



**REQUEST FOR PROPOSAL (RFP)**

**RFP-437**

**Bookstore Operations**

Issue Date: November 17, 2023

Due Date: **January 16, 2024**

**SUBMITTAL DUE DATE AND TIME:**

One (1) **original technical and cost proposal** plus one (1) convenience copy, as well as an electronic copy (submitted on a USB drive) to:

Monica J. Cochran  
Director of Procurement  
Fairmont State University  
Hardway Hall Room 305  
1201 Locust Avenue  
Fairmont, WV 26554

The outside of the envelope or package(s) for both the technical and the cost proposal should be clearly marked:

REQ/RFP #: RFP-437  
Opening Date: 1-16-24  
Opening Time: 3:00 p.m.

Late submittals will not be accepted. Proposals will be accepted until the time and date specified.

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  - C – Higher Education Policy Commission, Series 51 Procedural Rule
  - D – FSU Policy # 54
  - E – Sample Format of Operating Profit and Loss Statement
  - F – Sample Format of Quarterly Management Fee Statement
  - G – Annual Sale and Other Income Statement – FY’s 21, 22 & 23
  - H – Financial/Cost Proposal Worksheets

**LETTER OF INTENT (to submit a bid) – and attend the Mandatory Pre-bid Conference:**

My company intends to submit a bid response for RFP-.

Company Name:	
Contact Name:	
Address:	
City, State, Zip:	
Phone #:	
Fax #:	
Email Address:	

**Signature:** \_\_\_\_\_

**Title:** \_\_\_\_\_

RFP addendums (if any) will be sent (by email) to the contact person listed above.

Please return by email no later than **November 27, 2023**. Please return to:

**Monica J. Cochran, Director of Procurement**  
**Fairmont State University**  
**Email: [monica.cochran@fairmontstate.edu](mailto:monica.cochran@fairmontstate.edu)**

## **SECTION 1: GENERAL INFORMATION / BACKGROUND**

### **1.1 Purpose:**

Fairmont State University, herein after referred to as “Fairmont State” or “University” is seeking to establish an exclusive contract and lease of on-site academic bookstore. The University, therefore, is seeking to obtain competitive proposals via this Request for Proposal (RFP) document.

This solicitation serves as notice, pursuant to West Virginia Code §5A-3-10b, of the commodity or service being sought and is to be considered the opportunity for vendors to indicate their interest in bidding on such commodity or service.

### **1.2 Location and Operating Environment:**

The University is located at 1201 Locust Avenue, Fairmont WV 26554. The bookstore’s retail operation is currently located on the second floor of the Falcon Center. There is a second location on the third floor of the Falcon Center dedicate to textbook sales.

The size of both of the current bookstore locations is approximately 3486 square feet with approximately 1,177 square feet dedicated to textbook operations and approximately 2,309 square feet for merchandise and other operations.

Full and part time enrollment at FSU is approximately 3,000 students per semester, excluding the summer semesters.

Current hours of operation for the bookstore, which coincide with the normal operating hours of the campus, are Monday through Friday 8:00 a.m. to 4:00 p.m.

Extended and late hours will be required during the rush period. Rush hours typically begin the Thursday before classes begin and continue on for the first two weeks of classes.

The bookstore will also be required to open on other Saturdays and possibly weekday evenings upon request (e.g., for Maroon and White Day, Campus Visitation Day, Homecoming, etc.).

The actual hours of operation are to be mutually agreed upon by FSU and the successful bidder.

### **1.3 HEOA and Rules:**

The contract bookstore is required to support Fairmont State student population and is required to follow rules set forth in:

- The Federal Higher Education Opportunity Act 2008 (Exhibit B).
- The rules set forth in Series 51 of the West Virginia Higher Education Policy Commission (Exhibit C)
- Fairmont State’s Policy #54 (Exhibit D)

### **1.4 Background:**

Fairmont State University is located on 120-acre main campus in Fairmont, West Virginia. Fairmont State is a regional university located in Fairmont, WV.

Additional information about Fairmont State University can be found on our webpage:  
[www.fairmontstate.edu](http://www.fairmontstate.edu)

### **1.5 Definitions:**

The following definitions will be part of any contract awarded for order placed as result of this RFP.

**Addendum:** Written clarification or revision to this RFP issues by Fairmont State University Purchasing Office.

**Bidder:** An individual or business entity submitting a bid proposal in response to this RFP.

**Contract:** This RFP, any addendum to this RFP, and the bidder’s proposal submitted in response to this RFP, as accepted by Fairmont State University.

**Contractor:** The bidder awarded a contract resulting from the RFP.

**Equipment, Item or Product:** Refers to the purchase unit.

**Institution or Agency:** Fairmont State University

**May:** Denotes that which is permissible, not mandatory.

**Shall or Must:** Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejections of a bid proposal as materially non-responsive.

**Should:** Denotes that which is recommended, not mandatory.

**State:** State of West Virginia

**University, The University, or FSU:** Fairmont State University

**1.6 Acknowledgement:**

By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this RFP.

A Request for Proposal (RFP) is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

**1.6.1 Compliance with Laws and Regulations:** The Vendor shall procure all necessary permits and licenses to comply with all applicable Federal, State, or municipal laws, along with all regulations, and ordinances of any regulating body.

**1.6.2** The Vendor shall pay any applicable sales, use or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract shall be borne by the Vendor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

**1.7 Schedule of Events:**

RFP Release Date.....	November 17, 2023
Letter of Intent to Attend the Mandatory Pre-Bid.....	November 27, 2023
Mandatory Pre-Bid Meeting .....	December 1, 2023
Vendor Questions Due .....	December 1, 2023
Addendum Issued (to respond to vendor’s questions).....	December 8, 2023
Bids Due/Bid Opening Date.....	January 16, 2024
Evaluation Committee Meets .....	February 2, 2024
Vendor Presentations (top four technical scores) .....	February 19-23, 2024
Letter of “intent to award” Issued .....	Approx. April 1, 2024
Contract Award .....	Approx. May 1, 2024
Contract Effective Date .....	Will depend upon approved transition plan

**1.8 Letter of Intent to Submit a Bid (and attend the mandatory pre-bid conference):**

Vendors planning to submit a bid as a result of this RFP are requested to return the Letter of Intent (page 4 of bid package) by November 27, 2023

**1.9 Mandatory Pre-bid Conference:**

There will be a mandatory pre-bid conference at 9:00 a.m. on December 1, 2023, at Fairmont State University, in the Falcon Center Private Dining Room (3<sup>rd</sup> Floor).

All interested bidders are **required to be present at this meeting**.

Failure to attend the mandatory pre-bid conference shall automatically result in disqualification. No one person can represent more than one vendor. Those attending the conference must submit the "Letter of Intent" found on page 4 of the RFP.

After the pre-bid conference, prospective bidders may visit the actual bookstore location. Site visits must be accompanied by a Fairmont State representative.

**1.10 Vendor Presentations:**

All proposals, information and responses must be submitted in writing. The top four vendors who receive the highest technical scores will be asked to make an oral presentation to the evaluation committee. The oral presentations (interviews) will tentatively be held between February 19-23, 2024.

**1.11 Inquiries:**

Inquiries regarding specifications of this RFP must be submitted in writing to the Director of Procurement. The only exception is for questions regarding the proposal submission which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.7. All inquiries of specification clarification must be addressed to:

Monica J. Cochran, Director of Procurement – [monica.cochran@fairmontstate.edu](mailto:monica.cochran@fairmontstate.edu)  
Fairmont State University  
Hardway Hall Room 305  
1201 Locust Avenue  
Fairmont, WV 26554

No contact between the Vendor and the University is permitted without the express written consent of the Director of Procurement. Violation may result in rejection of the bid. The Director of Procurement named above is the sole contact for any and all inquiries after this RFP has been released.

**1.12 Response to Vendor's Questions/Inquiries:**

Any vendor questions will be answered in an RFP Addendum which will be distributed (via email notification) to vendors who submitted a Letter of Intent to Bid and attended the mandatory pre-bid meeting. The addendum will be released via email notification no later than December 8, 2023. Addendum will also be posted on the Fairmont State University Procurement webpage. Only the written response to questions will be binding.

**1.13 Verbal Communication:**

Any verbal communication between the Vendor and any University personnel is **not** binding. Only information issued in writing and added to the RFP specifications by an official written addendum by Procurement is binding.

**1.14 Addenda:**

If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by the Procurement Office.



## **SECTION 2: PROJECT SCOPE AND SPECIFICATIONS**

### **2.1 General Scope and Objectives:**

Fairmont State University seeks proposals from qualified vendors to engage in an exclusive contract and lease of on-site academic bookstore on the campus of Fairmont State University.

- 2.1.1 Under the anticipated contract, the successful respondent will operate as the official Fairmont State Bookstore. Except as otherwise noted herein, Fairmont State will grant the exclusive right to market and sell textbooks, trade books, art supplies, College-licensed memorabilia, clothing, souvenirs, and caps and gowns at the bookstore.
- 2.1.2 To the extent permissible by law and except as otherwise noted herein, these rights are granted for sales at the specified retail bookstore location at the FSU main campus. No FSU staff member or administrator shall contract, encourage, or require the purchase of textbooks or other items, to which exclusive rights have been granted, from any merchant, other than the successful contractor.
- 2.1.3 Optionally, and except only free speech areas and student newspapers, FSU may grant rights to the successful respondent as the exclusive advertiser of textbooks at all campus locations, in all official college publications, and on all owned or sponsored media and electronic media sites (including athletic facilities, media, and events).
- 2.1.4 Exclusive rights do not apply to any services or merchandise of any kind purchased for administrative use.
- 2.1.5 Except as otherwise noted above, exclusive rights do not apply to any services or merchandise of any kind to be sold at Fairmont State University athletic facilities and events.

