



**PROJECT MANUAL
FOR**

Village Hall Park

VILLAGE OF MARVIN, NORTH CAROLINA

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DEFINITIONS

- A. General: Basic Contract definitions are included in the Conditions of the Contract.
- B. "Approved": When used to convey Architect's action on Contractor's submittals, applications, and requests, "approved" is limited to Architect's duties and responsibilities as stated in the Conditions of the Contract.
- C. "Directed": A command or instruction by Architect. Other terms including "requested," "authorized," "selected," "required," and "permitted" have the same meaning as "directed."
- D. "Indicated": Requirements expressed by graphic representations or in written form on Drawings, in Specifications, and in other Contract Documents. Other terms including "shown," "noted," "scheduled," and "specified" have the same meaning as "indicated."
- E. "Regulations": Laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, and rules, conventions, and agreements within the construction industry that control performance of the Work.
- F. "Furnish": Supply and deliver to Project site, ready for unloading, unpacking, assembly, installation, and similar operations.
- G. "Install": Unload, temporarily store, unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, protect, clean, and similar operations at Project site.
- H. "Provide": Furnish and install, complete and ready for the intended use.
- I. "Project Site": Space available for performing construction activities. The extent of Project site is shown on Drawings and may or may not be identical with the description of the land on which Project is to be built.
- J. "Mass Rock": Any material that cannot be dislodged by a Caterpillar D-8 bulldozer, or equivalent, equipped with a single tooth ripper, without the use of impact hammers, drilling, or blasting. Boulders or masses of rock exceeding ½ cubic yard in volume may also be considered mass rock. These classifications do not include materials such as loose rock, concrete, or other materials that can be removed by means other than impact hammering, but which for any reason, such as economic reasons, the Contractor chooses to remove by impact hammering.
- K. "Trench Rock": Any material that cannot be dislodged by a Caterpillar 325 hydraulic backhoe, or equivalent, without the use of impact hammers or drilling and blasting. Boulders or masses of rock exceeding ½ cubic yard in volume may also be considered trench rock. These classifications do not include materials such as loose rock, concrete, or other materials that can be removed by means other than impact hammering, but which for any reason, such as economic reasons, the Contractor chooses to remove by impact hammering.

INDUSTRY STANDARDS

- A. Applicability of Standards: Unless the Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the Contract Documents to the extent referenced. Such standards are made a part of the Contract Documents by reference.
- B. Publication Dates: Comply with standards in effect as of date of the Contract Documents unless otherwise indicated.
- C. Copies of Standards: Each entity engaged in construction on Project should be familiar with industry standards applicable to its construction activity. Copies of applicable standards are not bound with the Contract Documents.
 - 1. Where copies of standards are needed to perform a required construction activity, obtain copies directly from publication source.

ABBREVIATIONS AND ACRONYMS

- A. Industry Organizations: Where abbreviations and acronyms are used in Specifications or other Contract Documents, they shall mean the recognized name of the entities indicated in Gale's "Encyclopedia of Associations: National Organizations of the U.S." or in Columbia Books' "National Trade & Professional Associations of the United States."

INVITATION FOR BIDS

Marvin Village Hall

Date: August 11, 2025

BID ID # 1000

The Village of Marvin will be accepting sealed bids for the construction of the new Village Hall Park that will be located at 10006 Marvin School Road, Marvin NC 28173; all bids are subject to all terms, conditions, and provisions, etc., set forth herein and attached. A single combined bid package encompassing all General contracting services for construction of a new Village Hall Park shall be accepted from August 13th, 2025 until August 21st, 2025 at 1:00 p.m. E.S.T. The extent of the work is shown on the drawings prepared by Dewberry Engineers Inc. titled "Village Hall Park Phase 1" and dated "6/4/2025" & specified in the project manual. Any questions must be submitted to Tyler Huneycutt (thuneycutt@marvinnc.gov) and Christina Amos (manager@marvinnc.gov) by 5:00 pm on August 15th. All sealed bids shall be submitted to the Village of Marvin either in person or by mail to the attention of the Village Manager, Christina Amos, or Recreation Manager, Tyler Huneycutt by 1:00 p.m. E.S.T. on August 21st, 2025 at 10006 Marvin School Road, Marvin, NC 28173 at which time and location all bids will be opened and announced publicly. Facsimiles or electronic responses are not acceptable. For purposes of exact time determination, the clock in the Village of Marvin Council Room will be used. **LATE BIDS WILL NOT BE ACCEPTED.**

It is the intent of the Village to award a Contract to the lowest responsive, responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. However, the Village reserves the right to reject any and all bids. The Village reserves the sole right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Village's judgment, is in the Village's own best interests. Alternates will be reviewed in consideration of the overall project cost to determine feasibility within the project budget. The Village shall accept or reject any alternates in any order or combination. To determine the lowest bidder, the Village shall calculate the sum of the total base bid and/or the deduction or addition of the alternates, if accepted.

For more project information, call Tyler Huneycutt, Recreation Events Coordinator at 704-843-1680 or Thuneycutt@marvinnc.gov

INSTRUCTIONS TO BIDDERS

Page 1 of 3

The Village of Marvin (hereafter, the “Village” or “Owner”) will receive sealed bids for the following Project:

PROJECT NAME: Village Hall Park

SCOPE OF WORK: Construction of a new park adjacent to the existing Village of Marvin Town Hall shall include a lawn area, a graded pad for future amphitheater, pervious concrete sidewalk, a gravel hiking trail connection, a underground rainwater cistern, an enhanced landscape planting area, storm drainage, and landscaping. For reference the construction documents are attached.

BIDDING SUBSTITUTION/PRIOR APPROVAL REQUESTS: Requests for changes in products, materials, equipment, and methods of construction from those indicated in the Bidding and Contracting Documents, shall be submitted prior to receipt of bids. (See Attachments 1, 2 and 3, hereby incorporated by reference.)

CONTRACT DOCUMENTS: The Contract Documents are this Project Manual (which contains the Invitation to Bid, Instructions to Bidders, Bid Documents, Agreement, Forms, Supplementary General Conditions, MBE Guidelines, Dispute Resolution Requirements, and Specifications), the Plans & Drawings, and any addenda. Contractors shall adhere to the specifications in the project plans including but not limited to sheets SP1-SP3.

BID DEADLINE: All sealed bids shall be submitted to the Village of Marvin either in person or by mail to the attention of Village Manager, Christina Amos, or Recreation Activities Coordinator, Tyler Huneycutt by August 21, 2025 at 1:00 p.m. E.S.T. at 10006 Marvin School Road, Marvin, NC 28173 at which time and location all bids will be opened and announced publicly by the Project Architect.

TIMELINE:

Project Advertisement	August 13, 2025
Bid Documents Available	August 13, 2025
Bids due by 1:00 PM EST	August 21 st , 2025
Village Council to Award Contract	September 9th, 2025
Completion of Project	November 30, 2026

CONTENT OF BID: Each Bid shall contain the following fully-completed forms / documents:

- Instructions to Bidders
- Bid Proposal Form
- Representative Projects Form
- Execution of Bid Form
- Bid Bond
- MBE Forms
- Bidding Substitution Request Form

INSTRUCTIONS TO BIDDERS

Page 2 of 3

All Bids shall be placed in a sealed envelope with the following information printed on the outside of the envelope:

BID FOR:	<u>Village Hall Park</u> <i>Project Name</i>	BID ID # 1000
BIDDER'S NAME:	_____	
	<i>Contractor's Name</i>	
DO NOT OPEN UNTIL:	<u>August 21st, 2025 1:00 p.m. E.S.T</u> <i>Bid Opening Date & Time</i>	

BID BOND: Each proposal must be accompanied by a Bid Deposit of cash, certified check or a fully executed Bid Bond payable to the Village of Marvin in an amount of five percent (5%) of the gross amount of the base-bid proposal executed in accordance with and conditioned as prescribed by North Carolina General Statute 143-129 as amended.

BIDS ARE FIRM OFFERS: All Bids shall be firm offers to contract for 120 days from the Bid Deadline. Unless forfeited, Bid Bonds shall be returned to Bidders upon the earlier of Contract Award or 180 days from the Bid Deadline.

BID PHASE CONTACT: For questions regarding the Project or Instructions to Bidders, contact: Christina Alphin, Village Administrator. The Village will attempt to answer all questions in writing by addenda. **THE VILLAGE WILL NOT MAKE ORAL REPRESENTATIONS AND BIDDERS MAY NOT RELY ON ORAL REPRESENTATIONS.**

ADDENDA: Addenda will be filed on Village's website and delivered by email to all persons who have requested Contract Documents. The Bidder shall be responsible for inquiring if Addenda have been issued.

SELECTION CRITERIA: It is the intent of the Village to award a Contract to the lowest responsive, responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. However, the Village reserves the right to reject any and all bids. The Village reserves the sole right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Village's judgment, is in the Village's own best interests. Alternates will be reviewed in consideration of the overall project cost to determine feasibility within the project budget. The Village shall accept or reject any alternates in any order or combination. To determine the lowest bidder, the Village shall calculate the sum of the total base bid and/or the deduction or addition of the alternates, if accepted. Consideration will be given only to Bids from contractors who are properly licensed, bonded, experienced in the class of work proposed and who can refer to projects of similar magnitude and character that have been completed by them.

ONLY 1 BID PER ENTITY: No entity or person may submit or participate in the submission of more than one (1) Bid.

INSTRUCTIONS TO BIDDERS

NEGOTIATIONS WITH APPARENT LOW BIDDER: The Village reserves the right to negotiate with the lowest responsive and responsible bidder if the bid exceeds estimated costs or available funds. Negotiations may include reduction in bid price, modification, and/or reduction in scope of the work, substitution of materials, or any other alterations to the work, so that the low bid is reduced to within available funds, including a reasonable fund balance for contingency funds to be available during the course of construction.

CONTRACT AWARD: The Village will inform the Selected Bidder of its selection and request that the Selected Bidder submit the executed Agreement plus insurance certificates and payment and performance bonds. The Selected Bidder shall submit the requested documents so that they are received by Village within 10 calendar days (or such other time as designated by Village) from the date of notice of selection. The Selected Bidder's failure to do so will result in forfeiture of its bid bond. The contract shall not be deemed awarded and this Agreement shall not be binding on the Village unless and until both the Selected Bidder and Village have both executed the Agreement.

