



Town of Clayton

REQUEST FOR QUALIFICATIONS

RFQ #700-ELEC-2024-22

Project Title: Pole Attachment Management Services

Issue Date: February 20, 2024

Due Date: March 14, 2024

Issuing Department: Electric

Direct all inquiries concerning this RFQ to:

Ethan Poppe

Project Coordinator

Email: epoppe@townofclaytonnc.org

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INTRODUCTION

1.1 Background

The Town of Clayton has operated a power distribution grid since 1913, and today has well over 8,000 customers, almost 50 miles of overhead line, and over 140 miles of underground line. Historically, the Town has shared its utility poles with a very small number of communications companies. However, with the growth of the fiber industry a number of communications companies have expressed interest in attaching to the Town's utility poles. This carries a potential to overload our poles and encroach upon our minimum spacing requirements which ensure communication worker safety. The Town is seeking a qualified consultant to examine pole attachment applications and ensure that the Town's code and safety standards are met.

1.2 Purpose

The Town of Clayton (hereby known as "Town") is seeking Statements for Qualifications from qualified firm(s) or organizations(s) (hereby known as "firm") to provide on-call Pole Attachment Management Services (hereby known as "professional services") to provide support to the Town of Clayton Electric Department, as needed. The Town is seeking firms whose combination of experience and expertise will provide timely, professional services to the Town. The Town's desire is to supplement its existing professional staff to develop and execute a variety of Town pole attachment initiatives.

The initial Master Agreement contract length will be one (1) year, with an option of extending the agreement annually for a period of two (2) years. Anticipated annual contract amounts for on-call services will be dependent upon specific needs for supplemental services and availability of funding. No work is guaranteed under any contract with work assigned on an as-needed basis to be determined by the Town in its sole and absolute discretion. The Town reserves the right to cancel a Master Agreement at anytime. Selected firms that do not meet the Town's performance expectations, routinely decline opportunities to participate in projects offered, or lose significant internal expertise submitted with their original proposal may be subject to having their Master Service Agreement cancelled.

The qualification process will establish the terms and conditions governing the selection of firm(s) to provide professional services. All statements must be in the specified format in the Section 2 of this solicitation. Qualifications must be submitted in the form of a Statement of Qualifications. The RFQ process will result in the execution of Master Agreements with a task order-based approach for the provision of professional services. For larger-scale projects, the Town will continue to procure professional services using a separate qualifications-based selection process.

A detailed scope of services is provided in Section 4 of this solicitation.

Information related to this solicitation, including any addenda, will be posted to the North Carolina Interactive Purchasing System (NC IPS) at: <https://www.ips.state.nc.us/IPS/>

1.3 RFQ Timeline

Provided below is a list of the anticipated schedule of events related to this solicitation. The Town of Clayton reserves the right to modify and/or adjust this schedule to meet the needs of the project. All times shown are Eastern Time (ET):

RFQ Process	Date and time
RFQ Advertisement Date	<i>February 20, 2024</i>
Deadline for written questions	<i>March 5, 2024, at 3:00pm</i>
Town Response to Questions (anticipated)	<i>March 7, 2023</i>
Submittal Due Date and Time	<i>March 14, at 3:00pm</i>
Selection Announcement (tentative)	<i>TBD</i>

1.4 Questions

Requests for clarification and questions to this RFQ must be received by the Town not later than the date shown above in Section 1.2, entitled “RFQ Timeline”, for the submittal of written inquiries. The Town will not entertain any further questions after the due date. All questions related to this solicitation must be submitted in writing (via email) to the following individual:

Contact Name	Email Address
Ethan Poppe – Project Coordinator	epoppe@townofclaytonnc.org

Indicate “**RFQ #700-ELEC-2024-22 – Questions**” in the subject of the email. Questions submitted via telephone will not be answered.

The Firm’s failure to request clarification and submit questions by the date in the RFQ Timeline above shall be considered to constitute the Firm’s acceptance of all of the Town’s requirements. The Town will not entertain any further questions after the date shown in the RFQ timeline. The Town shall issue addenda reflecting questions and answers to this RFQ, if any, which shall be posted to the NC IPS website. No information, instruction or advice provided orally or informally by any Town personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding. The proposer shall be entitled to rely *only* on written material contained in an Addendum to this RFQ.