### **2.2 Mandatory Requirements:**

#### **2.2.1 Bookstore Textbook Committee:**

The successful contractor will participate in the Bookstore Textbook Committee composed of bookstore staff, Fairmont State faculty, student and administrators for the purpose of reviewing store operations, policies, procedures, book costs and performance.

The successful contractor will provide an independent customer satisfaction survey of students and faculty every year during the term of the agreement. Results of the survey shall be reported to the Bookstore Textbook Committee and the VP for Finance & Administration.

#### **2.2.2 Contract Management:**

Bookstore on-site management personnel must meet with the Fairmont State liaison on a monthly basis to review store performance and financials. Fairmont State's management will give input on improvements and future performance.

#### **2.2.3 Renovations, Maintenance, Utilities and Telecommunications:**

The successful contractor will be responsible for all renovations, alterations, changes, or modifications to existing facilities, except as may be required to maintain structural integrity and environmental safety, throughout the full term of the agreement. All such changes must have the prior written consent of Fairmont State and be coordinated with Facilities Management.

The successful contractor will be responsible for maintenance and repair of all premises, fixtures and equipment, whether furnished by the contractor or the University, throughout the entire term of the agreement. Store must be maintained to the highest standards of good repair, cleanliness, and orderliness, which shall include, but not necessarily be limited to windows, floors, carpets, pest control, trash removal, janitorial service, furniture and equipment.

Fairmont State will provide heat, air conditioning, water, light (not light bulbs), and power for the store.

At the discretion of Fairmont State University's leadership and department of Information Technology, successful contractor may lease telecommunication services and internet services from Fairmont State University at current market rate. Or, the successful contractor must provide for these services in coordination with Fairmont State University's department of Information Technology and department of Facilities Administration.

**Existing State Employees:**

Fairmont State does not have any State employees working in the bookstore.

All future hires of the bookstore will be hired as contract vendor employees. Fairmont State University is an Equal Opportunity/Affirmative Action institution. We do not discriminate on the basis of race, sex, age, disability, veteran status, religion, sexual orientation, color of national origin in the administration of any of our educational programs, activities or with respect to admission or employment. The successful contractor must comply with all policies, procedures of Fairmont State, and all Federal, State and local regulations, and laws applicable to Equal Opportunity and Affirmative Actions.

**2.2.4 Textbook Electronic Commerce:**

Bidders must provide an electronic commerce website designed and maintained for the students and faculty to purchase textbooks and other related materials. The site must be easily accessible and user-friendly. Contractor must work with the Information Technology department in making their website easily accessible from our electronic resources – both future planned portal(s) as well as current web and network arrangements. Customers must be able to review required texts and make purchase online, including purchase of texts through financial aid accounting. A variety of delivery options should be available including shipping to the local bookstore location for customer pick-up. Textbooks orders place online for in-store customer pick up should have a 24-hour turnaround time.

**2.2.5 Competition:**

Following the termination or expiration of any agreement, contract or renewals thereof, the successful contractor may not operate a bookstore or similar business in competition with Fairmont State or its contractors for a period of four (4) years.

**2.2.6 Reporting:**

The contractor must maintain and keep completed financial records, including monthly sales reports for all lines of business and for each revenue source. All Revenue and Expense reports must meet state and federal requirements. Records must be made available upon request for review and audit by Fairmont State or its independent auditors.

The successful bidder must submit monthly Operating Profit and Loss Statements in a format approved by Fairmont State. Exhibit E is an example of an approved format. **All**

**bidders must submit an example of their Operating Profit and Loss Statement along with their financial bid.**

**2.2.7 Existing Contracts:**

The contractor must comply with all terms and conditions of any existing contracts, in particular, exclusive rights contracts for food service and vending operations.

**2.2.8 Employee Parking Permits:**

Bookstore employees must purchase a faculty/staff parking permit at rates normally charged to Fairmont State faculty and staff.

**2.2.9 Inventory at end of contract:**

On termination or expiration of any contract or any renewals thereof, Fairmont State reserves the right to purchase any portion or all inventory of books or other merchandise.

**2.2.10 Bookstore Manager:**

The University shall have the authority to request that a manager be retained or replaced.

**2.2.11 Name of Bookstore and Signage:**

The name of the bookstore may carry the name of the contract vendor on behalf of Fairmont State University.

The contract vendor is responsible for updating/changing all signage at its own expense with no depreciation cost to Fairmont State.

**2.3 Vendor Qualifications, Experience and References:**

Fairmont State desires a vendor with the organizational experience, size and qualifications to ensure successful administration of the bookstore as well as financial stability throughout the contract duration.

**2.3.1** Describe your company, its history, corporate structure, officers or partners, number of employees and operating policies which would affect this contract.

**2.3.2** Identify the firms' representative that will be assigned to our account and describe his/her history and experience in serving clients of similar scope and size to Fairmont State University.

**2.3.3** Provide a list of at least three current higher education clients of similar scope and size. Include organization name, contact name, title, telephone number and email address of the contact person.

**2.3.4** Provide a list of higher education accounts your company has lost (early termination or non-renewal) over the past three (3) years. Include contract name and phone number, length of service at each account and the reason for loss.

**2.4 Technical Specifications:**

Provide information detailing the bidder's business and ability to provide the services described in the RFP including:

**2.4.1 Textbooks:**

Describe in detail your ability to provide sufficient and timely delivery of all textbooks and course packs required and recommended by the faculty. All decisions regarding the selection of textbooks shall be made solely by the faculty and/or administrative staff in compliance with Federal, State, Higher Education and Institutional Policies.

Include your projected gross margins, procedures and policies for being price competitive, obtaining book lists, copyright clearances, maintaining sufficient inventory, meeting special needs, used and new book supplies, buyback programs, textbook rental program, discount programs, pack and hold services, electronic commerce capabilities, and other programs to deliver textbooks in the most affordable manner or any additional information you wish us to consider in evaluating your response.

**2.4.2 Valued Partner:**

Describe in detail how you will become a valued partner and how you become involved in the academic and social culture of Fairmont State. How will you set yourself apart from your competitors and become a valued part of our learning community?

**2.4.3 Customer Service:**

Describe in detail your policies and procedures for Quality Assurance, including customer service standards and reviews, conflict resolution, employee training programs, public relations, personal check policy, credit card acceptance, refund policy and secret shopper programs, etc.

**2.4.4 Trade Books:**

Describe in detail your ability to provide a wide selection of trade books and academic and technical literature in support of the academic disciplines at Fairmont State.

Include the number and titles of trade and reference titles you will stock, and your procedures and policies for selection, inventory, handling special requests, new vs. used textbook ratios, discount programs, and other features or information you wish us to consider in evaluating your response.

**2.4.5 Bookstore Soft Goods:**

Describe in detail your ability to provide a wide selection of soft goods and other services and merchandise, college-licensed memorabilia, clothing, souvenirs, paper and office supplies.

**2.4.6 Market Share:**

Describe in detail your market share for textbooks and other merchandise in operations similar in size and scope to Fairmont State. Include information about total textbook revenues for given enrollments and classes, and percent market share, new vs. used textbook ratios, product margins, competition, market segments conceded to competitors, revenue and percentages of non-textbook merchandise, and share of textbook and non-textbook revenues from electronic commerce.

**2.4.7 Transition Plan:**

Fairmont State expects to award the contract by May 1, 2024. Actual effective date and full implementation to be mutually determined. All renovations, inventories, and merchandise resupply must be completed in an orderly and cooperative fashion. Services to students, faculty and staff may not be interrupted. Submit a detailed transition plan describing your procedures and practices for assuming operations from an existing contractor. Include information regarding inventory, store change over timelines, service continuity, textbook buyback, and any other factors related to an orderly transition.

**2.4.8 Financial Stability:**

Fairmont State desires to review the bidder's financial information that confirms the financial stability of the company. Provide copies of your organization's annual reports for the last three years, including independently audited financial statements, Dun and Bradstreet ratings, and other performance information related to the discal strength and resources of your organization.

Is your company or firm engaged, or planning to engage in any merger, acquisition, or business reorganization that might have an impact on your relationship with the University.

**2.4.9 Higher Education Opportunity Act, HEPC Series 51 and FSU Policy Statements 54:**

The contracted bookstore is required to support Fairmont State's student population and is required to follow rules set forth in the Federal Higher Education Opportunity Act of 2008, the rules set forth in Series 51 of the West Virginia Higher Education Policy Commission and Fairmont State University's Policy #54. Attachments B, C and D.

Describe how you will manage bookstore business recognizing and utilizing Federal, State and Institutional policies.

**2.5 Additional Considerations:**

Make any additional and/or alternate proposals you wish Fairmont State University to consider in evaluating your response. Included in this section may be, but not limited to, creative ideas, concepts, alternative facilities, special business relationships, third party developer relationships, innovative customer service programs, low-cost alternative options, entrepreneurial initiatives, and alternative financial considerations. Note: All financial information must be included in the Cost Proposal – not the Technical Proposal.

### **SECTION 3: TECHNICAL RESPONSE/SUBMISSION REQUIREMENTS/BID OPENING:**

#### **3.1 Economy of Preparation:**

Proposals should be prepared simply and economically providing a straightforward, concise description of the Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of the content.

#### **3.2 Incurring Cost:**

Neither the University nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

#### **3.3 Proposal Format:**

While there is no intent to limit the contents of any proposal, proposals should conform to the tab format outlined below to ensure that all pertinent information necessary for evaluation is included and to facilitate review.