MBE Goal: The MBE participation goal for this contract is 10%.

Signed by: _____ Printed: _____
(Contractor's authorized company representative)

Contractor's Name: _____

INSTRUCTIONS TO BIDDERS -- ATTACHMENT 1

BIDDING SUBSTITUTIONS:

1 QUALITY ASSURANCE

- A. Compatibility of Substitutions: Investigate and document compatibility of proposed substitution with related products and materials. Engage a qualified testing agency to perform compatibility tests recommended by manufacturers.

2 BIDDING SUBSTITUTIONS

- A. Bidding Substitutions, General: By submitting a bid, the Bidder represents that its bid is based on materials and equipment described in the Bidding and Contracting Documents, including Addenda. Bidders are encouraged to request approval of qualifying substitute materials and equipment when the Specifications Sections list materials and equipment by product or manufacturer name.
- B. Bidding Substitution Requests will be received and considered by Owner when the following conditions are satisfied, as determined by Architect; otherwise requests will be returned without action:
 - 1. Extensive revisions to the Contract Documents are not required.
 - 2. Proposed changes are in keeping with the general intent of the Contract Documents, including the level of quality of the Work represented by the requirements therein.
 - 3. The request is fully documented and properly submitted.

3 SUBMITTALS

- A. Bidding Substitution Request: Submit to Project Architect. Bidding Substitution Request must be made in writing to the Project Architect in compliance with the following requirements:
 - 1. Requests for substitution of materials and equipment will be considered if received no later than 10 days prior to date of bid opening.
 - 2. Submittal Format: Submit single electronic copy of each written Bidding Substitution Request, using form included in the Project Manual.
 - a. Identify the product or the fabrication or installation method to be replaced in each request. Include related Specifications Sections and drawing numbers.
 - b. Provide complete documentation on both the product specified and the proposed substitute, including the following information as appropriate:
 - 1) Point-by-point comparison of specified and proposed substitute product data, fabrication drawings, and installation procedures.
 - 2) Copies of current, independent third-party test data of salient product or system characteristics.
 - 3) Samples where applicable or when requested by Architect.

- 4) Detailed comparison of significant qualities of the proposed substitute with those of the Work specified. Significant qualities may include attributes such as performance, weight, size, durability, visual effect, sustainable design characteristics, warranties, and specific features and requirements indicated. Indicate deviations, if any, from the Work specified.
 - 5) Material test reports from a qualified testing agency indicating and interpreting test results for compliance with requirements indicated.
 - 6) Research reports, where applicable, evidencing compliance with building code in effect for Project, from ICC-ES.
 - 7) Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by Owner and separate contractors, which will become necessary to accommodate the proposed substitute.
- c. Provide certification by manufacturer that the substitute proposed is equal to or superior to that required by the Bidding and Contracting Documents, and that its in-place performance will be equal to or superior to the product or equipment specified in the application indicated.
- d. Bidder, in submitting the Bidding Substitution Request, waives the right to additional payment or an extension of Contract Time because of the failure of the substitute to perform as represented in the Bidding Substitution Request.

INSTRUCTIONS TO BIDDERS -- ATTACHMENT 2

BIDDER REQUEST FOR INFORMATION FORM

Use this form to request information required for completing bid when information is not contained in the Bidding Documents. Response to request is a clarification only and does not constitute a change to the requirements of the Bidding Documents unless incorporated in a written Addendum.

Project: **Village Hall Park**

Project No.: 1000 UAG#2020-66

To: _____ Specification Section #: _____

Contractor: _____

Attn. _____

Requested by: _____

Phone: _____

Phone:

Email: _____

Email: _____

Bidder's Inquiry:

[illegible]

Signed:

Owner's Response:

[illegible]

Signed:

Date:

INSTRUCTIONS TO BIDDERS – ATTACHMENT 3

BIDDERS SUBSTITUTION/PRIOR APPROVAL REQUEST FORM

Submit this completed form with required attachments to request prior approval of product when specifications list required products by name. Request is not required when specifications list products by name and include the terms "Available Products," "Or equal," or "Or equivalent product; in such circumstances, evaluation will be made at time of Contractor submittal. Refer to Instructions to Bidders.

Project: Village Hall Park Project No.: 1000 UAG#2020-66
To: _____ Specification Section #: _____
_____ Contractor: _____
Attn.: _____ Requested by: _____
Phone: _____ Phone: _____
Email: _____ Email: _____

Specified Product/Fabrication Method

(List name/description; model no.; manufacturer): _____

Required Information for **Specified** Product:

Point by Point Comparative Product Data

Tests

Reports

Fabrication Drawings

Samples (Where Applicable)

Attached:

☐☐☐☐☐

Proposed Product/Fabrication Method

(List trade name/description; model no.; manufacturer) : _____

Required Information for **Proposed** Product:

Annotated copy of applicable specification

Point by Point Comparative Product Data

Tests

Reports

Fabrication Drawings

Samples (Where Applicable)

List of Related Changes/Modifications:

Attached:

☐ (Required)

☐ (Required)

☐☐☐☐

Differences between proposed substitution
and specified product:

Proposed product/fabrication method ☐ No
affects other parts of the Work ☐ Yes: Explain _____

Undersigned certifies:

- Proposed substitution has been fully investigated and determined to be equal or superior in all respects to specified product as utilized for this project, except as noted herein.
- Qualifications of manufacturer, installer, and other specified parties meet the specified qualifications.
- Same special warranty will be furnished for proposed substitution as for specified product.
- Same maintenance service and source for replacement parts, as applicable, is available as that specified.
- Proposed substitution does not affect dimensions and functional clearances, except as noted herein.

**For the Bidder
(Required):**

Submitted by: _____
Signed: _____
Firm: _____
Telephone: _____
Fax: _____
Email: _____

**For the Manufacturer
(Required):**

Submitted by: _____
Signed: _____
Firm: _____
Telephone: _____
Fax: _____
Email: _____

BID DOCUMENTS

1. Bid Proposal Form
2. Representative Projects Form
3. Execution of Bid Form
4. Bid Bond
5. MBE Forms
6. Bidding Substitution/Prior Approval Request Form, if applicable

BID PROPOSAL FORM

Page 1 of 2

**PROJECT NAME: VILLAGE HALL Park
10006 MARVIN SCHOOL ROAD
MARVIN, NC 28173**

NAME OF BIDDER:_____

The undersigned bidder hereby offers, in the lump sum amount stated below, to furnish all labor, materials, tools, equipment, apparatus, facilities, transportation and permits for the construction of the Village of Marvin Village Hall at 10006 Marvin School Road, Marvin, NC, if this offer is accepted by the Village.

TOTAL AMOUNT OF BASE BID \$ _____ **LUMP SUM**
(use figures only)

The base bid amount is to be stated in figures only and is the total amount bid for the entire contract work including all applicable allowances and taxes. Any alteration, erasure, or change must be clearly indicated and initialed by the bidder. The bidder agrees that if there are any discrepancies or questions in the figures, the Village will use the lower figure despite the bidder's intent.

ALLOWANCES AND UNIT PRICES

Item No.	Description	Unit	Estimated Qty	Bid Unit Price	Bid Price
1.	Unsuitable Soil Replacement	CY	75		
2.	Unsuitable Soil Undercut and Removal	CY	75		
3.	Mass Rock Removal	CY	50		
4.	Trench Rock Removal	CY	50		
Total of All Unit Price Bid Items					\$

BID PROPOSAL FORM

Page 2 of 2

ACKNOWLEDGEMENT OF ADDENDA:

The undersigned acknowledges receipt of the following addenda:

No. _____	Dated: _____	No. _____	Dated: _____
No. _____	Dated: _____	No. _____	Dated: _____
No. _____	Dated: _____	No. _____	Dated: _____

SUBMITTED BY:

The undersigned agrees to begin work promptly upon receipt of Notice to Proceed and to pursue the work with an adequate work force to complete the work within **8 months** from the Notice to Proceed. Liquidated Damages of **Five Hundred and 00/100 Dollars (\$500.00)** per calendar day are hereby agreed upon as assessment from the Contractor for failure to complete the work within the time period stated herein.

Company Name: _____

Mailing Address: _____

City/State/Zip: _____

Telephone: _____ Email: _____

Printed Name: _____ Title: _____

Signature: _____ NC Gen. Contractor
License #: _____

REPRESENTATIVE PROJECTS FORM

1. Project: _____
Owner: _____
Contract Price: _____
Date Completed: _____
Owner Contact: _____

2. Project: _____
Owner: _____
Contract Price: _____
Date Completed: _____
Owner Contact: _____

3. Project: _____
Owner: _____
Contract Price: _____
Date Completed: _____
Owner Contact: _____

Contractor Name:

EXECUTION OF BID FORM

PROJECT NAME: Village Hall Park

The person executing the Bid, on behalf of the Bidder, being first duly sworn, deposes and says that:

- (1) It is the intent of the Bidder to enter into this Contract to furnish materials, labor, and equipment required to perform all work specified in accordance with the instructions, terms, conditions, provisions, specifications, plans and all other Contract Documents incorporated into this Invitation to Bid;
- (2) He/she is fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances regarding such Bid;
- (3) Neither he/she, nor any official, agent or employee of the Bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is a restraint of free competitive bidding in connection with is Bid;
- (4) He/she will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability, or veteran's status; and

Type of Bidder: ☐ Sole Proprietor ☐ Partnership ☐ Limited Liability Company
☐ Corporation ☐ Joint Venture (Check appropriate box)

BIDDER # _____ (# to be filled in by Village)

Name _____

Address _____

Phone _____

Fax _____

Printed Name _____

SIGNATURE _____

Title _____

NC General Contractor's
License Number _____

Classification _____

Limits _____

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

Signature
My commission expires _____

BID BOND

(Attach Bond to this sheet)

MBE FORMS

(Attach appropriate forms to this sheet)

BIDDING SUBSTITUTION/ PRIOR APPROVAL REQUEST FORM

(Attach to this sheet, if applicable)

AGREEMENT

1. Agreement for Construction attached in appendix
2. Surety Company Contacts
3. Performance Bond
4. Payment Bond
5. Certificate of Insurance

AGREEMENT FOR CONSTRUCTION

Contractor shall adhere to all conditions within the AIA contracts herein attached within the Appendix of this manual.

