



Town of Clayton Request for Qualifications

RFQ #700-ENG-2025-07

Title: Private Development Review and Engineering Support

Issue Date: October 18, 2024

Due Date: November 12, 2024

Issuing Department: Engineering

Direct all inquiries concerning this RFQ to:

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Engineering Technician
Email: spoole@townofclaytonnc.org

1	INTRODUCTION.....	2
1.1	Purpose	2
1.2	Background.....	2
1.3	RFQ Timeline.....	2
1.4	Questions.....	3
1.5	Submittal Requirements and Contact Information	3
1.6	Rights to Submitted Material.....	4
1.7	Communications	4
1.8	Lobbying.....	5
1.9	Gifts and Favors.....	5
1.10	Minority Women Business Enterprises (MWBE)	5
1.11	Diversity and Inclusion	5
1.12	Proposer Expenses	5
1.13	Proposer Acceptance	5
2	QUALIFICATIONS PACKAGE	6
2.1	Request for Qualifications Required Document Format	6
2.3	Qualifications Package Documents.....	8
3	PROPOSAL EVALUATION	9
3.1	Evaluation Criteria	9
3.2	Final Selection.....	9
3.3	Notice to Proposers Regarding RFQ Terms and Conditions	9
4	SCOPE OF SERVICES.....	10
5	EXECUTION of PROPOSAL.....	15

APPENDIX I Identification of Minority Business Participation

APPENDIX II Proposer Questionnaire

APPENDIX III Town of Clayton Master Agreement for Professional Services

1 INTRODUCTION

1.1 Purpose

The Town of Clayton (hereby referred to as “the Town”) is seeking a Statement of Qualifications from professional firms to perform private development review and engineering support. Firm(s) selected will be required to execute a Master Agreement for Professional Services (MSA) (Appendix III for reference). The agreement will be effective for a period of two (2) years, with the option of extending the agreement for a period of two (2) years, for a maximum of four (4) years. Anticipated amounts for these services will be dependent upon specific needs and availability of funding. No work is guaranteed under any agreement 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 any time. Selected firms that do not meet the Town’s performance expectations, routinely decline opportunities to provide services, or lose significant internal expertise submitted with their original proposal may be subject to have their Master Agreement cancelled. The Town reserves the right to issue separate solicitations for a specific service or project when it is determined to be in the best interest of the Town to do so.

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 electronic Vendor Portal (eVP) at: <https://evp.nc.gov/solicitations/>

1.2 Background

The Town of Clayton, nestled in the heart of Johnston County, North Carolina, is a blend of historic charm and modern innovation. With its rich history dating back to the early 1700s, Clayton has evolved from a small, railway depot village into a vibrant and growing community. The rapid growth in Clayton has created an influx of workload for staff responsible for managing and reviewing private development projects. The increased workload has created challenges for meeting timelines and standards.

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 services. All times shown are Eastern Time (ET):

RFQ Process	Date and time
RFQ Advertisement Date	<i>October 18, 2024</i>
Deadline for written questions	October 29, 2024 by 2:00 pm
Town Response to Questions (anticipated)	November 1, 2024
Submittal Due Date and Time	<i>November 12, 2024, by 4:00 PM</i>
Selection Notification (anticipated)	<i>week of December 2, 2024</i>

1.4 Questions

Requests for clarification and questions related to this RFQ must be received by the Town not later than **October 29, 2024 by 2:00pm**. The Town will not entertain any further questions after the due date. Clarification needs or other questions **will not** be discussed via the telephone. All questions related to this solicitation must be submitted electronically via email, to the following individual:

Contact Name	Email Address
Shannon Poole	spoole@townofclaytonnc.org

Indicate “**RFQ #700-ENG-2025-07– Private Development Review and Engineering Support**” in the subject of the email.

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 Town’s terms and conditions and requirements. The Town shall issue addenda reflecting questions and answers to this RFQ, if any, which shall be posted to the [NC eVP](#) 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. Respondents shall be entitled to rely *only* on written material contained in an Addendum to this RFQ.