Tab 1. **Title Page and Attachments** -- State the RFP number, vendor's name, business address, telephone number, name of contact person, e-mail address, and Vendor signature and date. Include Attachment A (Purchasing Affidavit), and Attachment B (Bid Response Certification) under tab 1.

Tab 2. **Technical Response/Scope of Services** – provide the information requested in Section 2 of the RFP. Vendors must address all specifications listed in Section 2 in its entirety with an acknowledgement of (or comments/response to) each item (sub-section) – i.e., provide a detailed explanation regarding how each technical specification will be met.

Tab 3. **Agreement or Exceptions** – Indicate agreement with or exceptions to any of the contract terms or conditions.

Tab 4. **Pricing** – This tab should include all cost information. Vendor shall provide information for this tab in a **sealed envelope separate from the technical proposal**.

#### **3.4 Proposal Submission:**

Proposals must be received in **two distinct parts**: technical and cost.

- **Part 1: Technical proposals** (tabs 1, 2, and 3) must not contain any cost information relating to the project.
  - **Part 2: Cost proposal** (tab 4) shall be sealed in a separate envelope and will not be opened initially.
- 3.4.1** All proposals must be submitted to the University **prior** to the date and time stipulated in the RFP as the opening date. All bids will be dated and time stamped to verify official time and date of receipt.
- 3.4.2** Vendors should allow sufficient time for delivery. In accordance with **West Virginia Code** §5A-3-11, the University cannot waive or excuse late receipt of a proposal, which is delayed or late for any reason. Any proposal received after the bid opening date and time will be immediately disqualified in accordance with State law.

**3.4.3** Vendors responding to this RFP shall submit:

**One (1) original technical and cost proposal plus one (1) convenience copy; as well as one electronic copy (on a USB drive) to:**

Monica J. Cochran  
Director of Procurement  
Fairmont State University  
Hardway Hall Room 305  
1201 Locust Avenue  
Fairmont, WV 26554

The outside of the envelope or package(s) for both the technical and the cost should be clearly marked:

REQ/RFP #: RFP-437  
Opening Date: January 16, 2024  
Opening Time: 3:00 p.m.

**3.5 Purchasing Affidavit:**

**West Virginia Code** §5A-3-10a requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the proposal. (ATTACHMENT A)

**3.6 Bid Response Certification:**

Fairmont State University is requesting vendors read and sign the Bid Response Certification to declare they have read Request for Bids, and the proposal is submitted on the basis that the vendor agrees to all specifications contained therein. (ATTACHMENT B)

**3.7 Technical Bid Opening:**

The Procurement Office will open and announce only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the evaluation committee.

**3.8 Cost Bid Opening:**

After the evaluation and scoring of the technical proposals, the Procurement Office will open the cost proposals. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will not be opened. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code** §5A-3-11(h) and **West Virginia Code of State Rules** §148-1-6.2.5.

**SECTION 4: EVALUATION AND AWARD**

**4.1 Evaluation Process:**

Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria. The Vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Vendors shall be awarded the contract. The selection of the successful Vendor will be made by a consensus of the evaluation committee.

**4.2 Evaluation Criteria:**

All evaluation criteria are defined in the specifications section and based on a 100-point total score. Cost shall represent a minimum of 30 of the 100 total points.

**Step 1: Technical Proposal Evaluation 60 Points**

The following are the evaluation factors and maximum points possible for technical point scores:

- Vendor Qualifications, Experience & References (section 2.3)..... 10 Points
- Transition Plan (section 2.4.7) ..... 5 Points
- HEOA, Series 51 & Policy 54 (section 2.4.9) ..... 10 Points
- Project Specifications and Scope (section 2.4 and 2.5) ..... 35 Points

**Step 2: Oral Presentation (section 1.10) 10 Points**

**Step 3: Financial/Revenue Proposal (section 6) 30 points**

Points for cost will be determined by the following formula for all Vendors who attained the minimum acceptable score:

$$\frac{\text{Revenue of Proposal Being Evaluated}}{\text{Highest Net Revenue}} = (?) \times 30 = \text{Revenue Score}$$

**4.2.1 Technical Evaluation:** The University evaluation committee will review the technical proposals, and make a final recommendation to the Procurement Office.

**4.2.2 Minimum Acceptable Score:** Vendors must score a minimum of 70% of the total technical points possible. The minimum qualifying score on the technical portion is 42 points in order to be eligible for Oral Presentations. All vendors not attaining the minimum acceptable score (MAS) will be disqualified and removed from further consideration. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder’s technical proposal failing to meet the minimum acceptable score and the bidder’s technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code §5A-3-11(h)** and **West Virginia Code of State Rules §148-1-6.2.5**.



**4.2.3 Cost Evaluation:** The Procurement Office will review the cost proposals, assign appropriate points, and make a final recommendation of award.

**4.3 Independent Price Determination:**

A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

**4.4 Rejection of Proposals:**

The University reserves the right to accept or reject any or all proposals, in part or in whole at its discretion. The University further reserves the right to withdraw this RFP at any time and for any reason. Submission of or receipt of proposals by the University confers no rights upon the bidder nor obligates the University in any manner.

**4.5 Vendor Registration:**

Prior to contract award, Vendor must be registered (and pay the applicable registration fee) with the State of West Virginia Purchasing Division. **Vendors are strongly encouraged to register with the State of West Virginia through the Vendor Self-Service portal**, which may be accessed at [wvOASIS.gov](http://wvOASIS.gov). Vendors may also register by completing a WV-1 **Vendor Registration & Disclosure Statement and Small, Women, & Minority-Owned Business Certification** form, available for download through <http://www.state.wv.us/admin/purchase/forms.html>. A completed registration can be processed for a vendor through *either* the electronic or paper form method.

## SECTION 5: CONTRACT TERMS AND CONDITIONS

### 5.1 Contract Provisions:

The RFP and the Vendor's response will be incorporated into the contract by reference. The order of precedence shall be the contract, the RFP and any addendum, and the vendor's proposal in response to the RFP.

### 5.2 Public Record:

All documents submitted to the University related to purchase orders or contracts are considered public records. All bids, proposals, or offers submitted by Vendors shall become public information and are available for inspection during normal official business hours in the Fairmont State University Procurement Office.

Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code** §5A-3-11(h) and **West Virginia Code of State Rules** §148-1-6.2.5.

**5.2.1 Risk of Disclosure:** The only exemptions to disclosure of information are listed in **West Virginia Code** §29B-1-4. Any information considered a trade secret must be separated from the Vendor submission and clearly labeled as such. Primarily, only trade secrets, as submitted by a bidder, are exempt from public disclosure. The submission of any information to the State by a Vendor puts the risk of disclosure on the Vendor. The University does not guarantee non-disclosure of any information to the public.

**5.2.2 Written Release of Information:** All public information may be released with or without a Freedom of Information request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently, the fees are 30 cents per page.

### 5.3 Conflict of Interest:

Vendor affirms that neither it nor its representatives have any interest nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the University.

### 5.4 Vendor Relationship:

The relationship of the Vendor with the University shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the University for any purpose whatsoever.

Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *et cetera* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold harmless the University, and shall provide the University with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

The Vendor shall not assign, convey, transfer, or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association, or entity without expressed written consent of the University.

**5.4.1** Subcontracts/Joint Ventures: The Vendor may, with the prior written consent of the University, enter into subcontracts for performance of work under this contract.

**5.4.2** Indemnification: The Vendor agrees to indemnify, defend, and hold harmless the State and the University, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage laws.

**5.4.3** Governing Law: This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws and regulations as provided by Federal, State, and local governments.

**5.5 Term of Contract and Renewals:**

This contract will be effective TBD and shall extend for the period of five (5) years, at which time the contract may, upon mutual consent, be renewed. Such renewals are for a period of up to one (1) year, with a maximum of five (5) one-year renewals. Automatic renewal of this contract is prohibited.

**5.6 Non-Appropriation of Funds:**

If funds are not appropriated for the University in any succeeding fiscal year for the continued use of the services covered by this contract, the University may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The University shall give the Vendor written notice of such non-appropriation of funds as soon as possible after the University receives notice. No penalty shall accrue to the University in the event this provision is exercised.

**5.7 Changes:**

If changes to the contract become necessary, a formal contract change order will be negotiated by the University and the Vendor.

**NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER FROM THE PROCUREMENT OFFICE.**

**5.8 Invoices:**

The Vendor shall submit invoices, in arrears, to the University at the address on the face of the purchase order labeled "Invoice To."

**5.9 Purchasing Card Acceptance:**

Fairmont State University currently utilizes a Purchasing Card Program, administered by the State of WV under contract by a banking institution, to process payment for goods and services. The Vendor should accept both the Purchasing Card and Purchase Orders for orders under this contract.

**5.10 Liquidated Damages:** *Not applicable*

**5.11 Contract Termination:**

The contract may be terminated by Fairmont State University with thirty (30) days prior notice pursuant to ***West Virginia Code of State Rules § 148-1-7.16.2***. Fairmont State University shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

**5.12 Special Terms and Conditions:**

The apparent successful vendor shall furnish proof of the insurance identified below and must include the University as an additional insured on each policy prior to contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, vendor shall provide the University with proof that the insurance mandated herein has been continued. Vendor must also provide the University with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, policy reduction, or change in insurers. The apparent successful vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to contract award.

**5.12.1 Bid and Performance Bonds:** *Not Applicable*

**5.12.2 Insurance Requirements:**

**Comprehensive General Liability Coverage** with \$1,000,000 limit of liability;

**Cyber Liability** with \$3,000,000 of liability or greater in the event the vendor has access to sensitive data, PII or PHI;

**Auto Coverage** with \$1,000,000 limit of liability in the event the vendor's operation involves the use of a vehicle in conjunction with the proposed contract and the vehicle would be used on state property. If the vendor is sending goods via postal delivery or other delivery carrier, Auto coverage is not needed;

**Workers' Compensation Coverage** as required by law, with Employers Liability Coverage included should the vendor's employees be performing services in WV.

