



Brooks Creek Stream Restoration and Culvert Replacement Project

SECTION 1. Project Information and Procurement Process

1.1 Overview

The Brooks Creek Stream Restoration and Culvert Replacement Project is in unincorporated Chatham County, North Carolina and provides ingress and egress to the Saralyn Homeowners Association (Saralyn HOA) community. The project will provide tremendous environmental and safety impacts by replacing a 50-year-old metal culvert at the Saralyn Road crossing with a bottomless culvert. Additionally, the project will include a full stream channel restoration to Brooks Creek with riparian enhancements to restore the stream channel and riparian corridor. Due to intensified weather patterns and a robust demand for local development, it is critical that the culvert and road system remain viable and in-tact for health, safety, economic, and social needs of the Saralyn community.

1.2 Statement of Purpose

It is the intention of Triangle J Council of Governments (“TJCOG”), to solicit proposals for a contractor (“Contractor”) that can provide services to design and build a site design plan for a stream channel restoration with riparian enhancements and culvert replacement and implement said design plan for the Brooks Creek Stream Restoration and Culvert Replacement Project (BCSRCRP). TJCOG is seeking design/build proposals for the BCSRCP at the entrance of the Saralyn HOA. The Contractor will work cooperatively with TJCOG and the Saralyn Project Team and provide, among other services, drawings, plans, permits, labor, materials, equipment, cost estimating, due diligence, budgeting, value engineering, constructability review, scheduling, and pre-construction planning throughout the pre-construction phase of the Project. The Contractor, through its engineering, shall produce detailed design development documents and construction documents. The Contractor shall construct the BCSRCP pursuant to the construction documents and in accordance with the Saralyn Project Team’s scheduling requirements and will provide construction oversight services throughout the entire construction phase. The pre-construction and construction phase services of the Contractor shall be set forth in more detail in the Agreement between the Saralyn Project Team and the Contractor. The final Agreement will be entered into by the Saralyn HOA and the selected Contractor.

1.3 Conceptual Schedule

To meet the requirements of the project's grant funding, the Project must be completed before October 31, 2023.

1.4 Procurement Process

1.4.1 TJCOG is using the design-build method. The procurement and the provision of services are in accordance with North Carolina General Statutes (G.S.) Chapter 143-128.1A and this RFQ.

1.4.2 This process will proceed with the issuance of the RFQ where any interested Proposer can submit its Statements of Qualifications ("SOQ") in accordance with the requirements set forth in this RFQ.

1.4.3 The selection committee will evaluate the SOQs. The three most highly qualified proposers shall be ranked. SOQs may not be withdrawn within 60 days from the date on which SOQs are submitted.

1.4.4 If not as many as three SOQs have been received from qualified Proposers, TJCOG will again solicit for design-build services. If as a result of such second solicitation not as many as three responses are received, TJCOG and the Saralyn Project Team may then begin negotiations with the highest ranked Proposer under G.S 143-64.31, even though fewer than three responses were received. If a contract cannot be negotiated with the highest ranked qualified Proposer, negotiations shall be terminated in writing and initiated with the next best qualified Proposer.

1.4.5 Contractor, by submitting its proposal, agrees that any costs incurred by the Contractor in responding to this RFQ are to be borne by the Contractor and may not be billed to TJCOG. Contractor's proposal must match the order in which the RFQ was submitted or clearly state where the information resides. If TJCOG has any confusion or difficulty in retrieving the required information from a Contractor's proposal, it may result in disqualification of such proposal. Contractor may not have the ability to resubmit its proposal.

1.4.6 The Contractor shall provide TJCOG and the Saralyn HOA with a Certificate of Insurance verifying its limits for public liability, property damage, and automobile insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence. For the awarded Contract, TJCOG and the Saralyn HOA shall be specifically named as an "additional insured" on all policies covering work under the Contract and the required Certificate of Insurance shall show that TJCOG and the Saralyn HOA has been added to the policies. All insurance shall be endorsed so that it cannot be canceled in less than thirty (30) days.

1.4.7 The Saralyn HOA intends to enter into a Design-Build Agreement, meeting the following requirements outlined throughout this RFQ. The Saralyn HOA will not contract with any vendor who is restricted from contracting with the State of North Carolina pursuant to N.C.G.S. §§ 143-133.3, 143-59.1, 143-59.2 or 147.86.60.

1.5 Services Provided by the Design-Builder

1.5.1 The following is a general outline of the work required. This is not intended to be all inclusive, as a detailed description of the work requirements will be developed in negotiation of the Task Authorization with the successful Contractor. The design requirements for this project will be discussed with the selected Contractor and will achieve the following goals:

- a. Goal 1: Replace the 50-year-old metal culvert at the Saralyn Road crossing with a bottomless culvert.
- b. Goal 2: Direct restoration of 65 linear feet of stream channel that flows under Saralyn Road in a bottomless culvert and enhancement of the existing stream bed and banks (125 linear feet) and riparian buffers (250 linear feet, both sides) immediately downstream of the culvert.
- c. Goal 3: The existing culvert has caused severe scouring to the stream bed and banks, so the stream geometry and riparian buffer will be designed, restored, and enhanced to mimic that of the cross-sections, geomorphology, and riparian buffer flora immediately observed up-stream of the existing culvert in a stable condition.
- d. Goal 4: Improve aquatic and terrestrial habitats in the project area and downstream due to reduced sedimentation as a result of the project.
- e. Goal 5: Design adequate ingress and egress into the community throughout the construction phase of the Project – recognizing that this is the only point of entry into the community.

All goals will aid in creating safe and stable ingress and egress into the Saralyn community and will increase water quality upstream and downstream of the Project's location.

1.5.2. Design components include but are not limited too;

- a. Design and document the work necessary to replace the existing culvert at the Saralyn crossing as well as the necessary stream restoration and embankment repairs.
- b. The Contractor will conduct a preliminary site investigation and will review all pertinent readily available existing data.
- c. The Contractor will provide an engineer's cost estimate of construction costs for the design of the project.
- d. The Contractor will provide geotechnical services incidental to the design work as applicable.
- e. Utility conflicts are to be avoided to the maximum extent practicable.
- f. Provide a design that conforms to the standards of Chatham County, State Agencies, and NCDOT. This includes meetings with regulatory agencies to ensure approval of the project (when applicable), or other agencies where appropriate.
- g. The design team will coordinate with TJCOG, the Saralyn Project, Team, United States Army Corps of Engineers (USACE) ,and the North Carolina Department of Environmental Quality (NCDEQ).
- h. Design of erosion and sediment control measures to conform to NCDEQ requirements. Includes meetings with regulatory agencies to ensure approval of the project (if applicable).
- i. Perform environmental assessments as necessary.

- j. Provide methods of analysis and design discharge determination decisions in a design memorandum.
- k. Constant communication with TJCOG and the Saralyn Project Team for successful completion of the project.
- l. All data, designs, and specifications will be provided and become the property of TJCOG and the Saralyn Project Team.
- m. TJCOG and the Saralyn Project Team have the right to test materials if deemed necessary.
- n. Prepare Monthly Progress reports and supporting data. The progress report shall include accomplished tasks for the month, anticipated progress for the next month, pending issues, and schedule completion target dates.
- o. Incorporate recommendations, as feasible, from TJCOG and the Saralyn Project Team to be folded into the final design.
- p. Finalize drawings and specifications for engineering and construction services needed including dimensions and materials needed. This will also include an updated construction timeline and updated construction costs.
- q. Present the final design recommendation to the Saralyn HOA Board and answer questions and provide clarification as needed.