To be completed by Village of Marvin:

The Agreement/s herein as attached has been pre-audited in the manner required by the “Local Government Budget and Fiscal Control Act.”

By: _____
Finance Officer

Date: _____

SURETY COMPANY CONTACTS

PERFORMANCE BOND NO.

Surety Name:

Address:

Phone No.:

Contact:

PAYMENT BOND NO.

Surety Name:

Address:

Phone No.:

Contact:

Attach PERFORMANCE BOND to this sheet.

Attach PAYMENT BOND to this sheet.

Attach CERTIFICATE OF INSURANCE to this sheet.

FORMS

1. Contractor's Affidavit Release and Waiver of Claim
2. Contractor's Affidavit of Payment of Debts and Claims
3. State/ County Sales/Use Tax Statement

CONTRACTOR'S AFFIDAVIT RELEASE AND WAIVER OF CLAIM

STATE OF _____ COUNTY OF _____

_____, (Name) _____, (Title) _____

_____, (Contractor) _____, being first dully sworn, deposes and says that:

The undersigned is authorized to execute this Affidavit, Release and Waiver of Claim on behalf of the Contractor and that he has personal knowledge of all facts set forth herein;

Project: _____ Project No. _____

All payrolls, material bills, sales tax, social security tax, state and federal unemployment insurance, and all other liabilities and taxes owed by the Contractor and arising in any manner from the above-described project have been paid in full;

No claim or lien exists in favor of any supplier of materials or labor or in favor of any subcontractor furnishing materials or labor on the above-described project;

Notwithstanding the foregoing, if the Village of Marvin, or property of the Village of Marvin, is subject to any claim or lien that arises in any manner from the failure of the Contractor to pay any liability described above, the Contractor will indemnify and hold the Village of Marvin harmless for any amount that the Village of Marvin is required to pay to discharge such lien or settle such claim and, further, will pay the Village of Marvin's expenses, costs, and attorney fees incurred in connection therewith;

All claims, suits, and proceedings of every name, description, or nature arising out of the above project against the Village of Marvin, its officers, employees, and agents have been settled;

The Contractor releases and waives any and all claims of every type and description that the Contractor may have against the Village of Marvin arising in any manner from the construction of the above-described project.

By _____ Date _____

Title _____

Sworn to and subscribed before me this _____ day of _____, 20____

(Notary Public)

My commission expires _____

CONTRACTORS' AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS

To: (Owner) _____ Contract For:

Project Name and Address: _____ Contract Date:

State of North Carolina County of _____

The undersigned hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed , for all sub-contractors services and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner of his property might in any way be held responsible.

Exceptions:

Contractor:

Address :

By:

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

Notary Public:

My Commission Expires:

STATE/COUNTY SALES/USE TAX STATEMENT

Project: _____ -

Contractor / Subcontractor _____

Period Covered _____

Invoice No.	Invoice Date	Vendor's Name	Amount Before Taxes	NC Tax	County Tax	Total Invoice Amount	County Paid

I certify that the above-listed vendors were paid sales tax upon purchases of building material during the period covered by the construction estimate, and the property upon which such taxes were paid were, or will be, used in the performance of this Contract. The list above does not include any taxes paid on purchases of tangible personal property that does not annex to, affix to, or in some manner become a part of the project, building, structure or repairs.

Signed _____

Title _____

SUPPLEMENTARY GENERAL CONDITIONS

- I. Scope of Work
- II. Control of Work
- III. Prosecution of Progress
- IV. Measurement and Payment
- V. Miscellaneous

I. SCOPE OF WORK

1.1 ALTERATION OF WORK AND QUANTITIES – CHANGE ORDERS

The Owner (herein referenced within this document to mean the Village of Marvin) reserves and shall have the right to make such alterations in the Work as may be necessary or desirable to complete the Work in the manner acceptable to Owner. Unless otherwise specified herein, the Owner may make such alterations in the Work as may increase or decrease the originally awarded Contract quantities and otherwise may add to or decrease the scope of Work. The alterations will be memorialized in a written Change Order executed by Owner and Contractor.

Pricing the alterations:

The Owner and the Contractor shall negotiate in good faith an appropriate adjustment and shall conclude these negotiations as expeditiously as possible.

Adjustments to time for alterations: Shall be governed by Section 3.4 of the Supplementary General Conditions.

Interim Directed Changes: Prior to reaching agreement with the Contractor on an adjustment to the Contract Price or Contract Time, if any, the Owner may issue a written Interim Directed Change directing the alteration to proceed pending an agreement.

1.2 MAINTENANCE OF TRAFFIC

When the Contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of Work that is otherwise provided for in the Contract Documents, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flagmen, and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein.

The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the Contractor will not be required to furnish snow removal for such existing road, street, or highway.

1.3 FINAL CLEANING UP

Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property owner.

1.4 ACCESS TO THE WORK

The Contractor shall identify access routes with suitable signs, barricades and similar equipment.

The entire access route and construction site shall be kept free and clean of all debris at all times and maintained in good repair by the Contractor. All damage to the access route caused by the actions of the Contractor or his agents shall be immediately repaired to the satisfaction of the Owner.

Contractor' vehicles, equipment, and materials may be stored in the area designated on the Plans, or by the Owner. Upon completion of the work, the storage area shall be cleaned up and returned to its original condition to the satisfaction of the Owner. No special payment will be made for clean up and restoration of the storage area.

1.5 MAINTENANCE DURING CONSTRUCTION

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the total cost of the contract, and the Contractor will not be paid an additional amount for such work.

END OF SCOPE OF WORK

II. CONTROL OF WORK

QUALITY REQUIREMENTS

2.1 SUMMARY

- A. Section includes administrative and procedural requirements for quality assurance and quality control.
- B. Testing and inspecting services are required to verify compliance with requirements specified or indicated. These services do not relieve Contractor of responsibility for compliance with the Contract Document requirements. The Owner shall hire a testing firm for tests, inspections and approvals. The Contractor shall give the Testing Firm and Consultant timely notice of when and where tests and inspections are to be made so they may be present for such procedures. The Consultant or Owner's Representative shall define the nature of the testing criteria for testing contract purposes.

If such procedures for testing, inspections or approval reveals failure of portions of the Work to comply with requirements established by the Contract Documents, laws, ordinances, rules or regulations – All necessary costs for re-testing, additional Consultant's fee, repair of the Work shall be paid by the Contractor.

The Testing Firm shall distribute the certification of tests, inspections, or approvals to the Owner, Contractor, and Consultant.

- 1. Specified tests, inspections, and related actions do not limit Contractor's other quality-assurance and -control procedures that facilitate compliance with the Contract Document requirements.
- 2. Requirements for Contractor to provide quality-assurance and -control services required by Architect, Owner, or authorities having jurisdiction are not limited by provisions of this Section.

2.2 DEFINITIONS

- A. Quality-Assurance Services: Activities, actions, and procedures performed before and during execution of the Work to guard against defects and deficiencies and substantiate that proposed construction will comply with requirements.
- B. Quality-Control Services: Tests, inspections, procedures, and related actions during and after execution of the Work to evaluate that actual products incorporated into the Work and completed construction comply with requirements. Services do not include contract enforcement activities performed by Architect.
- C. Mockups: Full-size physical assemblies that are constructed on-site. Mockups are constructed to verify selections made under Sample submittals; to demonstrate aesthetic effects and, where indicated, qualities of materials and execution; to review coordination, testing, or operation; to show interface between dissimilar materials; and to demonstrate compliance with specified installation tolerances. Mockups are not Samples. Unless otherwise indicated, approved mockups establish the standard by which the Work will be judged.

- D. Preconstruction Testing: Tests and inspections performed specifically for Project before products and materials are incorporated into the Work, to verify performance or compliance with specified criteria.
- E. Product Testing: Tests and inspections that are performed by an NRTL, an NVLAP, or a testing agency qualified to conduct product testing and acceptable to authorities having jurisdiction, to establish product performance and compliance with specified requirements.
- F. Source Quality-Control Testing: Tests and inspections that are performed at the source, e.g., plant, mill, factory, or shop.
- G. Field Quality-Control Testing: Tests and inspections that are performed on-site for installation of the Work and for completed Work.
- H. Testing Agency: An entity engaged to perform specific tests, inspections, or both. Testing laboratory shall mean the same as testing agency.
- I. Installer/Applicator/Erector: Contractor or another entity engaged by Contractor as an employee, Subcontractor, or Sub-subcontractor, to perform a particular construction operation, including installation, erection, application, and similar operations.
 - 1. Use of trade-specific terminology in referring to a trade or entity does not require that certain construction activities be performed by accredited or unionized individuals, or that requirements specified apply exclusively to specific trade(s).
- J. Experienced: When used with an entity or individual, "experienced" means having successfully completed a minimum of five previous projects similar in nature, size, and extent to this Project; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction.

2.3 CONFLICTING REQUIREMENTS

- A. Referenced Standards: If compliance with two or more standards is specified and the standards establish different or conflicting requirements for minimum quantities or quality levels, comply with the most stringent requirement. Refer conflicting requirements that are different, but apparently equal, to Architect for a decision before proceeding.
- B. Minimum Quantity or Quality Levels: The quantity or quality level shown or specified shall be the minimum provided or performed. The actual installation may comply exactly with the minimum quantity or quality specified, or it may exceed the minimum within reasonable limits. To comply with these requirements, indicated numeric values are minimum or maximum, as appropriate, for the context of requirements. Refer uncertainties to Architect for a decision before proceeding.