**5.12.3 License Requirement:** *Not Applicable*

**5.12.4 Protest Bond:** *Not Applicable*

**5.13 Record Retention (Access and Confidentiality):**

Vendor shall comply with all applicable Federal and State rules, regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by the Vendor. The Vendor shall maintain such records a minimum of five (5) years and make such records available to university personnel at the Vendor's location during normal business hours upon written request by the University within ten (10) days after receipt of the request.

Vendor shall have access to private and confidential data maintained by the University to the extent required for the Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and

hold harmless the State and the University against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by the Vendor.

**5.14 Agreement Addendum Form WV-96:**

If it is the intent of the apparent successful vendor to require the State to execute the vendor's contract, such contract must be attached for consideration with the proposal. **It will also be a requirement of the successful vendor to sign the "Agreement Addendum" form (WV-96) which** is attached for your review (ATTACHMENT C)

## **SECTION 6: Cost Proposals/Financial Consideration:**

### **6.1 Cost Proposals**

All financial information must be submitted in a separate sealed envelope at the same time as the technical response is submitted.

Bidders must submit a separate detailed financial/revenue proposal using the attached Cost Proposal Worksheet/Exhibit H) which included the following information:

- a) State the monthly rent you will pay to Fairmont State each year. This amount should reflect the value of retail space, utilities and services provided.
- b) State the nature and amount of additional consideration you will pay to Fairmont State each year, including, but not limited to, book scholarships, scholarship endowments, etc.
- c) Optionally state the account of consideration you will pay Fairmont State each year for the right to be the exclusive seller of textbook at all campus locations.
- d) The financial bid of the proposer must indicate the percent of sales (and projected revenue) that will be provided to Fairmont State for the purpose of paying toward debt service of the Fairmont State University Falcon Center. The financial bids need to follow format required for facilities funded by Federal Tax-Sheltered Bonds (i.e., fixed and variable amount) – See Exhibit F for reporting format and Exhibit G for FY 21, 22 and 23 Sales and Other Income.
- e) Include a sample Operating Profit and Loss Statement

### **6.2 Capital Improvement/Renovations**

Any proposed capital improvements/renovations to the existing store or future store location(s) will be at the expense of the contract vendor and no depreciation to Fairmont State University is allowed.

### Terms and Conditions

1. **ACCEPTANCE:** Seller shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Seller are objected to and are hereby rejected, unless otherwise provided for in writing by the Buyer and approved by the Attorney General.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the Governing Board having jurisdiction shall govern all rights and duties under the Contract, including without limitation the validity of the Purchase Order/Contract.
3. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Seller without the Buyer's consent.
4. **BUYER:** For the purposes of these Terms and Conditions, the "buyer" means the institutional purchasing goods and services for which a Purchase Order has been lawfully issued to the Seller.
5. **CANCELLATION:** The Buyer may cancel any Purchase Order/Contract upon 30 days written notice to the Seller.
6. **COMPLIANCE:** Seller shall comply with all federal, state and local laws, regulations and ordinances including, if applicable.
7. **DELIVERY:** For exceptions to the delivery date as specified in the Order, the Seller shall give prior notification and obtain the approval of the Buyer. Time is of the essence of this Order and it is subject to termination by the Buyer for failure to deliver on time.
8. **DISPUTES:** Disputes arising out of the agreement shall be submitted to the West Virginia Claims Commission.
9. **HOLD HARMLESS:** The Buyer will not agree to hold the Seller or any other party harmless because such agreement is not consistent with state law.
10. **MODIFICATIONS:** This writing is the parties final express of intent. No modification of this Order shall be binding unless agreed to in writing by the Buyer.
11. **NON-FUNDING:** All services performed or goods delivered under this Purchase Order/Contract are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
12. **ORDER NUMBERS:** Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgements, shipping labels, packing slips, invoices and correspondence.
13. **PAYMENTS:** Payments may only be made after the delivery of goods and services.
14. **RENEWAL:** The Contract may be renewed only upon mutual written agreement of the parties.
15. **REJECTION:** All goods or materials purchased herein are subject to approval of the Buyer. Any rejection of goods or materials resulting in nonconformity to the terms, conditions or specifications of this Order, whether held by the Buyer or the Seller, will be at the Seller's risk and expense.
16. **SELLER:** For the purposes of these Terms and Conditions, the "Seller" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued purchase order from the Buyer.
17. **SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB Destination. NO charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods and services shall be shipped on or before the date specified on this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Buyer.
18. **TAXES:** The State of West Virginia (the Buyer) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. **TERMINATION:** In the event of a breach by the Seller of any of the provisions of this contract, the Buyer reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Seller. The Seller shall be liable for damages suffered by the Buyer resulting from the Seller's breach of contract.
20. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; (b) be merchandise and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.

Any supplier furnishing items on this purchase order covered by a Material Safety Data Sheet must provide the MSDS citing the purchase order number.

It is the policy of Fairmont State University to administer all University actions and procedures without regard to race, color, age, religion, sex, national origin, disability, veteran's status or sexual orientation as identified and defined by law.

The University neither affiliates knowingly with nor grants recognition to any individual, group, or organization, including vendors that discriminate on the basis of any of the above.

Fairmont State University complies with the requirements of the nondiscrimination clauses set out by the Code of Federal Regulations Title 41 60-1.4(a)(7) (equal opportunity clause), 60-250.4(m) (affirmative action for veterans), and 60-741.4(f) (affirmative action for persons with disat

## ATTACHMENT A: PURCHASING AFFIDAVIT

<http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

### STATE OF WEST VIRGINIA Purchasing Division

## PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

#### DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

#### WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

AFFIX SEAL HERE

NOTARY PUBLIC \_\_\_\_\_

*Purchasing Affidavit (Revised 01/10/2018)*



**ATTACHMENT B: BID RESPONSE CERTIFICATION**

\_\_\_\_\_  
DATE

The undersigned, as bidder, declares that he/she has read the Request for Bids and the following bid is submitted on the basis that the undersigned, the company and its employees or agents, shall meet, or agree to, all specifications contained therein. It is further acknowledged addenda numbers \_\_\_\_\_ to \_\_\_\_\_ have been received and were examined as part of the RFP document.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
FEIN

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email

## ATTACHMENT C: ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

<http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

WV-96  
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### STATE OF WEST VIRGINIA ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

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1/1/2019

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *italics* to identify language being added and ~~striketrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: \_\_\_\_\_

Vendor: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

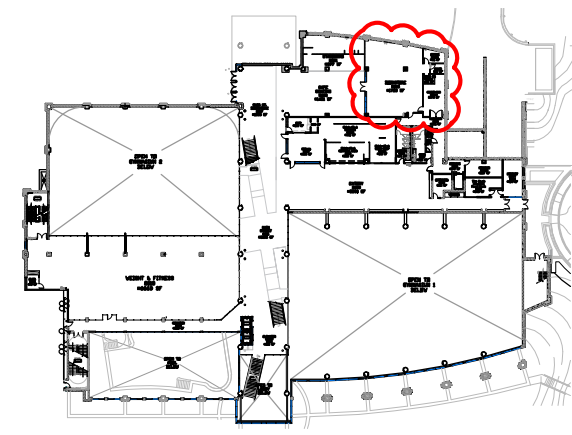
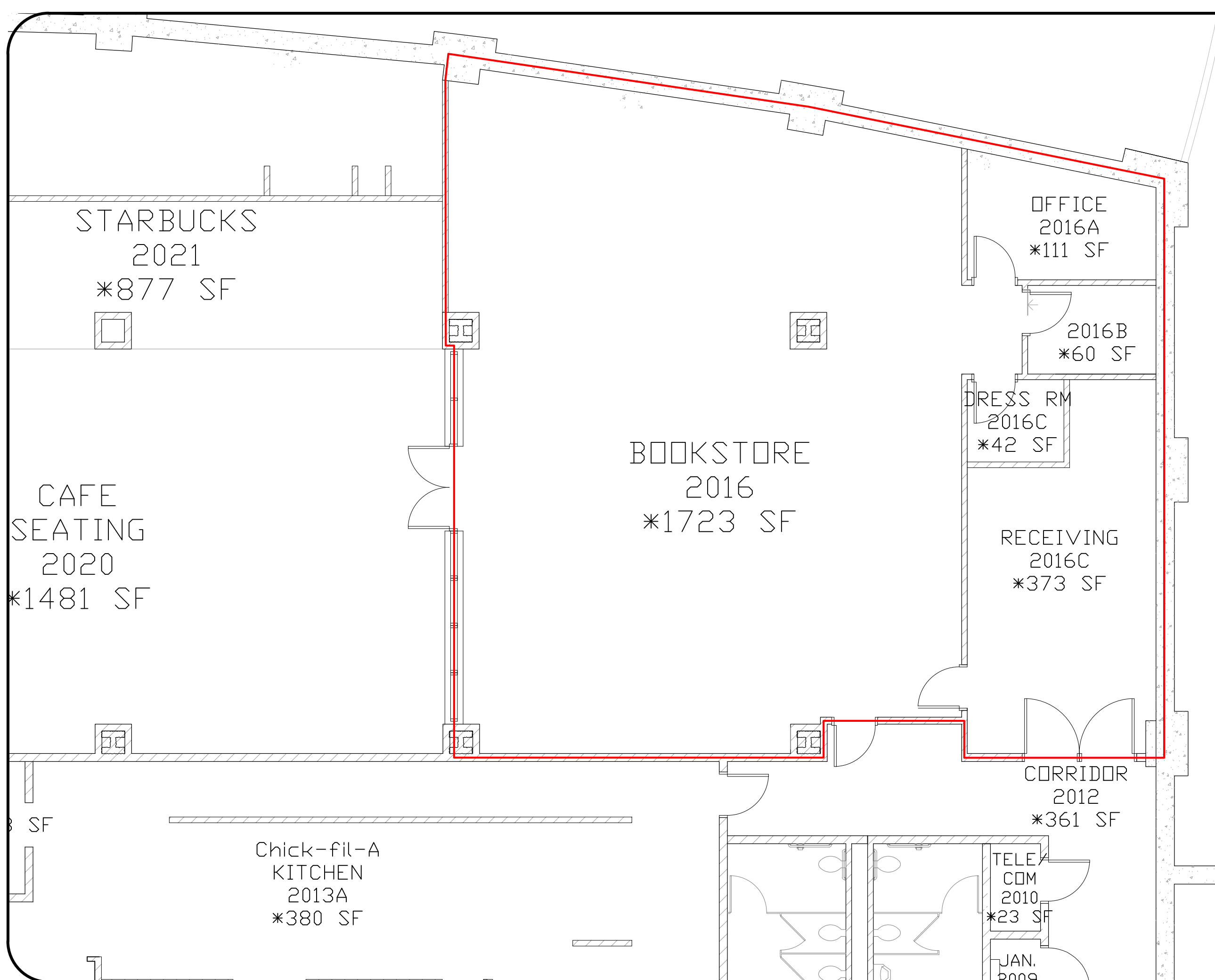
Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Floor Plans**

