

**CONTRACT FOR PROFESSIONAL SERVICES
FOR THE MARVIN LOOP TRAIL EXPANSION (BL-0012)**

This CONTRACT, made and entered into this ____ day of _____ 2024 ("Effective Date"), by and between the VILLAGE OF MARVIN (the "Village") and DEWBERRY ENGINEERS INC., a New York corporation, hereinafter referred to as the "Consultant."

GENERAL RECITALS

WHEREAS, the Village seeks engineering and related services for the design of new trail segments which will be a continuation of the existing Marvin Loop Greenway Trail; and

WHEREAS, the Village advertised for the Request for Letters of Interest dated March 21, 2023, including Addendum No. 1, dated March 31, 2023 ("RFLOI"); and

WHEREAS, the Consultant submitted a proposal in response to the RFLOI; and

WHEREAS, the Village is authorized by the Village Council to enter into a Contract for performance of such professional services; and

WHEREAS, the Village desires to engage the Consultant to provide professional services for the Marvin Loop Trail Extension as outlined hereinafter upon the terms and conditions as set out herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and further consideration of the covenants and representation contained herein, the parties agree as follows:

AGREEMENT

1 INCORPORATION OF EXHIBITS

The following exhibits are attached to this Contract and are incorporated into and made a part of this Contract:

EXHIBIT A:	Scope of Work
EXHIBIT B:	Proposal to RFLOI
EXHIBIT C:	Fee/ Cost Breakdown
EXHIBIT D:	Byrd Anti-Lobbying Certification
EXHIBIT E:	Certification Regarding Debarment or Suspension
EXHIBIT F:	Certificate of Insurance
EXHIBIT G:	NCDOT Locally Administered Project – Federal (Agreement ID # 11323)

2 DEFINITIONS

ACCEPTANCE refers to the receipt and approval by the Village of a Deliverable or Service in accordance with the acceptance process and criteria set forth in this Contract.

AGREEMENT refers to this written agreement executed by the Village and the Consultant for the Services as outlined herein.

CONTRACT PERIOD refers to the number of calendar days or specified date set forth in the Contract for completion of the Services, including authorized amendments or modifications thereto; also referred to as Time of Completion.

VILLAGE refers to the Village of Marvin, North Carolina.

VILLAGE PROJECT MANAGER refers to the specified Village employee representing the best interests of the Village for the Services.

CONSULTANT PROJECT MANAGER refers to the specified Consultant employee representing the best interests of the Consultant for the Services.

DELIVERABLES refer to all tasks, reports, information, designs, plans, specifications, documents and other items, which the Consultant is required to complete and deliver to the Village in connection with this Contract.

DOCUMENTATION refers to all written, electronic, or recorded works, that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are published or provided to the Village by the Consultant or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the Deliverables or Services.

RFLOI refers to Request for Letters of Interest – Marvin Loop Trail Expansion (BL-0012) issued March 21, 2023, with addendum 1 dated March 31, 2023.

SERVICES refer to the services to be performed by the Consultant pursuant to this Contract.

SPECIFICATIONS AND REQUIREMENTS refer to all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Deliverables and Services which are set forth or referenced in: (i) this Contract, (ii) the Documentation; and (iii) any functional and/or technical specifications which are published or provided by the Consultant or its licensors or suppliers from time to time with respect to all or any part of the Deliverable or Services.

WORK PRODUCT refers to the Deliverables and all other reports, information, designs, plans and other items developed by the Consultant in connection with this Contract, and all partial, intermediate or preliminary versions of any of the foregoing.

3 DESCRIPTION OF SERVICES

The Consultant shall perform the services described in **Exhibit A** attached to this Contract and incorporated herein by reference ("Services"). Unless otherwise provided in **Exhibit A**, the Consultant shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

The Consultant will comply with the schedule(s) set forth on page 9 in **Exhibit B**, as amended from time to time during the Contract Period, in performing the Services. All references to days in this Contract (including the exhibits) shall refer to calendar days rather than business days, unless a provision specifically uses the term “business days.” Any references to “business days” shall mean the days that the Village’s offices are open for the public to transact business.

4 COMPENSATION

4.1 HOURLY AND UNIT PRICE BASIS ALLOWANCE

The Village agrees to pay the Consultant for actual services performed on an hourly and unit price basis for the Services outlined in this Contract using the hourly and unit price rates set forth in **Exhibit C**, provided that the total amount payable under this Contract to the Consultant for providing hourly and unit price basis services and all costs shall not exceed \$567,481.84. This contract will be funded partially by federal funds and all applicable federal laws and regulations shall be followed.

4.2 REIMBURSABLE EXPENSES

Reimbursable expenses shall be limited to the actual expenditures made by the Consultant during the performance of the Services. The following expenses may be reimbursed at cost, in accordance with **Exhibit B**:

Travel

- a. Vehicular transportation at the rate established by the Internal Revenue Service current at the time the travel occurs; and
- b. Parking fees.

