



Town of Clayton
Regular Town Council Meeting Agenda
Tuesday, January 19, 2021 @ 6:00 PM

THE TOWN OF CLAYTON WILL FOLLOW GUIDELINES FROM THE CENTERS FOR DISEASE CONTROL AND THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES WITH REGARD TO SOCIAL DISTANCING.

BELOW PLEASE FIND CHANGES TO THE COUNCIL MEETING FORMAT:

THE JANUARY 19, 2021 TOWN COUNCIL MEETING WILL BE HELD IN PERSON.

ANY MEMBER OF THE PUBLIC THAT WISHES TO ADDRESS THE COUNCIL, MAY DO SO IN PERSON, HOWEVER YOU ARE ASKED TO CONTACT THE TOWN CLERK IN ADVANCE OF THE MEETING.

IF YOU DO NOT WISH TO ATTEND THE MEETING IN PERSON BUT DO WISH TO SHARE ANY PUBLIC COMMENT WITH THE COUNCIL, PLEASE FORWARD YOUR COMMENT(S) TO THE TOWN CLERK NO LATER THAN NOON THE DAY OF THE MEETING. PLEASE INCLUDE YOUR NAME AND ADDRESS. PUBLIC COMMENT(S) RECEIVED WILL BE READ INTO THE RECORD BY THE TOWN CLERK.

EMAIL: KMOFFETT@TOWNOFCLAYTONNC.ORG

**THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOU TUBE CHANNEL:
[HTTP://YOUTUBE.COM/C/TOWNOFCLAYTONNC1869](http://youtube.com/c/TownofClaytonNC1869)**

BELOW PLEASE FIND ADDITIONAL INFORMATION REGARDING PROCEDURES FOR IN-PERSON MEETINGS:

- **ALL persons attending must wear a mask.**
- **We will be following proper social distancing at all times.**
- **Entrance AND Exit Access will be main door on Second Street.**
- **Any member of the public attending will be asked to wait in the lobby until item they wish to address is ready for discussion and asked to leave once item is completed.**
- **Lobby will be set to encourage social distancing.**
- **Chairs will be at least 6' from each other.**
- **We will have TWO staff members attending the meeting(s) to ensure smooth transition with those attending the meeting.**
- **One person will serve as LOBBY staff and the other will serve as CHAMBER staff.**
- **The meeting will be shown on the monitor in the lobby. (YouTube)**
- **All council or board members will be socially distanced in the council chambers and wearing face masks.***
- **Staff will be socially distanced and seated within the council chambers. Face masks will be worn.***

- Hand sanitizer will be available, both in the lobby and council chambers.
- Podium/microphone will be sanitized after each speaker.

*Masks may be lowered when speaking.

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. ADJUSTMENT OF THE AGENDA

3. CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a. DRAFT Minutes

- December 21, 2020 - Regular Meeting
*Minutes will be sent under separate cover
- December 21, 2020 - Closed Session
- January 4, 2021 - Regular Meeting

b. Budget Amendments

[Ordinance #2021-01-05](#)

[Ordinance #2021-01-06](#)

[Ordinance #2021-01-07](#)

c. Proclamation - All in Red Week

[Proclamation](#)

POTENTIAL ACTION: Adoption of Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

6. PUBLIC HEARINGS

7. OLD BUSINESS

a. Town Hall Parking Lot Expansion – Utility Undergrounding

Presenters: Joshua Baird, Town Engineer & Dale Medlin, Electric Distribution System Director

[Cover](#)

POTENTIAL ACTION: Approval to Move Forward with Project

b. No Parking / Loading Zone - Portion of Second Street

Presenter: Rich Cappola, Deputy Town Manager

[Cover](#)

[Town Hall Parking-AltA - Phase 1](#)

[Ordinance](#)

POTENTIAL ACTION:

Adoption of Ordinance #2021-01-08

8. NEW BUSINESS

- a. Return Check Policy - Amendment
Presenter: Ann Game, Customer Service Director

[Cover](#)

[Slide](#)

[Resolution](#)

POTENTIAL ACTION:

Adoption of Resolution #2021-02

- b. Development Agreements
Presenters: Chad Essick, Poyner Spruill and Russell Killen, Parker Poe

[Cover](#)

POTENTIAL ACTION:

Informational Only

- c. AFG Grant
Presenter: Lee Barbee, Fire Chief

[Cover](#)

POTENTIAL ACTION:

Approval for Staff to Proceed with Application Process

- d. Library Grants
Presenter: Joy Garretson, Library Director

[Cover](#)

POTENTIAL ACTION:

Approval for Staff to Proceed with Application Process

- e. Uniform Guidance Policy
Presenter: Robert McKie, Finance Director

[Cover](#)

[Uniform Guidance Procurement Policy 2021](#)

[Resolution](#)

POTENTIAL ACTION:

Adoption of Resolution #2021-03

- f. MWBE Policy Update
Presenter: Robert McKie, Finance Director

[Cover](#)

[Minority Business Policy](#)

[Forms](#)

[Resolution](#)

POTENTIAL ACTION:

Adoption of Resolution #2021-04

- g. Title 6 - Non Discrimination Policy
Presenter: Rich Cappola, Deputy Town Manager

[Cover](#)

[Memo from Town Attorney](#)

[Policy Statement](#)
[Procedures Document](#)
[NCDOT Specification](#)
[NDOT Fact Sheet](#)
[Resolution](#)

POTENTIAL ACTION: Adoption of Resolution #2021-05

- h. COVID-19 Update
 - Parks & Recreation Department and Library

Presenter: JD Solomon, Town Manager

[Cover](#)

9. STAFF REPORTS

- a. Town Manager
- b. Town Attorney
- c. Town Clerk
- d. Other Staff
 - DDA Update

Presenter: Jennifer Gallimore, Economic Development Specialist

10. OTHER BUSINESS

- a. Informal Discussion & Public Comment
- b. Council Comments

11. ADJOURNMENT

Quasi-Judicial (evidentiary) – These hearings are different from other public hearings in that they resemble a court hearing where testimony is presented and the Town Council acts like a court of law. During evidentiary hearings, the Town Council receives only sworn testimony and other credible evidence. In addition, the Town Council must make findings of fact based upon the evidence presented. Citizens may give testimony in an evidentiary hearing after they have taken an oath.

Town of Clayton
Amendment to the Capital Project Budget Ordinance

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the AMI Capital Project Budget Ordinance:

Fund: 640 – AMI Project

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Revenues			
640-49 81	Due from Water & Sewer Fund		
	\$0	+500,000	\$500,000
Expenditures			
640-58 00	Capital Projects		
	\$3,015,467	+500,000	\$3,515,467

Explanation: Amending the capital project budget ordinance to fund the projected cost overrun to complete the project. This amendment is required for compliance with G.S. 159-13.2.