It is important that all Proposers submitting to this RFQ periodically check the <https://evp.nc.gov/for> any Addenda. It is the Proposer’s responsibility to ensure that all addenda have been reviewed and, if required, signed, and returned.

1.5 Submittal Requirements and Contact Information

Proposals must follow the format as defined in Section 2 Qualifications Package and be addressed and submitted as follows:

<u>DELIVERED BY USPS:</u>	<u>DELIVERED BY ALL OTHER MEANS:</u>
Town of Clayton Attn: Ethan Poppe PO Box 879 Clayton, NC 27528 RFQ No. 700-ELEC-2024-22 <i>Pole Attachment Management Services</i>	Town of Clayton Attn: Ethan Poppe 653 NC Hwy 42 W, Clayton, NC 27520 RFQ No. 700-ELEC-2024-22 <i>Pole Attachment Management Services</i>

Proposals must be enclosed in a sealed envelope or package and clearly marked with the name of the submitting company, the *RFQ number* and the *RFQ Title*. Proposers must submit one (1) signed original, one (1) electronic version. The electronic version of the Proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a flash drive. CD's will not be accepted. Both hard copy and electronic versions must be received by the Town on or before the RFQ date and time provided in Section 1.2. Proposals received after the RFQ deadline above will not be considered and will be returned unopened to the return address provided on the submission envelope.

The Town reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFQ that cannot be met must be indicated in the proposal. Proposers must respond to the entire Request for Qualifications (RFQ). Any incomplete proposal may be eliminated from the selection at the discretion of the Town.

Submittals that arrive after the due date and time will not be accepted or considered for any reason whatsoever. If the Firm elects to mail in its response, the Firm must allow sufficient time to ensure the Town's proper receipt of the package by the time specified in Section 1.2 RFQ Timeline. Regardless of the delivery method, it is the responsibility of the Firm to ensure that their response arrives at the designated location specified in this Section by the due date and time specified in Section 1.2 RFQ Timeline.

1.6 Rights to Submitted Material

All proposals and supporting materials, as well as correspondence relating to this RFQ, shall become the property of the Town. The content of all submittals will be held confidential until the selection of the firm is made. Proposals will be reviewed by the Evaluation Team, as well as other Town staff and members of the general public who submit public record requests. *Any proprietary data must be clearly marked.* In submitting a Proposal, each Prospective Proposer agrees that the Town may reveal any trade secret materials contained in such response to all Town staff and Town officials involved in the selection process and to any outside consultant or other third party who serves on the Evaluation Team or who is hired by the Town to assist in the selection process. Proposals marked entirely as "confidential", "proprietary", or "trade secret" will be considered non-responsive and will be removed from the evaluation process.

1.7 Communications

All communications of any nature regarding this RFQ with any Town staff, elected Town officials, evaluation committee members are strictly forbidden from the time the solicitation is publicly posted

until award. Questions must be submitted in writing to the individual designated in Section 1.3 prior to the deadline provided in Section 1.2.

Violation of this provision may result in the Firm's proposal being removed from consideration.

1.8 Lobbying

By responding to this solicitation, the Firm certifies that it has not and will not pay any person or firm to influence or attempt to influence an officer or employee of the Town or the State of North Carolina, or any elected official in connection with obtaining a contract as a result of this RFQ.

1.9 Gifts and Favors

Consultant shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. §14-234, N.C.G.S. §133-1, and N.C.G.S. §133-32

1.10 Minority Women Business Enterprises (MWBE)

The Town invites and encourages participation in this procurement process by minority women business enterprises (MWBE) in accordance with North Carolina General Statute 143-128.2. The Town has a current verifiable goal of ten percent, with an outreach plan applicable to the selection process of architectural, engineering, surveyor and alternative construction methods.

1.11 Diversity and Inclusion.

Equality has become a core value here at the Town of Clayton. The Town is committed to encourage firms to have a diverse and inclusive project team involved in all aspects of this RFQ solicitation.