1.5.3 Permitting components include but are not limited too;

- a. Submit all permit applications (to include permit fees) to appropriate agencies in a timely, progressive manner upon completion of approved design.
- b. Monitor permit status while in review process.
- c. Coordinate with permitting agencies to obtain approval.
- d. Permitting shall be included as part of the design schedule.

1.5.4 Construction components include but are not limited too;

- a. Construction will be based off the final design documents and will not take place until final approval from TJCOG and the Saralyn Project Team has been authorized.
- b. The Contractor will abide to the non-negotiable deadline of October 31, 2023.
- c. Notify TJCOG and the Saralyn Project Team of Intent for Construction Start Date.
- d. Schedule and hold kick off meeting on the site (or virtual meeting if deemed necessary).
- e. Present construction plan and schedule to TJCOG and the Saralyn Project Team
- f. Prepare Monthly Progress reports and supporting data. The Progress Report shall include accomplished tasks for the month, anticipated progress for the next month, pending issues, and schedule completion target dates.
- g. Establish Perimeter Controls and Erosion and Sediment Control Measures.
- h. Implement construction plans developed during design services phase.
- i. Provide construction management and administration.
- j. Provide and manage site safety.
- k. Provide quality assurance and quality control services.
- l. Build and manage a temporary traffic diversion around the work site during the culvert replacement that allows ingress and egress into the community.

- m. Provide monthly cost and schedule updates to TJCOG and Saralyn Project Team
- n. Complete construction.
- o. Request final acceptance meeting.
- p. Project closeout, including punch list walk through and final acceptance.
- q. Warranty correction work.
- r. Bond release.

SECTION 2. Instructions for Proposers

2.1 Advertisement of RFQ

2.1.1 Information related to this solicitation, including any addenda, will be posted on <https://www.tjcog.org/get-involved/requests-proposals>. Proposers are encouraged to routinely monitor the web site. It is the Respondent’s responsibility to ensure that all addenda have been reviewed and, if required, signed, and returned.

2.2 Delivery of SOQs and Procurement Schedule

2.2.1 Deliver the SOQ to the address shown below no later than 3:00 p.m. on 6/3/2022 for the SOQ to be accepted. SOQs received after this time will be returned unopened. Address SOQs to: Triangle J Council of Governments Attn: Lindsay Whitson, 4307 Emperor Blvd., Suite 110, Durham, North Carolina, 27703.

Procurement and Project Schedule

Issue RFQ	4/29/2022
Deadline for Questions and Comments	5/25/2022
Submission of SOQS	6/3/2022
Interviews (optional at discretion of TJCOG and the Saralyn Project Team)	6/14/2022 to 6/15/2022
Selection of best qualified design-builder	6/22/2022 (or earlier)
Negotiations	Start 6/22/2022 (or earlier)
Contract Execution	7/1/2022
Deadline for Substantial Completion	9/1/2023
Deadline for Final Completion	10/31/2023
Deadline for Final Warranty Inspection	12/1/2023

2.2.2 TJCOG and the Saralyn Project Team reserve the right to schedule interviews. At this time interviews are not being included in the RFQ procurement phase.

2.2.3 TJCOG and the Saralyn Project Team assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFQ. All such costs shall be borne solely by each Proposer.

2.3 Point of Contact and Questions

2.3.1 To ensure fairness during the procurement process, until the Agreement is executed, Proposers and their employees, representatives, and agents shall not contact TJCOG staff, the Saralyn Project Team, the Saralyn HOA Board, or any other official, employee, or representative.

2.3.2 Direct questions regarding this RFQ and Project are to be submitted electronically to the Point of Contact listed below. Questions will not be answered via phone. Modifications to the RFQ can only be made by Addenda. Requests for clarification and questions to this RFQ must be received by TJCOG no later than 5/25/2022. TJCOG will not entertain any further questions after the due date.

Point of Contact: Lindsay Whitson, Community and Economic Development Program Manager, Triangle J Council of Governments. Email address: lwhitson@tjcog.org.

TJCOG shall issue addenda reflecting questions and answers to this RFQ, if any, which shall be posted to <https://www.tjcog.org/get-involved/requests-proposals>. Respondents shall be entitled to rely only on written material contained in an Addendum to this RFQ.

2.3.3 All communication is subject to distribution to all Proposers except deemed confidential information or as proprietary by a Proposer. TJCOG will share with all Proposers all Addenda to this RFQ including any revisions based on its review of Proposer comment and questions concerning this RFQ. TJCOG disclaims the accuracy of information derived from any source other than the Point of Contact identified above, and the use of any such information is at the sole risk of the Proposer. Only answers and responses issued by formal Addenda shall be final and binding upon TJCOG. Oral and other interpretations shall be without legal effect and Proposer shall not rely on such oral and other interpretations. Proposers are required to submit a signed Addenda if issued.

2.4 Preparation of SOQ

2.4.1 The Statement of Qualifications Letter (“SOQ Transmittal Letter”) and other SOQ Forms are included with the RFQ. A copy of these forms in Word or Excel, as appropriate, will be made available to Proposers.

2.4.2 Complete all blanks on the SOQ Transmittal Letter, SOQ Form 1. Execute SOQ Form 1 as indicated below:

- a. For a corporation in the corporate name with the signature of the president, a vice-president or other corporate officer accompanied by evidence of authority of the individual to sign on behalf of the corporation. Show the corporate address and state of incorporation with the signature.

b. For a partnership in the partnership name with the signature of a partner. The title of the partner must appear with the signature. The document must be accompanied by evidence of authority for that individual to sign on behalf of the partnership. Show the official address of the partnership with the signature.

c. For a limited liability company in the name of the firm with the signature of an officer of that company. The document must be accompanied by evidence of authority for that individual to sign on behalf of the company. Show the state in which the firm was formed and the official address of the firm with the signature.

d. For a joint venture with a signature of an authorized person from each joint venture member entity in the manner indicated on the SOQ Transmittal Letter. The document must be accompanied by evidence of authority for each individual to sign on behalf of their respective organizations. Show the official address of the joint venture with the signature.

2.4.3 Type or print all names in ink below the signature.

2.4.4 Acknowledge receipt of all Addenda by filling in the number and date of each Addenda received. Provide a signature as indicated to verify that the Addenda were received. A SOQ Transmittal Letter that does not acknowledge the receipt of all Addenda may be considered non-responsive.

2.4.5 Provide the name, address, and telephone number of the individual to be contacted for any communications regarding the RFQ in the SOQ Transmittal Letter.

2.4.6 Proposer shall provide evidence of its authority to do business in the State of North Carolina and include such evidence with SOQ Form 1. Alternatively, Proposer will covenant to obtain such authority prior to award of the Agreement, with its execution of SOQ Form 1.

2.5 Confidentiality of SOQ Information

2.5.1 Documents submitted as part of the SOQ are governed by Chapter 132 (Public Records) of the General Statutes of North Carolina. If the Proposal contains confidential technical, financial, or other information that constitutes a trade secret under applicable North Carolina law (See GS 66-152(3) and GS 132-1.2), such confidential information shall be specifically and clearly identified by properly marking each page and inserting the following notice on the front page of the SOQ immediately following the Proposer's Cover Letter: "Pages of this Proposal, identified by an asterisk (*) and along the right margin with a bold vertical line, contain information that is a trade secret under applicable North Carolina law. The Proposer requests that such information be used for the limited purpose of evaluating this Proposal. In submitting this Proposal, the Proposer represents that it is familiar with and understands the current provisions of Chapter 132 (entitled Public Records) and Article 24 of Chapter 66 (entitled "Trade Secrets Protection Act") of the North Carolina General Statutes.