Reprographics, Renderings, and Models

- a. Copying and binding expenses for drawings, specifications, reports and other Project documents;
- b. Photography as approved by the Village’s Project Manager; and
- c. Renderings and models requested by the Village if not specifically included in basic services.

4.3 TOTAL FEES AND ALLOWANCES

The maximum cumulative amount paid to the Consultant pursuant to this Contract for all services performed and all reimbursable expenses shall not exceed \$567,481.84. The maximum total fees and charges will not be increased except by a written amendment duly executed by both parties.

4.4 INVOICES

Each month after Services have been performed, the Consultant shall submit an invoice to the Village stating the nature and quantity of Services performed and accompanied by proper supporting documentation as the Village may require, including a monthly project status report. Hourly rates, unit prices, and reimbursable expenses, as applicable, shall be itemized on each invoice. The Consultant shall charge the Village at regular hourly billing rates for any overtime hours worked (as defined by the Fair Labor Standards Act).

The Consultant shall email all invoices to Finance@Marvinnc.gov with copy to Planner@Marvinnc.gov.

Each invoice must contain the following information:

The Village will pay accurate, undisputed, properly submitted invoices within thirty (30) days after the receipt from the Consultant. An undisputed properly submitted invoice is defined as an invoice that indicates only those items that have been satisfactorily completed and accepted by the Village. As a condition of payment, the Consultant must invoice the Village for Services within ninety (90) days after such Services are performed. The Consultant waives the right to payment for any Services that have not been invoiced to the Village within ninety (90) days after such Services were rendered.

4.5 PRE-CONTRACT COSTS

The Village shall not be charged for any Services or other work performed by the Consultant prior to the Effective Date of this Contract.

4.6 COST OVERRUNS

If it appears during the course of performance of the Services that any of the estimated fees and allowances may be exceeded, the Consultant shall immediately notify the Village's Project Manager in writing. The estimated fees and allowances shall not be exceeded except by written amendment to the Contract. Any work performed without prior written approval shall be at the Consultant's expense.

4.7 ACCOUNTING AND AUDITING

The Consultant shall maintain complete and accurate records, using Generally Accepted Accounting Principles (GAAP), of all costs related to this Contract. Such records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Village's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the Consultant or any of his payees in connection with this Contract. Records subject to examination will include, but are not limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Contract.

For the purpose of such inspections, the Village's agent or authorized representative shall have access to said records from the Effective Date of this Contract, for the duration of the Services, and until three (3) years after the date of final payment by the Village to the Consultant pursuant to this Contract. The Village's agent or authorized representative shall have access to the Consultant's facilities and shall be provided an adequate and appropriate work place, in order to conduct audits in compliance with this Section. The Village will give the Consultant reasonable advance notice of planned inspections. If, as the result of an audit hereunder, the Consultant is determined to have charged the Village for amounts that are not allocable or verifiable, the Consultant shall promptly reimburse the Village for said amount.

The rights granted to the Village and its agents shall further be extended to the FHWA, US Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives.

4.8 WITHHOLDING OF PAYMENTS

The parties agree that the Village shall be entitled to withhold payments, including final payment, due to the Consultant under this Contract until the Village has received in a form reasonably satisfactory to the Village all claim releases and other documentation

4.9 PROMPT PAYMENT TO SUBCONTRACTORS

The Consultant shall pay subcontractors for satisfactory performance of their subcontracts within seven (7) days after the Village has paid the Consultant for such work. If the Consultant withholds any retainage pending final completion of any subcontractor's work, the Consultant is required to pay the retainage so withheld within seven (7) days after such subcontractor completes his work satisfactorily.

4.10 NON-APPROPRIATION OF FUNDS

If the Marvin Village Council does not appropriate the funding needed by the Village to make payments under this Contract for any given fiscal year, the Village will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the Village will promptly notify the Consultant of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the Village, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

5 CONTRACT PERIOD

This Contract shall commence on the Effective Date and shall continue in full force completion of the Services, unless terminated earlier as set forth herein.

6 CONSULTANT'S RESPONSIBILITIES

Upon receipt of a written Notice to Proceed, Consultant shall:

- a. Provide for the Village professional services in all phases of the Project to which this Contract applies;
- b. Serve as Village's professional for the Project as directed by the Village's Project Manager;
- c. Furnish professional consultation and advice and furnish customary services incidental to the Project;
- d. Review available data and consult with Village to clarify and define the Village's requirements;
- e. Obtain that information, conduct those investigations, and undertake other reasonable efforts necessary for the Consultant to become conversant with the philosophy and purpose of the Project and to carry out its responsibilities;
- f. Identify and analyze requirements of governmental authorities having jurisdiction and assist the Village in obtaining required approval from such authorities; and
- g. Be responsible to facilitate and ensure compliance with all records, procedures, rules and regulations set forth in the Locally Administered Project – Federal (Agreement ID # 11323) dated October 2, 2022 between NCDOT and the Village as set forth on **Exhibit G**.

