



**REQUEST FOR PROPOSALS
FOR
MARVIN EFIRD PARK
PLAYGROUND REPLACEMENT**

VILLAGE OF MARVIN, NORTH CAROLINA

INVITATION FOR PROPOSAL
Marvin Efird Park Playground Replacement

The Village of Marvin will be accepting sealed proposals for demolition and installation of a new playground at Marvin Efird Park located at 8909 New Town Road, Waxhaw, NC 28173; all proposals are subject to all conditions, and provisions, etc., set forth herein and attached. Proposals will be accepted from 7/13/23 to 7/20/23 at 12:00PM.

All proposals shall be lump-sum with itemized pricing as instructed. All sealed proposals must be submitted to the Village of Marvin either in person or by mail to the attention of Village Manager, Christina Amos, or Tyler Huneycutt, Recreation Activities Coordinator, by July 20, 2023 at 12:00 p.m. E.S.T. at 10006 Marvin School Road, Marvin, NC 28173.

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 PROPOSALS WILL NOT BE ACCEPTED.**

SELECTION CRITERIA: It is the intent of the Village to award a contract to the best overall proposal as determined by the Village under GS 143-129.8 including the best valued proposal based on price and performance under GS 143-135.9, so long as pricing 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. The Village shall accept or reject any alternates in any order or combination. To determine the lowest Proposer, the Village shall calculate the sum of the total base bid and/or the deduction or addition of the maintenance alternates, if accepted.

The bids received will be evaluated based upon the following:

- a) Pricing (initial and maintenance)
- b) Experience and past performance
- c) Thoroughness of bid, including detailed breakdown and unit pricing
- d) Ability of contractor to anticipate and identify potential conditions that would impact project cost and schedule
- e) RFP Compliance

TIMELINE:

Bids due	7/20/23
Potential Committee meeting for comments on plans	7/24/23- 7/28/23
Final Design/Cost estimate proposal due	8/1/23
Village Council selection	8/8/23
Completion of Project	Fall-Winter 2023

INSTRUCTIONS TO PROPOSERS

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

PROJECT NAME: **Marvin Efird Park Playground**

SCOPE OF WORK: The purchase of all goods, material, equipment, design, labor, installation and demolition for a new playground at Marvin Efird Park (to include two distinct sections labeled in Exhibit A as “Tot Playground” and “Main Playground”). The following components of work are anticipated:

- A) Demolition and Disposal of the existing playground and current surfacing as labeled in “Main Playground” in Exhibit A.
- B) Excavation, Site prep, grading, soil remediation/compaction, and other necessary groundwork related to preparing for foundation and installation including assurance of ADA compliance for playground labeled as “Tot Playground” and “Main Playground.”
- C) Installation of a sidewalk compliant with ADA standards from existing sidewalk to the playground labeled “Tot Playground.”
- D) Installation of 7” pour in place fall surface for the “Main Playground.”
- E) Installation of a 4” pour in place fall surface for the “Tot Playground.”
- F) Design and installation of at least a two-part playground structure for 5-12 year olds, with a tree house/Log style concept with covered tops and bridge to connect the two sections. The playground structure should include a climbing tree tower concept and a two bay swing set to include at least one bucket swing, one ADA swing, and 3 or more belt swings. Design of both playgrounds shall include various decorative and functional design elements of GFRC (Glass Fiber Reinforced Concrete) to include plank climbers, standing logs, discovery critters, climbing components, and slides.
- G) Remediation and necessary drainage work for the both playgrounds.
- H) Warranty information.
- I) Estimated timeline for demolition and construction.

COOPERATION BETWEEN CONTRACTORS

The Village 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 Village 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.

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

- History documenting experience with projects of similar size, scope and complexity within last three (3) years
- Instructions to Proposer
- Bid Proposal Form

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

BID FOR:	<u>Marvin Efird Park Playground Replacement</u> <i>Project Name</i>	BID ID # 1000
PROPOSER 'S NAME:	_____ <i>Proposer's Name</i>	
DO NOT OPEN UNTIL:	<u>July 20, 2023 at 12:00 p.m. E.S.T</u> <i>Bid Opening Date & Time</i>	

PROPOSALS ARE FIRM OFFERS: All proposals shall be firm offers to contract for 120 days from the Deadline.