1.12 Proposer Expenses

The Town will not be responsible for any expenses incurred by any Firm in the development of a response to this Request for Qualifications or any other activities associated with this procurement including but not limited to any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to Town and/or its representatives. Further, the Town shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended Firm even if the awarding authority for each entity has formally accepted a recommendation.

1.13 Proposer Acceptance

Submission of any proposal indicates a Proposer's acceptance of the conditions contained in this RFQ. The Town of Clayton has the sole discretion and reserves the right to cancel this RFQ, and to reject any and all proposals, to waive any and all informalities and/or irregularities, if it is deemed to be in the Town's best interests to do so. The Town of Clayton reserves the right to accept or reject any or all of the items in the proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual Firms if it is deemed in the Town of Clayton's best interest. Moreover, the Town of Clayton reserves the right to make no selection if proposals are deemed not in the best interest of the Town of Clayton.

QUALIFICATIONS PACKAGE

Responses must follow the format outlined below. The Town may reject as non-responsive at its sole discretion any submittal that does not provide complete and/or adequate responses or departs in any substantial way from the required format.

1.14 Statement of Qualifications Required Document Format

The Statement of Qualifications document must be no more than 25 pages (including front and back), and no smaller than 12-point font. **All** pages included in the binding count toward the 25-page limit. Hard copies of the document must be spiral bound, and electronic copies must be submitted on a USB flash drive. Responses must be divided using tabs to separate each section, listed sequentially as follows:

Section 1: Introduction and Executive Summary

Provide an introduction letter and executive summary summarizing the unique qualifications of the Firm to meet the needs of this project. This letter must be presented on the Firm's official letterhead and signed by an authorized representative who has the authority to enter into a contract with the Town on behalf of the Firm. The letter must include the name, title, address, telephone, and email address of the individual who serves as the point of contact for this solicitation, as well as acknowledgement of any addenda issued by the Town.

Section 2: Corporate Background and Experience

Include background information on the Firm, including the year of established, demonstration of longevity and financial stability, and provide detailed information regarding the Firm's experience with similar projects and services with government organizations or related entities. A list of all similar contracts performed in the past five (5) years, accompanied by at least three (3) project references, including contact persons, firm/agency, telephone number and email address must be provided.

Failure to provide a list of all similar contracts in the specified period may result in the rejection of the Firm's proposal. The evaluation team reserves the right to contact any or all listed references, and to contact other public entities regarding past performance on similar projects.

Section 3: Understanding, Approach and Schedule

Provide a comprehensive narrative, outline, and/or graph demonstrating the Firm's understanding and approach to accomplishing the work outlined in the Scope of Work section of this RFQ. Include the Firm's familiarity with the Town's permitting processes, ordinances and/or specifications. Describe major facts or features of the scope, including any conclusions, assumptions, and generalized recommendations the Responder desires to make. Discuss the Firm's understanding of the scope's objective and describe the proposed project approach to deliver the services in an effective, timely and professional manner. Describe your firm's project management and quality control procedures. A description of each discipline and deliverable must be included.

Section 4: Firm/Team, Experience and Certifications/Qualifications

This section must include the proposed staffing, deployment, and firm of personnel to be assigned to this project. The Proposer must provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person. A project-specific firm chart which clearly illustrates the roles, responsibilities, and the reporting

relationships of each team member must be included. Discuss your team's ability to respond to urgent requests, including the ability to handle multiple concurrent projects in terms of equipment, staff availability and scheduling capacity.

1.15 Statement of Qualifications Package Documents

This RFQ is comprised of the base RFQ document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFQ in advance of any Contract award are incorporated herein by reference.

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PROPOSAL EVALUATION

1.16 Evaluation Criteria

This is not a bid. There will not be a public opening. Proposals will be evaluated based solely on the following criteria:

Criteria	Weight (a)	Score Points (b)	Total Score (a) x (b)
Quality of Statement of Qualifications (SOQ): - SOQ is presented in a professional manner - SOQ includes all requested/required components as listed in the RFQ - SOQ demonstrates the ability to successfully provide on-call services	10%		
Methodology and General Approach: - Scope and discipline understanding - SOQ provides logical and understandable sequence of activities - SOQ demonstrates ability to work with the Town as a team to complete projects	25%		
Applicable Experience and Reference of the Firm: - SOQ describes examples of experience with similar projects/scopes - SOQ provides references for similar work	20%		
Project Team Qualifications: - Firm/team members demonstrate previous governmental experience - Team members can handle all aspects of work in the scope of this RFQ	20%		
Response and Completion Time: - SOQ demonstrates firms' ability to respond to the Town in a timely manner for a project request - SOQ describes the firms plan to complete projects in an efficient manner to meet deadlines	25%		
Final Score			

