



**Date October 6, 2023**

**Proposal # 700-ADM-2024-00**

**Addendum No. 2**

**Please note that this addendum is to include the Consultant Services Agreement Template as an Attachment**

This addendum must be acknowledged and signed by an authorized representative of the firm and must be returned with your bid.

**Failure to do so will cause your bid to be rejected:**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Date \_\_\_\_\_



## AGREEMENT FOR CONSULTING SERVICES

This Agreement for Consultant Contracted Services (“Agreement”) is made by and between the Town of Clayton (hereafter, “Town”) and \_\_\_\_\_, a [corporation] [limited liability corporation] [other – fill in] (hereafter, “Contractor”).

### RECITALS

WHEREAS, The Town desires to procure a contractor to perform services; and

WHEREAS, the Town has completed necessary steps for retention of (Type of Service Provided) under applicable Town policies; and

WHEREAS, the Town has agreed to engage the Contractor, and the Contractor has agreed to contract with the Town, for performance of services as described, and according to the further terms and conditions, set forth herein.

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 EXECUTION DATE AND SCOPE OF SERVICES

- 1.1 The Recitals are incorporated into Agreement. This Agreement shall be effective upon execution by both parties.
- 1.2 This Agreement is for consultant services to be provided by Contractor with respect to the Project \_\_\_\_\_ located in the Town of Clayton, North Carolina. Contractor shall provide all services including reports and other deliverables as described herein and in Attachment A, attached hereto and incorporated herein by reference (“Scope of Work”). Contractor 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 “Contractor Services” or “Services.”
- 1.3 Services shall commence after Execution 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 Execution Date and ending on [date] and/or [written acceptance of the completed Services by the Town] and/ or

[successful completion of any required correction period by the Contractor] unless changed by a duly authorized amendment.

- 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 the 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.

The Total Fixed Fee for Services, which is a not to exceed contract amount, is [insert \$ written in words] (\$ total contract amount) unless changed by duly authorized written amendment.

(If there is a breakdown of payment (monthly, milestones etc) it can be placed here to reference an attachment)

Payments for Services 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 which is 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 the Services, following reasonable notice and opportunity to cure such nonperformance by Contractor. **For prompt payment all invoices must include the Purchase Order Number. Submit invoices to TOWN OF CLAYTON [invoice@townofclaytonnc.org](mailto:invoice@townofclaytonnc.org) as a PDF attachment. Invoices not submitted following these instructions will result in delayed payment.**

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-spend basis at the hourly rates shown in Attachment A.

- 3.3 Reimbursable Expenses. There are no reimbursable expenses.

***[OPTIONAL use only if the parties agree that there are 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, 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 including bodily injury, sickness, disease or death of any of Contractors' employees or subcontractors as required by state law; 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 and to real and personal property; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury or death, and property damage when vehicles are used in performance of work or coming onto Town premises; Cyber Liability Insurance (if applicable) covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional/Errors & Omissions Liability Insurance (if applicable) covering professional services and claims arising out of or related to Contractor's performance under this Agreement.

Minimum limits of insurance coverage are:

General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Commercial Automobile Liability	\$1,000,000 CSL
Commercial Excess/Umbrella Liability	\$1,000,000 per occurrence
Workers' Compensation	Statutory Limits
Employer's Liability	\$500,000 per occurrence
Professional Liability (if applicable)	\$1,000,000 per claim

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

The insurance policies are to contain, or be endorsed to contain, the following provisions:

*Insurers*

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

*Additional Insured Status*

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

*Notice of Cancellation*

Each policy shall provide that the Town shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of

the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, Contractor shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

*Primary*

Contractor's insurance coverage shall be primary for any claims related to this agreement.

*Waiver of Subrogation*

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

*Verification of Coverage*

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

Certificate Holder address should read:

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

*Special Risks or Circumstances*

The Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **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 given to the Town immediately upon becoming aware of such possible infringement. This indemnification shall survive termination of Agreement.
- 6.3 Non-Exclusivity of Remedies/No Waiver of Remedies. The 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 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. 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 thirty (30) days written notice to Contractor.

8.2 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.

8.3 Compensation After Termination.

8.3.1 In the event of termination for the convenience or reason of material breach of Town, Contractor shall be paid that portion of its fees and expenses that it has earned to the date of termination, 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 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.