PROPOSAL CONTACT: For questions regarding the Project or Instructions to Proposer s, contact: Christina Amos, Village Manager. The Village will attempt to answer all questions in writing by addenda. **THE VILLAGE WILL NOT MAKE ORAL REPRESENTATIONS AND PROPOSER S 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 Proposer shall be responsible for inquiring if Addenda have been issued.

NEGOTIATIONS WITH APPARENT LOW PROPOSER: The Village reserves the right to negotiate with any proposer in order to obtain a final contract that best meets the needs of the Village. 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.

CONTRACT AWARD: The Village will inform the Selected Proposer of its selection and request that the Selected Proposer submit the executed Agreement plus insurance certificates and payment and performance bonds. The Selected Proposer 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 Proposer '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 Proposer and Village have both executed the Agreement.

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

Contractor's Name: _____

INSTRUCTIONS TO PROPOSERS -- ATTACHMENT 1

PROPOSER 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: Marvin Efirid Park Playground Replacement

Project No.: 1000

To: Christina Amos, Village Manager at Manager@Marvinnnc.gov

Contractor: _____

Requested by: _____

Phone: _____

Email: _____

Proposer 's Inquiry:

Signed: _____

BID DOCUMENTS

1. Bid Proposal Form

PROPOSAL FORM

**PROJECT NAME: MARVIN EFIRD PARK PLAYGROUND REPLACEMENT
8909 NEW TOWN ROAD
MARVIN, NC 28173**

NAME OF PROPOSER: _____

The undersigned proposer hereby offers, in the lump sum amount stated below:

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

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

Please itemize out all components in the Lump Sum Proposal

Proposer must attach list of manufacturers of major system components.

AGREEMENT

Agreement for Services attached in appendix as a contract template but subject to modifications agreed to by Village.



Village of Marvin

10004 New Town Road
Marvin, NC 28173
Phone (704) 843-1680 * Fax (704) 843-1660
manager@marvinnc.org

**CONTRACT FOR
SERVICES
STANDARD FORM**

**CONTRACTOR
INFORMATION**

**LOCATION OF
WORK/SERVICES
TO BE
PERFORMED (If
not Village Hall)** New Village Hall Site
10006 Marvin School
Road
Marvin, NC 28173

This Contract for Services, and all attachments, (collectively this “Contract”) is entered into this ____ day of _____ 2021 by and between the Village of Marvin, a municipal corporation of the State of North Carolina, (the “Village”) and _____, a North Carolina corporation located at (the “Contractor”).

For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Scope of Services. The Contractor agrees to perform for the Village the following services:

Installation of audio, visual equipment.

The work required in this contract shall be commenced by the Contractor not later than 10 days after a written Notice to Proceed from the Village and the entire work shall be completed not later than two months after the date set forth in the Notice to Proceed (“Deadline”). With consent of the Village, the work may be phased in conjunction with construction of Village Hall provided that Contractor meets the Village’s schedule. The Village and Contractor agree that the Village will incur damages if the project described above is not satisfactorily completed within the specified time and that such damages are difficult to ascertain due to their indefiniteness and uncertainty. Liquidated damages for this Contract are therefor set at \$250.00 for each day after the Deadline that the project is not satisfactorily completed, unless such Deadline is extended in accordance with this Contract.

2. Specifications / Contract Documents. In addition to the attached Standard Terms and Conditions, this Contract incorporates by reference the Request for Proposal for Audio Visual, Access Control, and Security for Marvin Village Hall (“RFP”) and Contractor’s Proposal dated (“Proposal“), all of which will govern the services to be provided by the Contractor. **The RFP and Proposal contain extensive terms and conditions all of which form a part of this Contract as if**

set forth verbatim. In the event of any Conflict between any terms and conditions of this Contract (including attachments) and the RFP and/or Proposal, the terms and conditions most favorable to the Village shall control.

3. Payment for Services. In consideration of the above services, the Village will pay the Contractor the sum of \$_____ payable within 30 days after receipt of undisputed invoices. Village shall not be responsible for any portions of the services that are not performed or are improperly performed. Village shall not be responsible for any additional services or charges without the prior written approval of such services and price by the Village.