Score Points

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

2- Meets Expectation
 3- Exceeds Expectation

1.17 Final Selection

Proposals will be reviewed after opening, evaluated by an evaluation committee and will be ranked in order of choice. After ranking the proposals, the Town reserves the right at its own discretion to select the highest rated proposal(s) and invite the firm(s) in for interviews or not perform interviews. The Town shall not be bound or in any way obligated until both parties have executed a contract. The Town also reserves the right to delay the award of a contract or to reject all proposals.

The general conditions and specifications of the RFQ and/or written correspondence applicable to the RFQ, may become part of the contract documents. Failure of the awarded firm to perform as represented may result in contract cancellation.

1.18 Notice to Proposers Regarding RFQ Terms and Conditions

It shall be the Proposer's responsibility to read the instructions, all relevant exhibits and attachments, and any other components made a part of this RFQ, and to comply with all requirements and specifications provided herein. Proposers are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFQ.

SCOPE OF SERVICES

Objective: The Town of Clayton seeks the services of a Professional Engineer to manage the growing number of shared attachments on its power poles. The project encompasses Pole Attachment Applications, Make Ready Engineering (MRE), Outside Plant Engineering (OSP), and GIS Services.

Make Ready Engineering Scope of Services:

1. **Process Application:**
 - Receive application details from the Town of Clayton Electric Department.
 - Load data into GIS and Pole analysis application.
 - Submit application comments to pole owner for the Town of Clayton Electric Department.
2. **Field Audit and Data Collection:**
 - Conduct a field inventory of poles using GIS and/or pole analysis application(s).
 - Calibrate and annotate poles for existing attachments based on the Town of Clayton Electric Department scope of work.
 - Capture data, including measurements, annotations, and photos for reporting and reference purposes.
3. **Make Ready Engineering (MRE):**
 - Produce a detailed report in spreadsheet format with photos depicting each pole and required work.
 - Reconcile data with the respective power company and/or other pole owner(s) if requested.
4. **Construction Compliance Inspection:**
 - Conduct post-construction inspection of each pole if requested by Pole Owner(s).
 - Identify any violations of Make Ready design and provide a detailed report with photos.
5. **Management:**
 - Provide tracking and status updates to the Town of Clayton Electric Department.
 - Prepare and submit applications to pole owner(s).
 - Communicate as required with pole owner(s).

Exclusions:

- Municipal, State, or other permitting.
- Field visits required by third parties (fee assessed).
- Field "Ride Outs" as required by pole owner(s) at a day rate.
- Make Ready Design within Power Space on Poles.

Outside Plant Engineering Scope of Services:

- Design the network using optimal routes meeting the Town of Clayton Electric Department's objectives.
- Produce design drawings compatible with AutoCAD/GIS platform.
- Provide a construction materials list.
- Conduct a field survey of poles and routes along public and private rights of way.
- Evaluate overhead and underground routes for efficiency.
- Identify special situations affecting installation costs.

- Identify necessary third-party approvals or permits.
- Deliver design drawings and materials list suitable for construction.

Assumptions:

- The Town of Clayton Electric Department will provide overlay maps, desired routing, or service area requirements.
- Travel costs are included in pricing.
- The Town of Clayton Electric Department will provide equipment and design specifications at the start of the project.

EXECUTION OF PROPOSAL

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

- This proposal is signed by an authorized representative of the Firm.
- The potential consultant has read and understands the conditions set forth in this RFQ to include TOC general conditions/service terms, any addenda, and all attached exhibits and agrees to them with no exceptions.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

APPENDIX II - References

Responder **must** supply at least (3) three Governmental Agency or Private Company references for which Wastewater Treatment Plant – Management services have been performed during the past (5) five years. Responder are cautioned to provide accurate reference information. References will be checked during evaluation period.