7 DUTY OF CONSULTANT TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES

The Consultant shall identify and request in writing from the Village in a timely manner: (i) all information reasonably required by the Consultant to perform the Services, (ii) a list of the Village's personnel whose presence or assistance reasonably may be required by the Consultant

to perform the Services, and (iii) any other equipment, facility or resource reasonably required by the Consultant to perform the Services. Notwithstanding the foregoing, the Consultant shall not be entitled to request that the Village provide information, personnel or facilities other than those which **Exhibit A** specifically requires the Village to provide. The Consultant shall not be relieved of any failure to perform under this Contract by virtue of the Village's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Consultant failed to identify and request in writing from the Village pursuant to this Section; or (ii) which the Village is not required to provide pursuant to this Contract. In the event the Village fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Consultant shall notify the Village in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Consultant of any claim or defense it may otherwise have based on the Village's failure to provide such information, personnel, facility or resource.

8 POINTS OF CONTACT; NOTIFICATIONS

8.1 VILLAGE PROJECT MANAGER

The duties of the Village Project Manager include:

- a. Examining the documents submitted by the Consultant and expediting decisions concerning the documents in order to avoid unreasonable delay in the progress of the Consultant's Services;
- b. Reviewing Consultant's Services and Deliverables for all requirements and specifications outlined in this Contract;
- c. Coordinating the Village's resource assignment as required to fulfill the Village's obligations pursuant to this Contract;
- d. Promptly responding to the Consultant's Project Manager when consulted in writing or by email with respect to Project issues; and
- e. Acting as the Village's point of contact for all aspects of the Project including contract administration and coordination of communication with the Village's staff.

The Village Project Manager is:

Hunter Nestor, MPA
Village of Marvin
10006 Marvin School Road
Marvin, NC 28173
704-843-1680
planner@Marvinnc.gov

The Consultant shall contact the Village Project Manager prior to all meetings involving Village personnel.

8.2 CONSULTANT PROJECT MANAGER

The duties of the Consultant Project Manager include, but are not limited to:

- a. Coordinating Project schedules and the Consultant's resource assignment based upon the Village's requirements and schedule constraints;
- b. Managing the overall Project by monitoring and reporting on the status of the Project and

- on actual versus projected progress, and by consulting with the Village Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- c. Providing consultation and advice to the Village on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Consultant's specialist resources that may be needed to supplement the Consultant's normal implementation staff;
 - d. Acting as the Consultant's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
 - e. Facilitating review meetings and conferences between the Village and the Consultant's staff when scheduled or requested by the Village;
 - f. Communicating among and between the Village and the Consultant's staff;
 - g. Promptly responding to the Village's Project Manager when consulted in writing or by email with respect to Project deviations and necessary documentation;
 - h. Identifying and providing the Village with timely written notice of all issues that may threaten the Consultant's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Consultant becomes aware of them);
 - i. Ensuring that adequate quality assurance procedures are in place throughout the Project; and
 - j. Meeting with other entities working on Village projects that relate to this effort as necessary to resolve problems and coordinating the Services.

The Consultant Project Manager is:

Tristan McMannis, Project Manager
Dewberry Engineers Inc.
9300 Harris Coners Pkwy, Suite 220
Charlotte, NC 28269-3797
tmcmanis@dewberry.com

8.3 NOTICES AND PRINCIPAL CONTACTS

Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the respective Project Managers at the addresses set forth above.

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice that is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

9 REMOVAL OF CONSULTANT PERSONNEL

The Village will have the right to require the removal and replacement of any personnel of the Consultant or the Consultant's subcontractors who are assigned to perform Services for the Village. The Village shall be entitled to exercise such right in its sole discretion by providing written notice to the Consultant.

10 PROGRESS REPORTS

The Consultant shall prepare and submit to the Village, at such times as may be agreed, written progress reports, which accomplish each of the following: (a) update the project schedule, indicating progress for each task and Deliverable; (b) identify and report the status of all tasks and Deliverables that have fallen behind schedule; and (c) identify and summarize all risks and problems identified by the Consultant, which may affect the performance of the Services along with an action plan mitigating the risk and resolving the problem and any impact on the project schedule.

11 ACCEPTANCE OF DELIVERABLES

If the Village Project Manager is not reasonably satisfied that the Deliverable(s) have been met, a notice of rejection (a "Rejection Notice") shall be submitted to the Consultant by the Village Project Manager that specifies the nature and scope of the deficiencies that require correction. Upon receipt of a Rejection Notice, the Consultant shall: (a) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (b) immediately upon completing such corrections give the Village a written, dated certification that all deficiencies have been corrected (the "Certification"). In the event the Consultant fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within fifteen (15) days after receipt of the Rejection Notice, the Village shall be entitled to terminate this Contract for default without further obligation to the Consultant and without obligation to pay for the defective work. The Village shall not be obligated to allow the Consultant to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable and shall be entitled to terminate this Contract for default if the Consultant does not meet this time frame.