Furthermore, in submitting this Proposal, the Proposer also agrees that TJCOG may reveal any trade secret materials contained in the Proposal to individuals and entities involved in the review or evaluation of any Proposal submitted as part of this Project. Additionally, the Proposer agrees to indemnify and hold harmless any person or organization participating in the review committee to include but not limited to; officers and employees of TJCOG, members of the Saralyn Project Team, and the Saralyn Homeowners Association (HOA) Board. The Proposer further understands that it may be disqualified if the Proposer designates one or more portions of its submitted Proposal as a trade secret and TJCOG’s Attorney determines that the Proposer knew or should have known that any part of such portion(s) does not qualify as a trade secret under applicable North Carolina law. It is understood that the public disclosure of any portion of a Proposal will be made to the extent that TJCOG determines that such disclosure is required by applicable Law.” Furthermore, marking the entire SOQ as confidential is not allowed.

2.6 Submittal of Forms

2.6.1 The Proposer shall complete and submit the SOQ per the instructions and requirements of the RFQ.

a. The SOQ shall be submitted in the following format and subject to the page limits as indicated below and elsewhere in this RFQ:

Section #	Section Title	Counts Towards Page Limit
	Cover Letter	Yes
1	Statement of Qualifications Transmittal Letter	No
2	Proposer and Design-Build Team Profiles	Yes
3	Proposer and Design-Build Team Qualifications and Experience	No
4	Project Organization and Personnel	Yes
5	Design-Build Team Project Approach	Yes
6	Safety Program and Safety Performance	Yes
7	Financial Information	No
	SOQ Page Limit (Single printed pages) – 30-page limit	

b. Except for charts, schedules, tables, exhibits, and other illustrative and graphical information, all information shall be prepared on 8.5” x 11” white paper, except where specifically accepted in this RFQ. Charts, schedules, tables, exhibits, and other illustrative and graphical information may be on 11” x 17” paper but must be folded to 8.5” x 11”. An 11” x 17” sheet shall be counted as one (1) page provided it is a chart,

schedule, table, exhibit, or other illustrative and graphical information. All printing, except for the front cover of the SOQ and any appendices, must be a font of not less than 12-point and be double-sided. A double-sided page shall be considered two (2) pages for purposes of the page limitations. The SOQ covers front and back and section dividers with tabs will not count as pages for page limitations. Any plan sheets or drawing submitted shall be drawn to an identifiable scale and submitted on 11” x 17” sheets. The SOQ shall be submitted in a spiral bound document or in a binder. As mentioned in the table above, there is a 30-page limit. There are some pages that do not count towards the 30-page limit (as mentioned in the table above).

c. Proposers are instructed to limit the information in the SOQ to the information necessary to demonstrate Proposer’s technical, financial, and other qualifications and experience for the Project and any other information specifically requested in this RFQ. SOQs should be prepared in a straightforward and concise manner. TJCOG and the Saralyn Project Team are not interested in receiving marketing brochures, promotional material, generic narratives, elaborate binding, colored displays, etc. in the SOQs. Emphasis should be placed on clarity and completeness of content and responsiveness to the RFQ requirements.

d. SOQ Forms

SOQ Form Number	Title	SOQ Submittal Location
1	Statement of Qualifications	With Cover Letter
2	Surety Letter of Intent	Enclosed with SOQ Form 2
3	Draft Design-Build Agreement Comment	Enclosed with SOQ Form 3
4	Financial Resources Data	Enclosed with SOQ Form 4
5	Bank Credit Reference	Enclosed with SOQ Form 5
6	Proposer or Design-Builder Team Member Similar Project Experience	Enclosed with SOQ Form 6
7	Proposed Key Personnel Matrix	Enclosed with SOQ Form 7
8	Proposer Safety Performance Questionnaire	Enclosed with SOQ Form 8

e. Proposals must be enclosed in a sealed envelope or package and clearly marked with the name of the submitting company and RFP Title. Proposers must submit three (3) hard copies of a signed proposal and an electronic version as a viewable and printable Adobe Portable Document File (PDF) on a flash drive. Both hard copies and electronic versions must be received by TJCOG on or before 3:00 p.m. on 6/3/2022. Proposals received after the RFQ deadline will not be considered for award.

2.7 Modification or Withdrawal of SOQ

2.7.1 Deliver the document to the place where the SOQs are to be submitted prior to the date and time for the opening of the SOQs.

2.7.2 Proposers may withdraw an SOQ by providing a written request, duly executed by an authorized representative and delivered to TJCOG at any time prior to the SOQ submittal deadline or within 24 hours after SOQs are opened. If withdrawal is after SOQs are opened, the written request shall demonstrate to the reasonable satisfaction of TJCOG that there was a material and substantial mistake in the preparation of its SOQ. Individuals making the withdrawal will be required to provide evidence of serving as an authorized representative of the Proposer.

2.8 Evaluation of SOQs

2.8.1 Within 30 days after the date of opening the SOQs, TJCOG and the Saralyn Project Team will evaluate and rank each SOQ with respect to the evaluation criteria described in this RFQ. In evaluating SOQs, TJCOG and the Saralyn Project Team will consider whether the SOQs fully comply with the RFQ submittal requirements.

2.8.2 In considering SOQs, TJCOG and the Saralyn Project Team will evaluate, score, and rank the SOQs in accordance with the requirements set forth in this RFQ to determine the three most highly qualified Proposers.

2.8.3 The SOQs will be evaluated using the criteria indicated in the table below.

Evaluation Criteria	(a) Weight	(b) Score 1-5	(a) x (b) Weighted Score
Compliant SOQ Transmittal Letter, Financial Information, Ability to Provide Bonds	Pass/Fail		
Proposer Experience with Similar Size and Scope Projects	15%		
Key Staff Qualifications	15%		
Project Approach	25%		
Innovation and Cost Control	25%		
Proposed Schedule for Completing Tasks Identified	15%		
Location of the Firm	5%		
Proposer and Design-Build Team Safety Program and Safety Performance	Pass/Fail		
Total	100		

Rating system will be as follows:

Proposals will be evaluated using a standardized scoring system. Each criteria component will be assigned points ranging from 1 – 5 according to the extent to which the proposed system meets the stated requirements. The points will be assigned as follows:

- 5 points: Fully meets
- 4 points: Meets with minor gaps (no compromise required)
- 3 points: Meets with moderate gaps (some compromise required)
- 2 points: Partially meets with significant gaps (compromise required)
- 1 point: Does not meet

The points for each criteria component will be multiplied by the percentage weight listed above and totaled.

2.8.4 Material misstatements and/or inaccuracies in the information submitted in the SOQs that were relied upon for evaluation, scoring, and ranking may be grounds for rejection of the SOQ for this Project. Any material misstatements and/or inaccuracies, if discovered after award of the Agreement may be grounds for immediate termination of the Agreement, at TJCOG's and the Saralyn Project Team's sole discretion. Additionally, the Proposer will be liable to the Saralyn HOA for any additional costs or damages to the Saralyn HOA resulting from such misstatements and/or inaccuracies, including costs and attorney's fees for collecting such costs and damages.

2.8.5 Submission of an SOQ indicates Proposer's acceptance of the evaluation and scoring criteria and methodology contained in the RFQ as well as Proposer's recognition and acknowledgement that subjective judgments must be made by the selection committee during the evaluation.