2.4 INFORMATIONAL SUBMITTALS

- A. Contractor's Statement of Responsibility: When required by authorities having jurisdiction, submit copy of written statement of responsibility sent to authorities having jurisdiction before starting work on the following systems:
 - 1. Seismic-force-resisting system, designated seismic system, or component listed in the designated seismic system quality-assurance plan prepared by Architect.
 - 2. Main wind-force-resisting system or a wind-resisting component listed in the wind-force-resisting system quality-assurance plan prepared by Architect.
- B. Testing Agency Qualifications: For testing agencies specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include proof of qualifications in the form of a recent report on the inspection of the testing agency by a recognized authority.

2.5 REPORTS AND DOCUMENTS

- A. Test and Inspection Reports: Prepare and submit certified written reports specified in other Sections.
- B. Manufacturer's Field Reports: Prepare written information documenting tests and inspections specified in other Sections.
- C. Permits, Licenses, and Certificates: For Owner's records, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, correspondence, records, and similar documents, established for compliance with standards and regulations bearing on performance of the Work.

2.6 QUALITY ASSURANCE

- A. General: Qualifications paragraphs in this article establish the minimum qualification levels required; individual Specification Sections specify additional requirements.
- B. Manufacturer Qualifications: A firm experienced in manufacturing products or systems similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- C. Fabricator Qualifications: A firm experienced in producing products similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- D. Installer Qualifications: A firm or individual experienced in installing, erecting, or assembling work similar in material, design, and extent to that indicated for this Project, whose work has resulted in construction with a record of successful in-service performance.
- E. Professional Engineer Qualifications: A professional engineer who is legally qualified to practice in jurisdiction where Project is located and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for installations of the

system, assembly, or product that are similar in material, design, and extent to those indicated for this Project.

- F. Specialists: Certain Specification Sections require that specific construction activities shall be performed by entities who are recognized experts in those operations. Specialists shall satisfy qualification requirements indicated and shall be engaged for the activities indicated. Requirements of authorities having jurisdiction shall supersede requirements for specialists.
- G. Testing Agency Qualifications: An NRTL, an NVLAP, or an independent agency with the experience and capability to conduct testing and inspecting indicated, as documented according to ASTM E 329; and with additional qualifications specified in individual Sections; and, where required by authorities having jurisdiction, that is acceptable to authorities.
 - 1. NRTL: A nationally recognized testing laboratory according to 29 CFR 1910.7.
 - 2. NVLAP: A testing agency accredited according to NIST's National Voluntary Laboratory Accreditation Program.
- H. Manufacturer's Representative Qualifications: An authorized representative of manufacturer who is trained and approved by manufacturer to observe and inspect installation of manufacturer's products that are similar in material, design, and extent to those indicated for this Project.
- I. Preconstruction Testing: Where testing agency is indicated to perform preconstruction testing for compliance with specified requirements for performance and test methods, comply with the following:
 - 1. Contractor responsibilities include the following:
 - a. Provide test specimens representative of proposed products and construction.
 - b. Submit specimens in a timely manner with sufficient time for testing and analyzing results to prevent delaying the Work.
 - c. Build laboratory mockups at testing facility using personnel, products, and methods of construction indicated for the completed Work.
 - d. When testing is complete, remove test specimens, assemblies, and mockups; do not reuse products on Project.
 - 2. Testing Agency Responsibilities: Submit a certified written report of each test, inspection, and similar quality-assurance service to Architect, with copy to Contractor. Interpret tests and inspections and state in each report whether tested and inspected work complies with or deviates from the Contract Documents.
- J. Mockups: Before installing portions of the Work requiring mockups, build mockups for each form of construction and finish required to comply with the following requirements, using materials indicated for the completed Work:
 - 1. Build mockups in location and of size indicated or, if not indicated, as directed by Architect.
 - 2. Notify Architect seven days in advance of dates and times when mockups will be constructed.
 - 3. Demonstrate the proposed range of aesthetic effects and workmanship.

4. Obtain Architect's approval of mockups before starting work, fabrication, or construction. a.

Allow seven days for initial review and each re-review of each mockup.

5. Maintain mockups during construction in an undisturbed condition as a standard for judging the completed Work.
6. Demolish and remove mockups when directed unless otherwise indicated.

2.7 QUALITY CONTROL

- A. Owner/Contractor Responsibilities: Perform quality-control activities required to verify that the Work complies with requirements, whether specified or not.
 1. Engage a qualified testing agency to perform these quality-control services.
 2. Notify testing agencies at least 24 hours in advance of time when Work that requires testing or inspecting will be performed.
 3. Submit additional copies of each written report directly to authorities having jurisdiction, when they so direct.
- B. Manufacturer's Field Services: Where indicated, engage a manufacturer's representative to observe and inspect the Work. Manufacturer's representative's services include examination of substrates and conditions, verification of materials, inspection of completed portions of the Work, and submittal of written reports.
- C. Retesting/Reinspecting: Provide quality-control services, including retesting and reinspecting, for construction that replaced Work that failed to comply with the Contract Documents.
- D. Testing Agency Responsibilities: Cooperate with Architect and Contractor in performance of duties. Provide qualified personnel to perform required tests and inspections.
 1. Notify Architect and Contractor promptly of irregularities or deficiencies observed in the Work during performance of its services.
 2. Determine the location from which test samples will be taken and in which in-situ tests are conducted.
 3. Conduct and interpret tests and inspections and state in each report whether tested and inspected work complies with or deviates from requirements.
 4. Submit a certified written report, in duplicate, of each test, inspection, and similar quality-control service through Contractor.
 5. Do not release, revoke, alter, or increase the Contract Document requirements or approve or accept any portion of the Work.
 6. Do not perform any duties of Contractor.
- E. Associated Services: Cooperate with agencies performing required tests, inspections, and similar quality-control services, and provide reasonable auxiliary services as requested. Notify agency sufficiently in advance of operations to permit assignment of personnel. Provide the following:
 1. Access to the Work.
 2. Incidental labor and facilities necessary to facilitate tests and inspections.

3. Adequate quantities of representative samples of materials that require testing and inspecting. Assist agency in obtaining samples.
4. Facilities for storage and field curing of test samples.
5. Delivery of samples to testing agencies.
6. Preliminary design mix proposed for use for material mixes that require control by testing agency.
7. Security and protection for samples and for testing and inspecting equipment at Project site.

F. Coordination: Coordinate sequence of activities to accommodate required quality-assurance and -control services with a minimum of delay and to avoid necessity of removing and replacing construction to accommodate testing and inspecting.

1. Schedule times for tests, inspections, obtaining samples, and similar activities.

2.8 SPECIAL TESTS AND INSPECTIONS

A. Special Tests and Inspections: Conducted by a qualified special inspector as required by authorities having jurisdiction, as indicated in individual Specification Sections, and as follows:

1. Verifying that manufacturer maintains detailed fabrication and quality-control procedures and reviews the completeness and adequacy of those procedures to perform the Work.
2. Notifying Architect and Contractor promptly of irregularities and deficiencies observed in the Work during performance of its services.
3. Submitting a certified written report of each test, inspection, and similar quality-control service to Architect with copy to Contractor and to authorities having jurisdiction.
4. Submitting a final report of special tests and inspections at Substantial Completion, which includes a list of unresolved deficiencies.
5. Interpreting tests and inspections and stating in each report whether tested and inspected work complies with or deviates from the Contract Documents.
6. Retesting and reinspecting corrected work.

OTHER REQUIREMENTS

2.9 CONFORMITY WITH PLANS AND SPECIFICATIONS

All Work and all materials furnished shall be in within the specified tolerances of the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified in the contract, plans and specifications.

If the Owner finds the materials furnished, Work performed, or the finished product not within the specified tolerances of the plans and specifications but that the portion of the Work affected will, in its opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, that the affected Work be accepted and remain in place. In this event, the Owner determine an adjustment in the Contract Price for the affected portion of the Work.

If the Owner finds the materials furnished, Work performed, or the finished product are not in within the specified tolerances of the plans and specifications and have resulted in an unacceptable finished product, the affected Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Owner's written orders.

For the purpose of this subsection, the term “reasonably close conformity” shall not be construed as waiving the Contractor’s responsibility to complete the Work in accordance with the Contract Documents. The term shall not be construed as waiving the Owner’s right to insist on strict compliance with the requirements of the Contract Documents.

2.10 COOPERATION OF CONTRACTOR

The Contractor will be supplied with two copies each of the plans and specifications. He shall have available on the Site at all times one copy each of the plans and specifications. Additional copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Owner and his/her inspectors, the Engineer and with other contractors in every way possible. The Contractor shall have a competent superintendent on the Work at all times who is fully authorized as his/her agent on the Work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Owner or his/her authorized representative.

2.11 COOPERATION BETWEEN CONTRACTORS

The Owner reserves the right to contract for and perform other or additional work on or near the Work covered by this contract.

When separate contracts are let within the limits of any one project, each contractor shall conduct his/her Work so as not to interfere with or hinder the progress of completion of the Work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

Each contractor involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other contractors working within the limits of the same project.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

2.12 AUTHORITY AND DUTIES OF INSPECTORS

Inspectors employed by the Owner shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

2.13 INSPECTION OF THE WORK

All materials and each part or detail of the Work shall be subject to inspection by the Owner or Owner's inspectors. The Owner and Owner's inspectors shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Owner or Owner's inspector requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the specifications. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the Work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any Work done or materials used without supervision or inspection by the Owner may be ordered removed and replaced at the Contractor's expense unless the Owner failed to inspect after having been given reasonable notice in writing that the Work was to be performed.

2.14 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

All Work which does not conform to the requirements of the Contract Documents will be considered unacceptable, unless otherwise determined acceptable as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS.

Unacceptable Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the Work, shall be removed immediately and replaced in an acceptable manner at the Contractor's expense.

Upon failure on the part of the Contractor to comply forthwith with any order of the Owner made under the provisions of this subsection, the Owner will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due the Contractor.

2.15 LOAD RESTRICTIONS

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Work. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at its own expense.

2.16 RETEST OF WORK

When as provided for in the Contract Documents, the Owner performs sampling and tests of the Work and if the tests show a failure to meet the requirements of the Contract Documents, the expense of retesting, after reworking or substitution by the Contractor will be at the expense of the Contractor and such costs will be deducted from the payments otherwise due to the Contractor.

2.17 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

All equipment which is proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the contract, plans, and specifications.