4. Warranty. Contractor warrants that the Equipment is (a) fit and sufficient for the particular purposes intended (Contractor understands and agrees that Village is relying on the Contractor's skill and judgments to furnish Equipment for the specific purposes provided under this Agreement), (b) merchantable, of good quality and free from defects, whether patent or latent, in material or workmanship and (c) that Contractor has title to the Equipment free and clear of all liens, encumbrances and security interests. For a period of at least one (1) year (or such longer period of time as may be agreed upon) from the date of completion of installation, Contractor agrees, at Contractor's sole cost and expense, to repair, replace and adjust any Equipment that is not functioning properly within ten (10) days' notice from Village. The warranty shall cover all fees and costs associated with such repair, replacement or adjustment, including but not limited to all shipping, installation, labor, travel, freight and testing. Contractor agrees to assign to Village any and all manufacturers' warranties on the Equipment. The warranties provided hereunder shall be in addition to any other warranties that may be available to the Village under applicable law.

5. Insurance Requirements. The Contractor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to the Village and authorized to do business in the State of North Carolina:

Automobile - Contractor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence.

Commercial General Liability - Contractor shall maintain commercial general liability insurance that shall protect Contractor from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate.

Worker's Compensation and Employers' Liability Insurance - If applicable to Contractor, Contractor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance.

Contractor shall also provide any other insurance or bonding specifically required by applicable law.

Certificates of such insurance shall be furnished by Contractor to the Village Administrator and shall contain the provision that the Village of Marvin shall be included on the policies as named additional

insured and be given 30 days' written notice of any intent to amend or terminate such policies by either Contractor or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

6. Termination. Either party may terminate this Contract in the event the other party fails to cure a material breach of the terms hereof within ten (10) days' notice of such breach. Village may terminate this contract for any reason by giving Contractor at least thirty (30) days written notice prior to termination date.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals.

Contractor

Village of Marvin

Name: _____
Name of Contractor (type or print) Village Manager

By: _____
(Signature)

Title: _____

Attest:

Attest: _____
(Secretary, if a corporation) Village Clerk

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

Finance Officer

STANDARD TERMS & CONDITIONS

1. **Acceptance.** Contractor's acknowledgment of the terms of this Contract constitutes an agreement to (i) all terms and conditions set forth or referenced herein, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Contract (including without limitation any request for proposals or invitation for bids or Contractor's response thereto) that deal with the same subject matter as this Contract, and (iv) any other terms and conditions of a written agreement signed by Contractor and the Village that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Contractor and the Village with respect to the purchase by the Village of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to the Village shall control. No additional or supplemental provision or provisions in variance herewith that may appear in Contractor's quotation, acknowledgment, invoice or in any other communication from Contractor to the Village shall be deemed accepted by or binding on the Village. The Village hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the Village's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the Village are subject to correction.
2. **Entire Agreement.** These terms and conditions and any other specifications contained in any other documents referenced shall constitute and represent the complete and entire agreement between the Village and Contractor and supersede all previous communications, either written or verbal with respect to the subject matter of this Contract.
3. **Changes, Additions, Deletions.** No changes, additions, deletions or substitutions of scope of work, specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges or price will be permitted without the prior written approval from the Village.
4. **Relationship of the Parties.** The Contractor is an independent contractor and not an employee of the Village. The conduct and control of the work will lie solely with the Contractor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Contractor and the Village. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation.
5. **Prices.** If Contractor's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or performance of such Services, Contractor agrees to give the Village the benefit of such lower price on any such Goods or Services. In no event shall Contractor's price be higher than the price last quoted or last charged to the Village unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
6. **Taxes.** Any applicable taxes shall be invoiced as a separate item.
7. **Substitutions.** No substitutions or cancellations shall be permitted without prior written approval from the Village.
8. **Indemnification.** Contractor shall indemnify and hold harmless the Village, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Contractor's failure to comply with any applicable law, code, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Contractor's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract shall be defective in any respect whatsoever, Contractor shall indemnify and save harmless the Village, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Contractor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of the Village in the performance of the Contract Documents, Contractor agrees that it will indemnify and hold harmless the Village, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
9. **Invoices and Payment Terms.** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the Contract to cancellation. Upon satisfactory delivery of the Goods or satisfactory completion of the Services, all invoices and statements shall reference the Contract number and be submitted to: Village of Marvin, Accounts Payable, 10004 New Town Road, Marvin, North Carolina, 28173. Payment terms are Net 30 days after receipt of correct, undisputed invoice or acceptance of Goods or Services, whichever is later.
10. **Anti-Discrimination.** During the performance of the Contract, Contractor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
11. **Insurance.** Whenever any work or services are provided, either in or on Village owned property, the following shall apply: The Village shall specify the insurance coverage required including, but not limited to, minimum acceptable coverage and limits, as well as a minimum acceptable insurance rating for an insurance provider. The Contractor shall provide the Village with a North Carolina Certificate of Insurance PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. Such certificates of insurance shall be considered part of the Contract.