It is important that all Respondents submitting a Statement of Qualifications periodically check the [NC eVP website](#) for any Addenda. It is the Respondent’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 US POSTAL SERVICE</u>	<u>DELIVERED BY ALL OTHER MEANS</u>
Town of Clayton Engineering Department Attn: Shannon Poole 111 E. Second St. Clayton, NC 27520 RFQ No. 700-ENG-2025-07 Private Development Review and Engineering Support	Town of Clayton Engineering Department Attn: Shannon Poole 111 E. Second St. Clayton, NC 27520 RFQ No. 700-ENG-2025-07 Private Development Review and Engineering Support

Proposals must be enclosed in a sealed envelope or package and clearly marked with the name of the firm, the RFQ number and the RFQ Title. Respondents must submit:

- One (1) signed original (marked as original)
- One (1) electronic version of the signed original

The electronic version of the Proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a flash drive. Both hard copy and electronic versions must be received by the Town on or before **November 12, 2024, at 4:00pm**.

All proposals are limited to Twelve (12) pages single sided, or Six (6) pages double-sided and shall be typed on 8 ½" x 11" paper, 12" font size, single spaced.

- Fold out pages are not allowed.
- The use of front/back covers and dividers/tabs are at the discretion of the respondent. They will be **excluded** from page count.
- Execution of Proposal will be **excluded** from page count.
- Addenda acknowledgement form, if applicable, is **excluded** from page count.
- Appendix II, Proposer Questionnaire, is **excluded** from page count.
- The form of binding is at the discretion of the respondent. One staple in the upper left-hand corner is preferred.
- Font type is at the discretion of the respondent.

Proposals **not** meeting this criterion will not be evaluated.

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 competition 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 1.3 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 1.3 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 electronically via email to the individual designated in Section 1.4 prior to the deadline provided in Section 1.3. 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

Contractor 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 (10%), 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 in the Town of Clayton. The Town is committed to encouraging firms to have a diverse and inclusive services team involved in all aspects of this RFQ solicitation.

1.12 Proposer Expenses

The Town of Clayton 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 of Clayton and/or its representatives. Further, the Town of Clayton 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 unless clearly and specifically noted otherwise on Appendix V, "Exceptions to RFQ," and submitted with proposal. 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.

2 QUALIFICATIONS PACKAGE

We invite your firm to submit their **Letter of Interest**. Express your interest and demonstrate your unique qualifications for these services. 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.

2.1 Request for Qualifications Required Document Format

Responses should be addressed in sections, listed sequentially as follows:

Section 1: Introduction

Provide a creative and insightful introduction on your Firm's official letterhead including:

- **Firm Overview:** Briefly describe the history, mission, and values of your firm. Emphasize aspects that make your firm uniquely qualified for these services.
- **Contact information:** Include the name, title, email address, and phone number of the primary point of contact for this RFQ.
- **State of Interest:** Explain your firm's interest in providing Engineering Support Services to the Town of Clayton and why these services aligns with your firm's expertise.

Section 2: Corporate Background and Experience

Include background information on the Firm. We invite you to share the journey that has shaped your firm's identity and the expertise that sets you apart. Narrate your firm's evolution, its core competencies, and demonstrate your proven track record in providing support to local municipalities. Also include:

- **Municipal Engineering Experience:** Describe your firm's experience working with municipal or local government clients, particularly in the areas outlined in the Scope of Services. Include examples of similar projects where your firm provided development review support and engineering consultation.
- **Private Development Project Review:** Highlight specific projects where your firm reviewed private development plans for compliance with municipal codes and standards.
- **Project Management Experience:** Summarize experience with managing project timelines, coordinating between multiple departments, and maintaining project documentation.
- **Client References:** Provide references for at least three projects that are similar in scope. For each reference, include the client's name, a brief project description, and contact information (see Appendix II, Proposer Questionnaire).