12 REPRESENTATIONS AND WARRANTIES OF CONSULTANT

12.1 GENERAL WARRANTIES.

- a. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;
- b. All Services performed by the Consultant and/or its subcontractors pursuant to this Contract shall meet the customary industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- c. Neither the Services, nor any Deliverables provided by the Consultant under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- d. The Consultant and each employee provided by the Consultant to the Village for this Project shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit A; and
- e. Each employee is an employee of the Consultant, and the Consultant shall make all payments and withholdings required for by law for the Consultant for such employee.

12.2 ADDITIONAL WARRANTIES

The Consultant further represents and warrants that:

- a. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- b. It has all the requisite corporate power and authority to execute, deliver and perform its

- obligations under this Contract;
- c. The execution, delivery, and performance of this Contract have been duly authorized by the Consultant;
 - d. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
 - e. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
 - f. The performance of this Contract by the Consultant and each employee provided by the Consultant will not violate any contracts or agreements with third parties or any third-party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

13 OTHER OBLIGATIONS OF THE CONSULTANT

13.1 WORK ON VILLAGE PREMISES

The Consultant will, whenever on the Village premises, obey all instructions and Village policies that the Consultant is made aware of with respect to performing work on the Village premises. The Consultant shall assure that its employees interact with Village employees and with the public in a courteous, helpful and impartial manner. All employees of the Consultant in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Consultant. In the event that the Consultant causes damage to the Village equipment or facilities, the Consultant shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Consultant's action.

14 REMEDIES

14.1 RIGHT TO COVER

If the Consultant fails to meet any completion date or resolution time set forth under this Contract (including the Exhibits) and any relevant amendment thereto, the Village may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:

- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Consultant is again able to resume performance under this Contract; and
- b. Deduct direct expenses incurred by the Village in obtaining or performing the Services from any money then due or to become due to the Consultant and, should the Village's cost of obtaining or performing the Services exceed the amount due the Consultant, seek the amount due from the Consultant.

14.2 RIGHT TO WITHHOLD PAYMENT

If the Consultant breaches any material provision of this Contract, the Village shall have a right to withhold all payments due to the Consultant until such breach has been fully cured.

14.3 OTHER REMEDIES

Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is

entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

15 TERMINATION OF CONTRACT

15.1 TERMINATION FOR CONVENIENCE

The Village may terminate this Contract for convenience at any time, for any reason or no reason, by giving thirty (30) days' prior written notice to the Consultant. In the event the Contract is terminated pursuant to this Section, the Consultant shall continue performing the Services until the termination date designated in the termination notice. As soon as practicable after written notice of termination without cause, Consultant shall submit a statement to the Village showing in detail the authorized Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the Village agrees to: (i) pay the Consultant for authorized Services rendered through the termination date at the rates set forth in **Exhibit C**. The foregoing payment obligation is contingent upon: (i) the Consultant having fully complied with this Section; and (ii) the Consultant having provided the Village with written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage of completion of each Deliverable.

Nothing in this Section shall be construed as limiting any right of either party in the event of a breach.

15.2 TERMINATION FOR DEFAULT

By giving written notice to the Consultant, the Village may terminate the Contract upon the occurrence of one or more of the following events:

- a. The Consultant fails to complete a particular task by the completion date set forth in the Contract or any amendment thereto;
- b. The Consultant makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- c. The Consultant takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Contract, or failure to provide the proof of insurance as required by the Contract.
- d. The Consultant violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within fifteen (15) days of receipt of written notice of default from the non-defaulting party;
- e. The Consultant attempts to assign, terminate or cancel the Contract contrary to the terms hereof;
- f. The Consultant ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance

of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of the Consultant's assets or properties.

15.3 CANCELLATION OF ORDERS AND SUBCONTRACTS

In the event this Contract is terminated by the Village for any reason prior to the end of the term, the Consultant shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement to the Village showing in detail the authorized Services performed under this Contract to the date of termination.

15.4 OBLIGATIONS UPON EXPIRATION OR TERMINATION

Upon expiration or termination of this Contract, the Consultant shall promptly return to the Village (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the Village; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination.

15.5 NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS

Termination of this Contract shall not relieve the Consultant of the obligation to pay any fees, taxes or other charges then due to the Village, nor relieve the Consultant of the obligation to file any daily, monthly, quarterly or annual reports nor relieve the Consultant from any claim for damages previously accrued or then accruing against the Consultant.

15.6 TRANSITION SERVICES UPON TERMINATION

Upon termination or expiration of this Contract, the Consultant shall cooperate with the Village to assist with the orderly transfer of the Services provided by the Consultant to the Village. Transition services performed by the Consultant shall be compensated by the Village at an hourly rate as provided in **Exhibit C**, unless termination is due to a breach of this Agreement by the Consultant and, in that event, the transition services which shall be provided at no cost to the Village.

