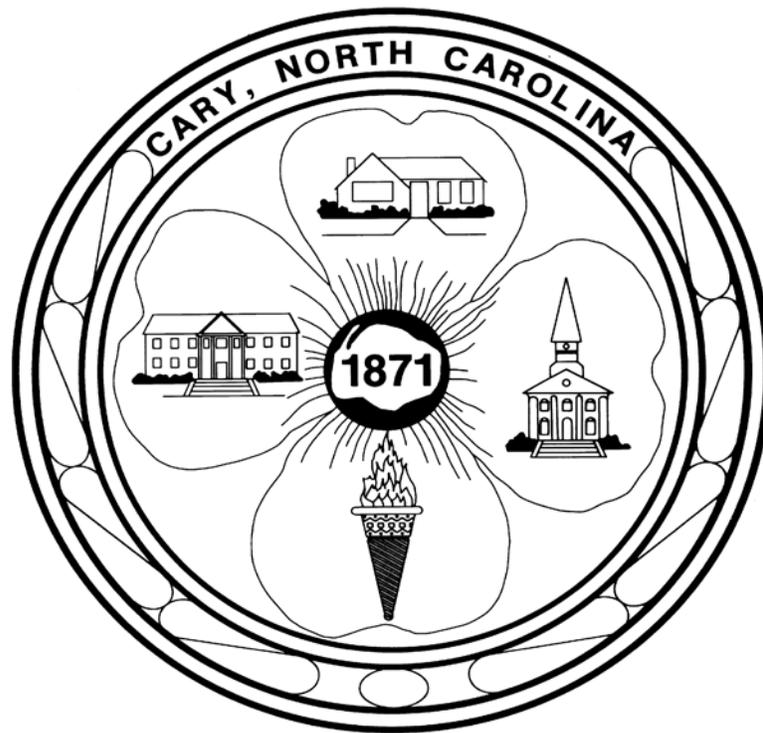


TOWN of CARY

NORTH CAROLINA

ADMINISTRATION DEPARTMENT



REQUEST FOR QUALIFICATIONS

RFQ 18-01

Community Branding

Issue Date: July 5, 2017

Closing Date: August 31, 2017



TOWN of CARY

NORTH CAROLINA

ADMINISTRATION DEPARTMENT

Issued By: Administration Department
316 North Academy Street
Cary, NC 27513

RFQ Name: RFQ 18-01 Community Branding

Issue Date: July 5, 2017

Pre-Proposal Meeting: N/A

Questions Due Date: August 1, 2017, in writing only, no later than 11:59 PM EDT

Direct Inquiries To: Susan Moran
Public Information Director
susan.moran@townofcary.org

Proposal Due Date: August 31, 2017, no later than 3 PM EDT

Delivery of Submissions:

By Mail:
Town of Cary
Administration Department, Second Floor
P.O. Box 8005
Cary, NC 27512
Attention: Teri Peralta
Re: RFQ 18-01

Hand-delivery*:
Town of Cary
Administration Department
316 N. Academy Street, Second Floor
Cary, NC 27513
Attention: Teri Peralta
Re: RFQ 18-01

*FedEx, UPS or similar carrier methods may require this address for delivery. Please verify this information with carrier.

Respondents are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render a Respondent's proposal unacceptable and unresponsive for award. Question and inquiries must be made in writing as outlined herein.

The TOWN OF CARY, NC invites sealed submittals of qualifications for Community Branding to be received until 3 p.m., Eastern Daylight Time on 08/31/2017, to be submitted by mail, hand-delivery or express carrier.

GENERAL INFORMATION

To give our citizens every advantage in the increasingly competitive regional, national, and global marketplaces for securing the best jobs and opportunities today and for generations to come, the [Town of Cary](#), NC is searching for incredibly creative, highly skilled, forward thinking, and collaborative consultants with an impressive record of success to work with a project Steering Committee – the Town’s Economic Development Committee – in uncovering the community’s brand identity and formulating a compelling brand strategy that positions Cary for increased success. The successful consultant will create a brand that delivers the right message(s) to existing as well as potential residents, visitors, employers, entrepreneurs, and investors. The consultant’s brand strategy should enable Cary to communicate its message in all types of communications.