Section 3: Understanding and Approach

Demonstrate your **understanding** of the Town of Clayton's requirements and objectives by addressing the following:

- **Scope of Work Understanding:** Summarize your understanding of the key responsibilities and deliverables required by this RFQ, including private development plan review, permit support, construction plan evaluation, and software implementation support.
- **Challenges and Solutions:** Identify potential challenges associated with the scope of work and provide your approach to addressing these challenges. Discuss any unique or innovative approaches your firm may employ to improve review processes, facilitate software implementation, or streamline coordination among departments.
- **Value to the Town:** Explain how your firm's services will add value to the Town of Clayton's Engineering Department and contribute to achieving its objectives.

Describe your firm's proposed **approach** to delivering the services outlined in the Scope of Services. In your response, include:

- **Methodology:** Outline your general approach to the tasks involved in the scope of services, such as plan reviews, interdepartmental coordination, and field inspections. Explain the tools, techniques, and processes your firm uses to ensure thorough and timely reviews.
- **Quality Assurance and Control:** Describe the quality control measures your firm employs to ensure accuracy and compliance with development reviews. Address how your firm handles feedback and ensures timely corrections and resubmittals.
- **Software Implementation Support:** Provide details on your approach to supporting software development and implementation. Include specific methods for gathering requirements, configuring systems, and conducting user training.
- **Communication and Reporting:** Describe how your firm will communicate with Town staff, developers, and other stakeholders. Provide examples of communication methods and reporting structures used on similar projects.

Section 4: Team Qualifications

This is an opportunity to showcase the depth of your team's expertise, the strategic alignment of their roles, and the collaborative synergy that sets your firm apart. Detail the qualifications of the team members who will be assigned to the services, including:

- **Organizational Chart:** Include an organizational chart that identifies the key personnel who will be involved in the services and support, their roles, and reporting relationships.
- **Resumes and Relevant Experience:** Provide brief resumes for each key team member, highlighting their experience, education, certifications, and areas of expertise relevant to the scope of services.
- **Service/Support Roles and Responsibilities:** Clearly define the specific roles and responsibilities of each team member. Discuss how their expertise aligns with the different areas of the scope of services, such as civil engineering, environmental compliance, transportation, and software support.
- **Availability and Commitment:** Indicate each team member's availability and commitment to this Service/Support, including any current workload or potential conflicts that may impact service/support timelines.

2.2 Qualifications Package Documents

This RFQ is comprised of the base RFQ document, any attachments, and any addenda released before submittal due date. All attachments and addenda released for this RFQ in advance of Selection notifications are incorporated herein by reference.

3 PROPOSAL EVALUATION

3.1 Evaluation Criteria

This is not a bid. There will not be a public opening. Each section will be evaluated based on the firm’s ability to demonstrate relevant experience, provide a comprehensive understanding, outline a practical approach, and present a qualified and capable team

Criteria	(a) Weight	(b) Score (0-3)	(a) x (b) Weighted Score
Introduction	10		
Background and Experience	25		
Project Understanding	25		
Project Approach	20		
Team and Qualifications	20		
Final Score			

Score Points

0- Missing or Does Not Meet Expectation

1- Partially Meets Expectation

2- Meets Expectation

3- Exceeds Expectation

3.2 Final Selection

Proposals will be reviewed after opening and will be ranked in order of choice, at which point contract negotiations will begin with the most qualified firm. If negotiations are unsuccessful, the Town will then pursue negotiations with the next most qualified firm. 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 not award a contract. The number of firms to be selected has not been determined.

The general conditions and specifications of the RFQ, including a Professional fee schedule, and/or written correspondence applicable to the RFQ, may become part of the agreement documents. Failure of the selected Professional to perform as represented may result in agreement cancellation.

Firm shall inform the Town of any change to key staff members identified in the respondents Statement of Services prior to the selection and after selection has been made and a professional service agreement has been executed.

3.3 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.