**3 pages (including cover page)**





Key Plan

\* Total 2nd Floor Bookstore area approximately, 2,309 SF.

Firm Name and Address	
Fairmont State Facilities 1201 Locust Ave. Fairmont, WV 26554	
Project Name and Address	
Falcon Center Second Floor Bookstore	
Drw. By	Stephanie DeGroot
Date	8/31/09
Scale	NTS
Sheet	
2	



**Higher Education Act of 1965, as amended by Public Law 110–315—AUG. 14, 2008**

**SEC. 133. TEXTBOOK INFORMATION.**

(a) **PURPOSE AND INTENT.**—The purpose of this section is to ensure that students have access to affordable course materials by decreasing costs to students and enhancing transparency and disclosure with respect to the selection, purchase, sale, and use of course materials. It is the intent of this section to encourage all of the involved parties, including faculty, students, administrators, institutions of higher education, bookstores, distributors, and publishers, to work together to identify ways to decrease the cost of college textbooks and supplemental materials for students while supporting the academic freedom of faculty members to select high quality course materials for students.

(b) **DEFINITIONS.**—In this section:

(1) **BUNDLE.**—The term ‘bundle’ means one or more college textbooks or other supplemental materials that may be packaged together to be sold as course materials for one price.

(2) **COLLEGE TEXTBOOK.**—The term ‘college textbook’ means a textbook or a set of textbooks, used for, or in conjunction with, a course in postsecondary education at an institution of higher education.

(3) **COURSE SCHEDULE.**—The term ‘course schedule’ means a listing of the courses or classes offered by an institution of higher education for an academic period, as defined by the institution.

(4) **CUSTOM TEXTBOOK.**—The term ‘custom textbook’—

(A) means a college textbook that is compiled by a publisher at the direction of a faculty member or other

person or adopting entity in charge of selecting course materials at an institution of higher education; and

(B) may include, alone or in combination, items such as selections from original instructor materials, previously copyrighted publisher materials, copyrighted third-party works, and elements unique to a specific institution, such as commemorative editions.

(5) **INSTITUTION OF HIGHER EDUCATION.**—The term ‘institution of higher education’ has the meaning given the term in section 102.

(6) **INTEGRATED TEXTBOOK.**—The term ‘integrated textbook’ means a college textbook that is—

(A) combined with materials developed by a third party and that, by third-party contractual agreement, may not be offered by publishers separately from the college textbook with which the materials are combined; or

(B) combined with other materials that are so interrelated with the content of the college textbook that the separation of the college textbook from the other materials would render the college textbook unusable for its intended purpose.

(7) **PUBLISHER.**—The term ‘publisher’ means a publisher of college textbooks or supplemental materials involved in or affecting interstate commerce.

(8) **SUBSTANTIAL CONTENT.**—The term ‘substantial content’ means parts of a college textbook such as new chapters, new material covering additional eras of time, new themes, or new subject matter.

(9) **SUPPLEMENTAL MATERIAL.**—The term ‘supplemental material’ means educational material developed to accompany a college textbook that—

(A) may include printed materials, computer disks, website access, and electronically distributed materials; and

(B) is not being used as a component of an integrated textbook.

(c) **PUBLISHER REQUIREMENTS.**—

(1) **COLLEGE TEXTBOOK PRICING INFORMATION.**—When a publisher provides a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher

education receiving Federal financial assistance with information regarding a college textbook or supplemental material, the publisher shall include, with any such information and in writing (which may include electronic communications), the following:

(A) The price at which the publisher would make the college textbook or supplemental material available

to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes the college textbook or supplemental material available to the public.

(B) The copyright dates of the three previous editions of such college textbook, if any.

(C) A description of the substantial content revisions made between the current edition of the college textbook or supplemental material and the previous edition, if any.

(D)(i) Whether the college textbook or supplemental material is available in any other format, including paperback and unbound; and

(ii) for each other format of the college textbook or supplemental material, the price at which the publisher would make the college textbook or supplemental material in the other format available to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes such other format of the college textbook or supplemental material available to the public.

(2) UNBUNDLING OF COLLEGE TEXTBOOKS FROM SUPPLEMENTAL MATERIALS.—A publisher that sells a college textbook and any supplemental material accompanying such college textbook as a single bundle shall also make available the college textbook and each supplemental material as separate and unbundled items, each separately priced.

(3) CUSTOM TEXTBOOKS.—To the maximum extent practicable, a publisher shall provide the information required under this subsection with respect to the development and provision of custom textbooks.

(d) PROVISION OF ISBN COLLEGE TEXTBOOK INFORMATION IN COURSE SCHEDULES.—To the maximum extent practicable, each institution of higher education receiving Federal financial assistance shall—

(1) disclose, on the institution's Internet course schedule and in a manner of the institution's choosing, the International Standard Book Number and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution's course schedule used for preregistration and registration purposes, except that—

(A) if the International Standard Book Number is not available for such college textbook or supplemental material, then the institution shall include in the Internet course schedule the author, title, publisher, and copyright date for such college textbook or supplemental material; and

(B) if the institution determines that the disclosure of the information described in this subsection is not practicable for a college textbook or supplemental material, then the institution shall so indicate by placing the designation 'To Be Determined' in lieu of the information required under this subsection; and

(2) if applicable, include on the institution's written course schedule a notice that textbook information is available on the institution's Internet course schedule, and the Internet address for such schedule.

(e) AVAILABILITY OF INFORMATION FOR COLLEGE BOOKSTORES.— An institution of higher education receiving Federal financial assistance shall make available to a college bookstore that is operated by, or in a contractual relationship or otherwise affiliated with, the institution, as soon as is practicable upon the request of such college bookstore, the most accurate information available regarding—

(1) the institution's course schedule for the subsequent academic period; and



- (2) for each course or class offered by the institution for the subsequent academic period—
- (A) the information required by subsection (d)(1) for each college textbook or supplemental material required or recommended for such course or class;
  - (B) the number of students enrolled in such course or class; and
  - (C) the maximum student enrollment for such course or class.

(f) ADDITIONAL INFORMATION.—An institution disclosing the information required by subsection (d)(1) is encouraged to disseminate to students information regarding—

- (1) available institutional programs for renting textbooks or for purchasing used textbooks;
- (2) available institutional guaranteed textbook buy-back programs;
- (3) available institutional alternative content delivery programs; or
- (4) other available institutional cost-saving strategies.

(g) GAO REPORT.—Not later than July 1, 2013, the Comptroller General of the United States shall report to the authorizing committees on the implementation of this section by institutions of higher education, college bookstores, and publishers. The report shall particularly examine—

- (1) the availability of college textbook information on course schedules;
- (2) the provision of pricing information to faculty of institutions of higher education by publishers;
- (3) the use of bundled and unbundled material in the college textbook marketplace, including the adoption of unbundled materials by faculty and the use of integrated textbooks by publishers; and
- (4) the implementation of this section by institutions of higher education, including the costs and benefits to such institutions and to students.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede the institutional autonomy or academic freedom of instructors involved in the selection of college textbooks, supplemental materials, and other classroom materials.

(i) NO REGULATORY AUTHORITY.—The Secretary shall not promulgate regulations with respect to this section.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 2010.

**TITLE 133**  
**PROCEDURAL RULE**  
**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 51**  
**BOOKSTORES AND TEXTBOOKS**

**§133-51-1. General.**

1.1. Scope. -- Rule establishing process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials.

1.2. Authority. -- W. Va. Code §§18B-1B-4; 18B-10-14.

1.3. Filing Date. -- April 27, 2010.

1.4. Effective Date. -- May 27, 2010.

**§133-51-2. Purpose.**

2.1. To require institutions to promulgate rules that fully and adequately address the mandates in W. Va. Code §18B-10-14 regarding the operation of bookstores and the actions of employees of the institution in the selection and adoption of textbooks and course materials.

2.2. To require institutions to promulgate rules that will effectuate the mandates regarding textbooks and supplementary course materials set out by Congress in the Higher Education Opportunity Act (HEOA) enacted on August 14, 2008, and any successor to that Act.