Duly adopted this 19th day of January, 2021, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

**Town of Clayton
Amendment to the FY 20-21 Budget**

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 20-21 Budget:

Fund: General Fund

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Revenue			
100-40-00-48 99	Fund Balance Appropriated \$3,456,492	+341,859	\$3,798,351
Expenditures			
100-40-02-50 00	Salaries Full-Time \$362,018	+60,000	\$422,018
100-40-02-51 10	Benefits FICA \$25,183	+4,590	\$29,773
100-40-02-51 11	Benefits Health Insurance \$26,827	+6,966	\$33,793
100-40-02-51 15	Benefits Life Insurance \$1,677	+76	\$1,753
100-40-02-51 20	Benefits Retirement \$36,925	+6,120	\$43,045
100-40-02-51 30	Benefits 401K \$14,598	+2,400	\$16,998
100-40-02-56 00	Professional Services \$0	+50,000	\$50,000
100-41-10-50 00	Salaries Full-Time \$117,672	+37,500	\$155,172
100-41-10-51 10	Benefits FICA \$9,139	+2,869	\$12,008
100-41-10-51 11	Benefits Health Insurance \$18,611	+3,483	\$22,094
100-41-10-51 15	Benefits Life Insurance \$578	+47	\$625
100-41-10-51 20	Benefits Retirement \$12,003	+3,825	\$15,828
100-41-10-51 30	Benefits 401K \$4,779	+1,500	\$6,279
100-50-31-50 00	Salaries Full-Time \$1,551,634	+45,580	\$1,597,214
100-50-31-51 10	Benefits FICA \$123,852	+3,487	\$127,339
100-50-31-51 11	Benefits Health Insurance \$187,538	+6,966	\$194,504
100-50-31-51 15	Benefits Life Insurance \$7,675	+58	\$7,733

100-50-31-51 20	Benefits Retirement		
	\$173,568	+4,941	\$178,509
100-50-31-51 30	Benefits 401K		
	\$80,952	+2,279	\$83,231
100-52-02-50 00	Salaries Full-Time		
	\$408,646	+26,832	\$435,478
100-52-02-51 10	Benefits FICA		
	\$31,773	+2,055	\$33,828
100-52-02-51 11	Benefits Health Insurance		
	\$40,559	+3,483	\$44,042
100-52-02-51 15	Benefits Life Insurance		
	\$2,023	+33	\$2,056
100-52-02-51 20	Benefits Retirement		
	\$41,683	+2,737	\$44,420
100-52-02-51 30	Benefits 401K		
	\$16,614	+1,073	\$17,687
100-55-52-50 00	Salaries Full-Time		
	\$543,217	+43,050	\$586,267
100-55-52-51 10	Benefits FICA		
	\$44,413	+3,293	\$47,706
100-55-52-51 11	Benefits Health Insurance		
	\$87,988	+10,448	\$98,436
100-55-52-51 15	Benefits Life Insurance		
	\$2,764	+55	\$2,819
100-55-52-51 20	Benefits Retirement		
	\$57,765	+4,391	\$62,156
100-55-52-51 30	Benefits 401K		
	\$23,122	+1,722	\$24,844

Explanation:

Amendment to appropriate fund balance to cover the new position requests and asset management survey that Council authorized on December 21, 2020, which are effective January 1, 2021. This amendment is required for compliance with G.S. 159-15.

1. Two Business Analysts: \$80,152
2. Procurement and Contracts Manager: \$49,224
3. Two Patrol Officers: \$63,311
4. Emergency Services Coordinator: \$36,213
5. Janitorial Contract Transition - 3 Staff: \$62,959
6. Asset Management Survey: \$50,000

Duly adopted this 19th day of January, 2021, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town of Clayton
Amendment to the FY 20-21 Budget

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following amendments shall be made to the FY 20-21 Budget:

Fund: Water and Sewer Fund

<u>Line Item</u>	<u>Previous Appropriation</u>	<u>Adjustment</u>	<u>Revised Appropriation</u>
Revenue			
300-56-00-48 99	Fund Balance Appropriated \$445,651	+500,000	\$945,651
Expenditures			
300-56-00-59 23	Transfer to Capital Project Fund \$0	+500,000	\$500,000

Explanation:

Amendment to appropriate fund balance for the transfer of funds to cover the projected cost overrun to complete the AMI Project. This amendment is required for compliance with G.S. 159-15.

Duly adopted this 19th day of January, 2021, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Proclamation

Whereas, the well-being of our community is of paramount importance and maintaining excellent health among our citizens is a top priority, February 5, 2021 marks the launch of an 8-day County wide heart health awareness campaign entitled “**ALL IN RED**”, presented by Johnston Health and Dr. Matthew Hook, and organized by the Johnston Health Foundation; and

Whereas, In the United States, North Carolina, and Johnston County heart disease is the leading cause of death among men and women;

Whereas, Heart Disease and Stroke rank among the top five health priorities in Johnston County; per the 2019 Johnston County Community Health needs Assessment Implementation Plan; and

Whereas, per the Center for Disease Control and Prevention (CDC), about 80% of deaths from premature heart disease and stroke could be prevented by changes in physical activity, diet, education and management of common medical conditions, and;

Whereas, **ALL IN RED** week is an opportunity to increase heart health awareness, while addressing the growing needs of local heart patients; and

Whereas, the **ALL IN RED** campaign invites all Johnston County residents, business owners and visitors to participate in this initiative by **wearing RED on February 5, 2021, National Wear Red Day**, and/or **run a RED promo or fundraiser from February 5-12**; and

Whereas, the financial challenges of a heart patient are enormous; all funds raised within this campaign period will benefit local heart patients through the Johnston Health Foundation’s Heart Fund; and

Whereas, on this day, we recognize heart disease and stroke survivors, those battling the disease, their families who are their source of love and encouragement, and applaud the efforts of our medical professionals who provide quality care; and

NOW, THEREFORE, the Clayton Town Council does hereby proclaim February 5 until February 12, 2021 as “**ALL IN RED WEEK**” and encourage businesses, industries and citizens in the community to support and participate in this event.

Duly proclaimed this the 19th day of January, 2021 while in regular session.

Jody McLeod, Mayor



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

Old Business

Item Title

Town Hall Parking Lot Expansion – Utility Undergrounding

Presenter

Joshua Baird – Town Engineer

Summary/Description

On December 21, 2020, the Town Manager provided Town Council with an overview of what is required to underground the existing overhead utilities through the Town Hall parking lot. Town staff have further evaluated and vetted schedule and costs. The Town Manager previously indicated approximately \$130,000 for costs associated with undergrounding electric, Town fiber, Spectrum, and CenturyLink. At the time, additional costs from the general contractor associated with additional time were unknown. Since, staff have worked with general contractor to better understand the impact to overall project and budget. With additional costs from general contractor, staff anticipate total undergrounding costs to be around \$150,000. As previously stated by the Town Manager, the undergrounding could add up to 3-4 months of time to the project. Staff continue to believe this is a reasonable estimate, however the agreements with CenturyLink and Spectrum do not specify a time. Staff have considered and discussed best and worst case scenarios with the contractor. There may be option to expedite the opening. Staff will present different scenarios to council. Furthermore, it has been determined no budget amendment is necessary at this time. There are funds available in the electric fund to cover costs associated with the undergrounding. If additional electric fund needs come up in the future, budget amendments will be brought back to Council. Staff request authorization from Council to proceed with undergrounding the utilities. This includes general contractor change orders, electric department work, and execution of agreements with Spectrum and CenturyLink.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: \$150,000 Yes ☒ No ☐

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

Click or tap here to enter text.



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

Old Business

Item Title

Second Street No Parking Zone – Continued

Presenter

Rich Cappola, PE – Deputy Town Manager / Public Services Director

Summary/Description

This is a continuation of the discussion at the December 21, 2020, and January 4, 2021 meeting.