4 SCOPE OF SERVICES

1. General Overview

The selected consultant will assist the Town of Clayton Engineering Department in reviewing private development projects to ensure compliance with municipal standards, codes, and regulations. Additionally, the consultant will provide general support for managing development review processes, coordinating with various stakeholders, supporting development, testing and implementation of development review software, and ensuring the smooth flow of projects through the approval pipeline.

2. Core Services

2.1 Private Development Plan Review

The consultant shall perform comprehensive reviews of all private development projects submitted to the Town. This includes, but is not limited to:

- Civil Site Plans: Review for compliance with grading, drainage, stormwater management, erosion control, parking, and site layout.
- Utility Infrastructure: Assess water, sewer, stormwater, and electrical designs for conformance with municipal engineering standards.
- Transportation/Traffic Impact: Verify Street designs, traffic control measures, and transportation studies align with municipal requirements and policies.
- Land Use/Zoning Compliance: Verify land use applications, zoning adherence, and subdivision plat conformity with city ordinances.
- Environmental Regulations: Review projects for compliance with environmental protection standards, including floodplain management, wetlands, and tree preservation ordinances.
- Stormwater Management: Confirm proper stormwater mitigation and post-construction stormwater control measures (SCMs).
- Building Code and ADA Compliance: Collaborate with building departments as necessary to ensure compliance with municipal building codes and accessibility requirements.

Deliverables:

- Comprehensive written comments detailing deficiencies or necessary revisions.
- Redlined drawings or documents where applicable.
- Timely responses to resubmittals, maintaining project schedules.

2.2 Pre-Application and Design Consultation

The consultant will provide consultation services during the pre-application phase of private development. This includes:

- Meetings with Developers/Applicants: Attend and provide feedback during meetings to discuss project concepts and potential issues.
- Preliminary Review of Concept Plans: Offer high-level feedback on early-stage project designs, highlighting major engineering concerns or potential non-compliance.

Deliverables:

- Participation in meetings (virtual or in-person).

- Summary of pre-application feedback provided to the developer and city staff.

2.3 Permit Review Support

Assist the Engineering Department in reviewing permit applications related to private development projects, including:

- Stormwater Management Permits.
- Right-of-Way Permits.
- Water and Sewer Connection Permits.

Deliverables:

- Review and approval (or denial) of permit applications.
- Documentation of reasons for permit denials and recommendations for resubmission.

2.4 Construction Plan and Engineering Drawing Review

Evaluate construction drawings and technical specifications for infrastructure improvements associated with private developments, ensuring they meet Town requirements. Focus areas include:

- Site Grading and Earthwork.
- Drainage and Erosion Control Plans.
- Roadway and Pavement Design.
- Water and Sewer Line Design.

Deliverables:

- Detailed comments on construction plans and specifications.
- Approval or recommendations for revisions.

2.5 Site Inspections & Field Visits

As part of quality control during construction, the consultant may be required to conduct site inspections or field visits to verify that on-site conditions align with approved plans and regulatory requirements.

Deliverables:

- Field reports documenting compliance or identifying issues.
- Recommendations for corrective actions if needed.

3.0 General Support Services

3.1 Coordination with Engineering Staff

The consultant will work closely with various departments within the Town, including planning, zoning, public works, utilities, and legal, to ensure a cohesive review process.

Specific tasks include:

- Interdepartmental Coordination: Facilitate communication between Town departments and private developers to resolve technical or procedural issues.
- Meeting Attendance: Participate in planning commission meetings, technical review committee meetings, or public hearings as needed.

Deliverables:

- Regular progress reports or meeting summaries.
- Resolution of interdepartmental review conflicts or concerns.

3.2 Development of Standard Operating Procedures (SOPs)

Assist the Engineering Department in developing or updating SOPs for reviewing private development projects. This includes:

- Streamlining Review Processes: Recommend strategies to improve efficiency in the review process.
- Template Development: Provide templates for standard review checklists, comment forms, and approval letters.

Deliverables:

- Draft SOPs and review templates.
- Finalized procedural documents upon approval.