2.3. To require institutions to promulgate rules addressing the recommendations of the Statewide Task Force on Textbook Affordability contained in the final report of that Task Force jointly adopted by the Higher Education Policy Commission (Commission) and the Council for Community and Technical College Education.

**§133-51-3. West Virginia Code Mandates.**

3.1. Each institutional governing board under the jurisdiction of the Commission shall promulgate rules that fully and adequately address the statutory mandates of W. Va. Code §18B-10-14. Specifically, these rules shall, at a minimum:

3.1.a. Provide specific mechanisms to ensure that bookstores operated at institutions under the governing board's jurisdiction minimize the costs to students for textbooks and course materials. To that end, the governing board rule shall:

3.1.a.1. Commit, to the maximum percent practicable, the number of used books the bookstore will repurchase from students at the end of each semester;

3.1.a.2. Commit, to the maximum percent practicable, a range of percentage repurchase prices based on the new textbook price;

3.1.a.3. Commit, to the maximum percent practicable, to a selection procedure that will ensure certain basic textbooks will be utilized for a reasonable number of consecutive years without new editions being adopted, or selection of basic textbooks where earlier editions are easily and appropriately utilized in the courses.

3.1.b. Prohibit any employee of the governing board from receiving any payment, loan, subscription, advance, deposit or money, service benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook or supplemental course materials, provided, however, that an employee may receive royalties or other compensation from such sales that include the employee's own writing or work. An employee may also receive free sample copies, instructor's copies and instructional material but may not resell those items and retain the proceeds.

3.1.c. Prohibit any employee of the governing board from requiring for any course a textbook that includes his or her own writing or workbook if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written in or removed from the textbook. This does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook.

3.1.d. Provide firm deadlines, to the maximum extent practicable, for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester.

3.1.d.1. For those deadlines not met there shall be a mechanism in place reasonably calculated to ensure that used textbooks, if available, can be located and purchased by the time of enrollment each semester, to the maximum extent practicable.

3.1.d.2. This mechanism should include, but is not limited to, such measures as default selection of certain textbooks, continuing to use the previous textbook, or having a chair or dean select the textbook. Any such textbook default selection must be strictly enforced and faculty not allowed to change the selection.

3.1.e. Provide that a listing of all selected textbooks and materials selected and assigned prior to each semester shall be prominently posted immediately after such selection process is completed and the textbook and course materials are designated for order by the bookstore:

3.1.e.1. In a central location on campus communicated to the student body;

3.1.e.2. In every campus bookstore operated at the institution;

3.1.e.3. On the institution's website; and

3.1.e.4. With the International Standard Book Number (ISBN), edition number and any other relevant information regarding each textbook or supplemental course materials.

3.1.f. Provide that by November 1 of each year, the institution shall report to the Chancellor of the Commission, for the prior fiscal year, the deadlines established for faculty to be assigned to courses; the deadlines for textbooks and course materials to be selected; the percentages of those deadlines met; and the dates the listing of assigned textbooks and course materials were posted pursuant to the requirements of Section 3.1.e. of this rule.

3.1.g. Provide that all revenue the institution receives from a private entity for bookstore operation be utilized for non-athletic scholarships at the institution.

#### **§133-51-4. Federal Mandates.**

4.1. Each institutional governing board under the jurisdiction of the Commission shall promulgate rules that fully and adequately address the federal mandates regarding textbooks contained in the Higher Education Opportunity Act of 2008 (Public Law 110-315). Specifically, these rules shall, at a minimum:

4.1.a. Provide that textbook publishers soliciting any employee of the governing board to select textbooks or supplemental course material provide that employee, in writing:

- 4.1.a.1. The price of the textbook and supplemental course materials;
- 4.1.a.2. The copyright dates of the three previous editions, if any;
- 4.1.a.3. A description of substantial content revisions from the previous editions;
- 4.1.a.4. Whether the textbook is available in other lower-cost formats and, if so, the price to the institution and the general public;
- 4.1.a.5. The price of textbooks unbundled from supplemental material; and
- 4.1.a.6. The same information, to the extent practicable, for custom textbooks.

4.2. Provide that no employee of the governing board shall select or assign a textbook or supplemental course materials if the publisher has not supplied the information, in writing, required by Section 4.1.a. of this rule.

4.3. Provide that the institution shall provide on its electronic course schedule, or through a link to its bookstore's website, prior to course enrollment each semester for all required or recommended textbooks and supplemental material:

4.3.a. The ISBN number and retail price, or if the ISBN number is not available then the author, title, publisher and copyright date;

4.3.b. If such disclosure is not practicable, then the designation "To Be Determined";

4.3.c. A reference shall be made on any written course schedule to the information available on the electronic course schedule accessible through the institutional website and the internet address for the electronic course schedule.

4.4. Provide that the institution will include on its website or through a link to its bookstore's website and electronic course schedule any of its policies or provisions for:

- 4.4.a. Rental of textbooks;
- 4.4.b. The purchase of used textbooks;
- 4.4.c. Textbook repurchase or buy backs; and
- 4.4.d. Alternative content delivery programs.

4.5. Provide that the institution will update its policies to comply with any future federal mandates.

#### **§133-51-5. Textbook Affordability Committee.**

5.1. Each institution shall establish a permanent Textbook Affordability Committee consisting of faculty, students, administrators and bookstore representatives which shall meet periodically, but at least annually, to advise the faculty senate, student government, administration, and institutional board of governors on affordability issues and initiatives, textbook selection guidelines and strategies, and

educational opportunities.

5.2. The governing board shall annually meet with the Textbook Affordability Committee to receive any recommendations or reports it may have generated and copies of any such recommendations and reports shall be transmitted to the Chancellor of the Commission.

### **§133-51-6. Required Provisions.**

6.1. In adopting the policies required by this rule each governing board shall:

6.1.a. Adopt guidelines for faculty in the selection of textbooks and supplementary course materials that ensure appropriate, high quality course materials are selected but give students timely access to the most affordable materials. Institutions are encouraged to consider:

6.1.a.1. Requiring faculty to consider more than one textbook publisher and compare prices for textbooks and course materials;

6.1.a.2. Requiring that all new textbook selections submitted to the appropriate dean or chair for approval be accompanied by a simple form for the faculty member to state whether or not the written information required from the publisher pursuant to Section 4.1.a. of this rule, if requested, was provided;

6.1.a.3. Discouraging selection of textbooks in which less than 50 percent of the content will be used in the course unless the same textbook will be utilized by the student in other courses;

6.1.a.4. Encouraging selection of textbooks that have low cost alternative editions available;

6.1.a.5. Encouraging selection of textbooks it is believed will not be revised by the publisher in the near future;

6.1.a.6. Utilizing consortiums which make available open source textbooks or course materials to faculty and students free or at low cost;

6.1.a.7. Directing an examination of the feasibility of operating a textbook rental program;

6.1.a.8. Providing that the institution shall conduct training for all faculty, at the time of hire and periodically thereafter, on textbook selection and strategies that guarantee high quality course materials at the most affordable cost;

6.1.a.9. Providing that at least one administrator at the institution shall be designated as a liaison with textbook publishers, to be responsible for dissemination of relevant information to the faculty on textbook strategies and education and training opportunities regarding textbook selection, and to enforce the policies the governing board adopts;

6.1.a.10. Providing that the institution, to the maximum extent practicable, consider placing a copy of required textbooks on reserve in the institutional or departmental library;

6.1.a.11. Addressing the issue of providing financial aid to students prior to the start of classes that will allow them to purchase course materials;

6.1.a.12. Addressing the institution's commitment to utilizing various 21st Century technology innovations for the provision of textbooks and course materials, such as electronic textbooks, on-line textbooks, print-on-demand services, open source materials, and institution produced textbooks; and

6.1.a.13. Periodically updating their rules to address emerging technologies or new strategies which address textbook affordability.

**§133-51-7. Deadline.**

7.1. The rules required by this rule shall be adopted by each governing board within 180 days of the effective date of this rule.

Fairmont State University  
Board of Governors  
Policy #54  
Bookstore Policy

Effective Date: June 6, 2019

**SECTION 1: GENERAL**

- 1.1 **SCOPE:** This policy shall be in effect and shall govern textbook sales and the operation of a bookstore by a private vendor at Fairmont State University (FSU). The goal of the policy is to maintain and improve program and course quality and minimize textbook costs to students and ensure compliance with the Higher Education Opportunities Act of 2008 and West Virginia Higher Education Policy Commission Series 51.
- 1.2 **AUTHORITY: West Virginia Code § 18B-1B-4, 18B-10-14**

**SECTION 2: PRICING**

- 2.1 The prices charged for textbooks and other instructional material may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage and other operating expenses.
- 2.2 The bookstore will minimize the costs to students of purchasing textbooks and instructional supplies.
  - 2.2.1 The bookstore shall maintain both new and used book stocks along with other supplies for student needs and commit to the maximum extent practicable to make available a maximum number of used textbooks. Additionally, the bookstore shall make available textbook rental programs and offer books in alternate formats such as electronic books that offer cost savings to students.
    - 2.2.1.1 The institution will require that prior to submitting a new adoption for textbooks or related educational components that faculty review other comparable titles and compare pricing. This comparison will be documented on the adoption form at time of submission. The review should include price of textbook and supplement materials, copyright dates of three (3) previous editions if any, a description of substantial content revisions, whether the textbook is available in lower cost formats with prices included, the price of textbooks unbundled, and the price of custom textbooks.
    - 2.2.1.2 Bundling of customized and supplemental items with textbooks is strongly discouraged. Access codes and disposable class resources such as workbooks must be made available separately from required textbooks to maximize the opportunity for buy back (bookstore repurchase from students) and the availability of used textbooks for students.