The Town of Cary intends to select up to four consultants from the pool of qualified Respondents for first-round interviews via videoconferencing. A second round of interviews for up to two finalists will be conducted in Cary, NC, with the successful Consultant being hired by the Town of Cary based on the totality of the information provided in the RFQ response and the interviews as well as other information that may be gathered independently by the Steering Committee from other sources.

Once selected and as will be detailed and agreed upon in a Contract for Services, the Consultant can expect to produce deliverables including but not necessarily limited to:

- 1) Branding Workshop with Town staff and external stakeholders
- 2) Positioning Statement
- 3) Research on Competitive and Current State
- 4) Logo Development: Three (3) options w/three (3) rounds of revisions to the preferred option
- 5) Tagline: Three (3) options w/three (3) rounds of revisions to the preferred option
- 6) Key Marketing Messages
- 7) Multi-piece Collateral Design & Copywriting
- 8) Messaging Architecture
- 9) Brand Style Guide
- 10) Rollout Plan

BACKGROUND

Starting as a small, rural crossroads community with a rich agricultural heritage, Cary, NC has evolved into a nationally recognized community of distinction. The arrival of the

North Carolina Railroad in 1854 and the development of the Research Triangle Park in 1959 were both game changers for the region and for Cary. Over the last thirty years, the Town has attracted Fortune 500 companies, a series of high quality attractive residential developments, commercial growth, and community amenities that put it on the map. The Town’s population grew from approximately 8,000 residents in 1970 to more than 160,000 today. Cary is consistently ranked and recognized as one of the best mid-sized communities in the nation to live and work, to find a home or start a business, and to raise a family or retire.

Cary’s success is not a result of good fortune or happenstance, but rather the result of visionary planning and execution. In 2017, the Cary Town Council continued this course by adopting [Imagine Cary](#), its 2040 comprehensive community plan to serve as a blueprint for achieving Cary’s sustained success as a premier community that continues to offer new opportunities to live, work, play, shop, and dine in the place we call home.

This community branding initiative will be an essential part of actualizing Imagine Cary and keeping Cary great in a complex and unpredictable world.

TIMELINE

Distribution of RFQ	July 5, 2017
Deadline for Questions	11:59 p.m. August 1, 2017
Receipt of responses	3 p.m. August 31, 2017
Evaluation	September 1 – November 30, 2017
Selection	December 4, 2017
Contract award	December 29, 2017
Notice to Proceed	January 2, 2018

PROPOSAL SUBMITTAL REQUIREMENTS

By Mail:	Hand Delivery:
Town of Cary	Town of Cary
P.O. Box 8005	Administration Department
Cary, NC 27512-8005	316 N. Academy Street, 2d Fl
Attention Teri Peralta	Cary, NC 27513
RFQ 18-01	Attention Teri Peralta
	RFQ 18-01

Interested consultants shall submit six (6) hard copies and one digital PDF version of their Statement of Interest (see below) in a sealed envelope to the Town. No fax or email

responses will be accepted or considered. Responses must be received no later than 3 p.m., Eastern Daylight Time, on 08/31/2017. Submittals may be mailed or hand-delivered, see specific addresses on page two (2) and any submittal received after the deadline by any delivery method will not be considered or evaluated.

SUBMITTAL FORMAT AND CONTENT

Respondents are required to submit concise responses to this document. Unless a specific exception is noted in your response, Respondents shall be assumed to be in agreement with, and will employ, the technical approaches described in this request for qualifications and the scope of work as outlined in this RFQ. Submittals shall contain all elements of information requested. The Town reserves the right to include any part of the selected submittal, either in addition to or in lieu of the specifications contained in this document, in the final contract.

The Statement of Interest must include the following sections and content:

- 1) Company Profile
- 2) Project Team Members and Services To Be Performed
- 3) Experience and Reference Summary
- 4) Identification of Lawsuits and Administrative Claims/Fines
- 5) Cost Estimate
- 6) Proposed Scope of Work Timeline

Detailed requirements and directions for the preparation of each section are presented below. All pages in the proposal must be 8½" x 11". Page length requirements are denoted per each section. Only a front-cover page and back-cover page shall not count toward the overall page length requirements of the RFQ. All other pages shall be counted (e.g. divider pages, section pages, title pages, etc.) toward the overall page length requirements. Respondents are encouraged/cautioned to adhere to the page counts per each section below (if a count is specified).