The Second Street corridor between S. Fayetteville Street and Church Street has historically allowed for parking on both sides of the street. This has become problematic during certain times of the day where higher traffic volumes cannot allow for two-way traffic or emergency vehicles to pass due to the width of the roadway. To alleviate this congestion, Town Staff, working with local stakeholders, are proposing to eliminate parking along the south side of Second Street by signing and striping it as a “Loading Zone From 8AM to 5PM, Monday through Friday” from the end of the angled parking along the frontage of Town Hall, down to the Church Street intersection.

This would be Phase 1 in improving the traffic flow along this corridor. Once the new zone is in place, staff will evaluate its effectiveness and see how the new Town Hall parking lot affects the parking. On or before June 15, 2021, if it is determined additional restriction is necessary, staff will work with the local stakeholders to develop a plan to place restrictions to parking on the north side of the road and bring it forward to Town Council for consideration.

Staff requests authorization to install signage and striping along the south (town property) side of Second Street to create a Loading Zone and evaluate if the south side needs to be restricted also on or by June 15, 2021.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

5 min.



**TOWN OF CLAYTON
AMENDMENT TO THE CODE OF ORDINANCES
CHAPTER 74: PARKING SCHEDULES**

BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA amends its Code of Ordinances with the following:

Amend the following section of CHAPTER 74: Parking Schedules, Schedule IV – Commercial Loading Zones to read as follows:

Street	Location	Ord. No.	Passage Date
Second Street (South Side)	Install Signage and Striping Along South (Town Property) Side Of Second Street To Create A Loading Zone, Monday-Friday From 8:00AM – 5:00PM From End Of Angled Parking Along Frontage Of Town Hall, Down To Church Street Intersection.	2021-01-05	01-19-2021

Amend the following section of CHAPTER 74, Parking Schedules, Schedule III – Handicap Accessibility to reflect as follows: removing the Handicap Accessibility from Second Street (East):

Street	Description	Ord. No.	Passage Date
Church Street (South)	Two spaces on the west side of the 200 block (between Second Street and Horne Street)	2021-01-05	01-19-2021

Duly adopted this 19th day of January, 2021 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

Choose an item.

Item Title

Update of Returned Check/Draft Policy

Presenter

Ann Game Utility & Billing Director

Summary/Description

The current returned check policy was updated in 2016 to state that if a customer has 2 returned checks/drafts, they are blocked from paying with a check or draft henceforth. I am proposing that we change the policy to reduce that the time that we don't allow payment by check/draft to 5 years.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

Click or tap here to enter text.

Proposed Change to the Returned Check Policy

1. The Town of Clayton will accept cash, certified check or money order from any customer having two insufficient funds or closed accounts, in connection with (bad) checks, automatic drafts or credit card.
 - a. Upon receipt of the first returned check or other insufficient funds notice, the customer will be informed of and given a copy of the written policy. The customer will have 48 hours from notification to pay the returned item.
 - b. Upon receipt of the second returned check or other insufficient funds notice, the customer will be advised that all bills must be paid in cash, certified check, or money order for **a minimum of five (5) years and will be given another copy of the written policy. At the end of the five (5) year time period, the customer can request this restriction to be removed at the discretion of the Utilities & Billing Director.**

**TOWN OF CLATYON
CUSTOMER SERVICE POLICY
AMENDMENT TO RETURNED CHECKS/DRAFTS (INSUFFICIENT FUNDS)**

BE IT RESOLVED by the Clayton Town Council that the Customer Service Policy be amended to include the following :

Returned Checks or Drafts (Insufficient Funds):

1. The Town of Clayton will accept cash, certified check or money order from any customer having two insufficient funds or closed accounts, in connection with (bad) checks, automatic drafts or credit card within any one year period.
 - a. Upon receipt of the first returned check or other insufficient funds notice, the customer will be informed of and given a copy of the written policy. The customer will have 48 hours from notification to pay the returned item.
 - b. Upon receipt of the second returned check or other insufficient funds notice, the customer will be advised that all bills must be paid in cash, certified check, or money order for a minimum of five (5) years and will be given another copy of the written policy. At the end of the five (5) year time period, the customer can request this restriction to be removed at the discretion of the Utilities & Billing Director.
2. Notice to the customer of a returned check or other insufficient funds or credit or closed account notice will be made by telephone if possible. If not possible, a closed door hanger or written memo to will be released promptly after the check other insufficient funds or credit or closed account notice is received.
3. If the returned check or other insufficient funds or credit or closed account is not paid within the 48 hours period, utility service will be disconnected without further notice. Customers disconnected subsequent to a returned check or other insufficient funds shall be notified that they have 10 days to clear the unpaid balance with the Town or the matter is turned over to the Johnston County District Attorney's office for collection.
4. In the event a new customer posts a utility account deposit by check or credit card and the funds are returned, the account will be immediately disconnected without benefit or prior notification. A notation of this provision shall be included on the customer service agreement signed by the customer at the time of account activation. (Adopted July 20, 1998)
5. To the extent permitted by North Carolina law, a charge is added to the customer's bill because of each returned check, closed account or other insufficient funds or credit notice.
6. The customer's account will be charged for returned checks or if permitted, closed account, other insufficient funds or credit notice and will be subject to regular collection policies for delinquent accounts.
7. All returned checks, other insufficient funds, or credit or closed account notice and receipt of cash: certified check or money order payment will be recorded on the Town of Clayton's books. The Town may pursue other remedies available against customers for returned checks, closed accounts or insufficient funds or credit. The conditions necessary to pursue these additional remedies (e.g., notice and grace periods) should not restrict the Town's actions in pursuing other remedies, such as termination of service.

Duly adopted this the 19th day of January, 2021, while in regular session.

ATTEST:

Jody L. McLeod, Mayor

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

New Business

Item Title

Development Agreement Principles and Practices

Presenter

Chad Essick, Poyner Spruill

Russell Killen, Parker Poe

Summary/Description

This presentation will briefly outline the principles and practices associated with development agreements. The Town Council is expected to consider two major development agreements in February.

Primary topics in the presentation will include:

1. Why use development agreements?
2. When are they not appropriate?
3. Typical "wants" of units of local government
4. Typical "wants" of developers
5. The negotiation process
6. The final product

Requested Action

Informational Only

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Slideshow Presentation

Meeting Timeline

Click or tap here to enter text.



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

New Business

Item Title

Assistance to Firefighters Grant (AFG)

Presenter

Lee Barbee, Fire Chief

Summary/Description

The FY 2020 Assistance to Firefighters Grants (AFG) Application Period opened on Monday, January 4, 2021 and closes on Friday, February 12, 2021 at 5:00 PM. The Fire Department is seeking assistance through AFG to install sprinkler systems at both fire stations. Fire operations have transitioned from a volunteer and part time response to full time staff working 24 hour shifts, necessitating the staff to essentially live in the stations. Current building code would require the installation of sprinkler systems; we would like to bring the buildings to code and help to ensure the safety and wellbeing of our firefighters.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

Click or tap here to enter text.



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

Staff Reports

Item Title

Information about Library Application for NEA Big Read grant and LSTA Strategic Planning Grants

Presenter

Joy Garretson, Library Director

Summary/Description

Presentation to inform council of two grants that the library will apply for in the coming weeks; if granted, both will take place in FY22.

Requested Action

Informational Only

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet**Meeting Timeline**

Click or tap here to enter text.



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

New Business

Item Title

Uniform Guidance Policy

Presenter

Robert McKie – Finance Director

Summary/Description

The purpose of this policy is supplement the Town's existing purchasing policy by establishing guidelines that meet the Uniform Guidance Procurement Requirements for NC Local Governments. This policy establishes procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract. All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

The Town will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the Town have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

- Uniform Guidance Procurement Policy 2021

Meeting Timeline

10 min.