OFFEROR: _____

CITY, STATE, ZIP: _____

Reference #1

Agency or Firm Name: _____

Business Address _____

City: _____ State: _____ Zip Code: _____

Phone Number: (____) _____ Fax Number: (____) _____

Email Address: _____

Reference #2

Agency or Firm Name: _____

Business Address _____

City: _____ State: _____ Zip Code: _____

Phone Number: (____) _____ Fax Number: (____) _____

Email Address: _____

Reference #3

Agency or Firm Name: _____

Business Address _____

City: _____ State: _____ Zip Code: _____

Phone Number: (____) _____ Fax Number: (____) _____

Email Address: _____

Reference #4

Agency or Firm Name: _____

Business Address _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: (____) _____ **Fax Number:** (____) _____

Email Address: _____

Reference #5

Agency or Firm Name: _____

Business Address _____

City: _____ **State:** _____ **Zip Code:** _____

Phone Number: (____) _____ **Fax Number:** (____) _____

Email Address: _____

APPENDIX III – Professional Services Contract Template



Town of Clayton

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services ('Agreement'), by and between the Town of Clayton (hereafter, "Town") and (Vendor) _____, a professional (Type of Service) firm with a Professional Corporation with offices in North Carolina (hereafter, "Professional").

RECITALS

WHEREAS, the Town has completed necessary steps for retention of Structural Engineering services under applicable Town policies; and

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

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

ARTICLE 1 EFFECTIVE DATE AND SCOPE OF SERVICES

- 1.1 The Recitals are incorporated into Agreement. This Agreement shall be effective upon execution by both parties ('Effective Date').
- 1.2 This Agreement is for professional (Type of Service) services to be provided by Professional with respect to the Project located in the Town of Clayton, North Carolina. Professional shall provide all services including reports and other deliverables as described herein and in Attachment A, attached hereto and incorporated herein by reference ('Basic Services'). Professional shall also provide Additional Services as may from time-to-time be agreed upon by duly authorized written amendment to this Agreement ('Written Amendment'). Basic Services and Additional Services are collectively referred to as 'Professional Services' or 'Services.'
- 1.3 Basic Services shall commence after Effective Date and Professional's receipt of a Notice to Proceed from Town and shall be performed in accordance with any schedule contained in Agreement (sometimes 'Milestone Dates').
- 1.4 Professional represents and agrees that now and continuing for the term of Agreement, Professional:
 - a. is experienced, qualified, skilled and fully capable of performing Services in a competent and professional manner;
 - b. shall exercise reasonable care and diligence, and shall act in the best interest of Town;
 - c. shall act in accordance with generally accepted standards of Professional's practice 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. 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;
 - e. shall perform in a timely manner and in accordance with all Milestone Dates or other schedules required under this Agreement, time being of the essence;
 - f. shall work in good faith with Town to meet requirements imposed by the federal or state government or other funding entity if grants are used to fund any portion of Project; and,

g. the individual(s) signing Agreement have the right and power to do so and bind Professional to the obligations set forth herein and such individuals do so personally warrant that they have such authority.

ARTICLE 2 RESPONSIBILITIES OF PROFESSIONAL

2.1 Standard of Care

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

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

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

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

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

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

ARTICLE 3 COMPENSATION FOR SERVICES

3.1 Compensation for Basic Services.

The Total Fixed Fee for Basic Services, which is a 'total' fee that includes all costs and expenses, is a not to exceed amount of **\$(Amount)** unless changed by a duly authorized amendment. As set forth in Attachment A, Basic Services have been divided into 'phases' or 'tasks.'

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

Payments for phases or tasks that have been satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an acceptable Invoice. In the event Town finds any part of an Invoice not to be acceptable, it shall identify to the Professional the part or parts which are not acceptable and shall pay the part or parts of the Invoice which are acceptable. The Town shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by Town as a result of the Professional's failure to perform on any phase or task, following reasonable notice and opportunity to cure such nonperformance by Professional.