Section 1: Company Profile (no more than two (2) pages)

Please include the following Company Profile information for your firm (if multiple firms are responding as a team, provide the required information for each company):

- 1) Company name and business address, telephone and facsimile numbers, email addresses, website URL(s), and social media page(s) locator(s)
- 2) Type of ownership and parent company (if any); pending ownership changes (if any)
- 3) Indicate whether the company is licensed to do business in the State of North Carolina
- 4) Company Financial & Stability Status

- 5) Project manager's name and contact information

Section 2: Project Team Members and Services To Be Performed (no more than nine (9) pages)

- 1) Identify the administrative contact for the Respondent who would coordinate providing services under this agreement. The administrative contact should be the primary point of contact to initiate work under the agreement with the necessary authority to execute agreement and negotiate compensation.
- 2) Identify the team members proposed for each task within the scope of work to be performed and what approximate percentage each of these members will be doing.
- 3) Identify the role and experience of each team member as it relates to the each task within the scope of work to be performed, with specific reference to their participation in similar projects.
- 4) Identify which services would be performed by in-house forces and which services will require sub-contractors.

Section 3: Experience and Reference Summary (no more than four (4) pages)

For experience, please provide information on your agency's strategy and approach to projects of this type, including three (3) examples of other similar projects you have undertaken, how you produced the deliverables and evaluated effectiveness. If Respondents have no other projects that are similar in scope of work to this RFQ, please state this.

For references, Respondents must include at least three (3) references that can be contacted by the Town. Please provide the following information:

- 1) Reference name
- 2) Name and address of client
- 3) Client contact person (name/position/current phone number and email address)
- 4) Period of contract
- 5) Description of overall scope of work, including all services and deliverables
- 6) Status and comments

Section 4: Identification of Lawsuits and Administrative Claims/Fine (no more than one (1) page)

Respondents must identify all lawsuits, administrative claims or fine proceedings the Respondent has been a party to in the past five (5) years. In the response be sure to include any fines levied by any governmental unit relating to the proposed work in this RFQ such as fines from the EEOC, Department of Labor or similar unit of government.

Section 5: Experience working with the Town of Cary and the Cary Chamber of Commerce, if any (no more than two (2) pages)

Respondents must identify and provide their experience working for the Town of Cary and the Cary Chamber of Commerce within the past five (5) years.

Section 6: Cost Proposal (no more than two (2) pages)

- 1) Respondents shall submit a total project cost estimate based on the information provided in this RFQ, including accounting for anticipated travel, taxes, fees, and other miscellaneous expenses.
- 2) Respondents shall submit an estimated cost for each of the deliverables listed in the General Information section.
- 3) Respondents shall provide hourly rates per project team member.
- 4) Respondents shall indicate the minute interval used by the Company for hourly billing (e.g. 15, 10, or 6 minute intervals).

Section 7: Proposed Scope of Work Timeline (no more than one (1) page)

- 1) Respondents shall include a proposed timeline from Notice to Proceed to project completion, with various milestones based on the proposed approach specified.

RFQ QUESTIONS

Questions should be directed to: Susan Moran in the Town's Administration Department via e-mail: susan.moran@townofcary.org. Only emailed questions will be addressed and answered. All questions must be received by 11:59 p.m., Eastern Daylight Time on 08/01/2017. No questions or requests for clarifications will be accepted after this time. Responses to questions will be emailed with all addenda and clarifications issued by 11:59 p.m., Eastern Daylight Time on 08/15/2017.

The issuance of such written responses is the only official method by which interpretation, clarification or additional information will be given by the Town. Only requests answered by formal written responses will be binding. Oral and other interpretations or clarifications will be without legal effect.

SELECTION CRITERIA

The Town staff and Steering Committee will evaluate individual submittals in context of the Respondent's overall capabilities, experience and the information provided in each response. Any Respondent determined to be technically unqualified, or whose submittal is deemed unresponsive, will not be considered.

The submittals will be evaluated on the following criteria, listed not necessarily in order of importance:

- Past experience with similar projects
- Stability of company
- Ability to complete the scope of work in a timely manner without major deviations from the requirements
- Project team members' experience regarding similar services performed
- Proposed cost
- Proposed project timeline

AWARDING OF CONTRACT

The Town will select a Consultant qualified to provide these services and thereafter seek to negotiate a contract with the best qualified firm. Consideration will be given to only those proposals received from Respondents who are properly licensed and experienced in the class of work proposed and who can refer to similar scopes of work that are of a comparable magnitude. The Town also reserves the right to reject any and all offers and to waive informalities or technicalities as it may deem to be in its best interest.