3.3 Code and Ordinance Updates

Assist in the review and revision of existing municipal codes and ordinances related to private development and engineering standards. Provide recommendations for changes that improve clarity, efficiency, or alignment with best practices.

Deliverables:

- Draft amendments to municipal codes or engineering design standards.
- Supporting documentation for recommended changes.

4. Support for Development Review Software Implementation

4.1 Software Development and Configuration Support

The consultant shall assist the Engineering Department in the development, configuration, and implementation of a software system to manage private development reviews. This includes:

- Requirements Gathering: Collaborate with Town staff to define functional requirements and performance standards for the software.
- System Configuration: Provide input on system settings, workflows, and customization to ensure the software meets the specific needs of the Town's review processes.

Deliverables:

- Detailed documentation of software requirements.
- Recommendations for system configuration and optimization.

4.2 Testing and Validation of Software

Support the software development team and staff in testing the system prior to launch. The consultant will:

- Test Case Development: Assist in creating test cases to verify that the software performs all required tasks accurately (e.g., plan submission, review tracking, approval workflows).

- User Acceptance Testing (UAT): Participate in or lead UAT sessions to ensure the system operates smoothly and effectively for end-users.

Deliverables:

- Test cases for development review functions.
- Reports detailing any software bugs, issues, or areas needing improvement.

4.3 Training and User Support

The consultant will provide training and support to Town staff during the software rollout, ensuring a seamless transition to the new system. This includes:

- Training Sessions: Conduct in-person or virtual training sessions for staff on how to use the software for plan reviews, permit issuance, and communication with developers.
- User Guides: Develop step-by-step user guides or quick reference materials.

Deliverables:

- Training agendas, materials, and recorded sessions.
- Written user guides for software navigation and troubleshooting.

4.4 Post-Implementation Support

Following the software implementation, the consultant shall provide post-launch support to help troubleshoot any issues that arise and ensure the software continues to function as intended. This may include:

- Ongoing Monitoring: Assist in monitoring the system's performance and user adoption.
- Issue Resolution: Help resolve any technical issues or workflow challenges identified after the launch.

Deliverables:

- Post-launch status reports and resolution of identified issues.
- Ongoing support for software updates or refinements as needed.

5. Project Management and Reporting

5.1 Schedule Adherence and Workload Management

The consultant shall ensure that project timelines are adhered to by tracking key milestones, meeting deadlines for deliverables, and providing early notification of any potential delays or obstacles.

- Track Plan Submissions and Approvals: Maintain a tracking system for all projects under review, including submission dates, review timelines, and status updates.

Deliverables:

- Weekly or bi-weekly project status updates.
- Detailed monthly reports on active projects and completed reviews.

5.2 Stakeholder Communication

The consultant will maintain regular communication with developers, contractors, and Town staff, ensuring that any issues are addressed promptly and with minimal delay to project progress.

Deliverables:

- Meeting agendas, minutes, and summaries.
- Formal communications with developers as required.

5 EXECUTION of PROPOSAL

Respondent shall include this page with their proposal.

By submitting this Proposal, the potential professional certifies the following:

- This proposal is signed by an authorized representative of the Firm.
- The professional 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.
- By signing below, the firm acknowledges they have reviewed the Town of Clayton Master Agreement for Professional Services and if selected agree to the conditions.

Signature: _____

Printed Name: _____

Title: _____

Date: _____



Town of Clayton

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

This Master Agreement for Professional Services for _____ (“Agreement” or “Master Agreement”), is made by and between the Town of Clayton (hereafter, “Town”) and _____, a professional _____ with a partner or principal registered in North Carolina as a licensed _____ and with offices in North Carolina (hereafter, “Professional”).

RECITALS

WHEREAS, the Town is procuring “on-call” professional _____ services; and

WHEREAS, Town completed necessary steps for (Professional Service) as per 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 professional 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

PURPOSE, EFFECTIVE DATE AND SCOPE OF SERVICES

- 1.1 The purpose of the Town’s ‘on call’ process is to secure more than one _____ professional to provide professional on-call _____ services. The purpose of this Agreement is to provide the basic terms and conditions by which Professional will provide its services to the Town, as the need for Professional’s services may arise, and in accordance with the standards and requirements as described herein, in Attachment A, and in each Task Order (“Services” or “Basic Services”). The Recitals are incorporated into Agreement.