	TOWN OF CLAYTON POLICY	
	Department: Finance	Effective: January 19, 2021
Policy Title: FEDERAL UNIFORM GUIDANCE PROCUREMENT POLICY Version #01	Supersedes:	
	Prepared By: J. Brian Pridgen (Cauley Pridgen P.A.) Town Attorney	
	Approved By: Town Council	
	Resolution: 2021-03 Date: JAN. 19, 2021	

I. Purpose

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract. To the extent that other sections of procurement policies and procedures adopted by the Town of Clayton (hereinafter the "Town") are more restrictive than those contained in this policy, local policies and procedures shall be followed.

II. Policy

- A. **Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any subrecipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

- B. **Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The Town will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the Town have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
- C. **Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.
- D. **No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.
- E. **Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.
- F. **Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.
- G. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

III. General Procurement Standards and Procedures

Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

- A. Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.
- B. Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.
- C. Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- D. Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.
- E. Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.
- F. Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.
- G. Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
- H. Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.
- I. Documentation.** Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.
- J. Cost Estimate.** For all procurements costing \$250,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

- K. Contract Requirements.** The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy.
- L. Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder's list.
- M. Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
- N. Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.
- O. Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.

IV. Specific Procurement Procedures

Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

A. Service Contracts (except for A/E professional services) and **Purchase Contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, purchases must be distributed among qualified suppliers.

B. Service Contracts (except for A/E professional services) and **Purchase Contracts costing \$10,000 up to \$90,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids.
4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
5. Award the contract to the lowest responsive, responsible bidder.

C. Service Contracts (except for A/E professional services) and **Purchase Contracts costing \$90,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.
3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”

D. Service Contracts (except for A/E professional services) **costing \$250,000 and above** may be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)) when the “sealed bid” procedure is not appropriate for the particular type of service being sought. The procedures are as follows:

1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
 3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
 4. Consider all responses to the publicized RFP to the maximum extent practical.
 5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
 6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
 7. Award the contract on a fixed-price or cost-reimbursement basis.
- E. Construction and repair contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
 2. To the extent practicable, contracts must be distributed among qualified suppliers.
- F. Construction and repair contracts costing \$10,000 up to \$250,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
 3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
 4. Award the contract on a fixed-price or not-to-exceed basis.
 5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.
- G. Construction and repair contracts costing \$250,000 up to \$500,000** shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) as follows:
1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
 2. Complete specifications must be made available to all bidders.
 3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
 4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
 5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
 6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
 7. Award the contract on a firm fixed-price basis.

8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for “sound documented reasons.”
- H. Construction and repair contracts costing \$500,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
 2. Complete specifications must be made available to all bidders.
 3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
 4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
 5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
 6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
 7. Award the contract on a firm fixed-price basis.
 8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for “sound documented reasons.”
- I. Construction or repair contracts involving a building costing \$300,000 and above** must comply with the following additional requirements under state law:
1. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
 2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
 3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).
- J. Contracts for Architectural and Engineering Services costing under \$250,000** shall be procured using the state “Mini-Brooks Act” requirements (G.S. 143-64.31) as follows:
1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
 2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
 3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
 4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
 5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
 6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

K. Contracts for Architectural and Engineering Services costing \$250,000 or more shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

V. Exceptions

Non-competitive contracts are allowed ***only*** under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

- A. Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.
- B. Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.
- C. Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
- D. Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
- E. Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

**RESOLUTION FOR THE TOWN OF CLAYTON TO ADOPT THE
FEDERAL UNIFORM GUIDANCE PROCUREMENT STANDARDS**

WHEREAS, the United States Federal Government has enacted procurement requirements known as the Uniform Guidance Procurement Standards which all units of local government must follow in federally funded projects.

WHEREAS, the Town of Clayton is required to comply with the Uniform Guidance Procurement Standards for all federally funded projects.

WHEREAS, the Town of Clayton desires to amend its existing procurement policy to incorporate the requirements of the Uniform Guidance Procurement Standards to ensure the Town's compliance in any future federally funded projects.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF CLAYTON:

1. That the Uniform Guidance Procurement Standards are hereby adopted.
2. That the Town of Clayton shall follow the guidelines adopted hereby for any federally funded projects.
3. That where there is a conflict between the federal, state, or local requirements, the more restrictive requirement shall apply.
4. That this resolution shall become effective upon its adoption.

Duly adopted this the 19th day of January, 2021, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

New Business

Item Title

Minority Business Participation Policy

Presenter

Robert McKie – Finance Director

Summary/Description

This is an update to the existing policy regarding Participation by Minority Owned Businesses on Building Construction Contracts originally established in 1992. It is the intent of these guidelines that the Town of Clayton, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of ten percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2.

Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on Town of Clayton building construction or repair projects in the amount of \$300,000 or more and on Town building projects involving State funding where the total project cost \$100,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

The Town of Clayton has a current verifiable goal of ten percent for minority participation for building construction or repair projects. The goal will be reviewed every five years.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

- Policy document

Meeting Timeline

10 min.

	TOWN OF CLAYTON POLICY	
	Department: Finance	Effective: January 19, 2021
Policy Title: OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN TOWN OF CLAYTON BUILDING CONSTRUCTION OR REPAIR CONTRACTS Version #01	Supersedes: V.# 1992 Resolution	
	Prepared By: J. Brian Pridgen (Cauley Pridgen P.A.) Town Attorney	
	Approved By: Town Council Resolution: 2021-05 Date: JAN. 19, 2021	

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on **Town of Clayton** building construction or repair projects in the amount of \$300,000 or more and on Town building projects involving State funding where the total project cost \$100,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

The Town of Clayton has a current verifiable goal of **ten** percent for minority participation for building construction or repair projects. The goal will be reviewed **every five years**.

SECTION A: INTENT

It is the intent of these guidelines that the Town of Clayton, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of ten percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

A copy of these Guidelines will be issued with each bid package for applicable Town of Clayton building projects. These Guidelines shall apply to all contractors on such projects, regardless of ownership.

SECTION B: DEFINITIONS

1. Minority - 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, the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
 - e. Female
2. Minority Business (MBE) - means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, 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.
 - c. The business is certified as a Historically Underutilized Business by the North Carolina Department of Administration Office for Historically Underutilized Business.
3. 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.
4. Public Entity - means the State and all public subdivisions and local governmental units.
5. Owner – Town of Clayton.
6. Designer – Any person, firm, partnership, or corporation which has contracted with the Town of Clayton to perform architectural or engineering work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Town of Clayton to perform building construction or repair work.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.
11. HUB Office – N.C. Department of Administration’s Office for Historically Underutilized Businesses.

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Owner:

The Owner shall do the following:

1. Implement the attached “Town of Clayton’s Minority and Small Business Participation Outreach Plan” to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
2. Attend the scheduled prebid conference and explain the minority goals and objectives.
3. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Owner for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - (1) A description of the work for which the bid is being solicited.
 - (2) The date, time, and location where bids are to be submitted.
 - (3) The name of the individual within the public entity who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.
 - (5) Any special requirements that may exist.
4. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
5. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
6. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
7. Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
8. Forward documentation showing evidence of implementation of Owner’s requirements to the State Construction Office and the HUB Office upon request.

In addition, after a contract has been awarded the Owner shall:

- a. Review prime contractors’ pay applications for compliance with minority business utilization commitments prior to payment.
- b. Submit the report to the HUB Office as required by G.S. 143-128.3(a).