2.9 Payment and Performance Bonds

2.9.1 Payment and Performance Bonds.

- a. With the submission of the SOQ, Proposer will be required to submit a Letter of Intent from Proposer's surety verifying the Proposer's ability to acquire payment and performance bonds in the amount of 100% of the Agreement Value as required and documenting the commitment from its surety to provide such bonds.
- b. The performance bond and the payment bond shall be in the name of the Saralyn HOA executed by one or more surety companies legally authorized to do business in the State of North Carolina.
- c. The bonds shall become effective upon the awarding of the Agreement. The

bonds shall be in the amount of the total project budget (estimated project budget of \$525,000). When the price is established and prior to the initiation of construction, the bonds shall be adjusted to reflect the price.

d. Bonds shall be in a form that complies with North Carolina G.S. Chapter 44A Article 3.

2.10 The Draft Design-Build Agreement

2.10.1 The draft Design-Build Agreement for Professional Services is contained in Exhibit A. Additional information will set forth the intended risk allocation, responsibilities, obligations, and other requirements of the Design-Builder in performing the required Scope of Services for this Project. Information specific to the Design-Builder that may also become part of the Design-Build Agreement includes information provided in the Selected Proposer's SOQ. Once negotiated with the Selected Proposer, the Design-Build Agreement will contain the entire agreement between the parties with respect to the Project and will completely and fully supersede all other agreements, including those contained in the RFQ and the Design-Builder's Proposal.

2.10.2 Proposers are encouraged to provide detailed written comments on the Draft Design-Build Agreement in SOQ Form 3. TJCOG and the Saralyn Project Team fully intend to negotiate the terms and conditions of the final Design-Build Agreement and will consider suggested changes included on SOQ Form 3 during the course of negotiations with the selected Proposer.

2.11 Requirements for Design Professionals

Proposer shall certify that each licensed design professional who is a Design-Build Team Member, including subconsultants, was selected based on demonstrated competence and qualifications in the manner provided by North Carolina G.S. 143-64-31. This certification is included on Statement of Qualifications Transmittal Letter, SOQ Form 6.

2.12 Inspection and Construction Materials Testing

The Design-Builder may be required to provide quality assurance and quality control services in accordance with the Agreement documents, independent of those services. The Saralyn Project Team and the Saralyn HOA Board has the right to provide or contract for inspection services, testing of construction material engineering, and verification testing services necessary for acceptance of the Project. The Design-Builder will be required to provide management for coordination of these services.

2.13 Minority, Women and Small Business

2.13.1 TJCOG takes affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.

- a. Additional bidder documentation obligations. When submitting a bid, bidders must:
 - i. Identify on their bid the HUB (historically underutilized business) businesses used on the project.
 - ii. Include an affidavit listing the bidder's good faith efforts to solicit HUB participation and the total dollar value of work to be performed by HUBs.
 - iii. Prior to contract award, the apparent low bidder must submit either (1) an affidavit describing the percentage of HUB work; or (2) documentation of the bidder's good faith efforts to meet the local government's HUB participation goal. Failure to provide documentation of good faith efforts is grounds for rejecting the bid. [G.S. 143-128.2(c)].

2.14 Rights and Reservations of TJCOG and the Saralyn Project Team

In connection with this procurement process, including SOQs and the short listing of the highest ranked SOQs, TJCOG and the Saralyn Project Team reserves to itself all rights (which rights shall be exercisable by TJCOG and the Saralyn Project Team at its sole discretion) available to it under applicable law, including without limitation, the following with or without cause and with or without notice:

- a. The right to cancel, withdraw, postpone, or extend this RFQ in whole or in part at any time prior to the short list determination.
- b. The right to issue a new RFQ or to revise and modify, at any time prior to the SOQ submittal date, information included in the RFQ including but not limited to the dates set or projected and factors to be considered in evaluating SOQs and the responsibilities of the Proposers.
- c. The right to modify the procurement schedule.
- d. The right to waive minor and non-material deficiencies, informalities, and irregularities in an SOQ.
- e. The right to suspend and terminate the procurement process or to terminate evaluations of SOQs received at any time.
- f. The right to correspondence with the Proposers to seek an improved understanding of SOQs at any time.
- g. The right to hold meetings and conduct discussions with any or all of the Proposers to seek an improved understanding of the SOQs.

- h. The right to seek or obtain data and information from any source that has the potential to improve the understanding and evaluation of the SOQs.
- i. The right to appoint and change appointees of any selection committee.
- j. The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
- k. The right to respond to all, some or none of the inquiries, questions and/or requests for clarification received relative to this RFQ.
- l. The right to seek clarifications from any Proposer to fully understand information provided in the SOQ.
- m. The right to request additional information from a Proposer during the evaluation of SOQs.
- n. The right to reject an SOQ containing exceptions, additions, qualifications, or conditions not called for in the RFQ.
- o. The right to conduct an independent investigation of any information, including prior experience identified in an SOQ by contacting project references, accessing public information, contacting independent parties or any other means.

2.15 Requirements to Keep Design-Build Team Intact

The Design-Build Team proposed by Proposer, including but not limited to the Design-Build Team Members and Key Personnel identified in the SOQ, shall remain on Proposer's Design-Build Team for the duration of the procurement process and project implementation. If circumstances require a proposed change, it must be submitted in writing to the Point of Contact. The only circumstance that would warrant such a change would occur if a person defined as one of the "Key Personnel" is no longer employed by the Proposer or Design-Build Team Member. TJCOG and the Saralyn Project Team, in its sole discretion, will determine whether to authorize the change. Unauthorized changes to the Proposer's Design-Build Team at any time may result in the elimination of the Proposer from further consideration and may result in the termination of the project's contract. The Design-Builder shall obtain written approval from TJCOG and the Saralyn Project Team prior to changing Key Personnel as will be listed in the Agreement after the Agreement has been awarded.

SECTION 3. SOQ Submission Requirements

3.1 Requirements for the SOQ

3.1.1 Proposers must meet the criteria in the bullet points immediately below. Proposers that do not meet these criteria are automatically disqualified. All documentation required to prove the

firm meets the minimum criteria stated below should be included in the appendix of the firm's submittal.

a. North Carolina General Statutes Chapter 143-128.1A(c)(8) requires that the Proposer provide an explanation of its Design-Build Team selection, which shall consist of a list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the Proposer proposes to use for the Project design and construction. If the Proposer has minor work scope items that it plans to subcontract for at a later date, Proposer shall provide an outline of the strategy the design-builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes.

i. Proposer's "Designer(s) of Record" MUST have a current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work. A copy of the license(s) is to be included in the Proposer's SOQ.

ii. Proposer's "Builder" MUST have a current North Carolina Contractor's license included in the Proposer's SOQ.

b. Lead Design-Build firm MUST agree to keep and maintain for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record, and umbrella coverage that meets requirements for this project. The Contractor shall furnish TJCOG and the Saralyn Project Team certificates of insurance for each type of insurance described herein, with TJCOG and the Saralyn HOA listed as Certificate Holder and as an additional insured on the Contractor's general liability and auto liability policies and provide a waiver of subrogation on the Contractor's workers' compensation policy. In the event of bodily injury or property damage loss caused by Contractor's negligent acts or omissions in connection with Contractor's services performed under this Agreement, the Contractor's Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, the Contractor and Contractor's insurance carrier shall give TJCOG and the Saralyn Project Team at least thirty (30) days prior written notice. No work shall be performed until the Contractor has furnished the above referenced certificates of insurance and associated endorsements, in a form suitable to TJCOG and the Saralyn Project Team. Upon request, the Contractor shall provide the copies of their insurance policies. (The Owner reserves the right to negotiate different limits and coverage in the final contract.)

3.1.2 The Review Committee will endeavor to shortlist only firms that are fully capable and qualified to perform the current project.