NEGOTIATING WITH OFFERERS

The Town reserves the right to award a contract, based on initial offers received from Respondents, without discussion and without conducting further negotiations. The Town may also, at its sole discretion, have discussions with Consultants, and the Town may enter into negotiations separately with such Consultants. The Town shall not be deemed to have finally selected a Consultant until a contract has been successfully negotiated and signed by all parties.

RESPONSIBILITY FOR COSTS

Respondents shall be fully responsible for all costs incurred in the development and submission of this submittal. Submittal documents should be prepared simply and economically, providing a straightforward and concise description of the Respondent's capabilities to satisfy the requirements of the request. Emphasis should be placed on completeness and clarity of content. Selected Respondents may be asked to present in person the substance of their response to Town staff and external stakeholders. All costs of such presentations shall be borne solely by the Respondent.

PUBLIC RECORDS AND SUBMITTED PROPOSALS FROM RESPONDENT

Records received by the Town of Cary in response to a bid solicitation or a request for proposals/qualifications are public records and subject to public inspection and copying. Some bid records are public as soon as received by the Town, others become public at bid opening and others at bid award.

The Public Records law (N.C.G.S. 132-1 et seq.) authorizes the Town to withhold from public inspection and copying legitimate and properly marked "trade secrets". If a record meets all of the following conditions:

- it is a "trade secret" as defined in G.S. 66-152(3); and
- it is the property of a private "person" as defined in G.S. 66-152(2); and
- it is disclosed or furnished to the Town in connection with a bid or proposal; and,
- it is marked as "confidential" or as a "trade secret" at the time of its initial disclosure to the Town,

then the Town may withhold that particular trade secret from a public record inspection request.

If, as part of Respondent's bid or proposal, Respondent submits to the Town any record, or portion of a record, that Respondent considers to be a trade secret meeting the definition contained in G.S. 66-152 (2), Respondent shall clearly mark the particular record, or portion of the record, that meets the definition of trade secret as TRADE SECRET or CONFIDENTIAL TRADE SECRET. In the event the Town receives a public records request for records Respondent designates as "trade secret", the Town will notify Respondent and give Respondent the opportunity to, within one week of such notification, (1) confirm in writing that the specific record, or portion of record, that Respondent designated as TRADE SECRET meets the requirements of G.S. 132-1.2 and G.S. 66-152, and the reasons therefore, and (2) to indemnify the Town in the event a challenge is brought for the withholding of a record based on Respondent having designated it a trade secret. The Town will only withhold the record if both conditions have been fulfilled to the Town's satisfaction.

RESPONDENT QUALIFICATIONS

Respondents shall be required to submit evidence that they have relevant experience and have previously delivered services similar to those required.

Respondents may additionally be required to show that they have satisfactorily performed similar work in the past and that no claims of any kind are pending against such work. No submittal will be deemed responsive from any Respondent who is engaged in any work

which would impair its ability to perform or finance this work or from any Respondent with outstanding claims pending for work of a similar nature, either completed or in progress.

No submittal will be deemed responsive from, nor will a contract be awarded to, any Respondent who is in arrears to the Town upon any debt or contract, or who is in default, as surety or otherwise, upon any obligation to the Town, or is deemed to be irresponsible or unreliable by the Town.

RIGHT TO REJECT SUBMITTALS

The Town reserves the right to reject any and all submittals. This submittals request is neither a contractual offer nor a commitment to purchase services. The Town assumes no contractual obligation as a result of the issuance of this request, the preparation or submission of a qualifications statement by a Respondent, the evaluation of statements, or final selection.

CONFLICT OF INTEREST

By submission of a response, the Respondent agrees that at the time of submittal, it: (1) has no interest (including financial benefit, commission, finder's fee, or any other remuneration) and shall not acquire any interest, either direct or indirect, that would conflict in any manner or degree with the performance of Respondent's services, and (2) will not benefit from an award resulting in a "Conflict of Interest." A "Conflict of Interest" shall include holding or retaining membership, or employment, on a board, elected office, department, division or bureau, or committee sanctioned by and/or governed by the Town. Respondents shall identify any interests, and the individuals involved, on separate paper with the response and shall understand that the Town, in consultation with legal counsel, may reject their proposal.