Designer:

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders’ proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of

work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.

5. During construction phase of the project, review documentation for contract payment to MBEs (e.g. state form "Appendix E: MBE Documentation for Contract Payment" <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.
6. Make documentation showing evidence of implementation of Designer's responsibilities available for review by the Owner and State officials upon request.

Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors:

The following requirements apply to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods, as well as to all contractors performing as contractors and first-tier subcontractors under construction manager at risk. For purposes of this subsection, the term "contractor(s)" shall also include first-tier subcontractors under a construction manager at risk. The contractors shall:

1. Attend the scheduled prebid conference and any prebid meetings scheduled by the Owner.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. At least ten (10) days prior to the scheduled day of bid opening or due date for proposals, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
 - (a) A description of the work for which the subbid is being solicited.
 - (b) The date, time and location where subbids are to be submitted.
 - (c) The name of the individual within the company who will be available to answer questions about the project.
 - (d) Where bid documents may be reviewed.
 - (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.

4. During the bidding process, comply with the contractor(s) requirements listed in these Guidelines and any contractor requirements listed in the Town of Clayton's Minority and Small Business Participation Outreach Plan.
5. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and submit affidavit listing Good Faith Efforts (Affidavit A) as required by G.S. §143-128.2(c) and G.S. §143-128.2(f). If the contractor will be performing all of the work with its own workforce, the contractor may submit Affidavit B, Intent to Perform Contract with Own Workforce," in lieu of Affidavit A. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor responsibilities available for review by the Owner and State officials upon request.
7. Provide one of the following to Owner upon being named the apparent low bidder:
 - (1) an affidavit (Affidavit C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or

- (2) if the percentage is not equal to the applicable goal, then an affidavit (Affidavit D) and documentation of all Good Faith Efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitation, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
8. Within thirty (30) days after award of the contract, the apparent lowest responsible, responsive bidder shall file with Owner a list of all identified subcontractors that the contractor will use on the project.
9. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided as required in the General Conditions of the Contract to facilitate payments to the subcontractors.
10. Submit with each monthly pay request and final payment request the “MBE Documentation for Contract Payment” - (Appendix E), for Designer’s review.
11. If at any time during the construction of a project, if it becomes necessary to replace a minority business subcontractor, immediately advise the Owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor,
12. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

In addition, a construction manager at risk shall submit its plan for compliance with N.C. Gen. Stat. § 143-128.2 for approval by the Town prior to soliciting bids for the project’s first-tier subcontractors.

Minority Business Responsibilities:

Certification

The Town of Clayton does not certify minority businesses. Any business which desires to participate as a minority business under these Guidelines will be required to register and become certified as a historically underutilized business (“HUB”) by the North Carolina Department of Administration Office for Historically Underutilized Businesses (“HUB Office”).

Businesses seeking HUB certification are directed to: <http://www.doa.state.nc.us/hub/prog-certification.htm>.

Minority HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

1. Attending the scheduled prebid conference.
2. Responding promptly whether or not they wish to submit a bid when contacted by the Owner or bidders.
3. Attending training and contractor outreach sessions given by the Owner, contractors and state agencies, when feasible.
4. Participating in Mentor/Protégé programs, training, or other business development programs offered by the Owner, contractors or state agencies.
5. Negotiating in good faith with the Owner or contractors.

Other Responsibilities

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS

(To be included in solicitations and contract documents)

APPLICATION:

The Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts are hereby made a part of these contract documents.

MINORITY BUSINESS SUBCONTRACT GOALS:

The goal for participation by minority firms as subcontractors on this project has been set at 10%.

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. §143-128.2(c) and G.S. 143-128.2(f).

In addition, the lowest responsible, responsive bidder must do one of the following:

(1) Provide Affidavit C that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.

OR

(2) If the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of Good Faith Efforts.

OR

(3) Provide Affidavit B, which includes sufficient information for the Owner to determine that the bidder does not customarily subcontract work on this type project.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

SECTION D: MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and the Town of Clayton for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by the Town of Clayton that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the Town of Clayton whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, the Town of Clayton will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

1. Contacting 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 lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 points)
2. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (10 points)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)
5. Attending any pre-bid meetings scheduled by the public owner. (10 points)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 points)
9. Negotiating 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. (20 points)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 points)

SECTION E: DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with the Town of Clayton shall be resolved as governed under the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11).

SECTION F: In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in Town of Clayton projects.

SECTION G: The Town Board of Commissioners empowers the Town Manager to enforce and/or amend this policy as may be required by changes in State law or Federal regulation.

TOWN OF CLAYTON'S MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

In addition to the good faith efforts set forth in the Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts, the Town of Clayton will also make the following good faith efforts in order to make it feasible for minority businesses to submit successful bids or proposals for contracts for building projects. The Town of Clayton shall also make the following good faith efforts in the selection process for architectural, engineering, and construction manager at risk services.

1. Work with minority-focused and small business groups that support minority business and small business inclusion in the solicitation of bids.
2. Place more emphasis on the importance of soliciting certified minority businesses and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from minority businesses.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business for Participation in Town of Clayton Construction Projects and this Outreach Plan (hereinafter referred to collectively as the "MBE Program") and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the MBE Program, and identify opportunities to enhance it, by evaluating minority business participation and compliance and reviewing the "good faith efforts" provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified minority businesses and small businesses that have expressed an interest in Town of Clayton projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors plan to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how this MBE Program is working and sharing "best practices" and ideas to improve the program.
7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the Town's Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to minority businesses, majority contractors and small businesses, and provide information to the general public about the MBE Program, and continue outreach efforts to the business community.
9. Enhance the Town's web page by including the MBE Program, listing good faith efforts, and creating links to minority business resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Direct minority businesses to the Statewide historically underutilized business certification program in order to ensure those firms wishing to do business with the Town of Clayton or any other public entity have access to up to date information.
12. Advertise upcoming bid opportunities in minority-focused media and on the Town website.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.
14. Document telephone calls, emails and correspondence with or on behalf of minority businesses and encourage interested eligible firms to become certified.

do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

**HUB
Certified
(Y/N)[illegible]

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be (\$)_____.

State of North Carolina – AFFIDAVIT A – Listing of Good Faith Efforts

County of _____

(Name of Bidder)

Affidavit of _____

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☐ **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 lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids 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 prebid 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 equipment, 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 in establishing 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 pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

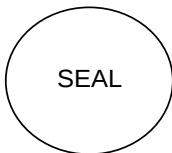
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure 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: _____

Title: _____



State of _____, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____
Notary Public _____
My commission expires _____

State of North Carolina – AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of _____

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

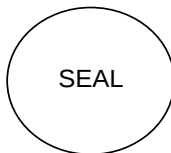
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

State of North Carolina – AFFIDAVIT C – Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.