- 1.2 This Agreement shall be effective upon execution by both parties (“Effective Date”) and shall have a term of (determined by Town).
- 1.3 Town hereby engages Professional to provide ‘on-call ___ services’ and Professional agrees to perform such services for projects as may be set forth in subsequent, fully executed task orders (“Task Order”). Projects shall commence and terminate as provided in the applicable Task Order(s) and shall be performed in accordance with any schedule contained in the applicable Task Order (sometimes, “Milestone Dates”). If one or more Task Orders are executed and undertaken but not completed prior to the termination of this Master Agreement, then and in that event this Master Agreement shall continue as to incomplete projects until such time as the last of projects undertaken hereunder is satisfactorily completed. The process for executing Task Orders is set forth in Article 2.
- 1.3 The Town has no obligation to provide Professional with any work hereunder and does not guarantee the issuance of any minimum number of Task Orders under this Agreement.
- 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, applicable Task Orders, 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 or an applicable Task Order, 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

COMMENCEMENT OF SERVICES

- 2.1 Services for a project shall be undertaken by Professional only after execution by both parties of a Task Order. Each Task Order shall include a “scope of work” for that particular Project prepared by Town outlining the required Services and parameters to be included in the work and such other materials and requirements as Town may deem necessary. Unless specifically excluded by a Task Order, all requirements of this Agreement are deemed to be incorporated into every Task Order. In addition, each Task Order shall include the fixed fee total compensation for Services (or other method of compensation as may be agreed upon by the parties), Project schedule including date by which Services shall be completed, and all deliverables to be delivered. If Professional proposes to use subcontractors for a portion of its Services, Task Order shall also include information about such subcontractor(s). Each Task Order shall be considered integral parts of this Agreement and subject to the terms and conditions hereof. The scope of work for each Project shall be the Basic Services as defined herein and as further supplemented by terms of Task Order.

- 2.2 Professional hereby authorizes the following to execute Task Orders and represents and warrants that these individuals and/or positions have the right and power to bind Professional to the obligations set forth in an executed Task Order:

If no names or position titles are listed above, then the only individuals authorized to execute a Task Order are those that can otherwise bind the company to execute contracts.

- 2.3 Professional may begin work on a Project upon written execution of Task Order by Town, unless the Task Order requires that work commence only upon a notice to proceed from Town. The time allowed for Professional to complete its work for each Project shall be specified in the applicable Task Order.
- 2.4 In consideration of Services performed under any Task Order, Town shall pay Professional compensation as specified in Task Order. Payment shall be made as provided in Article 4.1. Unless specifically designated and described in Task Order, there are no separately reimbursable expenses.

ARTICLE 3 RESPONSIBILITIES OF PROFESSIONAL

3.1 Standard of Care.

3.1.1 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 and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay the design or construction activities of the Project.

3.1.2 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.

3.1.3 In addition to any other damages that might be due to Town hereunder in connection with the breach of this Agreement (as supplemented by Task Orders) 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.

3.1.4 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.

- 3.2 Key Personnel and Subcontractors. The Professional and the Professional’s subcontractors for the Project, along with their key project personnel, should be listed in each Task Order. No changes in Professional’s personnel or subcontractors designated in Task Order 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 or a Task Order is terminated for cause by Town, Town may take assignment of such contract of Professional with their subcontractor.

- 3.3 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 4 COMPENSATION FOR SERVICES

- 4.1 Compensation for Basic Services.

4.1.1 Compensation for Professional's Services for each specific Project shall be as set forth in applicable Task Order. There shall be no reimbursable expenses unless explicitly permitted by the applicable Task Order.

4.1.2 Payment shall be made within thirty (30) days of receipt by Town of an acceptable invoice upon completion of the Project or each of the phases or tasks as set forth in Task Order.