3.1.3 Subject to the provisions of the Freedom of Information Act, the details of the proposal documents will remain confidential until final qualification selection is complete. Once a selection is made, Responses to this RFQ become public records and, therefore, will be subject to

public disclosure under the North Carolina Public Records Law (Gen. Stat. §132-1et seq.). If the firm designates a document confidential or a trade secret in accord with the procedures prescribed by the Public Records Law, the City will withhold the document from public disclosure to the extent it is entitled or required to do by applicable law (NC General Statutes §66-152(3)). However, the firm must invoke the protection of this section prior to or upon submission of the data or other materials and must identify the data on other materials to be protected and state the reasons why protection is necessary. Each individual page considered a trade secret or proprietary information must be labeled “Confidential” in the top right corner.

3.1.4 TJCOG and the Saralyn Project Team reserves the right to check references of proposed personnel on the project team and to request substitutions of personnel if it deems such action in their best interests. Moreover, both parties reserve the right to check any references that it may become aware of in addition to the references provided by the proposer.

3.1.5 Equal Employment Opportunity. During the performance of this Agreement, the Design-Builder agrees as follows: The Design-Builder will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, place of birth, or physical handicap. Design-Builder must have a history of being non-discriminating and will not discriminate on the basis of race, creed, color, sex, or national origin in any of its employment practices, or procurement practices with respect to the workforce of the firm, or procurement services in connection with this project.

3.1.6 It is a requirement that the selected firms must operate a drug-free workplace and that it will remain that way throughout the duration of the project.

3.1.7 E-Verify Employer Compliance: Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

3.1.8 Iran Divestment Act Certification. Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Divestment List (“List”) developed by the North Carolina State Treasurer pursuant to Article 6E of Chapter 147 of the General Statutes of North Carolina. Contractor shall not utilize any subcontractor that is identified on the List.

3.1.9 Companies Boycotting Israel Divestment Act Certification. Contractor hereby certifies that Contractor, and all subcontractors, are not on the list of companies engaged in a boycott of Israel (“List”) developed by the North Carolina State Treasurer pursuant to Article 6G of Chapter 147 of the General Statutes of North Carolina.

3.1.10 Proposers must provide the information requested in the RFQ. Information is requested subject to the page limits indicated and on the SOQ Forms included in this RFQ.

The SOQ is limited to 30 printed pages (may use front and back, which would count as 2 pages). This page limit does not include the cover letter, front and back covers, section dividers, Section 3.2.7 Financial Information, and the SOQ Forms. A copy of these forms will be provided in Microsoft Word or PDF, as appropriate, to assist with the preparation of the SOQs. Information in these forms must be provided completely and in detail. Failure to include the information completely and clearly may result in lower scores in the evaluation. Information that cannot be incorporated in the form may be included in an appendix to the form. This appendix must be clearly referenced by appendix number in the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.

3.2 SOQ Submission Requirements

3.2.1 Proposer and Design-Build Team Profiles

a. Proposer shall provide information as to the history of the Proposer, ownership, organization, and other background information including lines of business and service offerings, locations of home and other offices, years in business and providing construction services, including design and construction services for stream restoration projects, growth over time in terms of number of projects, size of projects, types of projects, firm revenue, number of employees, etc. This narrative should include a description of any other names the Proposer has had in its history and any related company that is named in the SOQ as to having relevant experience.

1. Proposer Legal Structure

i. TJCOG and the Saralyn Project Team are interested in understanding the legal structure of the Proposer and requests information be submitted. The information submitted shall be concise, clear, and in sufficient detail to allow TJCOG and the Saralyn Project Team to have a complete understanding.

ii. If Proposer is organized as a consortium, partnership or any other form of joint venture, a limited liability company (LLC), or other form of business entity specifically formed for this Project, whether the business entity for this Project already has been legally constituted or the business entity has not yet been legally formed, the Proposer shall provide the following information:

1) Confirmation of how Proposer is or will be legally structured, identification of the parties to the legal structure, the major roles and responsibilities of the parties, and percentages of ownership. Identification of the executed agreements that exist between the parties is required (i.e. a joint venture agreement, memo of understanding, other underlying agreements, etc.).

2) Summary of the key terms of the executed agreement(s) identified above in (a) between the parties including the manner the entity will operate administratively and financially, including: who is responsible for financial management of the entity, who is responsible for the day today management of the entity, how decisions are made, how conflicts and disagreements will be resolved and how to address any deadlocked situations or situations where a required unanimous agreement is not reached.

3) Based on the Proposer's legal structure, provide a statement acknowledging that the parties are either jointly and severally liable or that each party will guarantee all of the Proposer's obligations of the Agreement.

b. Provide the names of other Design-Build Team Members (other than Proposer). Provide summary, information as to its history, ownership, organization, and other background information including lines of business and service offerings, locations of home and other offices, years in business and providing design, construction and stream restoration services, growth over time in terms of number of projects, size of projects, types of projects, firm revenue, number of employees, etc.

3.2.2 Proposer and Design-Build Team Qualifications and Experience

- a. Proposer shall complete SOQ Form 7, which describes Proposer and if applicable, Design-Build Team experience in designing and constructing similar projects as to that proposed in this RFQ. These forms shall be submitted for no more than two (2) stream restoration/stabilization/repair/culvert projects using natural channel design methods, (one form per project) that were completed. It is at the discretion of the Proposer to select the projects that best demonstrate meeting the RFQ submittal requirements for Proposer and to provide applicable Design-Build Team Qualifications and Experience. The three similar projects should demonstrate:
 - i. Projects completed within the last 7 years.
 - ii. Stream restoration/stabilization/repair using natural channel design methods, including the regrading and stabilization of banks with stream channel profile improvements that incorporates cross veins (stream restoration projects consisting of at least 200 linear feet are desired)
 - iii. Working with a Homeowners Association and grant funded projects if able.
 - iv. Design and construction of stream restoration and culvert replacement projects.
 - v. Geotechnical, traffic control, and project safety components.
 - vi. Project management experience for design-build projects.

3.2.3 Project Organization and Personnel

a. Provide an organizational chart(s) for this Project showing Proposer's organization and management structure that identifies the Proposer and if applicable Design-Build Team Members responsibilities for the major activities and functions to be performed for the Services. The structure of the Proposer's Project organization will also identify the significant positions and participants (both firms and individuals) who are responsible for major elements of the provision of the Services. Significant positions indicated on the organizational chart can have named individuals other than Key Personnel on Form 7.

b. Describe the roles, responsibilities, functional arrangements, and reporting relationships between and among the Proposer and if applicable the Design-Build Team Members. Describe the rationale for the proposed organizational and management structure and the reasons why it is advantageous to TJCOG and the Saralyn Project Team.

c. Proposer shall designate Key Personnel proposed for the Project. Key Personnel include but may not be limited too Project Manager, Project Superintendent, Primary Equipment Operator, Lead Stream Restoration Designer, and Permitting Specialist. In addition, Design-Builder will be required to have at all times during the construction an English-speaking designee onsite. Proposers that wish to add any position and individual as a Key Personnel that serves a significant and important role can do so. The Proposer will designate such individuals and provide the information requested on SOQ Form 7 for each Key Personnel position. The Proposer must provide the services of the proposed Key Personnel for the life of the Project as a condition of the procurement. Failure to provide the proposed Key Personnel may result in the disqualification of the Proposer and may void the award of the Agreement.

d. The Proposer shall indicate in this SOQ section how the following has been satisfied: Site Superintendent and Primary Equipment Operator must have experience with at least two successful stream restoration projects. To demonstrate this, provide a page for each of the two projects that includes construction progress photos (a brief narrative is allowed on this page). Someone on the key personnel team should also have experience with the installation of two large culverts. To demonstrate this, provide a page for each of the projects that shows completed installation (a brief narrative is allowed).