This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of _____ I do hereby certify that on the _____
(Name of Bidder)

Project ID# _____ (Project Name) Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

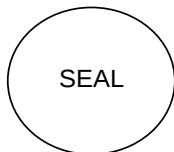
*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ Name of Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

State of North Carolina – AFFIDAVIT D – Good Faith Efforts

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of _____ I do hereby certify that on the _____
(Name of Bidder)

Project ID# _____ (Project Name) Amount of Bid \$ _____

I will expend a minimum of _____ % of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

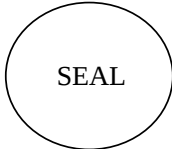
Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

**RESOLUTION FOR THE TOWN OF CLAYTON TO ADOPT OUTREACH PLAN AND TO
ESTABLISH VERIFIABLE PERCENTAGE GOAL FOR PARTICIPATION BY MINORITY
BUSINESSES IN THE AWARDING OF BUILDING CONSTRUCTION CONTRACTS
PURSUANT N.C.G.S. 143-128.2**

WHEREAS, the North Carolina General Assembly enacted N.C.G.S. 143-128.2 to enhance and improve the good faith efforts to recruit and select minority businesses for participation in public building construction or repair contracts; and

WHEREAS, N.C.G.S. 143-128.2 requires each city, county, or other local public entity to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects costing \$300,000 or more and on Town building projects involving State funding where the total project cost \$100,000 or more; and

WHEREAS, N.C.G.S. 143-128.2(b) requires a public entity awarding a building contract where the total cost equals or exceeds \$300,000 or \$100,000 on a Town building project involving State funding to establish, prior to solicitation of bids, good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects; and

WHEREAS, N.C.G.S. 143-128.2(e)(1) requires a public entity awarding a building construction or repair contract where the total cost exceeds \$300,000 or \$100,000 on a Town building project involving State funding, prior to awarding a contract, to develop and implement a minority business participation outreach plan; and

WHEREAS, the Town of Clayton desires to amend its existing policy to incorporate the current requirements of Chapter 143 of the North Carolina General Statutes.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF CLAYTON:

1. That the Town of Clayton shall have a ten percent verifiable percentage goal for participation by minority businesses in the total value of work for building projects awarded by the Town of Clayton and costing \$300,000 or more or \$100,000 on a Town building project involving State funding.
2. That the Town of Clayton shall follow the guidelines adopted hereby for minority business participation in building construction or repair contracts.
3. That this resolution shall become effective upon its adoption.

Duly adopted this the 19th day of January, 2021, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

New Business

Item Title

Title IV Policy

Presenter

Rich Cappola, PE – Deputy Town Manager

Summary/Description

Title VI is the federal law that protects individuals and groups from discrimination on the basis of race, color, and national origin in all programs, services, and activities of a Federal-aid recipient. (Title VI, the statute, is codified at 42 U.S.C. 2000d).

The N.C. Department of Transportation's Office of Civil Rights oversees Title VI implementation which includes any entities receiving federal financial assistance through NCDOT. NCDOT recently released guidance to subject entities for adopting local policies that meet the requirements of Title VI. This policy was drafted by the Town Attorney's office based on the guidance provided to ensure compliance.

Requested Action

Approval/Denial

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

- Memo from Town Attorney
- Policy Statement
- Procedures document
- NCDOT Specification
- NCDOT Fact Sheet
- Resolution

Meeting Timeline

10 min.

MEMORANDUM

FROM: Brian Pridgen
DATE: January 11, 2021
SUBJECT: Title VI Policy and Procedures

The North Carolina Department of Transportation's Office of Civil Rights is requiring that all municipalities enact a formal Title VI Policy. The Title VI of the Civil Rights Act of 1964 states that no person shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The 1987 Civil Rights Restoration Act extended these protections to all NCDOT programs and activities, whether federally-assisted or state-funded. Additional categories of protection have been enacted including sex, sexual orientation, low-income, limited English proficiency, age, disability, and religion / creed.

To comply with Title VI, the following attached documents require adoption by the Board:

1. Title VI Resolution
2. Title VI Nondiscrimination Policy Statement
3. Title VI Discrimination Complaint Form and Instructions

In conjunction with the adoption of these documents, the Town must take the following steps:

1. Appoint a Title VI Liaison - This designation is included in the Resolution.
2. Post the Nondiscrimination Policy Statement on the Town's website and in Town Hall.
3. Have available hard copies of the documents for citizens at Town Hall.
4. Following adoption of the documents, please submit to me and I will provide a completed submission package to NCDOT's Title VI Officer for approval. Once approved, a compliance report will be issued requiring the Town's signature.
5. Include the attached "Title VI Assurances for Contracts" in any contract involving NCDOT funds.
6. The Title VI Policy adopted must be renewed each year and submitted to NCDOT.

Additionally, municipalities are required to develop a method of data collection and analysis for identification of underserved populations within the municipality borders for anticipation of services. NCDOT has indicated that they will provide future guidance on how to comply with this requirement.

Should you have any questions regarding these documents or steps, please do not hesitate to contact me.

	TOWN OF CLAYTON POLICY	
	Department: Administration	Effective: January 19, 2021
Policy Title: TITLE VI NONDISCRIMINATION POLICY Version #01	Supersedes:	
	Prepared By: J. Brian Pridgen (Cauley Pridgen P.A.) Town Attorney	
	Approved By: Town Council	
	Resolution: 2021-04 Date: JAN. 19, 2021	

Title VI Nondiscrimination Policy Statement

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.

The following practices are hereby prohibited throughout the Town of Clayton to comply, at a minimum, with Title VI and related requirements:

- Denying to an individual any standard service, financial aid, or other program benefit without good cause;
- Providing any service, financial aid, or other benefit to a person which is distinct in quantity or quality, or is provided in a different manner, from that provided to others under the program;
- Subjecting a person to segregation or separate treatment in any part of a program;
- Restrictions in the enjoyment of any advantages, privileges, or other benefits enjoyed by others;
- Methods of administration which, directly or through contractual relationships, would defeat or substantially impair the accomplishment of effective nondiscrimination;
- Different standards, criteria, or other requirements for admission, enrollment, or participation in planning, advisory, contractual or other integral activities;
- Acts of intimidation or retaliation, including threatening, coercing, or discrimination against any individual for the purpose of interfering with any right or privilege secured by any pertinent nondiscrimination law, or because s/he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing;
- Discrimination in any employment resulting from a program, a primary objective of which is to provide employment.

To assure that appropriate program measures are implemented and monitored, the Town Manager will serve as the Town of Clayton's Title VI Coordinator; J.D. Solomon, (919) 553-5002. As an expression of my commitment to and support of the Town's Title VI Nondiscrimination Program, below is my signature as the Town Manager of the Town of Clayton.

This the ____ day of _____, 2021.

J.D. Solomon, Town Manager

TOWN OF CLAYTON

EXTERNAL DISCRIMINATION COMPLAINT INSTRUCTIONS

INTRODUCTION

The Town of Clayton is responsible for processing discrimination complaints filed under Title VI of the Civil Rights Act of 1964 and related nondiscrimination laws. Participants and beneficiaries of programs and activities administered or funded by the Town who feel they have been discriminated against based on race, color, national origin, income-level, Limited English Proficiency (LEP), sex, age, or disability have a right to file a complaint. Complaints of alleged discrimination will be investigated by the Town. **Note:** Religion is *only* covered under NCDOT's Right of Way program (Fair Housing) and programs funded by the Federal Aviation Administration (FAA) or Federal Transit Administration (FTA).