COMPLETE SERVICES/PRODUCTS

Respondents shall be required to (a) furnish all tools, equipment, supplies, supervision, transportation, and other execution accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and, (d) in accordance with good technical practice, with due diligence, and in accordance with the requirements, stipulations, provisions, and conditions of this document and the resultant contract, execute and complete all specified work to the satisfaction of the Town.

ADDITIONAL SERVICES

From time to time during the period of work outlined in the RFQ and afterward, the Town may elect to have the Respondent perform services that are not specifically described in the scope of work but are related to the contracted services (the “Additional Services”), in which event the Respondent shall perform such Additional Services on a time-and-materials basis, and at an hourly rate that does not exceed the hourly rate negotiated in the awarded contract for each of the Respondent’s personnel assigned to perform such Additional Services. This will be accomplished through an amendment to the contract.

TOWN OF CARY CONTRACT

The selected Respondent will be expected to execute and abide by the provisions of the Town’s standard contract form. The Town’s Standard Terms and Conditions are attached hereto and incorporated herein by reference in Attachment 1. Respondents submitting proposals should be willing to agree to the language in the attached contract or identify any potential issues prior to submitting a proposal.

*****PLEASE NOTE, IF YOU HAVE RECEIVED THIS SOLICITATION FROM A SOURCE OTHER THAN THE TOWN OF CARY, IT IS THE RESPONDENT’S RESPONSIBILITY TO ENSURE THAT ALL ADDENDA HAVE BEEN RECEIVED.*****

[This space is left blank intentionally. Attachment 1 follows.]

Attachment 1

AGREEMENT FOR CONTRACTED SERVICES

This Agreement for Contracted Services (“Agreement”), made as of the ____ day of _____, 20__, by and between the Town of Cary (hereafter, “Town”) and _____, a [corporation] [limited liability corporation] [other – fill in] (hereafter, “Contractor”).

RECITALS

WHEREAS, Town issued a “Request for Proposals” entitled _____ dated _____ (“RFP”) and

WHEREAS, Contractor responded to such request with a Proposal entitled _____ and dated _____ (“Proposal”); and

WHEREAS, Town chose Contractor to provide services for Town and Contractor 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 _____ services to be provided by Contractor with respect to the Project known as _____, located in the Town of Cary, North Carolina, and generally consisting of _____. Contractor 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”). Contractor shall also provide Additional Services as may from time-to-time be agreed upon by written amendment to this Agreement (“Written Amendment”). Basic Services and Additional Services are collectively referred to as “Contractor Services” or “Services.”

- 1.3 Basic Services shall commence after Effective Date and Contractor’s receipt of a Notice to Proceed from Town and shall be performed in accordance with any schedule contained in Agreement (sometimes “Milestone Dates”).
- 1.4 The term of this Agreement shall be for a period beginning on Effective Date and ending on [date] [written acceptance of the completed Services by the Town] [successful completion of any required correction period by the Contractor].
- 1.5 Contractor represents and agrees that now and continuing for the term of Agreement, Contractor:
 - 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 Contractor’s practice applicable to the locality; 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. shall assure that the individual(s) signing Agreement 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.

ARTICLE 2

RESPONSIBILITIES OF PROFESSIONAL

2.1 Standard of Care

2.1.1 Contractor 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 Contractor are in accordance with all Laws and Regulations.

2.1.2 Contractor 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. Contractor shall reimburse Town for the aggregate cost to Town for all errors and omissions of Contractor.

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 Contractor, Contractor shall reimburse Town for costs, damages, and expenses that are the result of errors, omissions, or delays of Contractor, including those of Contractor’s subcontractors.

2.1.4 Contractor 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 Contractor is behind schedule.

2.2 Key Personnel and Subcontractors. No changes in Contractor’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 Contractor provides any Services through the use of subcontractors, Contractor shall be solely responsible for all aspects of subcontractor(s) conduct and performance. Additionally, Contractor’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 Contractor with their subcontractor. If Town notifies Contractor in writing that any person on the Project appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with the prior written consent of Town. No automatic term or Milestone Date extension will be granted for replacement of such personnel or subcontractors.