3.2 **Compensation for Additional Services.** Additional Services shall be as set forth in Written Amendment. Payments for Additional Services that have been properly approved and satisfactorily completed will be made by Town within thirty (30) calendar days of receipt of an invoice that is in form and substance acceptable to Town. In the event the Town finds any part of an invoice not to be acceptable, it shall identify to the

Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. Town shall have the right to deduct from payments to Professional any costs or damages incurred, or which may be incurred, by Town as a result of Professional's failure to perform any Service, following reasonable notice and opportunity to cure such nonperformance by Professional. Unless otherwise agreed, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

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

**ARTICLE 4
RESPONSIBILITIES OF TOWN**

- 4.1 Cooperation and Coordination. In addition to being responsible for the duties set forth as duties or responsibilities of Town in RFP, Town may designate, in writing, a person to act as project manager who shall coordinate the project work and who shall be available during working hours as often as may be reasonably required to render decisions within guidelines established by the Town manager and to furnish information. Town shall examine documents submitted by Professional and shall make reasonable efforts to render timely decisions pertaining thereto so as not to unduly delay the orderly progress of Professional's Services.

**ARTICLE 5
INSURANCE**

- 5.1 Insurance. Professional and Professional's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense during the term and for three years after the termination of this Contract insurance for the following: protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of Professional's employees or subcontractors; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage; Cyber Liability 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 Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to Professional's performance under this Contract.

Unless otherwise specified on Attachment 1, minimum limits of insurance coverage are:

General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Commercial Automobile Liability	\$1,000,000 CSL
Commercial Excess Liability / Umbrella Policy	\$1,000,000 per occurrence
Workers Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident
Professional Liability	\$1,000,000 per claim

The Professional 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 Professional shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, the Town may, at its option, require the Professional to purchase insurance from a company whose rating meets the minimum

standard. Professional's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If Professional is unable to find an authorized carrier for any line of insurance coverage, Professional shall notify Town in writing.

Additional Insured Status

All insurance policies (except Workers Compensation 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, Professional shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

Professional'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 Contract. The Town'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.

Certificate Holder address should read:

Town of Clayton
Attn: Town Manager
PO Box 879
Clayton, NC 27528

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 Professional 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 Professional to perform as required by Agreement.

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

6.2 Indemnities.

6.2.1 General Indemnity. To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees, harmless from and against all claims, costs, charges, civil penalties, fines, losses, liabilities and damages (including but not limited to 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.

6.2.2 Intellectual Property Indemnity To the fullest extent permitted by Laws and Regulations, Professional shall indemnify and hold Town, its officers and employees harmless from and against all Claims, 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.

- 6.3 Non-Exclusivity of Remedies/No Waiver of Remedies. A party's selection of one or more remedies for breach of this Agreement shall not limit that party's right to invoke any other remedy available under this Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time-to-time and as often as deemed expedient.
- 6.4 Waiver of Damages. Professional shall not be entitled to, and hereby waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any consequential damages.

ARTICLE 7 AMENDMENTS TO AGREEMENT

- 7.1 Changes in the Basic Services. Changes in the Basic Services and entitlement to additional compensation or a change in duration or any other term of this Agreement shall be made only by a Written Amendment 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 Professional. Within three (3) days of receipt of such Written Amendment, Professional shall notify Town in writing of any change contained therein that Professional believes significantly increases or decreases Services and request an adjustment in compensation with respect thereto. If Written Amendment significantly increases or decreases Services, the compensation may be equitably adjusted.

ARTICLE 8 TERMINATION AND SUSPENSION

- 8.1 Termination for Convenience of Town. This Agreement may be terminated without cause by Town and for its convenience upon thirty (30) days written notice to Professional.
- 8.2 Other Termination. After ten (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, Town shall nevertheless have the right to require Professional to (a) turn over to Town all finished or unfinished Documents and Deliverables and (b) expend such additional effort as may be necessary to provide to the Town professionally certified and sealed reports and such other information and materials as may have been accumulated by Professional in the performance of this Agreement, whether completed or in process. If Professional provides such certified and sealed information as outlined above, Professional shall be compensated in accordance with this Agreement.
- 8.3 Survival. Termination of this Agreement, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder.
- 8.4 Suspension
- 8.5.1 Town may order Professional in writing to suspend, delay or interrupt all or any part of the Services for the convenience of Town.
- 8.5.2 In the event Professional believes that any suspension, delay or interruption of the Services ordered by Town may require an extension of the duration of Basic Services or an increase in the level of staffing by Professional, it shall so notify Town and propose an amendment to Agreement, which shall be effective only upon the written approval of Town. In the event the duration of Basic Services is extended or shortened or the level of staffing by Professional is increased or decreased, the Compensation for Basic Services may be equitably adjusted by Written Amendment.
- 8.5.3 A suspension, delay or interruption of the Services shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted by Written Amendment.