16 CHANGES

In the event changes to the Services (collectively "Changes"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented in writing which expressly references and is attached to this Contract (an "Amendment"). The Amendment shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Amendment. If the receiving party does not accept the Amendment in writing within ten business (10) days, the receiving party shall be deemed to have rejected the Amendment. If the parties cannot reach agreement on a proposed Change, the

Consultant shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

17 RELATIONSHIP OF THE PARTIES

The relationship of the parties established by this Contract is solely that of independent contractors. Nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose, and neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

18 VILLAGE OWNERSHIP OF WORK PRODUCT

The parties agree that the Consultant shall transfer ownership rights in the Work Product to Village upon payment in full therefor. (collectively the "Village IP"). The Consultant further agrees to execute and deliver such instruments and other documents as the Village may later reasonably require to perfect, maintain and enforce the Village's rights as sole owner of the Village IP, including all rights under patent and copyright law. Nothing herein shall constitute or be construed to be any representation by Consultant that the Work Product is suitable in any way for any other project except the one detailed in this Contract. Any reuse of Village IP by the Village for another project or project location shall be at Village's sole risk.

The Village grants the Consultant an irrevocable, perpetual, royalty-free, non-exclusive license to use and copy the Work Product to the extent necessary to perform this Contract. The Consultant shall not be entitled to use the Village IP for other purposes without the Village's prior written consent.

The Village acknowledges that any intellectual property that Consultant developed independently of the Village and/or pre-exists Consultant's performance of the Services pursuant to this Contract ("Consultant IP") is the sole and exclusive property of Consultant. Consultant retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Consultant including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, ideas, concepts, delivered by Contractor under this Agreement, whether incorporated in the Work Product or necessary to use the Work Product.

If any Consultant IP is incorporated into the Work Product, the Consultant hereby grants to the Village a perpetual, irrevocable, non-exclusive, worldwide, freely transferable license to use, reproduce, publicly perform, publicly display, and digitally perform such Consultant IP, as necessary to use, and maintain the Work Product.

Residual Rights. Nothing in this Contract will prevent Consultant or its employees from using any general skills and knowledge gained while providing Services pursuant to this Contract.

19 LICENSING

The Consultant may be required to provide evidence of all valid licenses and certificates required for performance of the Services. Such evidence shall be delivered to the Village no later than ten

(10) days after the Consultant receives the notice requesting such information from the Village. Licenses and certificates required for this Contract include, by way of illustration and not limitation, licenses pertaining to or that may be required to be held by field professionals participating in the contract work.

20 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the Village pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Consultant or its subcontractors in connection with this Contract; (iii) arising from the Consultant’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Consultant or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Consultant or an employee or subcontractor of the Consultant is an employee of the Village, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term “Indemnitees” means the Village, any state or federal agency that funds all or part of this Contract, and each of the Village’s and such state or federal agency’s officers, officials, employees, agents and independent contractors (excluding the Consultant); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Consultant shall either: (i) procure for the Village the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the Village shall not be adversely affected by such replacement or modification. If the Consultant is unable to comply with the preceding sentence within thirty (30) days after the Village is directed to cease use of a product or service, the Consultant shall promptly refund to the Village all amounts paid under this Contract.

21 SUBCONTRACTING

Should the Consultant choose to subcontract, the Consultant shall remain fully responsible for performance of all obligations, which it is required to perform under the Contract. Any subcontract entered into by Consultant shall name the Village as a third-party beneficiary.

22 INSURANCE

Throughout the term of this Contract, the Consultant shall comply with the insurance requirements described in this Section. In the event the Consultant fails to procure and maintain each type of insurance required by this Contract, or in the event the Consultant fails to provide the Village with the required certificates of insurance, the Village shall be entitled to terminate this Contract immediately upon written notice to the Consultant.

22.1 *General Requirements*

The Consultant shall not commence any work in connection with this Contract until it has obtained all the types of insurance set forth in this Section and the Village has approved such insurance. The Consultant shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.

All insurance policies required by this Section shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Consultant shall name the Village as an additional insured under the commercial general liability policy required by this Section.

The Consultant's insurance shall be primary of any self-funding and/or insurance otherwise carried by the Village for all loss or damages arising from the Consultant's operations under this agreement. The Consultant and each of its subcontractors shall and does waive all rights of subrogation against the Village and each of the Indemnitees (as defined in Section 20). The Village shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Consultant and/or subcontractor providing such insurance.

Prior to execution of this Contract, the Consultant shall provide the Village with certificates of insurance documenting that the insurance requirements set forth in this Section have been met, and that the Village be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Consultant shall further provide such certificates of insurance to the Village at any time requested by the Village after execution of this Contract, and shall provide such certificates within five (5) days after the Village's request. The Village's failure to review a certificate of insurance sent by or on behalf of the Consultant shall not relieve the Consultant of its obligation to meet the insurance requirements set forth in this Contract.