Any person employed by the Contractor or by a subcontractor who, in the opinion of the Owner does not perform its work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Owner may suspend the Work by written notice until compliance with such orders.

The failure to provide adequate labor and equipment may be considered cause for terminating the Contract.

2.18 FIRE PREVENTION

- A. Contractor shall conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Contractor. This includes keeping the Contract Work area clear of all trash at all times.
- B. All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden.
- C. Contractor shall provide portable fire extinguishers compatible with the hazard of each work area and shall instruct its personnel in their location and use. Wherever welding and burning are conducted, no inflammable materials shall be allowed, and welding

activities shall be shielded. The Contractor shall post a Hot Work Permit whenever an open flame shall be utilized for work.

2.19 PUMPING AND DRAINAGE

Surface or sub-surface water or other fluid shall not be permitted to accumulate in excavations or under any structure. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner and other public agencies having jurisdiction.

2.20 DUST CONTROL

The Contractor, for the duration of the Contract, shall maintain all excavations, embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

2.21 WATER POLLUTION

Contractor shall, at its expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, river, lake or other body of water, which may pollute the water or constitute substances or materials deleterious to fish and wild life.

2.22 ILLUMINATION

When any work is performed at night or where daylight is shut off or obscured, Contractor shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in compliance with local code, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

2.23 HAZARDOUS MATERIAL

- A. The Contractor shall immediately notify Owner of any hazardous materials subsequently found on the site and shall not remove same without the permission of Owner.
- B. If the contractor caused the hazardous material and subsequent contamination, Contractor shall remove said hazardous material and contaminated soils or materials from the site and shall dispose of same in accordance with all Federal, State or Local laws or regulations. Removal of such materials and contamination shall be monitored by a licensed hazardous materials laboratory, and said laboratory shall prepare a written report attesting to the complete removal of the contaminating material and resulting contamination, all to the satisfaction of, and at no cost to, the Owner.

2.24 REMOVAL AND DISPOSAL OF OTHER MATERIALS

Contractor shall remove and dispose of all construction debris, cleared vegetation, garbage and refuse in accordance with all Federal, State or Local laws or regulations. "Construction debris" means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure including houses, buildings, industrial or commercial facilities, and roadways.

2.25 EROSION CONTROL

Contractor shall conform to all Federal, State, and local laws and regulations pertaining to erosion control within or adjacent to the project. Contractor shall maintain and include in their bid maintenance of erosion control measures on the plan throughout the life of the project.

Contractor shall limit site disturbance to less than 1-acre at all times during construction.

2.26 REPAIR AND PROTECTION

- A. General: On completion of testing, inspecting, sample taking, and similar services, repair damaged construction and restore substrates and finishes.
 - 1. Provide materials and comply with installation requirements specified in other Specification Sections or matching existing substrates and finishes. Restore patched areas and extend restoration into adjoining areas with durable seams that are as invisible as possible.
- B. Protect construction exposed by or for quality-control service activities.
- C. Repair and protection are Contractor's responsibility, regardless of the assignment of responsibility for quality-control services.

SUBSTITUTION PROCEDURES

2.27 SUMMARY

- A. Section includes administrative and procedural requirements for substitutions.

2.28 DEFINITIONS

- A. Substitutions: Changes in products, materials, equipment, and methods of construction from those required by the Contract Documents and proposed by Contractor.

2.29 SUBMITTALS

- A. Substitution Requests: Submit three copies of each request for consideration. Identify product or fabrication or installation method to be replaced. Include Specification Section number and title and Drawing numbers and titles.

1. Substitution Request Form: Attachment 3: BIDDERS SUBSTITUTION/PRIOR APPROVAL REQUEST FORM.
2. Documentation: Show compliance with requirements for substitutions and the following, as applicable:
 - a. Statement indicating why specified product or fabrication or installation cannot be provided, if applicable.
 - b. Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by Owner and separate contractors, which will be necessary to accommodate proposed substitution.
 - c. Detailed comparison of significant qualities of proposed substitution with those of the Work specified. Include annotated copy of applicable specification section. Significant qualities may include attributes such as performance, weight, size, durability, visual effect, sustainable design characteristics, warranties, and specific features and requirements indicated. Indicate deviations, if any, from the Work specified.
 - d. Product Data, including drawings and descriptions of products and fabrication and installation procedures.
 - e. Samples, where applicable or requested.
 - f. Certificates and qualification data, where applicable or requested.
 - g. List of similar installations for completed projects with project names and addresses and names and addresses of architects and owners.
 - h. Material test reports from a qualified testing agency indicating and interpreting test results for compliance with requirements indicated.
 - i. Research reports evidencing compliance with building code in effect for Project, from ICC-ES.
 - j. Certification indicating compliance with HUD material requirements, where applicable.
 - k. Detailed comparison of Contractor's construction schedule using proposed substitution with products specified for the Work, including effect on the overall Contract Time. If specified product or method of construction cannot be provided within the Contract Time, include letter from manufacturer, on manufacturer's letterhead, stating date of receipt of purchase order, lack of availability, or delays in delivery.
 - l. Cost information, including a proposal of change, if any, in the Contract Sum.
 - m. Contractor's certification that proposed substitution complies with requirements in the Contract Documents except as indicated in substitution request, is compatible with related materials, and is appropriate for applications indicated.
 - n. Contractor's waiver of rights to additional payment or time that may subsequently become necessary because of failure of proposed substitution to produce indicated results.
3. Architect's Action: If necessary, Architect will request additional information or documentation for evaluation within seven days of receipt of a request for substitution. Architect will notify Contractor of acceptance or rejection of proposed substitution within 15 days of receipt of request, or seven days of receipt of additional information or documentation, whichever is later.
 - a. Forms of Acceptance: Change Order, Construction Change Directive, or Architect's Supplemental Instructions for minor changes in the Work.
 - b. Use product specified if Architect does not issue a decision on use of a proposed substitution within time allocated.

2.30 QUALITY ASSURANCE

- A. Compatibility of Substitutions: Investigate and document compatibility of proposed substitution with related products and materials. Engage qualified testing agency to perform compatibility tests recommended by manufacturers.

2.31 SUBSTITUTIONS

- A. Substitutions: Submit requests for substitution immediately upon discovery of need for change, but not later than 15 days prior to time required for preparation and review of related submittals.
 - 1. Conditions: Architect will consider Contractor's request for substitution when the following conditions are satisfied:
 - a. Requested substitution is consistent with the Contract Documents and will produce indicated results.
 - b. Requested substitution will not adversely affect Contractor's construction schedule.
 - c. Requested substitution has received necessary approvals of authorities having jurisdiction.
 - d. Requested substitution is compatible with other portions of the Work.
 - e. Requested substitution has been coordinated with other portions of the Work.
 - f. Requested substitution provides specified warranty.
 - g. If requested substitution involves more than one contractor, requested substitution has been coordinated with other portions of the Work, is uniform and consistent, is compatible with other products, and is acceptable to all contractors involved.

END OF CONTROL OF WORK

III. PROSECUTION AND PROGRESS

3.1 NOTICE TO PROCEED

The Owner shall deliver to Contractor a written Notice to Proceed stating the date on which it is expected the Contractor will begin the Work and from which date Contract Time will be charged. The Contractor shall begin the Work to be performed under the contract within ten (10) calendar days of the date set in the Notice to Proceed, but in any event, the Contractor shall notify the Owner in writing at least 24 hours in advance of the time actual construction operations will begin.

3.2 PROSECUTION AND PROGRESS

Unless otherwise specified, the Contractor shall submit his/her progress schedule for the Owner's approval within fourteen (14) work days after execution of this Agreement. The Contractor's progress schedule, when approved by the Owner, may be used to establish major construction operations and to check on the progress of the Work.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Owner's request, submit a revised schedule for completion of the Work within the Contract Time and modify his/her operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify the Owner in writing at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date set forth in the Notice to Proceed.

3.3 TEMPORARY SUSPENSION OF THE WORK

The Owner shall have the authority by written notice to the Contractor, to suspend the Work wholly, or in part, for such period or periods as the Owner may deem necessary, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or to perform any or all of the Contractor's other duties under this Contract.

- A. If the Contractor is ordered by the Owner to suspend the Work under this Section due to an unforeseen cause not otherwise provided for in the other provisions of this Contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the Work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the Owner's order to suspend the Work to the effective date of the Owner's order to resume the Work. Claims for such compensation shall be filed with the Owner within the time period stated in the Owner's order to resume work. The Contractor shall submit with its claim information substantiating the amount shown on the claim.
- B. If the Work is suspended under this Section for an indefinite period, the Contractor shall perform the following duties:
 - 1. Suitably store all materials.

2. Implement measures to protect existing work from damage or deterioration.
3. Erect such temporary structures and barricades as necessary to provide for traffic on, to or from the Project.
4. Periodically inspect and maintain the Work and temporary measures during the suspension period, and repair any damage to the Work during the suspension period.
5. Maintain all insurance and bond coverage.
6. Perform such other work as required by the Contract Documents with respect to the Project.
7. Remobilize when ordered to resume the Work by the Engineer.

The Contractor shall notify the Owner in writing fourteen (14) calendar days prior to demobilizing. At the time that the written notice is given to the Owner, the Contractor shall submit a written estimate of any costs of remobilization except in those cases in which the Contractor will bear the costs of remobilization under Paragraph C hereof. Compliance by the Contractor with such notice requirement, and with the requirement for submitting such written estimate, shall be a prerequisite to the Contractor's right to recover any costs incurred by the Contractor to comply with this Paragraph B, to the extent the Contractor would otherwise have a claim for such costs hereunder.

C. If the Contractor requests a suspension of the Work in whole or in part, or if the Contractor is ordered by the Owner to suspend the Work under this Section due to inclement weather, due to the Contractor's failure to carry out orders given or due to the Contractor's failure to perform any of the Contractor's other duties under this Contract, then:

1. The Contractor shall not be entitled to any additional compensation for fulfilling the duties that the Contractor is required to perform by reason of such suspension, regardless of whether any additional compensation would otherwise be allowed hereunder, including, without limitation, any additional compensation for fulfilling any of the duties that are imposed upon the Contractor under Paragraph B hereof or for fulfilling the Contractor's duty to remobilize at the end of such suspension; and
2. The Contractor shall pay the Owner all of the costs that are incurred by the Owner by reason of such suspension, including, but not limited to, the Engineer's fees and the costs of any necessary inspections or testing during the period of such suspension.