- 2.2.2 Textbooks should be used for at least three years before a change is made if at all practicable, and new adoptions should be made effective fall term.
- 2.2.3 The same textbook should be used for all sections of a single course number. Whenever practicable the course coordinator or Dean responsible for the adoption should submit adoptions for all sections.
- 2.2.4 All textbook adoptions for the full academic year (fall, spring, and summer semesters) shall be returned to the bookstore by March 15 or date prescribed by the bookstore and must have approval of the academic Dean.
  - 2.2.4.1 Failure to submit an adoption by the established deadline will result in the adoption of the class materials used in the previous semester.
  - 2.2.4.2 Faculty wishing to continue with the same class materials must confirm this through the submission of the textbook adoption forms.
  - 2.2.4.3 Once a textbook adoption is published, the adoption may not be changed by faculty member or Dean for any reason.
- 2.2.5 FSU employees may not require students to purchase a textbook, which they have authored, unless that textbook has also been adopted by another accredited institution or unless the employee waives royalties from the student purchases.

Textbooks that include or incorporate either detachable worksheets or worksheet-style pages may not be adopted without approval of the academic Dean and Textbook Affordability Committee; however, FSU employees are prohibited from adopting textbooks with detachable worksheets, which they have authored. This provision does not prohibit an employee from requiring as a supplement to a textbook any workbook, access code or similar material which is published independently from the textbook.

- 2.2.6 FSU employees may not receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook for coursework or instruction, as this would be in violation of the West Virginia Ethics Act.
- 2.2.7 The bookstore will compile a report regarding missing textbook adoptions by June 1. This report will be forwarded to the institutional Board of Governors for review. The report to the Board should contain specific information on adoption deadlines missed according to academic area, including justifications submitted by each Academic Dean, and course sections as well as general information required by West Virginia Higher Education Policy Commission standards.

The Academic Dean is responsible to submit a report concerning textbook adoptions in his/her department to the Vice President for Administrative and Fiscal Affairs. This report should include justification for adoption deadlines missed.



The institutional Board of Governors must submit a report on textbook adoptions to the West Virginia Higher Education Policy Commission annually by November 1.

### SECTION 3: TEXTBOOK LISTS

3.1 Prior to the beginning of each semester, the bookstore shall make available to students a listing of textbooks, with available formats (new, used, rental, ebook) and course materials required or assigned for any course offered at FSU. The bookstore will make provisions in its adoption procedure to include in book ordering all available formats of adopted texts to include new, used, rental, ebooks and other methods of content delivery and will make available to students policies concerning buy back (repurchase), return or length of license of materials in various formats.

3.1.1 The listing shall be prominently posted at the bookstore and on the official FSU website.

3.1.2 The listing shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

3.1.3 Each book will be posted to the listing in conjunction with the publishing of the master schedule of courses prior to pre-registration for the upcoming academic term.

### SECTION 4: DESK COPIES

4.1 FSU employees may receive sample copies, instructor's copies, and instructional materials. Per West Virginia Code § 18B-10-14(e)(2)(A), such material may not be sold for personal or private gain.

4.2 Faculty may make available review or desk copies of adopted textbooks for student use on library reserve. Instructor editions may not be made available to student.

4.3 Faculty and staff may donate unneeded textbooks to the bookstore. Proceeds from donated textbooks will be directed to the Textbook Scholarship fund.

### SECTION 5: BOOKSTORE REVENUES

5.1 Moneys derived from the operation of the bookstore shall be used first to replenish the stock of any goods and to pay the costs of operating and maintaining the bookstore.

All net revenues derived from the operation of the bookstore shall be paid into a special revenue fund, series 2003 B, toward the debt service payment for the student activity center.

5.2 Following the retirement of the Series 2003 B bond indebtedness, all revenue generated by the operation and enuring to the benefit of the institution shall be deposited into an appropriate account and shall be used for non-athletic scholarships.

## SECTION 6: TEXTBOOK AFFORDABILITY COMMITTEE

- 6.1 Fairmont State University's Academic Affairs Committee shall have a permanent Textbook Affordability Sub-Committee to advise faculty, student government, administration and the Board of Governors on issues related to textbook affordability and initiatives, textbook selection guidelines, educational opportunities and strategies designed to keep the cost of textbooks low.
- 6.2 This committee shall be the sole committee regarding textbook affordability as set forth herein and shall include a member of the Board of Governors' Academic Affairs Committee, faculty, administrators, students, staff, and bookstore representatives.
- 6.3 Members shall be selected annually and may serve consecutive terms.
- 6.4 Provided that FSU continues to operate a bookstore that supports both FSU and Pierpont C&TC, the membership of this Sub-committee shall meet jointly with its counterpart committee members from Pierpont C&TC quarterly.
- 6.5 The Textbook Affordability Sub-Committee shall meet at least annually with the members of the Board of Governors to present recommendations and reports concerning textbook affordability.

## SECTION 7: FUTURE MANDATES

- 7.1 The FSU Board of Governors will take steps to update this policy to ensure compliance with future mandates at both the State and Federal levels.

Operating Profit and Loss Statement

	Current Month				Year-to-Date					
	Actual	%	Budget	%	Actual	%	Budget	%	Last Year	%
Sales & Other Revenue										
Cost of Sales										
Gross Margin										
Salaries										
Benefits										
Total Payroll										
Contract Payments *										
Other Rent Pay/Construction										
Occupancy										
Direct Store Expense										
Direct Field Expense										
Advertising and Promotion										
Interest Expense										
Insurance										
Direct Corp. Support Services										
Income from Operations										

\*Contract payments includes commission/guarantee payments made or accrued, any other payments made, and property taxes paid to state and local Municipalities

Exhibit F  
Sample Format of  
Qtrly Management Fee Statement  
(1 page)

Christa Kwiatkowski  
VP Finance & Administration / CFO  
Fairmont State University  
1201 Locust Avenue  
Fairmont, WV 26554

**Quarterly Management Fee Statement  
Fairmont State University  
July 2024 – June 2025  
FY 2025**

Schedule of Sales		Management Fee Calculation		Amount
<b>2024</b>		YTD Net Sales Deposited		\$
July	\$	Less Management Fee:	# of Months Due	
August	\$	*Annual Fixed Fee \$	12	\$
September	\$	*Variable Fee:		
October	\$	Year to date sales between: \$ - \$	12	\$
November	\$	Variable Fee on Excess Amount %		\$
December	\$	Year to date sales between: \$ - \$	12	\$
<b>2025</b>		Variable Fee on Excess Amount %		\$
January	\$	Year to date sales between: \$ - \$	12	\$
February	\$	Variable Fee on Excess Amount %		\$
March	\$	Total Variable Fee:		\$
April	\$	Total Management Fee (Fixed Fee + Total Variable Fee)		\$
May	\$	Amount Due: (YTD Sales less Total Management Fee)		\$
June	\$	Previously Paid		\$
Total Sales	\$	Total Due		\$

**Fairmont State University**  
**Sales by Department Report**  
**June 2020 to May 2021**

**Exhibit G**  
**Sales & Other Income -**  
**FY21, 22 & 23 (3 pages)**

Account Description	June-20	July-20	August-20	September-20	October-20	November-20	December-20	January-21	February-21	March-21	April-21	May-21	FY21
Used Text	1,509.75	17,117.87	52,092.57	2,185.83	(76.75)	126.00	5,704.00	37,547.75	541.00	21.75	1,338.40	7,855.50	125,963.67
New Text	4,114.92	91,082.00	206,323.95	9,779.81	595.41	601.35	25,977.95	167,685.82	10,691.96	1,515.38	29,122.77	(1,572.27)	545,919.05
Digital Text	59.69	2,580.15	13,877.19	534.21	56.97	272.73	3,196.33	13,634.43	1,155.27	122.50	768.75	780.31	37,038.53
Gen Books/Non-Emblem	225.39	458.13	1,360.63	642.74	185.71	154.68	60.01	580.41	189.56	230.94	218.73	108.83	4,415.76
Supplies	1,557.25	4,525.33	10,569.24	27,340.05	2,178.52	759.15	2,220.44	9,083.31	1,027.59	537.99	10,023.24	267.48	70,089.59
Apparel	944.22	946.04	12,282.09	7,316.62	7,240.23	11,343.76	4,094.09	4,237.22	2,969.87	3,937.10	4,824.24	2,216.15	62,351.63
Gifts	1,088.05	738.31	2,601.76	1,265.61	715.05	890.29	810.78	1,007.98	327.96	597.96	1,937.71	1,235.90	13,217.36
Convenience	3,285.00	-	141.35	174.35	745.45	756.88	-	150.43	98.10	1,662.13	3,130.29	39.61	10,183.59
Graduation	-	-	-	-	-	-	-	-	-	-	-	-	-
Technology	67.90	1,045.37	1,400.68	1,623.19	646.79	445.44	-	2,159.80	359.75	255.86	355.65	13,943.65	22,304.08
Other Sales	-	-	-	-	-	-	-	-	-	-	-	-	-
Rental - Collected	855.17	16,192.38	63,311.67	3,466.82	310.17	199.59	6,087.31	50,017.62	1,522.40	549.33	899.10	2,016.15	145,427.71
Rental - Disposal	244.42	15,164.65	(5,893.85)	(583.50)	17.29	485.37	11,557.42	(1,359.37)	(809.06)	(46.83)	77.64	2,055.44	20,909.62
Campus Card	-	-	-	-	-	-	-	-	-	-	-	-	-
Course Adopted Supplies	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Gross Commissionable Sales</b>	<b>13,951.76</b>	<b>149,850.23</b>	<b>358,067.28</b>	<b>53,745.73</b>	<b>12,614.84</b>	<b>16,035.24</b>	<b>59,708.33</b>	<b>284,745.40</b>	<b>18,074.40</b>	<b>9,384.11</b>	<b>52,696.52</b>	<b>28,946.75</b>	<b>1,057,820.59</b>
Rent Exempt	(67.90)	(1,045.37)	(1,641.41)	(13,351.43)	(1,070.38)	(891.85)	(151.10)	(2,425.32)	(327.21)	(736.95)	(8,922.60)	(13,682.45)	(44,313.97)
Fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
Ring Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
Regalia - Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Blackhawk - Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Software Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Commissionable Sales</b>	<b>13,883.86</b>	<b>148,804.86</b>	<b>356,425.87</b>	<b>40,394.30</b>	<b>11,544.46</b>	<b>15,143.39</b>	<b>59,557.23</b>	<b>282,320.08</b>	<b>17,747.19</b>	<b>8,647.16</b>	<b>43,773.92</b>	<b>15,264.30</b>	<b>1,013,506.62</b>