**ARTICLE 9
OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

- 9.1 Ownership of Documents and Deliverables. Town shall be granted, at no additional cost, ownership of all 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. Professional shall turn over to Town in good unaltered condition, reproduces 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.
- 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 Professional harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by Town or a Professional 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 Professional. 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 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 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. Professional, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning Services without prior approval of Town. Any approval by Town may be given with certain stipulations, such as Town’s participation in the creation of the public product or Town’s review and the option to refuse ultimate release of the final product should it fail to meet the Town’s standards and goals. Publicly disseminate means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or Professional’s business collateral pieces. Notwithstanding the foregoing, the parties agree that Professional may list Town as a reference in response to requests for proposal and may identify the Town as a customer in presentations to potential customers.
- 10.2 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 Town’s written consent, which the Town may grant or withhold in its sole discretion. The Town’s consent shall not release Professional of any obligation under Agreement and Professional and permitted assigns shall be subject to all of Town’s defenses. Any attempt to assign Agreement without the prior written approval of Town shall be void. If Professional utilizes approved subcontractors, Professional 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 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 Johnston County, North Carolina.
- 10.4 Dispute Resolution. No services shall be delayed or postponed pending the resolution of any dispute unless Town otherwise agrees in writing. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought exclusively in the General Court of Justice of North Carolina sitting in Johnston 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 Town's dispute resolution process which shall be considered part of Basic Services unless specifically agreed otherwise herein.

- 10.5 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.
- 10.6 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
- 10.7 Protocol for Documents and Deliverables. Professional shall provide all Documents and Deliverables in electronic form to the Town in read-only MS-Windows compatible format (including either screen readable .pdf or HTML formats). All drawings shall be CAD generated and shall be provided on electronic media downloadable onto an AutoCAD based system. In order to meet US Justice Department standards for Internet accessibility, all Deliverables (draft and final) intended for presentation on the Town of 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 Professional notices any errors in electronic data provided to the Town under this Agreement, Professional shall immediately notify Town, and if Professional provided such electronic data, Professional shall immediately replace same with correct versions thereof.
- 10.8 Notice. Whenever any provision of this Agreement requires the giving of written notice, it will be deemed to have been validly given if (i) delivered in person to the Project Manager, if to the Town, or to the Project Manager, or equivalent position, or officer/member of the entity that is the Professional, if to the Professional, or (ii) if delivered at or sent by a nationally recognized overnight courier service or overnight express mail or registered or certified mail, postage prepaid, to the Town's or Professional's address. The date of said notice shall be the date of such delivery or mailing.

The notice address for the Town shall be:

Town of Clayton
Attn: (Name)
PO Box 879
Clayton, NC 27523

The notice address for the Professional shall be:

(Contractor Name)
Address
City, State ZipCode

- 10.9 Gifts and Favors. Professional shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
- 10.10 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 Town notifies Professional 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.

- 10.11 Public Records. Professional acknowledges that records made or received in connection with the transaction of public business are public records and subject to public records requests. Town may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Professional, 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). Professional shall make Town aware of any public records requests made in regard to Services or this Agreement.
- 10.12 Resolving Discrepancies. Except as otherwise stated in Agreement, the provisions of Agreement take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments and the provisions of any standard, specification, manual, code or instruction of any technical society, organization or association (collectively ‘Other Standards’), provided that if any of the Other Standards impose a more stringent standard or obligation upon Professional than in the Agreement, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement and the Other Standard.
- 10.13 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.
- 10.14 No Third-Party Beneficiaries. There are no third party beneficiaries to Agreement.
- 10.15 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.
- 10.16 Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by NCGS 159-28) has been affixed and signed by the Town of Clayton finance officer or deputy finance officer.
- 10.17 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.
- 10.18 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 8:00a.m. until 5:00p.m. Eastern Standard Time.
- 10.19 Further Assurances. Professional 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.