8.3.3 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 Scope of Work 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 Scope of Work is extended or shortened or the level of staffing by Contractor is increased or decreased, the Compensation for Scope of Work 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 Scope of Work 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 including social media, 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 Limited Assignment/Delegation. This Agreement shall bind Contractor and its successors and permitted assigns. Contractor shall not assign or transfer its rights or interest in this Agreement (including the right to payment), nor shall contractor delegate its duties under this Agreement, without the Town's written consent, which the Town may grant or withhold in its sole discretion. The Town's consent shall not release Contractor of any obligation under this Agreement and Contractor and permitted assigns shall be subject to all of Town's defenses. Any attempt to assign this Agreement without the prior written approval of Town shall be void. If Contractor utilizes approved subcontractors, Contractor shall be responsible for the scheduling, completeness, quality, accuracy and timeliness of all their work. Town has the right to request that any subcontractor be replaced due to unsatisfactory performance.
- 10.3 Governing Law. The parties acknowledge this Agreement is a "business contract" subject to the provisions of N.C.G.S. Chapter 1G and agree that this Agreement and the rights and duties of the Parties shall be governed by the laws of the State of North Carolina, without regards to conflict of laws provisions. The Parties further agree that any dispute arising from this Agreement shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to this Agreement shall be brought exclusively in Johnston County, North Carolina. Service of process may be effected by delivery by any method permitted under the N.C. Rules of Civil Procedure on the office or individual specified in Paragraph 10.9 'Notice' or on any officer of the Contractor.
- 10.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Town otherwise agrees in writing. 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 Scope of Work unless specifically agreed otherwise herein.
- 10.5 Entire Agreement; Amendments. 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"). This 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.

- 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.
- 10.8 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 Clayton'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 Clayton  
111 East 2<sup>nd</sup> Street  
Clayton, NC 27520

The notice address for the Contractor shall be:

[Redacted]

- 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.
- 10.12 Resolving Discrepancies. Except as otherwise stated in Agreement, the provisions of Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively “Other Standards”), provided that if any of the Other Standards impose a more stringent standard or obligation upon 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.
- 10.13 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.
- 10.14 Verification of Work Authorization. . 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.
- 10.15 No Third Party Beneficiaries. There are no third party beneficiaries to Agreement.
- 10.16 Independent Contractor. Contractor is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by Contractor to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of Contractor only. Contractor shall assume the sole and exclusive responsibility for the payment of wages to individuals

for services performed under this 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 Town notifies Contractor in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Town, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of Town. No extension to any "Milestone Date" or completion date will be granted for replacement of such personnel or subcontractors.

- 10.17 Nondiscrimination. To the extent permitted by law, neither Party, their officers, employees, contractors, agents, successors, or permitted assigns, shall discriminate against any member of a protected class as defined by federal, state, or local law
- 10.18 Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. § 159-28) has been affixed and signed by the Town of Clayton finance officer or Designee.
- 10.19 Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Town's police powers or regulatory authority.
- 10.20 No Waiver of Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by Town pursuant to N.C.G.S. 160A-485 or to in any way waive Town's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of Town 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.
- 10.21 Further Assurances. Contractor agrees that it will cooperate with Town and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as Town may reasonably request from time to time in order to effectuate the provisions and purposes of Agreement.
- 10.22 Federal Funds. The Contractor shall make all necessary inquiries to correctly identify the source of funding for Agreement. If the source of funds for Agreement is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), unless a more stringent state or local law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment

(31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); Record Retention Requirements (2 CFR § 200.324); Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R § 200.216); and Domestic Preferences for Procurements (2 C.F.R § 200.323).

- 10.23 Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. (2) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (3) References to a “Section” or “section” or “paragraph” shall mean a section or paragraph of this Agreement. (4) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (5) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (6) “Duties” includes obligations. (7) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (8) The word “shall” is mandatory. (9) The word “day” means calendar day. (10) Normal business hours means Monday through Friday from 8:00 a.m. until 5:00 p.m. Eastern Standard Time.
- 10.24 Emergencies. Notwithstanding anything else in this Agreement, 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, Johnston, unless mutually agreed to by Town and Contractor.
- 10.25 Electronic Signatures. Contractor acknowledges and agrees that the electronic signature application Adobe Pro may be used, at the sole election of the Town, to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the Adobe Pro application, Contractor consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Contractor's signature as if actually signed by Contractor in writing. Contractor also agrees that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. Contractor acknowledges and agrees that delivery of a copy of this Agreement or any other document contemplated hereby, through the Adobe Pro application, will have the same effect as physical delivery of the paper document bearing an original written signature.

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

[List Attachments here](#)

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

Remainder of page left blank intentionally.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s), and the Town has executed with the signature of its Town Manager or Designee on \_\_\_\_\_..

**Contractor - Insert Name**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(typed or printed name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Town of Clayton**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
Richard D. Cappola, Jr

Title: \_\_\_\_\_  
Town Manager

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Finance Officer or Designee

\_\_\_\_\_  
Date

Purchase Order \_\_\_\_\_

Approved to Form \_\_\_\_\_

## **Attachment A –Scope of Work**

Any services described in Agreement as Scope of Work to be provided to Town by Contractor.  
Additionally:

- Scope of Work is further described below and in Contractor's attached Proposal.

**Attachment B –  
Insurance Certificate**

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