If any part of the work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Section, provided that the amounts of the various types of insurance shall be such amounts as are approved by the Village in writing. However, this will in no way relieve the Consultant from meeting all insurance requirements or otherwise being responsible for the subcontractor.

22.2 *Types of Insurance*

Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.

Commercial General Liability. Bodily injury and property damage liability as shall protect the Consultant and any subcontractor performing work under this Contract, from claims of bodily injury or property damage which arise from operation of this Contract, whether such operations are performed by the Consultant, or anyone directly or indirectly employed by it. The amounts of

such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract. The Village of Marvin shall be listed as an additional insured under this coverage.

Workers' Compensation Insurance. The Consultant shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

Professional Liability Insurance in an amount of not less than \$1,000,000 each claim and \$1,000,000 aggregate.

23 NON-DISCRIMINATION POLICY

The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of employees, subcontractors, vendors or suppliers in connection with a Village contract or contract solicitation process, nor shall the Consultant retaliate against any person or entity for reporting instances of such discrimination. The Consultant shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on Village contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Consultant understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Consultant from participating in Village contracts, or other sanctions.

24 MISCELLANEOUS

24.1 ENTIRE AGREEMENT

This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.

24.2 CHANGE IN CONTROL

In the event of a change in "Control" of the Consultant (as defined below), the Village shall have the option of terminating this Contract by written notice to the Consultant. The Consultant shall notify the Village within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either:

- a. The ownership of or ability to direct the voting of, as the case may be, fifty-one percent (51%) or more of the equity interests, value or voting power in the Consultant; or
- b. The power to direct or cause the direction of the management and policies of the Consultant whether through the ownership of voting securities, by contract or otherwise.

24.3 GOVERNING LAW, JURISDICTION AND VENUE

North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). Any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court having jurisdiction in Union County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting or having jurisdiction in Union County, North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

24.4 *BINDING NATURE AND ASSIGNMENT*

This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

24.5 *VILLAGE NOT LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES*

The Village shall not be liable to the Consultant, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the Village, or any other consequential, indirect or special damages or lost profits related to this Contract. Notwithstanding the foregoing, the time for Consultant's performance shall be adjusted for any work stoppages or delay caused by the Village, or its other consultants, or subconsultants.

24.6 *SEVERABILITY*

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

24.7 *NO PUBLICITY*

No advertising, sales promotion or other materials of the Consultant or its agents or representations may identify or reference this Contract or the Village in any manner absent the written consent of the Village. Notwithstanding the foregoing, the parties agree that the Consultant may list the Village as a reference in responses to requests for proposals, and may identify the Village as a customer in presentations to potential customers.

24.8 *NO BRIBERY OR LOBBY*

The Consultant certifies that to the best of its knowledge, information, and belief, neither it, nor any of its affiliates or subcontractors, or any employees of any of the foregoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the Village in connection with this Contract.

24.9 *APPROVALS*

All approvals or consents required under this Contract must be in writing.

24.10 WAIVER

No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights. No delay or omission by either party to exercise any right or remedy it has under this Contract shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant.

24.11 SURVIVAL OF PROVISIONS

All provisions of this Contract which by their nature and effect are required to be observed, kept or performed after termination of this Contract shall survive the termination of this Contract and remain binding thereafter, including but not limited to the following:

Section "Representations and Warranties of Consultant"

Section "Termination of Contract"

Section "Village Ownership of Work Product"

Section "Indemnification"

Section "Notices and Principal Contacts"

Section "Miscellaneous"

24.12 FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES

The Consultant agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Consultant further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

24.13 TAXES

Except as specifically stated elsewhere in this Contract, the Consultant shall pay all applicable federal, state and local taxes which are ordinarily borne by the Consultant in its normal course of business. The Consultant consents to and authorizes the Village to collect any and all delinquent taxes and related interest, fines, or penalties of the Consultant by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the Village to the Consultant pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Consultant to the Village. This paragraph shall not be construed to prevent the Consultant from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

24.14 CONSTRUCTION OF TERMS

Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

24.15 TRAVEL UPGRADES

The Village has no obligation to reimburse the Consultant for any travel or other expenses

incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the Village: (a) the Village will only pay coach/economy rate airline fares, and (b) the Consultant's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates.

24.16 DELAYS AND EXTENSIONS

Reasonable extensions of time for unforeseen or unavoidable delays may be made by mutual consent of the parties involved.

24.17 FORCE MAJEURE

Neither Party will be liable or in default for any delay or failure to meet its obligations under this Contract if such delay or failure results solely from labor strikes, riots, war, acts of governmental authorities, terrorism, pandemics, extraordinary weather conditions, other natural catastrophes, or any other cause beyond the reasonable control of the Party obliged to perform ("Force Majeure").