10.20 No Waiver of Sovereign or Qualified 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 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, 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 Minority or Women Owned Business Enterprise

Pursuant to General Statutes of North Carolina Section 143-128 and 143-131 and to Town policy, the Town of Clayton encourages and provides equal opportunity for Certified Minority and Woman-Owned Business Enterprise (MWBE) businesses to participate in all aspects of the Town's contracting and procurement programs to include - Professional Services; Services; and Construction.

Furthermore, the Town's goal is to contract or subcontract ten (10%) of the contract amount to Certified MWBE's on construction projects, service and professional service contracts. If there are any questions, Contact Shaun Mizell, Procurement, Contracts and MWBE Manager at Phone: 919-359-9343 or smizell@townofclaytonnc.org

10.22 Federal Funds. Professional 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); and Record Retention Requirements (2 CFR § 200.324).

10.23 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, Johnston County, unless mutually agreed to by Town 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 (Name)

Attachment B - Certificate of Insurance

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

THIS CONTRACT is entered into this day: _____.

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.

Contractor **(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 Number _____

APPENDIX IV - MWBE INSTRUCTIONS



Town of Clayton, North Carolina

SPECIAL INSTRUCTIONS TO BIDDERS REGARDING UTILIZATION OF MINORITY BUSINESSES IN ALL TOWN CONTRACTS

The North Carolina General Statutes require that bids be awarded to the lowest responsible, responsive bidder “without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition.” Also, contractors are not required to make purchases of materials or equipment or award subcontracts to minority businesses that do not submit the lowest responsible bid(s).

NCGS 143.128.2 requires each city, county, or other local public entity to adopt a verifiable percentage goal for participation by minority businesses in the total value of work for building projects. The Town of Clayton has adopted a goal of ten percent (10%). Public entities shall require contractors to make good faith efforts in the recruitment and selection of minority businesses for participation in building construction projects.

The term “minority business” means a business:

- a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
- b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

A “Minority” is a person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
- b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
- d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
- e. Female

637. “m “socially and economically disadvantaged individual” means the same as defined in 15 U.S.C.

637. “Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.” “Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.”

Each bidder shall identify on its bid the minority businesses that it will use on the project (“Identification of Minority Business Participation”), the total value of the bid that will be performed by the minority businesses, and an affidavit “Affidavit A” listing the good faith efforts it has made. A contractor that performs all of the work under a contract with its own workforce may submit an Affidavit B in lieu of

Affidavit A. If not self-performing ONLY submit Affidavit A, C, D and Minority Women Business Indemnification. If these forms aren't returned with proposal your proposal could be deemed non responsive/responsible and disqualified.

No subcontractor listed in this documentation may be replaced with a different subcontractor except:

- a. if the subcontractor's bid is later determined to be nonresponsive or nonresponsive, or if the subcontractor refuses to enter into a contract for the work, or
- b. With the approval of the Town of Clayton for good cause.

The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.

If during the project, additional subcontracting opportunities become available, the prime contractor shall make a good faith effort to solicit subcontract bids from minority businesses

APPENDIX IV: Affidavit A

**Town of Clayton
County of Johnston**

Listing of the Good Faith Effort

Affidavit of: _____
(Name of Bidder)

**I have made a good faith effort to comply under the following areas checked:
(A minimum of 50 points must be earned from the following list in order to have achieved a “good faith effort”)**

- 1 - (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government-maintained (HUB)lists, at least 10 days before the bid or proposal date and notified them of the nature and scope of the work to be performed.
- 2 - (10 pts)** Made available for review by prospective minority businesses or provided these documents to them at least 10 days before the bid or proposals are due.
- 3 - (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 - (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 - (10 pts)** Attended pre-proposal meetings scheduled by the public owner.
- 6 - (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7- (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 - (25 pts)** Provided assistance to an otherwise qualified minority business in need of loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses establish credit.
- 9 - (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick payment options to enable minority contractors and suppliers to meet cash-flow demands.
- If you are not going to use MWBE (HUB) subcontractors put N/A _____**

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS 143-128.2(d). Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