12. **Ethics in Public Contracting.** The provisions contained in Article 8 of Chapter 143 of the North Carolina General Statutes shall be applicable to all contracts entered into by the Village of Marvin for purchase of Services totaling over \$30,000. By submitting their prices and acceptance of this Contract, all Contractors certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
13. **Applicable Laws and Courts.** All Village Contracts for Services shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, shall be governed in all respects by the laws of the State of North Carolina and venue shall be proper only in a court of competent jurisdiction located in Union County, North Carolina. The Contractor represents and warrants that it shall comply with all applicable federal, state and local laws, regulations and orders.
14. **Strict Compliance.** The Village may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
15. **Assignment.** The Contractor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the Village.
16. **General Provisions.** The Village's remedies as set forth herein are not exclusive. Any delay or omission by the Village in exercising any right hereunder, or any waiver by the Village of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default.
17. **Warranties.** The Contractor warrants it shall adhere to all laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Union, and the Village of Marvin in the performance of the Services outlined in this Contract and any attached specifications. Contractor warrants that any finished work (for example, sidewalks) completed hereunder shall also adhere to all laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Union, and the Village of Marvin. Contractor warrants that all Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by the Village of the Services and shall run to the Village and any user of the Services. Contractor warrants that all Services will be performed in a professional and workman like manner in accordance with best industry practices. This express warranty is in addition to Contractor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or in equity, the Village shall be entitled to consequential and incidental damages.
18. **Quality and Workmanship.** All work shall be performed to the satisfaction of the Village. The work shall not be considered complete nor applicable payments rendered until the Village is satisfied with the Services provided.
19. **Default.** The Village may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by the Contractor. In addition to any other remedies available to the Village in law or equity, the Village may procure upon such terms as the Village shall deem appropriate, Services substantially similar to those so terminated, in which case the Contractor shall be liable to the Village for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.
20. **Termination for Convenience.** The Village shall have the right, without assigning any reason therefore, to terminate any work under the Contract, in whole or in part, at any time at its complete discretion by providing 10 days notice in writing from the Village to Contractor. If the Contract is terminated by the Village in accordance with this paragraph, the Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Services actually delivered or performed to the total originally contemplated in the Contract. The Village will not be liable to the Contractor for any costs for materials acquired or contracted for, if such costs were incurred prior to the date of this Contract.
21. **Assignment.** Contractor may not assign, pledge, or in any manner encumber Contractor's rights under this Contract, or delegate the performance of any of its obligations hereunder, without Buyer's prior, express written consent.—
22. **No Third-Party Benefits.** The Contract shall not be considered by Contractor to create any benefits on behalf of any third party. Contractor shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.
23. **Valid Contract for Services.** In order for a Contract for Services of the Village to be valid, it must be approved in accordance with the Village of Marvin Purchasing Policy and Designation of Authority for Contract Signing ("Policy") and executed by the Village Administrator or other designee authorized by the Village Council in accordance with such Policy.
24. **Buyer.** All references to Buyer or Village, throughout these terms and conditions, shall refer to the Village of Marvin, North Carolina.
25. **Contractor.** All references to Seller or Contractor throughout these terms and conditions shall refer to the contractor identified on page 1 of this Contract for Services.

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 CERTIFICATE OF INSURANCE to this sheet.

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 _____

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.

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.

Firm Name, Address and Phone #	Work Type	*Minority Category

*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**

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.