Upon the occurrence of a Force Majeure Event, the Consultant shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as: (i) such Force Majeure Event continues and (ii) the Consultant continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. The Consultant shall promptly notify the Village by telephone or other means available (to be confirmed by written notice within five (5) business days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Consultant from performing its obligations for more than thirty (30) days, the Village may terminate this Contract.

24.18 ENDORSEMENT OF DOCUMENTS

The Consultant shall sign and seal, or cause to be signed and sealed, with the appropriate North Carolina Professional Seal, all final plans, specifications, calculations, reports, plats, and construction documents prepared by the Consultant under this Contract.

24.19 CORRECTION OF DEFECTS AND FAILURES

Any defective designs, specifications, plats, or surveys furnished by the Consultant and any failure of any Services performed by the Consultant to comply with any requirements set forth in this Contract shall be promptly corrected by the Consultant at no cost to the Village. The Village's approval, acceptance, use of, or payment for all or any part of the Consultant's Services or of the Project itself shall in no way alter the Consultant's obligations or the Village's rights under this Contract.

25 DISPUTE RESOLUTION

25.1 The Parties agree that all claims, disputes, and other matters ("Claims") in question between the Parties arising out of or relating to this Agreement or breach thereof shall first attempt to be resolved between themselves including escalating up to the appropriate levels of each Party. If after thirty (30) business days the Claim remains unresolved, the Parties agree to submit the Claim for confidential, non-binding mediation with both Parties agreeing to the mediator no later than forty-five (45) business days after written agreement to engage in mediation. The

fees and expenses of the mediator shall be equally shared by both Parties. Each Party is responsible for its own costs, expenses, consultant fees and attorney fees incurred in the presentation or defense of the Claims that is subject to mediation between the Parties. The Parties agree to fully cooperate and participate in good faith to resolve the Claims. No written or verbal representation made by either Party in the course of any discussion attempting to resolve the Claims or other settlement negotiations shall be deemed to be party admissions. 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.

- 25.2 If mediation fails to resolve the Claims within six (6) months, the Claims shall be submitted for determination through litigation in a court of competent jurisdiction consistent with Section set forth above.

26 NORTH CAROLINA PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL

Consultant certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract Consultant further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the Village for any and all damages, costs and attorneys' fees incurred by the Village in connection with any claim that this Contract or any part thereof is void due to Consultant appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

27 E-VERIFY

The Consultant shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and shall require each of its subcontractors to do so as well.

28 COMPLIANCE WITH LAWS

28.1 GENERAL COMPLIANCE WITH LAWS

The Consultant will agree to comply with all FAR and FHWA requirements and guidelines, whether they are mentioned in the contract or not.

The Consultant shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the services provided herein. Specific attention is directed to North Carolina General Statutes 14-100 (Obtaining Property by False Pretenses) and 136-13.2 (Falsifying Highway Inspection Reports). If, due to conflicts between two or more such ordinances, statutes, laws, rules, and regulations (the "Regulations") or due to conflicts in the interpretation or enforcement of such Regulations by courts or governing bodies having jurisdiction over the project, the Consultant is unable to comply with such Regulations, the Consultant shall exercise usual and customary professional care in complying with such conflicting Regulations.

The Consultant further agrees that it will at all times during the term of this Contract be in compliance with all applicable Federal, State and/or local laws regarding employment practices. Such laws include, but shall not be limited to workers' compensation, the Fair Labor Standards

Act (FSLA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

28.2 *SELECTION OF LABOR*

During the performance of this Contract, the Consultant shall not discriminate against labor from any other State, possession, or territory of the United States.

28.3 *EMPLOYMENT PRACTICES*

During the performance of this Contract, the Consultant agrees to comply with all applicable provisions of 49 CFR 21 through Appendix H and 23 CFR 710.405(b) and the Civil Rights Act of 1964, as amended, and agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, age, handicap and/or disability. The Consultant will take affirmative action to ensure applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, sex, age, handicap and/or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the State setting forth the provisions of this nondiscrimination clause.
- b. The Consultant will state, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap and/or disability.
- c. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State, advising the labor union or workers' representative of the Consultant's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- e. The Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and will permit access to his books, records, and accounts by the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.
- f. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or Federally-assisted construction Contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned Executive Order and regulations

or as otherwise provided by Law.

- g. The Consultant will include the provisions of this Section 28.3 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

28.4 SELECTION OF SUBCONTRACTORS, PROCUREMENTS OF MATERIALS, AND LEASING OF EQUIPMENT

During the performance of this Contract, the Consultant, for itself, its assignees, and successors in interest (herein referred to as "Consultant") agrees as follows:

- a. *Compliance with Regulations*

The Consultant will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.405 (b), hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.

- b. *Nondiscrimination*

The Consultant, with regard to the work performed by them after award and prior to completion of the Contract work, will not discriminate on the ground of race, creed, color, national origin, sex, age, handicap and/or disability in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

The Consultant and its subconsultants shall not discriminate on the basis of race, color, national origin, sex, age, handicap and/or disability in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Village deems appropriate.