3.4 ADJUSTMENT OF CONTRACT TIME

The Contract Time may be adjusted only by change order, when requested by the Contractor in writing and approved by the Owner, for reasons outside of the Contractor's control, as follows:

- A. Natural disasters affecting the site; or

- B. Excessive rainfall during the entire calendar month, defined as total monthly rainfall in excess of the normal rainfall for that calendar month and total number of days with more than 0.10 inches of rainfall in excess of the normal number of such days for that calendar month. Normal values shall be taken as published in "Climatography of the United States No. 20 for North Carolina"; or
- C. Suspension of the Work as order by the Owner; or
- D. Delays in critical work by others that is not part of this Contract; or
- E. Significant additions to the scope of the Work.

The Contractor shall bear the burden of proof that a delay has been caused by factors outside his control, shall clearly demonstrate how the delay impacts the critical path of the Work as shown on his work schedule as last revised, and shall demonstrate that he has made reasonable and prudent efforts to overcome the impact of the delay on the critical path. With respect to item (b) above, a condition precedent to meeting its burden of proof will be the monthly submission to the owner of a statement of the number of days, if any, the Contractor was prevented from prosecuting the Work during the immediately preceding month due to excessive rainfall.

3.5 FAILURE TO COMPLETE PUNCH LIST ON TIME

The Contractor shall complete all punch list items determined by the Owner within thirty (30) calendar days. Should the Contractor fail or refuse to complete all punch list items to the satisfaction of the Owner within the said 30-day period, the Owner shall have the right to complete all said punch list items. In such event, Owner shall be entitled to recover from Contractor the Owner's actual costs incurred in completing such punch list items, plus any and all consequential damages and costs incurred by Owner as a result of Contractor's failure to complete such punch list items. Failure to complete all punch list items within sixty (60) calendar days, shall be considered Default of Contract and shall result in loss of any remaining retainage otherwise due to the Contractor.

3.6 DEFAULT AND TERMINATION OF CONTRACT

The Contractor shall be considered in default and such default will be considered as cause for the Owner to terminate the Contract for any of the following reasons if the Contractor:

- A. Fails to begin the Work under the Contract within ten (10) calendar days of the date of commencement specified in the "Notice to Proceed"; or
- B. Fails to perform the Work or fails to provide sufficient workers, equipment or materials to assure completion of the Work in accordance with the terms of the Contract; or
- C. Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable; or
- D. Discontinues the prosecution of the Work; or

- E. Fails to resume Work which has been suspended within a reasonable time after notice to do so; or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
- G. Allows any final judgment related to the Project to stand against him unsatisfied for a period of 10 days; or
- H. Makes an assignment for the benefit of creditors; or
- I. Fails to perform any covenant of this Contract, or
- J. For any other cause whatsoever, fails to carry on the Work in an acceptable manner.

Should the Owner consider the Contractor in default of the Contract for any reason hereinbefore, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If Contractor or Surety shall fail to cure such default within 10 calendar days after such written notice from the Owner of the existence of such default or, if such default cannot with reasonable diligence be cured within a period of 10 calendar days, then upon the failure of the Contractor to commence to cure such default within said 10-day period and to proceed with due diligence to complete the remedying of said default; then the Owner will, have full power and authority, without violating the Contract, to terminate the Contract and/or to take control of the Work.

All costs and charges incurred by the Owner, together with the cost of completing the Work, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

3.7 TERMINATION FOR CONVENIENCE

At any time after the acceptance of this Contract, the Owner shall have the absolute right to terminate the entire Contract or any part thereof for any reason whatsoever.

3.8 ACTIONS UPON TERMINATION FOR OR CONVENIENCE

Upon receipt of such notice of termination, the Contractor shall:

- A. Stop the performance of the Work.
- B. Take any other action toward termination of the Work which the Owner directs, including but not limited to:
 - 1. Stabilization of the unfinished site to meet the conditions of the erosion and sediment control permit and at the direction of the Department of Environment and Natural Resources.

2. Maintain the necessary traffic control devices until all potential hazards due to unfinished construction activities have been removed and/or to the satisfaction of the Owner. Traffic control devices that are determined by the Owner to remain shall become the property of the Owner.
3. Complete any pay item as directed by the Owner that if left uncompleted may result in a safety hazard.
4. Deliver all paid stored materials stored off site and material stored on site to a location directed by the Owner.
5. Remove all temporary facilities.
6. Provide any necessary items of Work to secure the Site from public access as directed by the Engineer.

3.9 PAYMENT UPON TERMINATION

When the Contract, or any portion thereof, is terminated before completion of all pay items, payment will be made for the actual number of units or items of Work completed at the Contract price or as mutually agreed for items of Work partially completed.

Reimbursement for organization of the Work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the Work and that are not incorporated in the Work shall, at the option of the Owner, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Owner.

If the sum of all previous payment and credits made by the Owner exceeds the sum payable due to the Contractor, such excess shall be refunded by the Contractor to the Owner immediately upon the determination of such excess by the owner.

If the Contract is terminated for convenience, the Contractor shall be paid a sum as profit determined taking the amount of profit the Contractor would have received upon completing this Contract, multiplied by a fraction, the numerator of which is the value of the Work completed as of the date of receipt of the notice of termination and the denominator of which is the Contract Price.

Termination of the Contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed Work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the Work performed.

The Owner shall be given full access to all books, cost records, correspondence and papers of the Contractor relating to the Contract in order to determine amounts to be paid the Contractor due to any termination of the Contract

3.10 PARTIAL ACCEPTANCE

If at any time during the prosecution of the Work the Contractor substantially completes a usable unit or portion of the Work, the occupancy of which will benefit the Owner, he may request the Owner to make final inspection of that unit. If the Owner finds upon inspection that the unit has been satisfactorily completed in compliance with the Contract, he may accept it as being completed, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the Contract.

3.11 FINAL ACCEPTANCE

Upon due notice from the Contractor of presumptive completion of the entire Work, the Owner will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract Documents, such inspection shall constitute the final inspection. The Owner shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any Work, in whole or in part, as being unsatisfactory, the Owner will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the Work, another inspection will be made which shall constitute the final inspection, provided the Work has been satisfactorily completed. In such event, the Owner will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

END OF PROSECUTION AND PROGRESS

IV. MEASUREMENT AND PAYMENT

4.1 MEASUREMENT OF QUANTITIES

All Work completed under the Contract will be measured by the Owner, or his/her authorized representatives, using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of Work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Unless otherwise specified, all pay items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation the average end area method or other acceptable methods will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inches.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. All materials which are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material be paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the Engineer directs, and each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the Engineer in writing, material specified to be measured by the cubic yard may be weighed, and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon or ton. When measured by volume, such volumes will be measured at 60°F or will be corrected to the volume at 60°F using ASTM D 4311 for asphalts or ASTM D 633 for tars.

Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton or hundredweight.

Timber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used as an item of payment will mean complete payment for the Work described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered by the Engineer in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account Work as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of this section.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within one-half percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed one-tenth of 1 percent of the nominal rated capacity of the scale, but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50-pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales “over weighing” (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighing-accuracy test will be reduced by the percentage of error in excess of one-half of 1 percent.

In the event inspection reveals the scales have been “under weighing” (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit Contract prices for the various items of the project.

When the estimated quantities for a specific portion of the Work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the Work will be made, unless the dimensions of said portions of the Work shown on the plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

The following allowances and unit costs shall be included in the Contractor’s Bid.

UNIT PRICE #1 – UNSUITABLE SOIL REPLACEMENT

Description: Unsuitable soil replacement shall be paid for as noted and as specified in the Contract Documents to include, but not limited to, all fees and costs to provide all equipment and materials, and manpower to dispose of unsuitable soil legally, backfill with acceptable material within the limits of excavation, compact, and test the soil in the project limits.

Unit of Measurement: Cubic Yard

UNIT PRICE #2 UNSUITABLE SOIL UNDERCUT AND REMOVAL

Description: Unsuitable soil undercut and removal shall be paid for as noted and as specified in the Contract Documents to include, but not limited to, all fees and costs to provide all equipment and materials, and manpower to excavate, dispose of legally, backfill with acceptable material below the limits of excavation, compact, and test the soil in the project limits.

Unit of Measurement: Cubic Yard

UNIT PRICE #3 MASS ROCK REMOVAL

Description: Mass rock removal shall be paid for as noted and specified in the Contract Documents to include, but not limited to all fees and costs to provide all equipment and materials, and manpower to excavate, and legally dispose of mass rock, and backfill with acceptable material within the limits of excavation, and compact and test the soil in the project limits.

Unit of Measurement: Cubic Yard

UNIT PRICE #4 TRENCH ROCK REMOVAL

Description: Trench rock removal shall be paid for as noted and specified in the Contract Documents to include, but not limited to all fees and costs to provide all equipment and materials, and manpower to excavate, and legally dispose of trench rock, and backfill with acceptable material within the limits of excavation, and compact and test the soil in the project limits.

Unit of Measurement: Cubic Yard

4.2 COMPENSATION FOR ACTUAL QUANTITIES

When the actual quantities of work vary from the estimated quantities, the Contractor shall accept as payment in full, so far as pay items are concerned, payment at the unit price for the quantities of work actually completed and accepted. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly or indirectly from its unbalanced allocation of overhead and profit among the pay items, or from any other cause.

4.3 PARTIAL PAYMENT/RETAINAGE

Contractor may submit requests for payment every 30 days or at such longer intervals as the Contractor may choose. Notwithstanding, however, Contractor may not request payment when the amount due the Contractor since the last request amounts to less than five hundred dollars.

Partial payments will be made based upon estimates, prepared by the Contractor and approved by Owner, of the value of the Work performed and materials complete in place in accordance with the Contract Documents. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with the subsection titled PAYMENT FOR MATERIALS ON HAND of this section.