4.1.3 Invoices shall be in form and substance acceptable to the 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. The Town shall have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by the Town as a result of the Professional's failure to perform Services on any portion of the Task Order following reasonable notice and opportunity to cure such nonperformance by Professional.

- 4.2 Compensation for Additional Services. Additional Services shall be as set forth in a Task Order or Written Amendment to this Agreement. 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. If the Task Order or Written Amendment does not specify method of compensation, compensation shall be on a time-spent basis at the hourly rates shown in Attachment A.

- 4.3 Accounting Records and Other Records. Accounting records of Professional's compensation for Services and Additional Services 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 5
RESPONSIBILITIES OF TOWN**

5.1 With Respect to Task Orders under this Agreement, Town shall:

5.1.1 Provide full information to Professional as to its requirements for each Project.

5.1.2 Designate in writing one or more persons to act as Town representative to coordinate the work of each Project with Professional.

**ARTICLE 6
INSURANCE**

6.1 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.

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
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 7
DAMAGES AND REMEDIES**

7.1 Services, Reimbursement and Deductions.

7.1.1 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 or any Task Order.

7.1.2 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 or any Task Order.

7.2 Indemnities.

7.2.1 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.

7.2.2 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 7.2.1.

7.3 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.

7.4 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 8
AMENDMENTS TO AGREEMENT**

- 8.1 Changes in the Basic Services. Changes to this Agreement or changes in any Task Order including entitlement to additional compensation or a change in duration or any other term of this Agreement or a Task Order shall be made only by a Written Amendment to this Agreement or a Task Order Amendment executed by both parties. Town may, without invalidating a Task Order, make written changes in Scope of Services by preparing and executing a Task Order Amendment for review and execution by Professional. Within three (3) days of receipt of such Task Order 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 Task Order Amendment significantly increases or decreases Scope of Services, the compensation may be equitably adjusted.

ARTICLE 9 TERMINATION AND SUSPENSION

- 9.1 Termination for Convenience of Town. This Agreement and/or any Task Order hereunder may be terminated without cause by Town and for its convenience upon thirty (30) days written notice to Professional.
- 9.2 Other Termination. After thirty (30) days written notice to the other party of its material breach of the Agreement or a Task Order, this Agreement and/or any Task Order may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.
- 9.3 Compensation After Termination.
- 9.3.1 In the event of termination of any Task Order for the convenience of Town, Professional shall be paid that portion of its fees and expenses that it has earned under said Task Order to the date of termination. Upon receiving notice of termination, Professional shall immediately terminate any ongoing Services it is to provide under the applicable Task Order.
- 9.3.2 In the event of termination by reason of a material breach of a Task Order by Town, Professional shall be entitled to the same compensation as it would have received had Town terminated the Task Order for convenience, and Professional expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.
- 9.3.3 In the event of termination by reason of a material breach of a Task Order by Professional, Professional shall be paid that portion of its fees and expenses that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by Town due to errors or omissions of Professional or by reason of Professional's breach of the Task Order.
- 9.3.4 Should this Agreement or any Task Order 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 and any Project or Task Order hereunder, 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.
- 9.4 Survival. Termination of this Agreement or a Task Order, for whatever reason, shall not terminate a party's representations and warranties nor nullify any indemnity hereunder. If one or more Projects

are undertaken but not completed prior to the termination of this Agreement, then and in that event this Agreement shall continue until such time as all Projects undertaken hereunder are satisfactorily completed, unless a Project or Projects are specifically terminated prior to completion.

9.5 Suspension.

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

9.5.2 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 any Task Order or an increase in the level of staffing by Professional, it shall so notify Town and propose an amendment to the applicable Task Order, which shall be effective only upon the written approval of Town. In the event the duration of Basic Services or any Task Order 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 Task Order Amendment.