- 2.3 Taxes, Permits and Licenses. Unless otherwise provided, Contractor 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.

[choose one of the options below, or provide something different]

[OPTION 1 – Total Fixed Fee, payable upon completion of each phase or task]

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 set forth in Attachment A.

Upon the satisfactory completion of each phase or task Contractor shall submit to Town an Invoice for that phase or task. The Invoice shall be in a form acceptable to Town and shall show the Services performed in the completion of the phase or task.

Payments for phases or tasks that have been satisfactorily completed 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 Contractor the part or parts which are not acceptable and shall pay the part or parts of the Invoice which are acceptable. The Town shall have the right to deduct from payments to the Contractor any costs or damages incurred, or which may be incurred, by Town as a result of the Contractor’s failure to perform on any phase or task, following reasonable notice and opportunity to cure such nonperformance by Contractor.

[OPTION 2 – Total Fixed Fee, payable monthly based on percentage of phase or task completed in previous month.]

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.

Contractor 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 Contractor 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 Contractor any costs or damages incurred, or which may be incurred, by Town as a result of the Contractor’s failure to perform on any phase or task, following reasonable notice and opportunity to cure such nonperformance by Contractor.

OPTION 3 – Other Fee Basis. _____

[insert other fee basis here. Address all points addressed in Options 1 and 2, such as need for invoice to be in form acceptable to town, etc...]

- 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 Contractor 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 Contractor any costs or damages incurred, or which may be incurred, by Town as a result of Contractor’s failure to

perform any Service, following reasonable notice and opportunity to cure such nonperformance by Contractor. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

3.3 Reimbursable Expenses. There are no 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 Contractor. Contractor shall not be entitled to any mark-up on actual expenses incurred.]

3.4 Accounting Records and Other Records. Accounting records of Contractor's compensation for Services and Additional Services (and Reimbursable Expenses, if permitted under this Agreement) shall be maintained by Contractor 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 Contractor and shall make reasonable efforts to render timely decisions pertaining thereto so as not to unduly delay the orderly progress of Contractor's Services.

ARTICLE 5

INSURANCE

5.1 Insurance. Contractor and Contractor's permitted subcontractors shall purchase and maintain during the term and for three years after the termination of this Agreement insurance for protection from claims under workers' or workmen's compensation acts; Commercial General Liability Insurance (including contractual liability and completed 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 Contractors' employees or subcontractors or any other person and to real and personal property; Commercial 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 Contractor's performance under this Agreement.

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

Minimum limits of insurance coverage are:

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

All insurance policies (except Worker's Compensation and Professional Liability) shall name Town as an additional insured party. Each policy shall provide 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, Contractor 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 additional insured, shall not apply to such additional 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 Contractor;
- 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 Contractor.

ARTICLE 6

DAMAGES AND REMEDIES

6.1 Services, Reimbursement, and Deductions.

6.1.1 Contractor shall reimburse Town for costs, damages and expenses, including reasonable attorney's fees and expert's fees incurred by Town if such

costs, damages and expenses are the result of any error, omission, or delay of, or failure by Contractor 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 Contractor any costs, damages, and expenses, including reasonable attorney's fees, that have been or may be incurred by Town as a result of Contractor'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, Contractor shall indemnify and hold Town, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities, and damages (including but not limited to reasonable professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Contractor of any term or condition of this Agreement or Written Amendment, (b) any breach or violation by Contractor of any applicable Law or Regulation, or (c) any other cause resulting from any act or failure to act by Contractor under this Agreement or Written Amendment, but only to the extent caused by any negligence or omission of Contractor. This indemnification shall survive the termination of this Agreement.

6.2.2 Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Contractor 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 Contractor 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 Contractor 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. Contractor 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 executed by both parties. Town may, without invalidating Agreement, make written changes in Services by preparing and executing a Written Amendment for review and execution by Contractor. Within three (3) days of receipt of such Written Amendment, Contractor shall notify Town in writing of any change contained therein that Contractor 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 Contractor.
- 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, Contractor 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 Contractor. Upon receiving notice of termination, Contractor 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, Contractor shall be entitled to the same compensation as it would have received had Town terminated the Agreement for convenience, and Contractor expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

8.3.3 In the event of termination by reason of a material breach of the Agreement by Contractor, Contractor 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 Contractor or by reason of Contractor's breach of this Agreement.