From the total of the amount determined to be payable on a partial payment, ten percent (10%) of such total amount will be deducted and retained by the Owner until the final payment is made. The balance (90%) of the amount payable, less all-previous payments, shall be certified for payment. [Refer to G.S. 143-134.1 re whether retainage is permitted on each particular project.]

The Owner will pay, reject or request additional support for each pay request within 30 days after receipt. Late payments shall be subject to interest charges calculated at the rate of 8% per year from and after the date due until paid.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection titled ACCEPTANCE AND FINAL PAYMENT of this section.

4.4 TAX STATEMENT SUBMITTAL

A statement of state sales/use tax statement form must always accompany each request for payment.

4.5 PAYMENT FOR MATERIALS ON HAND

Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Contract Documents and are delivered to acceptable sites. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- A. The material has been stored or stockpiled in a manner acceptable to the Owner at or on an approved site.
- B. The Contractor has furnished the Owner with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- C. The Contractor has furnished the Owner with satisfactory evidence that the material and transportation costs have been paid.
- D. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- E. The Contractor has furnished the owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at anytime prior to use in the work.
- F. The value of the delivered material is to be used in one item of work exceeds \$3,000 and is not scheduled to be incorporated into the Work within 60 days after delivery.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his/her responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents.

In no case will the amount of partial payments for materials on hand exceed the Contract Price for such materials or the Contract Price for the pay items in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

4.6 ACCEPTANCE AND FINAL PAYMENT

When the Work has been accepted in accordance with the requirements of the subsection titled FINAL ACCEPTANCE, the Owner shall determine the actual quantities of the items of work actually performed. The Contractor shall approve the Owner's statement of actual quantities or advise the Owner of his/her objections which are based on disputes in measurements or computations of the final quantities. The Contractor and the Owner shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the Owner's final statement of

actual quantities. If, after such 30-day period, a dispute still exists, the Contractor may approve the Owner's statement of actual quantities under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES.

After the Contractor has approved, or approved under protest, the Owner's statement of actual quantities, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

4.7 LIENS

Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the Owner: (a) an affidavit stating, if that be in fact, that all subcontractors and suppliers have been paid in full, or if the fact be otherwise, showing the name of each subcontractor and supplier who has not been paid in full and the amount due or to become due each for labor, service or material furnished; (b) consent of surety, if any, to final payment; and (c) if required by Owner, other data establishing payment for satisfaction of all obligations, such as receipt, releases, and waivers of lien arising out of the Contract to the extent and in such form as designated by the Owner.

4.8 CLAIMS FOR ADJUSTMENT AND DISPUTES

If for any reason the Contractor deems that additional compensation is due him for work or materials not clearly provided for in the Contract Documents or previously authorized as Extra Work, he shall notify the Owner in writing of his/her intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the Owner is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Owner has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit his/her written claim to the Owner and the Engineer. Failure to do so within the time specified will constitute a waiver by Contractor of the claim.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

The following documentation and information must be presented in order to properly evaluate such claim:

- A. Definition of the basis of the claim, including a detailed identification of which materials and what work is considered to represent a change to the original contract, an explanation of why the work or material is different than what was called for by the original Contract, and an identification of the contract provisions and anything else which the Contract relied upon;
- B. An explanation of how and why the work which is considered a change will result in any additional cost or performance time for the Contractor;

- C. An identification of the categories of additional costs which may be incurred, an estimate of the dollar magnitude of each, and a statement of the impact this work will have on the construction schedule, including the contract completion dates;
- D. An indication of how the additional costs which is believed that may be incurred can be, and are to be, quantified;
- E. Documentation of any actual additional costs and any actual impact to the construction schedule due to this work;
- F. Documentation of the cost of performing all similar “unchanged” work, to provide the Engineer a basis for comparison;
- G. All backup and other documentation which are believed to support or relate to the claim;
- H. Documentation quantifying the amount of work which is believed to constitute this “changed” Work, and the time period and the areas where such work was or is to be performed.

4.9 CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final certificate nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defect due thereto and pay for any damage to other Work resulting therefrom, which shall appear within a period of one year from date of final acceptance. Wherever the word “acceptance” occurs, it shall be understood to mean final acceptance.

The Owner shall give notice of observed defects with reasonable promptness. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after the receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor’s expense. With respect to all warranties, expressed or implied, from subcontractors, manufacturer, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall:

- A. Obtain all warranties that would be given in normal commercial practice.
- B. Require all warranties to be executed, in writing, for the benefit of the Owner.

END OF MEASUREMENT AND PAYMENT

V. MISCELLANEOUS

5.1 VENUE

This Contract has been executed by, delivered to and accepted by the Owner in North Carolina, and the provisions hereof shall be governed by the laws of North Carolina. Any disputes arising out of or related to this Contract shall be resolved in accordance with said laws.

The parties agree that any action or legal proceeding arising out of or related to this Contract shall be brought in the state courts of Union County, NC, or in the U.S. District Court for the Western District of North Carolina; and the parties hereby consent to and waive any objection to jurisdiction or venue in said courts.

5.2 INDEPENDENT CONTRACTOR

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. Contractor shall act as an independent contractor and not as the agent of Owner in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such supplier or subcontractor and Owner.

5.3 LAWS AND REGULATIONS

Contractor and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules or regulations in effect at the time Work is performed under this Contract.

5.4 INDEMNITY

Contractor agrees to defend, indemnify and hold harmless the Owner, its officers, employees and agents from any and all claims, suits, actions, damages, expenses, costs (including attorneys' fees if applicable) or fines, arising from Contractor's performance of this Contract; provided that Contractor shall not be liable for any injury, damage or loss occasioned by the sole negligence of Owner, its officers, employees or agents. Contractor shall purchase insurance, as described in this Section, which insurance shall provide coverage for this contractual liability. In any case in which Contractor provides a defense to the Owner, its officers, employees or agents, pursuant to his indemnity, the defense will be provided by attorneys reasonably acceptable to the Owner. The provisions of this Section shall survive the expiration or early termination of this Agreement.

5.5 INSURANCE

5.5.1 Commercial General Liability Insurance. Contractor shall maintain in force during the term of this Contract commercial general liability insurance, in an amount acceptable to Owner but no less than One Million Dollars (\$1,000,000) per occurrence. This insurance shall include coverage for products/completed operations, bodily injury, personal injury, property damage and the contractual liability assumed under the indemnity provision of the Contract. The policy shall be occurrence-based and name the Owner as an additional insured.

5.5.2 Vehicle Liability Insurance. Contractor shall maintain in force during the term of this Contract liability insurance covering the operations of Contractors' owned, non-owned and hired

automobiles and other ground vehicles, for limits satisfactory to Owner but not less than One Million Dollars (\$1,000,000) bodily injury and property damage each occurrence. The policy shall be occurrence-based and name the Owner as an additional insured.

- 5.5.3 Worker's Compensation and Employer's Liability Insurance. Contractor shall maintain worker's compensation and employer's liability insurance in the amounts and form required by the laws of the State of North Carolina.
- 5.5.4 A certificate evidencing all insurance coverage required of Contractor shall be filed with the Owner at the execution of this Contract, and such certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) day's prior written notice to the Owner. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such coverage has been renewed shall be filed with the Owner. If such insurance coverage is canceled or reduced, the Contractor shall within fifteen (15) days after receipt of written notice from the Owner of such cancellation or reduction in coverage, file with the Owner a certificate showing the required insurance has been reinstated or provided through another insurance company or companies. The company or companies furnishing insurance shall be qualified to issue insurance effective in the State of North Carolina.
- 5.5.5 Payment and Performance Bonds. Contemporaneously with Contractor's execution of the Contract Documents, Contractor shall supply the Owner with a performance bond and a payment bond, each in an amount equal to the estimated Contract Price.

5.6 CONTRACT MEETINGS

The Contractor shall, as requested by Owner, attend any and all meetings called by Owner to discuss the Work. Such meetings shall be conducted and recorded by the Contractor with minutes of each meeting distributed to Owner and Contractor.

5.7 SUCCESSORS, ASSIGNEES AND ASSIGNMENT

Contractor shall not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof, without previous written consent of the Owner and concurred to by the sureties.

5.8 AUDIT RIGHTS

The Owner shall have the right to inspect, examine and make copies of any and all books, accounts, records, and other writings of contractors relating to the performance of the Work under the Contract, including change orders. Such audit rights shall be extended to any duly authorized representatives designated by the Owner. Audits shall take place at times and locations mutually agreed upon by both parties, but not later than one week following the date of a request for an audit.

END OF MISCELLANEOUS

MBE GUIDELINES and FORMS

OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES
("Guidelines") FOR PARTICIPATION IN CERTAIN VILLAGE OF MARVIN CONTRACTS

In accordance with G.S. § 143-64.31, G.S. § 143-128.2 and G.S. § 143-133, these Guidelines establish (i) goals for minority participation in building construction or repair contracts in the amount of \$300,000 or more, (ii) outreach efforts to solicit minority participation in building construction contracts in the amount of \$30,000 up to \$300,000, and (iii) outreach efforts to solicit minority participation in contracts for architectural, engineering, and Project Architect -at-risk services.

With regard to building construction and repair contracts in the amount of \$300,000 or more, the Village of Marvin ("Village") currently has a program goal of 10% percent for minority participation. The goal will be reviewed as needed or as soon as relevant data is available.

SECTION A: INTENT

It is the intent of these guidelines that the Village do all things legal, proper, and reasonable to achieve participation by minority businesses in those contracts subject to G.S. § 143-64.31, G.S. § 143-128.2 and G.S. § 143-133. 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 meet the other statutory criteria for award.

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.
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. Owner – Village of Marvin or (“Village”)

5. Designer – Any person, firm, partnership, or corporation which has contracted with the Village to perform architectural or engineering work.

6. Bidder – (i) Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract directly from the Village, or (ii) any first-tier subcontractor for Project Architect at risk projects.

7. 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.

8. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Village to perform building construction or repair work.

9. Subcontractor - A firm under contract with the prime contractor or Project Architect at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

10. Eligible Contracts – A contract for the repair or construction of a building, which is expected to be for \$300,000 or more, and which is bid under any of the methods authorized under G.S. 143-128(a1).