3.2.5 Proposer and Design-Build Team Design and Construction Approach

a. Proposer shall provide sufficient information to enable TJCOG and the Saralyn Project Team to understand the Proposer's design and construction approach, specifically for the items listed below. The submitted information should present a compelling case as to why the Proposer and if applicable its Design-Build Team should be shortlisted. Describe the project elements that would be necessary to successfully design and construct this project

b. Describe the key success factors as you see it.

- c. Provide a schedule of milestones of when project elements will be met.
- d. The Design-Build Team will describe any innovative and cost control measures that will benefit TJCOG and the Saralyn HOA.

3.2.6 Safety Program and Safety Performance

Each Proposer shall submit the safety program and safety performance information requested below. If the Proposer is a consortium, a joint venture, LLC or a partnership, each participating party or firm of such consortium, joint venture, LLC, or partnership shall provide the safety program and safety performance information.

Complete the Proposer Safety Performance Questionnaire on SOQ Form 8. Please note, Proposers with an Experience Modification Rate (EMR) higher than 1.0 may be disqualified as a Proposer for the Project.

3.2.7 Financial Information

- a. Each Proposer shall submit the financial information requested below in Section B.1. through B.4. and C and include such information in this Section, except where specifically noted in bold font. If the Proposer is a consortium, a joint venture, LLC or a partnership, each participating party or firm of such consortium, joint venture, LLC, or partnership shall provide the requested financial information required by this section.
- b. Please furnish for the Proposer, the following financial information listed below. If any of this information is not provided, the reason for its omission shall be described.
 - i. Evidence of the ability of the Proposer to meet the bonding requirements described in the RFQ. Letter(s) of Intent in the form required by the RFQ from the Surety or Sureties must be included with the SOQ Transmittal Letter.
 - ii. Evidence of the ability of the Proposer to meet the insurance requirements described in the RFQ. Letter(s) of Intent in the form required by the RFQ from the insurance company must be included with the SOQ Transmittal Letter.
 - iii. A summary narrative that describes the Proposer's financial condition and resources in sufficient detail to demonstrate the Proposer's ability to perform the Services for this Project. Completion and submission of SOQ Form 4 - Financial Resources Data.
 - iv. Completion of SOQ Form 5 – one (1) “Bank Credit Reference Form” by bank providing services to the Proposer.
- c. Direct Financial Questions. The purpose of this section is to elicit information pertaining to unfavorable circumstances or events that have the potential to adversely

impact the Proposer's ability to honor its contractual commitments in the provision of the Services. To the extent that any of these questions are answered in a manner that indicates that any of these unfavorable circumstances or events have occurred, it is the responsibility of the Proposer to describe the unfavorable circumstance or event and provide sufficient information to demonstrate that the unfavorable circumstance or event will not adversely impact the Proposer's ability to honor its contractual commitments in the provision of the Services. Responses to these questions are for Proposer and any predecessor name(s) of Proposer. All items are addressing events within the past three years.

- i. Material adverse changes in financial position.
- ii. Bankruptcy.
- iii. Liabilities and/or potential liabilities.
- ii. Failure to complete a contract or had a contract terminated due to alleged poor performance, default, or litigation.
- iii. Violation of laws.
- iv. Violation of regulatory compliance.
- v. Debarred from Bidding.
- vi. Has Proposer ever refused to construct or to provide materials defined in the contract documents for any project?
- vii. Has Proposer been released from a bid or proposal in the past three years?
- viii. Has Proposer been involved in litigation involving owners for construction projects that have been filed within last three years or that are currently outstanding?
- ix. Provide a summary of significant claims incidences (claim is 3% or more of the contract amount) over the past three years that Proposer has had involving owners for construction projects.

Exhibit A – Draft Design-Build Agreement for Professional Services

This Agreement for Professional Services ('Agreement'), by and between the Saralyn Homeowners Association (hereafter "HOA") and "Contractor), a professional Design-Builder firm with a Professional Corporation with offices in North Carolina (Hereafter, "Professional").

WHEREAS, the HOA has completed necessary steps for retention of Design-Build services under applicable procurement guidelines and HOA policies; and

WHEREAS, the HOA chose Professional to provide professional services for the HOA 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. This Agreement shall be effective upon execution by both parties ('Effective Date').
2. This Agreement is for professional design-build services to be provided by Professional with respect to the Project located in the HOA of Chatham County, North Carolina. Professional shall provide all services including reports and other deliverables as described herein and in Attachment A (Scope of Work), 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'). Scope of Work and Additional Services are collectively referred to as 'Professional Services' or 'Services.'
3. Scope of Work shall commence after Effective Date and Professional's receipt of a Notice to Proceed from the HOA and shall be performed in accordance with any schedule contained in Agreement (sometimes 'Milestone Dates').
4. Professional represents and agrees that now and continuing for the term of Agreement, Professional:
 - i. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
 - ii. shall exercise reasonable care and diligence, and shall act in the best interest of the HOA;
 - iii. shall act in accordance with generally accepted standards of Professional's practice applicable to the locality; and shall comply with this Agreement and with all applicable federal, statelocal laws, ordinances, codes, rules and regulations (collectively 'Laws and Regulations');
 - iv. is qualified to do business in North Carolina and will make all necessary filings and perform other actions

required to remain in good standing with the North Carolina Secretary of State, and possesses all necessary qualifications, licenses, and certifications;

- v. 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;
- vi. shall work in good faith with the HOA 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,
- vii. 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

1. Standard of Care. 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. Professional shall be responsible for all errors or omissions in Documents and Deliverables and shall correct at no additional cost to the HOA any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the Documents and Deliverables. Professional shall reimburse the HOA for the aggregate cost to the HOA for all errors and omissions of Professional.
3. In addition to any other damages that might be due to the HOA hereunder in connection with the breach of this Agreement by Professional, Professional shall reimburse the HOA for costs, damages, and expenses that are the result of errors, omissions, or delays of Professional, including those of Professional's subcontractors.
4. Professional shall expedite and accelerate its efforts as necessary to perform in accordance with this Agreement at no additional cost to the HOA, if the HOA reasonably determines that Professional is behind schedule.
5. 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 the HOA, 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 using 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 the HOA, the HOA may take assignment of such contract of Professional with their subcontractor.

6. 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

1. Compensation for Basic Services. The Total Fixed Fee for Basic Services, which is a 'total' fee that includes all costs and expenses, is a not to exceed amount of \$ (Amount) unless changed by a duly authorized amendment. As set forth in Attachment A, the Scope of Work has been divided into 'phases' or 'tasks.'
2. Upon the satisfactory completion of each phase or task Professional shall submit to the HOA an Invoice for that phase or task. The Invoice shall be in a form acceptable to the HOA and shall show the Services performed in the completion of the phase or task.
3. Payments for phases or tasks that have been satisfactorily completed will be made by the HOA within thirty (30) calendar days of receipt of an acceptable Invoice. In the event the HOA 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. The HOA shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by the HOA as a result of Professional's failure to perform on any phase or task, following reasonable notice and opportunity to cure such nonperformance by Professional.
4. 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 the HOA within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to HOA. In the event the HOA 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 HOA shall have the right to deduct from payments to Professional any costs or damages incurred, or which may be incurred, by the HOA as a result of Professional's failure to perform any Service, following reasonable notice and opportunity to cure such nonperformance by Professional.
5. 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 HOA at mutually convenient times for a period of six (6) years after termination of this Agreement.