9.5.3 A suspension, delay or interruption of a Project or Task Order shall not terminate this Agreement or the applicable Task Order; 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 10
OWNERSHIP OF DOCUMENTS AND DELIVERABLES**

10.1 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, reproducible as described in Section 11.8 of all Deliverables prior to final payment, if not delivered earlier hereunder, or within seven (7) days after completion of Project or after termination if this Agreement is terminated for any reason. Professional may retain one set of Deliverables for its records.

10.2 Termination. In the event of termination, for whatever reason, should Town use 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 contractor in connection with Town’s improper use (or misuse) of Documents and Deliverables.

10.3 Other Projects. Documents and Deliverables may be used by Town for any reason not related to a Project undertaken pursuant to a Task Order 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 11
ADDITIONAL PROVISIONS

- 11.1 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.
- 11.2 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 Task Order 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.
- 11.3 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..
- 11.4 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 or a Task Order 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.
- 11.5 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.

- 11.6 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.
- 11.7 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.
- 11.8 Notice. Whenever any provision of this Agreement or a Task Order requires the giving of written notice, unless otherwise provided in a particular Task Order, notice 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:

_____ Department
Town of Clayton
111 East 2nd Street
Clayton, NC 27520

The notice address for the Professional shall be:

- 11.10 Gifts and Favors. Professional shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including G.S. §14-234, G.S. §133-1, and G.S. §133-32.
- 11.11 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.

- 11.12 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.
- 11.13 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, its Attachments and any Task Order hereunder 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 its Attachments or Task Order, the Other Standard shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of this Agreement, its Attachment or Task Order and the Other Standard.
- 11.14 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..
- 11.15 Verification of Work Authorization. Professional, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.
- 11.16 No Third Party Beneficiaries. There are no third party beneficiaries to Agreement.
- 11.17 Nondiscrimination. It is the policy of the Town of Clayton to ensure that no person, shall, on the grounds of race, color, national origin, limited English Proficiency, income-level, sex, sexual orientation, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Town of Clayton program or activity, including, where applicable, religion, as provided by Title VI of the Civil Rights Act of 1964 and other pertinent nondiscrimination authorities.
- 11.18 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.
- 11.19 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.
- 11.20 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.

- 11.21 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.
- 11.22 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
- 11.23 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: 919-359-9343or smizell@townofclaytomc.org
- 11.23 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).
- 11.24 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.

IN WITNESS WHEREOF, 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:

List Attachments here

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

Appendix III SAMPLE

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.
(typed or printed name)

Title: Town Manager

Date: _____

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

Deputy Finance Officer

Date

Purchase Order: _____

Approved to Form: _____

APPENDIX II PROPOSER QUESTIONNAIRE

The following questions must be answered, and data given must be clear and comprehensive. If necessary, questions may be answered on separate sheets. The Proposer may submit any additional information desired.

Company Name:		d/b/a (if applicable)	
Street / PO Box:			
City:		State:	Zip:
Phone:	Fax:	E-Mail:	
Website (if applicable):			
<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other			
Number of years in business under company's present name:			
Fed Tax ID #:	DUNS #		
Are you registered with the North Carolina Secretary of State to conduct business (if required)? (Check One) YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/>			
Are you properly licensed/certified by the Federal and/or State of North Carolina to perform the specified work? YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/> ATTACH COPY OF ALL APPLICABLE LICENSING/CERTIFICATION DOCUMENTS			
Are/will you be properly insured to perform the work? YES: <input type="checkbox"/> NO: <input type="checkbox"/>			
Contact for this Contract:		Title:	
Phone:	Fax:	E-Mail:	
Have you ever defaulted or failed on a contract? (If yes, attach details) YES: <input type="checkbox"/> NO: <input type="checkbox"/>			
List at least three (3) references for which you have provided these services (same scope/size) in the past five years - preferably municipal agencies. <u>Do not include Town of Clayton as a reference to meet the requirement of listing at least (3) references.</u>			
1.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
2.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
3.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
4.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
5.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
The undersigned swears to the truth and accuracy of all statements and answers contained herein:			
Authorized Signature:		Date:	