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Minority Business Responsibilities

CERTIFICATION

The Village does not certify minority, disadvantaged or women-owned businesses. Any business that desires to participate as an MBE will be required to complete and submit for certification, documents required by any of the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the MBE participation percentage goals:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification
North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification
Small Business Administration 8(a) certification
Other governmental agencies on a case-by-case basis

Other Responsibilities

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

Owner Responsibilities

The Village will employ the following strategies to encourage participation from MBEs.

1. Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids for building construction and repair projects and in the solicitation for architectural, engineering, and Project Architect -at-risk services.
2. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents.
3. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
4. Require all bidders to make good faith efforts to obtain minority participation on all Eligible Contracts.
5. Establish a percentage goal for minority participation in an Eligible Contract if, in the Village's reasonable belief, such a goal is achievable.
6. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
7. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share "best practices" and ideas to improve programs.
8. Participate in educational opportunities throughout the community as they become available and offer training sessions to share the Village's outreach plan with interested businesses and organizations
9. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
10. Enhance the Village's web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.

11. Make available to minority-focused agencies and minority businesses that have requested notices a list of contracting opportunities when they are identified, no later than 10 days prior to the bid opening. The list shall include a description of the work, important bidding information, contact information for questions, where the bid documents may be reviewed, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
12. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with the Village have access to up-to-date information.
13. Advertise upcoming bid opportunities in minority-focused media.
14. Work with designers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

Designer responsibilities

For all Eligible Projects 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) and these Guidelines (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 (Form 6, attached) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

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

On all Eligible Contracts, the Bidders will:

1. Attend the scheduled pre-bid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. During the bidding process, comply with the owner's requirements listed in the proposal for minority participation.
4. Submit with the Bid (i) the minority businesses that will be utilized on the project with corresponding total dollar value of the bid (MBE Form 1, attached) and (ii) an affidavit listing Good Faith Efforts (MBE Form 2, attached), or an affidavit of intent to self-perform (MBE Form 3). See below for full description of Good Faith Efforts.
5. Upon being named the apparent low bidder, the bidder shall provide the following: (1) an affidavit 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 (MBE Form 4, attached); and (2) if there is a contract goal and the participation percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal (MBE Form 5, attached). The documentation must include evidence of all good faith efforts that were implemented including any advertisements, solicitations, 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.
6. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
7. The contractor(s) shall submit with each monthly pay request(s) and final payment(s) documentation for contract payment to MBEs (MBE Form 6, attached)
8. During the construction of a project, at any time, 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.
9. If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit sub-bids from minority businesses.
10. Make documentation showing evidence of implementation of Prime Contractor, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by the Village, upon request.

11. All written statements or affidavits made by the Bidder shall become a part of the agreement between the Contractor and the Village 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 Village 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 Village whether to terminate the contract for breach.

SECTION D: GOOD FAITH EFFORTS

In determining whether a contractor has made good faith efforts, the Village will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. At least five of the following 10 good faith efforts must be made in order to satisfy the Good Faith Efforts Requirement.

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.
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.
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
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.
5. Attending any pre-bid meetings scheduled by the public owner.
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.

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.
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.
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.

Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands.

ATTACH TO BID ATTACH TO BID ATTACH TO BID ATTACH TO BID

Identification of Minority Business Participation

I, _____
(Name of Bidder)

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

[illegible]

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

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

MBE Form 1

ATTACH TO BID ATTACH TO BID ATTACH TO BID ATTACH TO BID

Village of Marvin
“GOOD FAITH EFFORT”

COUNTY OF _____

AFFIDAVIT OF _____
(Name of Bidder)

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

(A minimum of 5 areas must be checked Yes in order to have achieved a “good faith effort”)

(Y/N)

- _____ (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.
- _____ (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.
- _____ (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- _____ (4) Working 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) Attending any probed meetings scheduled by the public owner.
- _____ (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- _____ (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of minority business based on lack of qualification should have the reasons documented writing.
- _____ (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 is required. Assisting minority businesses in obtaining the same unit pricing with the bidder’s suppliers in order to help minority businesses in establishing credit.

MBE Form 2

- _____ (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.
- _____ (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

In accordance with GS143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certified 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: _____

[Seal]

Title: _____

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

MBE Form 2

ATTACH TO BID ATTACH TO BID ATTACH TO BID ATTACH TO BID

Village of Marvin

**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 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: _____

[Seal] Title: _____

State of North Carolina

County of _____

Subscribed and sworn to before me

this _____ day of _____, 20____.

Notary Public _____

My commission expires. _____

MBE Form 3

Village of Marvin

-Portion of the Work to be
Performed by Minority Firms

****(NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL)****

If the portion of the work is to be executed by minority businesses as defined in GS 143-128.2 (g) is equal to or greater than 5% 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
(Bidder)

(Project Name)

Project ID# _____ 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	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**)

Pursuant to GS 143-128.2 (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.

MBE Form 4

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: _____

[Seal]

Title: _____

State of North Carolina,

County of _____

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

Notary Public _____

My commission expires _____

MBE Form 4

Village of Marvin

-Good Faith Efforts

If the contract for goal participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts.

Affidavit of: _____
(Bidder)

I do certify the attached documentation as true and accurate representation of my good faith efforts.

Minority firms contacted by Bidder
(Attach additional sheets if required.)

Name and Phone Number	*Minority Category	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**)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions. Examples of documentation shall include the following evidence:

- A. Copies of solicitation for quotes to at least three (3) minority business firms from the source listed provided 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 contract, 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 businesses 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.

MBE Form 5

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.

Date: _____ Name of Authorized Officer: _____

Signature: _____

[Seal]

Title: _____

State of North Carolina,

County of _____

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

Notary Public _____

My commission expires _____

MBE Form 5

Village of Marvin

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application#: _____ Period: _____

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Payment Amount	Owner Use Only

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

Date: _____

Approved/Certified By: _____

Name

Title

Signature

****THIS DOCUMENT MUST BE SUMITTED WITH EACH PAY REQUEST & FINAL PAYMENT**

MBE Form 6
DISPUTE RESOLUTION REQUIREMENTS

**DISPUTE RESOLUTION REQUIREMENTS (“Requirements”)
FOR CERTAIN VILLAGE OF MARVIN CONTRACTS**

In accordance with N.C.G.S. § 143-128 (f1), these Requirements establish the dispute resolution process for all Village building construction projects that cost over \$300,000, exclusive of land acquisition and design costs (“Eligible Projects”).

This dispute resolution process will be available to all parties involved in the Village’s Eligible Projects, including the Village, the architect, the Project Architect , the contractors, and the first-tier and lower-tier subcontractors. Therefore, it is the Village’s policy that the following clauses are hereby made part of all contracts executed by the Village on Eligible Projects.

1. It is understood and agreed that NCGS 143-128(g-h) requires that disputes arising under an agreement for the erection, construction, alteration or repair of a building be subject to a dispute resolution process specified by the owner. In compliance with this statutory provision, the Village specifies this Article as the dispute resolution process to be used on this Project. It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the Parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the Village is under no obligation under any circumstance to secure or enforce the participation of any other Party in the mediation of any dispute subject to this Article and GS 143-128(g-h).
2. Any dispute arising between or among the Parties listed in Section 4 of this Article that arises from an agreement to construct the Project, including without limitation a breach of such agreement, shall be subject to mediation mutually agreed upon by both parties. The mediation provided in this Article shall be used pursuant to this Agreement and GS 143-128(g-h) and is in lieu of any dispute resolution process adopted by the North Carolina State Building Commission, which process shall not apply to this Project.
3. For purposes of this Article the following definitions shall apply:

Construct or construction refers to and includes the erection, construction, alteration or repair of the Eligible Project; and

Party or Parties refers to the parties listed in Section 4 of this Article.
4. The Village and any Party contracting with the Village or with any first-tier or lower-tier subcontractor for the construction of the Eligible Project agree to participate in good faith in any mediation of a dispute subject to this Article and GS 143-128(g-h), including without limitation the following Parties (if any): architect(s), engineer(s), surveyor(s), Project Architect , Project Architect at risk, prime contractor(s), surety(ies), subcontractor(s), and supplier(s).

5. In order to facilitate compliance with GS 143-128(g-h), all Parties shall include this Article in every agreement to which it (any of them) is a Party for the Eligible Project without variation or exception. Failure to do so will constitute a breach of contract, and the Party failing to include this Article in any agreement required by this Article shall indemnify and hold harmless the remaining Parties from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this Section, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Article and can enforce the provisions hereof.
6.
 - a. The following disputes are not subject to mediation:
 - i. A dispute seeking a non-monetary recovery; and
 - ii. A dispute seeking a monetary recovery of \$15,000 or less.
 - b. A dispute seeking the extension of any time limit set forth in an agreement to construct the Project shall be subject to mediation pursuant to this Article and GS 143-128(g-h), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.
7. For purposes of this Article, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single Party or two or more Parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all Parties to such disputes.
8. In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.
9. Prior to requesting mediation, a Party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining Parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining Party, unless supported by such investigation and good faith belief by the Party requesting the mediation.
10. If a Party breaches any provision of Section 9, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.
11. All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal

shares of the remaining expenses and costs; provided that, if the Village is named as a party to the mediation, the Village shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the Village is named as a party to the mediation, the Village shall pay at least one-third of the mediation expenses and costs divided among the Parties.

12. The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Union County, as the mediator shall determine.
13. The provisions of this Article are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Article.
14. The Parties understand and agree that mediation in accordance with this Article shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Article.

SPECIFICATIONS

Contractors shall adhere to the specifications in the project plans including, but not limited to, sheets SP1-SP3.

Contractors shall follow the latest version of the North Carolina Building Code.

APPENDICES

1. AIA® Document A101TM – 2017 Standard Form of Agreement Between Owner and Contractor
2. AIA® Document A101TM – 2017 Exhibit A Insurance and Bonds
3. AIA® Document A201TM – 2017 General Conditions of the Contract for Construction
4. Civil, Water & Sewer, and Building Plans