ARTICLE 4 RESPONSIBILITIES OF HOA

1. Cooperation and Coordination. In addition to being responsible for the duties set forth as duties

or responsibilities of the HOA in the RFQ, the HOA 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 HOA manager and to furnish information. The HOA shall examine documents submitted by Professional and shall make reasonable efforts to render timely decisions pertaining thereto so as not to unduly delay the orderly progress of Professional's Services. The HOA has also procured administrative services from Triangle J Council of Governments and may authorize someone of their staff to act as project manager or co-project manager.

ARTICLE 5 INSURANCE

1. Professional shall provide a Certificate of Insurance verifying its limits for public liability, property damage, and automobile insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence. The Saralyn HOA and Triangle J Council of Governments shall be specifically named as an "additional insured" on all policies covering work under the Contract and the required Certificate of Insurance shall show that the Saralyn HOA and Triangle J Council of Governments has been added to the policies. All insurance shall be endorsed so that it cannot be canceled in less than thirty (30) days.
2. Each policy shall provide that the HOA shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal, or if a policy's limits are exhausted, Professional shall procure substitute insurance so as to assure the HOA that the minimum limits of coverage are maintained continuously throughout the periods specified herein.
3. Professional's insurance coverage shall be primary for any claims related to this agreement.
4. The insurer shall have no right of recovery or subrogation against the Saralyn HOA or Triangle J Council of Governments, its agents or agencies, it being the intention of the parties that the insurance policies shall protect the HOA and Triangle J and be primary coverage for any and all losses covered by the policies.
5. A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Contract. The HOA's review or acceptance of certificates of insurance shall neither relieve Professional of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Contract.
6. The HOA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 6 DAMAGES AND REMEDIES

2. Services, Reimbursements, and Deductions. Professional shall reimburse the HOA for costs, damages, and expenses, including reasonable attorney's fees and expert's fees incurred by the HOA 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.
3. In addition to any other remedies available to the HOA, the HOA shall have the right to deduct from payments to the Professional any costs, damages, and expenses, including reasonable attorney's fees, that have been or may be incurred by the HOA as a result of Professional's failure to perform as required by Agreement.
4. General Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold the HOA, its officers, and volunteers, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to reasonable professionals' fees and charges and all court or other dispute resolution costs) (collectively, "Claim(s)"), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by Professional of any term or condition of this Agreement, Written Amendment or any Task Order, (b) any breach or violation by Professional of any applicable Law or Regulation, or (c) any other cause resulting from any negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law, but only to the extent the fault of the Professional or its derivative parties (as defined in N.C.G.S. 22B-1 as it exists on the date of this Agreement) is a proximate cause of the Claim. This indemnification shall survive the termination of this Agreement.
5. Intellectual Property Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold the HOA, its officers, and volunteers, harmless from and against all Claims, by whomsoever brought or alleged, arising out of or related to infringement of patent rights, copyrights, or other intellectual property rights ("IP Indemnity"), except with respect to designs, processes or products of a particular manufacturer expressly required by the Town in writing. If Professional has reason to believe the use of a required design, process or product is an infringement of a patent, copyright or other intellectual property, the Professional shall be responsible for such loss unless such information is promptly given to the Town. If and to the extent this IP Indemnity is not permitted by Laws and Regulations, Professional agrees that any Claims that would have been subject to the IP Indemnity are subject to the General Indemnity provisions of paragraph 6.2.1.
6. Non-Exclusivity of Remedies/No Waiver of Remedies. A party's selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission, or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

7. Waiver of Damages. Professional shall not be entitled to, and hereby waive 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

1. Changes in Scope of Work. Changes in the Scope of Work 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. The HOA may, without invalidating Agreement, make written changes in Services by preparing and executing a Written Amendment for review and execution by Professional. Within three (3) days of receipt of such Written Amendment, Professional shall notify the HOA 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

1. Termination for Convenience. This Agreement may be terminated without cause by the HOA for its convenience upon thirty (30) days written notice to Professional.
2. Other Termination. After thirty (30) 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. Should this Agreement be terminated for any reason, the HOA shall nevertheless have the right to require Professional to (a) turn over to the HOA all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to the HOA 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.
3. Survival. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder.
4. Suspension. The HOA may order Professional in writing to suspend, delay, or interrupt all or any part of the Services for the convenience of the HOA.
5. In the event Professional believes that any suspension, delay, or interruption of the Services ordered by the HOA may require an extension of the duration of the Scope of Work or an increase in the level of staffing by Professional, it shall so notify the HOA and propose an amendment to Agreement, which shall be effective only upon the write approval by the HOA. In the event the duration of Scope of Work is extended or shortened or the level of staffing by Professional is increased or decreased, the Compensation for the Scope of Work may be

equitably adjusted by Written Amendment.

6. 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 the Scope of Work may be equitably adjusted by Written Amendment.

ARTICLE 9 OWNERSHIP OF DOCUMENTS AND DELIVERABLES

1. Ownership of Documents and Deliverables. The HOA 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 the HOA under this Agreement. Professional shall turn over to the HOA 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. Professional may retain one set of Deliverables for its records.
2. Termination. In the event of termination, for whatever reason, should the HOA use drawings or other Documents or Deliverables for completion of the Project, the HOA shall, to the extent allowed by law and covered by insurance, indemnify and hold Professional harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by HOA or a Professional in connection with the HOA's improper use (or misuse) of Documents and Deliverables.
3. Other Projects. Documents and Deliverables may be used by the HOA for any reason not related to this Project without additional compensation to the Professional. Such use of Documents and Deliverables by the HOA for other projects shall be at the full risk of the HOA and the HOA shall indemnify and hold Professional harmless, to the extent allowed by law and covered by insurance, from and against any costs, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the HOA, its officers, and volunteers, in connection with the HOA's improper use (or misuse) of Documents and Deliverables.

ARTICLE 10 ADDITIONAL PROVISIONS

1. Dissemination of Information. The HOA takes efforts to assure that accurate information about the HOA is disseminated such that neither the public trust nor the public's perception of the HOA impartiality is compromised. Professional, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of HOA. Any approval by the HOA may be given with certain stipulations, such as HOA's participation in the creation of the public product or the HOA's review and the option to refuse ultimate release of the final product should it fail to meet the HOA'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 the HOA as a reference in response to requests for proposal and may identify the HOA as a customer in presentations to potential customers.

2. **Limited Assignment/Delegation.** This Agreement shall bind Professional and its successors and permitted assigns. Professional shall not assign or transfer its rights or interest in Agreement (including the right to payment), nor shall Professional delegate its duties under Agreement, without the HOA's written consent, which the HOA may grant or withhold in its sole discretion. The HOA's consent shall not release Professional of any obligation under Agreement and Professional and permitted assigns shall be subject to all of the HOA's defenses. Any attempt to assign Agreement without the prior written approval of the HOA shall be void. If Professional utilizes approved subcontractors, Professional shall be responsible for the scheduling, completeness, quality, accuracy, and timeliness of all their work. The HOA has the right to request that any subcontractor be replaced due to unsatisfactory performance.
3. **Applicable Law.** This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed, and proper venue shall be in the Civil Superior Court of Chatham County, North Carolina.
4. **Dispute Resolution.** No services shall be delayed or postponed pending the resolution of any dispute unless the HOA 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 Chatham 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 HOA's dispute resolution process, which shall be considered part of Basic Services unless specifically agreed otherwise herein.
5. **Entire Agreement; Amendments to Agreement.** This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.
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.
7. **Protocol for Documents and Deliverables.** Professional shall provide all Documents and Deliverables in electronic form to the HOA 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 a website must be provided in a manner and format compatible, consistent, and in compliance with all of the HOA's 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 HOA under this Agreement, Professional shall immediately notify the HOA, and if Professional provided such electronic data, Professional shall immediately replace same with correct versions thereof.