8.3.4 Should this Agreement be terminated for any reason, Town shall nevertheless have the right to require Contractor to (a) turn over to Town all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to the Town reports and such other information and materials as may have been accumulated by Contractor in the performance of this Agreement, whether completed or in process. If Contractor provides such information as outlined above, Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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 drawings, specifications, plans, surveys, reports, technical memoranda, testing protocol, designs, electronic databases, and other documents or instruments identified as 'deliverables' herein or which, by their nature, are designed to be delivered to Town under this Agreement. Contractor shall turn over to Town in good unaltered condition, reproducibles as described in Section 10.8 of all 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. Contractor may retain one set of 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, 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 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 not related to this Project without additional compensation to the Contractor. Such use of Documents and Deliverables by Town for other projects shall be at the full risk of Town and Town shall indemnify and hold 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 Town, its agents or employees, in connection with Town's improper use (or misuse) of Documents and Deliverables.

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. Contractor, 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 Contractor's business collateral pieces. Notwithstanding the foregoing, the parties agree that Contractor may list Town as a reference in response to requests for proposal and may identify the Town as a customer in presentations to potential customers.

- 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 Contractor 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. Venue for any action shall be exclusively Wake County.
- 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 exclusively 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 Contractor shall participate in the Town's 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 Contractor 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, Contractor agrees to support and abide by the policies and elements contained in the chapters titled 'Our Culture' and 'Working with the Media' in such publication.

10.8 Protocol for Documents and Deliverables. Contractor 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 Contractor notices any errors in electronic data provided to the Town under this Agreement, Contractor shall immediately notify Town, and if Contractor provided such electronic data, Contractor 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 Contractor, if to the Contractor, 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 Contractor's address. The date of said notice shall be the date of such delivery, in the case of delivery in person, or mailing when sent by courier or mail.

The notice address for the Town shall be:

_____ Department
Town of Cary
PO Box 8005 / 316 North Academy Street
Cary, NC 27512

The notice address for the Contractor shall be:

- 10.10 Gifts and Favors. Contractor 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; Confidential Records and Information. Contractor acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Contractor, the Town will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of initial disclosure by contractor, and that are otherwise entitled to protection under N.C.G.S. 132-1.2(1). Contractor shall make Town aware of any public records requests made in regard to Services or this Agreement. If Contractor, its employees or subcontractors, during provision of Services, becomes aware of or has access to confidential records or information or information otherwise protected from disclosure by Federal or State law (“Confidential Information”), Contractor, its employees and subcontractors, shall not disclose any such Confidential Information.
- 10.15 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 Contractor 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.
- 10.16 Electronic Version of Agreement. Town may convert a signed original of this Agreement to an electronic record pursuant to an approved North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of this Agreement shall be deemed for all purposes to be an original signed Agreement.

- 10.17 Verification of Work Authorization; Iran Divestment Act Certification. Contractor, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Final Divestment List (“List”) created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Contractor shall not utilize any subcontractor that is identified on the List.
- 10.18 No Third Party Beneficiaries. There are no third party beneficiaries to Agreement.
- 10.19 Pre-Audit Requirement. This Agreement has not been fully executed nor is it effective until the Preaudit Certificate (if required by NCGS 159-28) has been affixed and signed by the Town of Cary finance officer or deputy finance officer.
- 10.20 Independent Contractor; Status and Qualifications of Personnel. Contractor is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All individuals assigned by Contractor to provide Services pursuant to this Agreement shall for all purposes of this Agreement, be considered employees of Contractor only. Contractor shall assume sole and exclusive responsibility for the payment of wages to such individuals.
- 10.21 Nondiscrimination. Neither party shall discriminate on any prohibited basis. Contractor must comply with the Americans with Disabilities Act of 1990 (“ADA”).

IN WITNESS WHEREOF, Contractor 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.

[Insert Contractor Name]

By: _____
(signature)

Name: _____
(typed or printed name)

Title: _____

TOWN OF CARY

By: _____

Name: _____

Title: _____

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

Finance Officer

Attachment A – Basic Services/Scope of Services

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

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

Basic Services are further described below.

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 Certificate**

[Contractor – Please attach Insurance Certificate upon executing agreement.]