- c. *Solicitations*

In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Consultant of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, national origin, sex, age, handicap and/or disability.

- d. *Information and Reports*

The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, account, other sources of information, and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and

instructions. If any information is required from the Consultant or a contractor and such information is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall describe efforts it has made to obtain the information.

e. *Sanctions for Noncompliance*

In the event of the Consultant's or Contractor's noncompliance with the nondiscrimination provisions of this Section 28.4, the Village shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- i. Withholding of payments to the Consultant under the Contract until the Consultant complies, and/or
- ii. Cancellation, termination or suspension of the Contract in whole or in part.

f. *Incorporation of Provisions*

The Consultant will include the provisions of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract, procurement or leases as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with litigation with a subcontractor, or lessor as a result of such direction, the Consultant may request the Village to enter into such litigation to protect the interests of the Village, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

g. *Environmental Protection*

For contracts and subcontracts in excess of \$100,000, the Consultant shall comply with all applicable standards, orders, regulations or requirements issued under the Clean Air Act (42 U.S.C. 7104, *et seq.*) the Clean Water Act (33 U.S.C. 1251, *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The Consultants shall report violations to the grantor agency and to Regional Office of the EPA.

29 MISCELLANEOUS CONDITIONS

29.1 *Amendment*

No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.

29.2 *Interest of the Parties*

The Consultant covenants that its officers, employees, shareholders and subconsultants have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

29.3 *Covenant Against Contingent Fees*

The Consultant warrants that he has not employed or retained any company or person, other

than a bona fide employee working solely for the Consultants, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Village shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

30 MAINTENANCE OF INFORMATION AND REPORTS

30.1 FHWA Information

- a. All work shall be administered and performed in accordance with Federal-Aid Policy Guide (FAPG) – 23 CFR 172 and the North Carolina Administrative Code.
- b. Subcontracts exceeding \$2,500 that involve the employment of mechanics or laborers shall require the subcontractor to comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5).
- c. Subcontracts exceeding \$10,000 shall require the subcontractor to comply with all Federal regulations required in the prime contract.

30.2 Availability of Information

- a. The Consultant shall maintain all books, documents, papers, accounting records, and other information pertaining to cost incurred in this project and to make such materials available at its offices at all reasonable times during the Contract period and for three (3) years from the date the Project has been closed or “final vouchered” in the Federal Highway Administration Agency’s fiscal system for inspection by the Village, the State, Federal Highway Administration, or any authorized representative of the Village, the State, and/or Federal Highway Administration, if requested. The Consultant shall use cost principles as described in Federal Acquisition Regulation (48 CFR 1-31), Subpart 1-31.2.
- b. The Consultant shall require all subcontractors to whom a portion of this Contract may be sublet to maintain all such books, documents, papers, accounting records, and other information pertaining to cost, and further to require that said subcontractors make these materials available to the Village, State, and/or Federal Highway Administration at all reasonable times during the contract period and for three (3) years from date the Project has been closed or “final vouchered” in the Federal Highway Administration Agency’s fiscal system, and to require said subcontractors to furnish copies of such documents to the Village, the State, and/or Federal Highway Administration upon request. The Consultant shall affirmatively enforce this provision of this Contract with the subcontractor upon request of the State or Federal Highway Administration.
- c. The Consultant shall notify the Village of significant changes within the Consultant’s firm (e.g., change of address, telephone number, project-related personnel changes, etc.). This responsibility includes ensuring the Consultant’s qualification paperwork and registration information is current in the State’s files.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Village and Consultant have executed and delivered this Agreement as of the Effective Date.

DEWBERRY ENGINEERS INC.

By: _____
Signature

Print Name

Title

Date

VILLAGE OF MARVIN

By: _____
Signature

Print Name

Title

Date

EXHIBIT A – SCOPE OF WORK (SERVICES)

EXHIBIT B – PROPOSAL TO RFLOI

EXHIBIT C – FEE/COST BREAKDOWN

EXHIBIT D – BYRD ANTI-LOBBYING CERTIFICATION

CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

1. The undersigned certifies, to the best of his or her knowledge and belief, that: (Contractor) 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 et seq., apply to this certification and disclosure, if any.

Date _____ Signature of Contractor's Authorized Official _____

Name and Title of Contractors Authorized Official _____

State of _____
County of _____

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

Notary Public

My Appointment Expires

EXHIBIT E – CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The bidder, consultant, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under this Agreement, or persons or entities holding a greater than 10% equity interest in it (collectively “Principals”):

- 1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
- 2. Have within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
- 4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

I hereby certify as stated above:

Company Name

(Print Name)

Title

Signature

Date

EXHIBIT F – CERTIFICATE OF INSURANCE INCLUDING PROFESSIONAL INSURANCE

**EXHIBIT G: NCDOT LOCALLY ADMINISTERED PROJECT – FEDERAL
(AGREEMENT ID # 11323)**