FILING OF COMPLAINTS

1. **Applicability** – These complaint procedures apply to NCDOT programs, activities and services, including subrecipients (e.g., municipalities, counties, Metropolitan Planning Organizations (MPO), transit agencies) and contractors (e.g., subcontractors, consultants, License Plate Agencies) receiving federal or state funds through NCDOT. **Note:** Title VI does not include internal complaints related to Equal Employment Opportunity (EEO).
2. **Eligibility** – Any person or class of persons who believes he/she has been subjected to discrimination based on race, color, national origin, income-level, LEP, sex, age, or disability, (and religion, where applicable) may file a written complaint with the Town's Title VI Coordinator. The law also prohibits intimidation or retaliation against anyone who files a complaint.
3. **Filing Options and Time Limits** – Complaints may be filed by the affected individual(s) or a representative and must be filed no later than 180 calendar days after the following:
 - The date of the alleged act of discrimination; or
 - The date when the person(s) became aware of the alleged discrimination; or
 - Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

Title VI and related discrimination complaints may be submitted to the following entities:

- **North Carolina Department of Transportation**, Office of Civil Rights, External Civil Rights, 1511 Mail Service Center, Raleigh, NC 27699-1511; 919-508-1808 or toll free 800-522-0453
- **US Department of Transportation**, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070
 - **Federal Highway Administration**, Office of Civil Rights, 1200 New Jersey Avenue, SE, 8th Floor, E81-314, Washington, DC 20590, 202-366-0693 / 202-366-0752
 - **Federal Highway Administration**, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010
 - **Federal Transit Administration**, Office of Civil Rights, ATTN: Title VI Program Coordinator, East Bldg. 5th Floor – TCR, 1200 New Jersey Avenue, SE, Washington, DC 20590
 - **Federal Motor Carrier Safety Administration**, Office of Civil Rights, 1200 New Jersey Avenue, SE, Room #W65-312, Washington, DC 20591, 202-366-8810
 - **Federal Aviation Administration**, Office of Civil Rights, 800 Independence Avenue, SW, Washington, DC 20591, 202-267-3258
- **US Department of Justice**, Special Litigation Section, Civil Rights Division, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202-514-6255 or toll free 877-218-5228

4. **Format for Complaints** – Complaints **must be in writing and signed** by the complainant(s) or a representative, and include the complainant’s name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages, including Braille. (See DISCRIMINATION COMPLAINT FORM included below.)
5. **Complaint Basis** – Allegations must be based on issues involving race, color, national origin, income-level, LEP, sex, age, or disability; (and religion, where applicable). The term “basis” refers to the complainant’s membership in a protected group category. **Note:** Religion (or creed) is *only* protected under Right of Way, Public Transportation and Aviation programs.

Protected Categories	Definition	Examples	Pertinent Statutes and Regulations	
			FHWA	FTA
Race	An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group	Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; 23 CFR 200; <i>(Executive Order 13166)</i>	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; Circular 4702.1B; <i>(Executive Order 13166)</i>
Color	Color of skin, including shade of skin within a racial group	Black, White, brown, yellow, etc.		
National Origin <i>(LEP)</i>	Place of birth. Citizenship is not a factor. <i>(Discrimination based on language or a person's accent is also covered)</i>	Mexican, Cuban, Japanese, Vietnamese, Chinese; Russian; French		
Income-Level	An individual or household determined to be low-income	Poverty status	Executive Order 12898	
Sex	The sex of an individual. <i>Note:</i> Sex under this program does not include sexual orientation.	Women and Men	1973 Federal-Aid Highway Act	Title IX of the Education Amendments of 1972
Age	Persons of any age	21 year old person	Age Discrimination Act of 1975	
Disability	Physical or mental impairment, permanent or temporary, or perceived	Blind, alcoholic, para-amputee, epileptic, diabetic, arthritic	Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990	
Religion	Creed. An individual belonging to a religious group; or the perception, based usually on distinguishable characteristics that a person is a member of a religious group	Muslim, Christian, Sikh, Hindu, etc.	Title VIII of the Civil Rights Act of 1968 (Fair Housing Act); 49 USC 47123 (FAA); 49 USC 5332 (FTA)	

COMPLAINT RECEIPT AND RESPONSE

1. The Town’s Title VI Coordinator will provide written acknowledgment of your complaint within ten (10) calendar days, by registered mail.
2. The Town will review your complaint upon receipt to ensure the required information was provided, the complaint was timely filed, and jurisdictional requirements were met.
 - a. If the complaint is complete and no additional information is needed, the Town’s Title VI Coordinator will send you a letter of acceptance as well as a Complainant Consent/Release form.
 - b. If the complaint is incomplete, you will be contacted in writing or by telephone to obtain the needed information. **Note:** Failure to respond and/or provide the requested information within 15 calendars days may be considered good cause for a determination of no investigative merit.

3. Within 15 calendar days of receiving your complaint, the Town will determine its jurisdiction in pursuing the matter and whether the complaint has sufficient merit to warrant investigation. Within five (5) days of this decision, the Town will notify you and Respondent (the person(s) against whom you have filed the complaint), by registered mail, stating the decision.
 - a. If the decision is to not investigate the complaint, the notification shall specifically state the reasons for the decision.
 - b. If the decision is to investigate the complaint, the notification shall state the grounds of the Town's jurisdiction and require your and the Respondent's full cooperation in assisting the investigator.
 - c. Interviews may be recorded during the investigation. Consent to record may be required if the interviewee is located outside of NC.
4. The Town will attempt to resolve all discrimination complaints within 60 days of accepting the complaint for investigation. Every effort will be made to obtain early resolution of complaints at the lowest level possible. The option of informal mediation between the affected parties and NCDOT staff may be utilized for resolution. The Town will make known all filing options and avenues of appeal.

DISCRIMINATION COMPLAINT FORM

Any person who believes that he/she has been subjected to discrimination based upon race, color, sex, age, national origin, disability, income-level, or limited English proficiency, may file a written complaint with the Town of Clayton's Title VI Coordinator within 180 days after the discrimination occurred.

Last Name:		First Name:		☐ Male ☐ Female
Mailing Address:		City	State	Zip
Home Telephone:	Work Telephone:	E-mail Address		

Identify the Category of Discrimination:

☐ RACE	☐ COLOR	☐ NATIONAL ORIGIN	☐ LIMITED ENGLISH PROFICIENCY	☐ AGE
☐ RELIGION	☐ DISABILITY	☐ SEX	☐ INCOME-LEVEL	

NOTE: Religion is covered as a basis **only** under NCDOT's Right of Way Unit (Fair Housing) and Public Transportation and Aviation Divisions.

Identify the Race of the Complainant

☐ Black	☐ White	☐ Hispanic	☐ Asian American
☐ American Indian	☐ Alaskan Native	☐ Pacific Islander	☐ Other _____

Date and place of alleged discriminatory action(s). Please include earliest date of discrimination and most recent date of discrimination.

Names of individuals responsible for the discriminatory action(s):

How were you discriminated against? Describe the nature of the action, decision, or conditions of the alleged discrimination. Explain as clearly as possible what happened and why you believe your protected status (basis) was a factor in the discrimination. Include how other persons were treated differently from you. **(Attach additional page(s), if necessary)**

The law prohibits intimidation or **retaliation** against anyone because he/she has either taken action, or participated in action, to secure rights protected by these laws. If you feel you have been retaliated against, separate from the discrimination alleged above, please explain the circumstances below. Explain what action you took which you believe was the cause for the alleged retaliation. **(Attach additional page(s), if necessary)**

Names of persons (witnesses, fellow employees, supervisors, or others) whom we may contact for additional information to support or clarify your complaint: (Attached additional page(s), if necessary).

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

DISCRIMINATION COMPLAINT FORM

Have you filed, or intend to file, a complaint regarding the matter raised with any of the following? If yes, please provide the filing dates. Check all that apply.