8. 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.
9. Independent Contractor. Professional is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by Professional to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of Professional only. Professional shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. If the HOA notifies Professional in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to the HOA, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of the HOA. No extension to any "Milestone Date" or completion date will be granted for replacement of such personnel or subcontractors.
10. 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. HOA may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Professional, the HOA will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. 66-152, that are specifically designated as a "trade secret" or "confidential" at the time of initial disclosure by contractor, and that are otherwise entitled to protection under N.C.G.S. 132-1.2(1). Professional shall make HOA aware of any public records requests made in regard to Services or this Agreement.
11. 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.
12. E -Verify. Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.
13. No Third-Party Beneficiaries. There are no third-party beneficiaries to Agreement.

14. Nondiscrimination. During the performance of this Agreement, the Professional agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Professional shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Professional shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions. The Professional, in all solicitations or advertisements for employees placed by or on behalf of the Professional, shall state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
15. Further Assurances. Professional agrees that it will cooperate with the HOA and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as HOA may reasonably request from time to time in order to effectuate the provisions and purposes of Agreement.
16. No Waiver of Sovereign or Qualified Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by the HOA pursuant to N.C.G.S. 160A-485 or to in any way waive the HOA's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer of the HOA shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
17. Emergencies. Notwithstanding anything else in this Contract, while federal, state, or local state(s) of emergency are in effect, or when a public health emergency has been declared, Contractor shall comply with all guidance and recommendations of the Centers for Disease Control, the State of North Carolina, and Chatham County, unless mutually agreed to by HOA and Contractor.

The Contract and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements, or Contracts.

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

Attachment A – Scope of Work and Personnel
Attachment B – Supplement General Conditions
Attachment C – Contract Addendum

In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the

signature(s) of its duly authorized officer(s), and the HOA has executed with the signature of its Board Chair, or Authorized Representative.

Contractor

By: _____
(signature)

Name: _____
(typed or printed name)

Title: _____

Date: _____

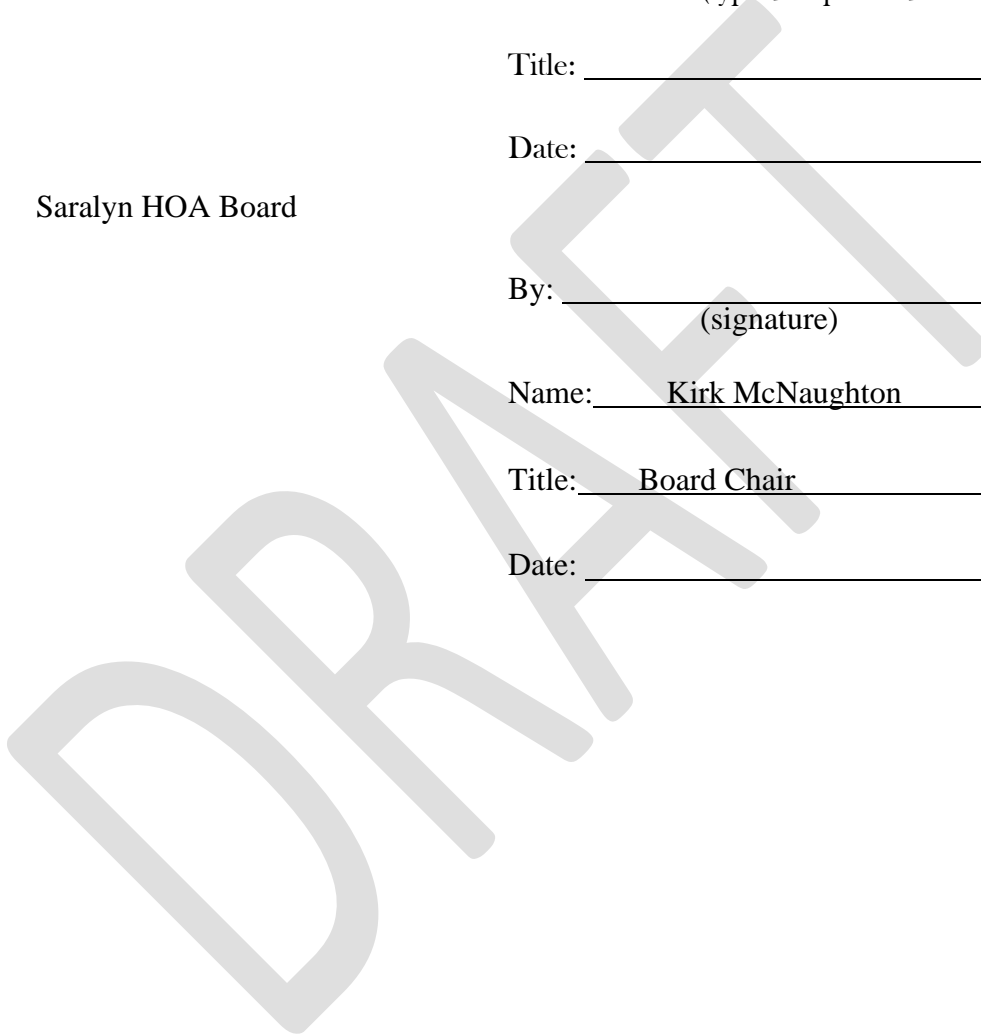
Saralyn HOA Board

By: _____
(signature)

Name: Kirk McNaughton

Title: Board Chair

Date: _____



Attachment A – Scope of Work and Personnel

DRAFT

Attachment B – Supplement General Conditions

DRAFT

Attachment C – Contract Addendum

Compliance with E-Verify requirements: The Contractor and any of its subcontractors must comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, if applicable, which requires certain employers to verify the work authorization of each newly hired employee through the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies.

Divestment from companies that boycott Israel: Contractor certifies that (a) it is not identified on the Israel Boycott List, or any other list created by the NC State Treasurer pursuant to N.C.G.S. 147—86.80 et al and (b) it will not take any action causing it to appear on any such list during the term of the contract agreement.

Iran Divestment Act Certification. The Contractor certifies that the Contractor is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58 (the Final Divestment List) and the Contractor will not utilize any subcontractors performing work under this Contract which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer’s website at the address www.nctreasurer.com/Iran and should be updated every 180 days.

Non-Discrimination in Employment. The Contractor will not discriminate again any employee or applicant for employment because of age, sex, race, creed, national origin or disability. In the event Contractor is determined by the final order of an appropriate agency or court to be in violation of this provision or any non-discrimination provision of federal, state or local law, this Contract may be suspended or terminated, in whole or in part by the HOA.

Indemnification: The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the HOA and Triangle J Council of Governments, their officers, and volunteers, against all damages, liabilities, or costs, including reasonable attorneys’ fees and defense costs, to the extent caused by Contractor’s negligent performance of services under this Agreement and that of its subcontractors or anyone for whom the Contractor is legally liable.

Drug-Free Workplace. During the performance of this agreement, the Contractor agrees to (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees of the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specifying the actions that will be taken against employees for violations of such prohibitions, (iii) state in all solicitations or advertisements for employees placed by or on its behalf that it maintains a drug-free workplace; (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

For the CONTRACTOR: _____ Title: _____

For the SARALYN HOA: _____ Title: _____