- ☐ Federal Highway Administration _____
- ☐ Federal Transit Administration _____
- ☐ Federal Motor Carrier Safety Administration _____
- ☐ US Department of Transportation _____
- ☐ Federal or State Court _____
- ☐ Other _____

Have you discussed the complaint with any Town representative? If yes, provide the name, position, and date of discussion.

Please provide any additional information that you believe would assist with an investigation.

Briefly explain what remedy, or action, are you seeking for the alleged discrimination.

****WE CANNOT ACCEPT AN UNSIGNED COMPLAINT. PLEASE SIGN AND DATE THE COMPLAINT FORM BELOW.**

COMPLAINANT'S SIGNATURE

DATE

MAIL COMPLAINT FORM TO:

TOWN OF CLAYTON
ATTN: TITLE VI COORDINATOR
P.O. Box 879, Clayton, NC 27528
919-553-5002

FOR OFFICE USE ONLY

Date Complaint Received: _____

Processed by: _____

Case #: _____

Referred to: ☐ FHWA ☐ FTA ☐ FMCSA

Date Referred: _____

TITLE VI ASSURANCES

The provisions of this section related to United States Department of Transportation (US DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21, 23 United States Code (U.S.C.) 140 and 23 CFR part 200 (or 49 CFR 303, 49 U.S.C. 5332 or 49 U.S.C. 47123) are applicable to all North Carolina Department of Transportation (NCDOT) contracts and to all related subcontracts, material supply, engineering, architectural and other service contracts, regardless of dollar amount. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.

NCDOT Title VI Assurance (1050.2A, Appendices A & E)

i. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ii. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs,

policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

NCDOT Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the US DOT that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, income-level, sex, age, or disability, (or religion, where

applicable) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

- i. During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. (*USDOJ Title VI Legal Manual, VI(F)*)
- ii. Subrecipients (e.g. cities, counties, LGAs, MPO/RPOs) may be required to prepare and submit a Title VI Program to NCDOT, which may include Title VI Nondiscrimination Assurances and/or agreements. Subrecipients must also ensure that their contractors and subrecipients comply with Title VI. (*23 CFR 200.9(b)(7)*)
- iii. If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. (*23 CFR 200.9(b)(15)*)

TITLE VI NONDISCRIMINATION PROGRAM Fact Sheet



OVERVIEW

The North Carolina Department of Transportation (NCDOT) is a recipient of Federal financial assistance from the US Department of Transportation. As a recipient of these funds, the Department must comply with Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities ("Title VI"). The NCDOT is required to have a comprehensive Title VI Nondiscrimination Program ("the Program") to prevent and eliminate discrimination in programs and activities administered by the Department. The Department's responsibilities for the Program are primarily outlined in 49 Code of Federal Regulations (CFR) part 21; 23 CFR part 200; and Federal Transit Administration Circular 4702.1B.

WHAT IS TITLE VI?

Title VI is the federal law that protects individuals and groups from discrimination on the basis of **race, color, and national origin** in all programs, services, and activities of a Federal-aid recipient. The law specifically states: "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (Title VI, the statute, is codified at 42 U.S.C. 2000d)

Other related laws have expanded the Program to protect against discrimination based on age, sex, limited English proficiency (LEP), income-level, and disability; (and creed/religion, where applicable). The intent of the Program is to remove barriers and conditions that prevent minority, low-income, LEP, and other disadvantaged persons from accessing, participating in, and benefiting from programs and activities of Federal-aid recipients.

PROGRAM RESPONSIBILITY

The Office of Civil Rights (OCR), External Civil Rights (ECR) is the focal point for the implementation of the Department's Title VI Nondiscrimination Program. ECR is required to monitor and coordinate with business units to effectively implement Title VI requirements. ECR is also responsible for determining if the Department's subrecipients are in compliance with Title VI. Subrecipients may include transit systems, metropolitan and rural planning organizations (MPOs and RPOs), local government agencies (LGAs), airport sponsors, universities, contractors, and other entities receiving funds through NCDOT (for Title VI purposes, contractors, consultants, subcontractors, and professional service firms are all considered "contractors").

WHAT IS COVERED BY TITLE VI?

As a Federal-aid recipient, all NCDOT programs, projects, services, and activities are covered by Title VI. Examples of areas covered by Title VI include, but are not limited to:

- | | |
|---|--------------------------------|
| ➤ Transportation (transit, planning, DMV, etc.) | ➤ Policy/Rulemaking activities |
| ➤ Right-of-way Acquisition | ➤ Communications |
| ➤ Contracting opportunities | ➤ Research opportunities |
| ➤ Education/training opportunities | ➤ Construction |
| ➤ Public meetings/events | ➤ Allocation of funds |

WHO MUST COMPLY?

All of NCDOT must comply. The Civil Rights Restoration Act of 1987 clarified the original intent of Title VI and restored the broad, institutional-wide scope and coverage of the statute to include **ALL** programs and activities of an agency that receives Federal financial assistance, whether such programs and activities are **federally funded or not**.

FOR ADDITIONAL INFORMATION:

Title VI Nondiscrimination Program
NCDOT Office of Civil Rights
External Civil Rights
1511 Mail Service Center
Raleigh, NC 27699-1511
919-508-1808 (Direct)

RESOLUTION TO ADOPT A TITLE VI POLICY FOR THE TOWN OF CLAYTON TO PROHIBIT DISCRIMINATION IN PROGRAMS AND SERVICES AND IN ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

WHEREAS, in 1964, Congress enacted the Civil Rights Act of 1964, which included that section labeled Title VI which prohibits discrimination in any activity which is financed by federal funds or receives federal financial assistance; and

WHEREAS, since the adoption of Title VI, additional federal regulations and court decisions have further refined the definition of “federal financial assistance” and what entities are affected and controlled by Title VI; and

WHEREAS, 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.

WHEREAS, the Town of Clayton has no formal policy in place for defining and preventing discrimination in the activities and for the entities Title VI affects; and

WHEREAS, the interpretation and application are not intuitive or readily understood, requiring an understanding of what “federal financial assistance” might be in any particular situation and what persons or entities must comply with Title VI; and

WHEREAS, a policy and procedure for reporting violations will provide guidelines for the Town, Town Departments and private persons and companies doing business with the Town and receiving federal financial assistance.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of Commissioners of the Town of Clayton that the attached “Title VI Policy” is hereby adopted as the official policy of the Town of Clayton for applying, reporting and enforcing Title VI of the Civil Rights Act of 1964.

AND BE IT FURTHER RESOLVED that the Town Manager be designated as the Town’s Title VI Coordinator to assure that appropriate program measures are implemented and monitored.

IT IS FURTHER RESOLVED that the Town Manager is authorized to approve this policy on a yearly basis if no changes are made to it.

Duly adopted this the 19th day of January, 2021, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

January 19, 2021

Agenda Location

New Business

Item Title

COVID-19 Parks & Recreation and Library Opening Update

Presenter

JD Solomon, Town Manager

Summary/Description

Discussion will be on partial and full openings to the public of the Parks and Recreation facilities as well as the Library. Units of local government are currently treating, in some cases, the re-opening of these facilities differently than their other facilities such as town halls.

Benchmarking in neighboring cities and towns have been completed on this subject.

Staff is working on a plan and proper procedures that will need to take place to reopen these facilities in the Mrch timeframe.

Requested Action

Informational Only

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Slideshow Presentation

Meeting Timeline

Click or tap here to enter text.