**Fairmont State University**  
**Sales by Department Report**  
**June 2021 to May 2022**

Account Description	June-21	July-21	August-21	September-21	October-21	November-21	December-21	January-22	February-22	March-22	April-22	May-22	FY22
Used Text	947.25	13,813.45	48,271.12	791.70	(413.50)	2,705.30	7,209.99	30,302.50	(3.65)	32.00	770.50	2,976.25	107,402.91
New Text	5,324.13	104,313.31	173,614.79	3,524.31	2,260.56	4,839.03	27,533.86	183,510.15	4,841.43	2,688.82	1,879.64	5,113.52	519,443.55
Digital Text	679.31	6,789.30	18,634.28	1,596.61	285.57	1,150.51	2,236.85	15,774.49	1,043.96	94.10	267.09	1,402.60	49,954.67
Gen Books/Non-Emblem	263.27	823.00	2,388.38	674.37	266.34	333.11	85.45	875.16	90.87	211.43	124.70	176.14	6,312.22
Supplies	940.76	10,786.51	30,337.31	1,282.34	1,321.26	16,887.99	1,985.17	14,929.87	1,743.84	424.90	9,856.66	1,313.06	91,809.67
Apparel	5,182.22	6,707.87	20,372.40	11,328.82	12,387.45	11,698.35	6,535.30	5,589.84	6,874.92	7,198.25	16,772.88	3,890.14	114,538.44
Gifts	737.55	881.04	1,538.86	1,028.69	595.95	1,684.50	795.21	451.10	681.90	1,455.05	2,851.75	1,264.15	13,965.75
Convenience	20.95	4,838.07	183.77	120.03	7,142.32	6,370.69	34.54	122.72	109.03	308.79	17,687.34	498.71	37,436.96
Graduation	-	-	-	-	-	-	-	-	-	-	-	-	-
Technology	1,985.54	3,471.85	5,105.44	2,011.79	516.41	327.41	19.00	1,678.14	336.48	2,718.95	648.40	99.70	18,919.11
Other Sales	-	-	-	-	-	-	-	-	-	-	-	-	-
Rental - Collected	1,176.19	12,457.32	44,560.85	1,108.10	392.38	858.77	5,527.75	41,914.15	926.05	79.26	220.23	1,681.37	110,902.42
Rental - Disposal	(333.09)	(233.45)	(261.06)	398.51	44.19	204.34	5,971.03	(1,128.06)	244.49	2,589.42	157.92	5,593.18	13,247.42
Campus Card	-	-	-	-	-	-	-	-	-	-	-	-	-
Course Adopted Supplies	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Gross Commissionable Sales</b>	<b>16,924.08</b>	<b>164,648.27</b>	<b>344,746.14</b>	<b>23,865.27</b>	<b>24,798.93</b>	<b>47,060.00</b>	<b>57,934.15</b>	<b>294,020.06</b>	<b>16,889.32</b>	<b>17,800.97</b>	<b>51,237.11</b>	<b>24,008.82</b>	<b>1,083,933.12</b>
Rent Exempt Fees	(2,106.63)	(3,667.63)	(5,723.65)	(2,791.12)	(812.14)	(648.52)	(854.34)	(1,838.70)	(802.44)	(3,276.25)	(1,817.51)	(752.80)	(25,091.73)
Other Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
Ring Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
Regalia - Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Blackhawk - Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Software Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Commissionable Sales</b>	<b>14,817.45</b>	<b>160,980.64</b>	<b>339,022.49</b>	<b>21,074.15</b>	<b>23,986.79</b>	<b>46,411.48</b>	<b>57,079.81</b>	<b>292,181.36</b>	<b>16,086.88</b>	<b>14,524.72</b>	<b>49,419.60</b>	<b>23,256.02</b>	<b>1,058,841.39</b>

**Fairmont State University**  
**Sales by Department Report**  
**June 2022 to May 2023**

Account Description	June-22	July-22	August-22	September-22	October-22	November-22	December-22	January-23	February-23	March-23	April-23	May-23	FY23
Used Text	701.25	10,621.25	26,052.75	785.00	(278.75)	906.50	1,433.75	18,914.50	527.00	-	61.25	1,106.50	60,831.00
New Text	5,985.41	61,070.73	130,646.73	1,512.90	792.50	314.40	5,682.12	170,756.19	6,809.81	515.25	51.00	5,637.45	389,774.49
Digital Text	614.53	8,488.23	16,557.80	602.40	17.54	129.98	1,234.96	12,941.79	724.50	15.46	49.51	1,221.49	42,598.19
Gen Books/Non-Emblem	167.94	186.35	1,035.98	633.19	125.19	165.75	142.21	952.64	531.45	168.50	424.89	117.95	4,652.04
Supplies	1,173.00	(440.61)	2,474.01	909.42	130.73	305.80	10.52	3,565.36	1,349.51	579.56	422.23	256.10	10,735.63
Apparel	7,790.58	5,125.28	15,088.69	11,695.51	11,221.17	9,237.69	8,476.96	6,669.56	11,018.70	8,958.62	13,833.64	5,872.73	114,989.13
Gifts	1,021.12	522.27	1,797.75	741.26	799.15	1,677.57	1,012.46	557.14	945.80	1,568.76	2,113.72	1,510.46	14,267.46
Convenience	6,485.65	47.59	254.37	161.14	5,892.32	11,032.50	-	72.26	79.03	346.07	14,856.97	1,934.74	41,162.64
Graduation	-	-	-	-	-	-	-	-	-	-	-	-	-
Technology	408.25	1,300.87	4,987.94	3,020.59	2,821.32	4,852.24	1,180.70	4,083.68	22,640.40	21,873.10	12,511.61	8,670.25	88,350.95
Other Sales	-	-	-	-	-	-	-	-	-	-	-	-	-
Rental - Collected	388.42	11,853.95	44,056.09	178.04	29.98	196.06	1,629.83	39,078.41	1,428.54	409.35	61.13	2,326.35	101,636.15
Rental - Disposal	(868.94)	86.26	488.88	(251.79)	-	281.03	11,503.61	1,809.14	3.00	-	32.64	7,878.76	20,962.59
Campus Card	-	-	-	-	-	-	-	-	-	-	-	-	-
Course Adopted Supplies	-	8,656.15	17,709.54	1,022.62	20,253.74	324.99	1,600.99	8,552.70	419.48	9,713.15	481.25	227.23	68,961.84
<b>Gross Commissionable Sales</b>	<b>23,867.21</b>	<b>107,518.32</b>	<b>261,150.53</b>	<b>21,010.28</b>	<b>41,804.89</b>	<b>29,424.51</b>	<b>33,908.11</b>	<b>267,953.37</b>	<b>46,477.22</b>	<b>44,147.82</b>	<b>44,899.84</b>	<b>36,760.01</b>	<b>958,922.11</b>
Rent Exempt Fees	(1,138.60)	(1,643.69)	(5,526.34)	(4,128.66)	(3,359.58)	(5,102.02)	(1,405.13)	(4,436.83)	(23,455.97)	(22,569.56)	(13,312.82)	(9,339.90)	(95,419.10)
Other Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
Ring Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
Regalia - Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Blackhawk - Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Software Commission	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Commissionable Sales</b>	<b>22,728.61</b>	<b>105,874.63</b>	<b>255,624.19</b>	<b>16,881.62</b>	<b>38,445.31</b>	<b>24,322.49</b>	<b>32,502.98</b>	<b>263,516.54</b>	<b>23,021.25</b>	<b>21,578.26</b>	<b>31,587.02</b>	<b>27,420.11</b>	<b>863,503.01</b>

## Cost Proposal Worksheet

<u>          </u>	% Mark - up on Textbooks
<u>          </u>	% Margin on Textbooks
<u>          </u>	% Mark -up on Other Items
	% Margin on Other Items

a. Monthly rent: \_\_\_\_\_ x 12 months = \_\_\_\_\_

\$                      \$

\$                      \$

\$

\$

FY 25.....

FY 26.....

FY 27.....

FY 28.....

FY 29.....

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

\$

Date: \_\_\_\_\_



**Annual Management Fee Statement**  
**Fairmont State University**  
**July 2024 – June 2025**  
**FY 2025**

Management Fee Calculation	Amount
YTD Net Sales Deposited	\$
Less Management Fee:	
*Annual Fixed Fee \$	\$
*Variable Fee:	
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Total Variable Fee:	\$
Total Management Fee (Fixed Fee + Total Variable Fee)	\$
Amount Due: (YTD Sales less Total Management Fee)	\$
Previously Paid	\$
Total Due	\$

**Annual Management Fee Statement**  
**Fairmont State University**  
**July 2025 – June 2026**  
**FY 2026**

Management Fee Calculation	Amount
YTD Net Sales Deposited	\$
Less Management Fee:	
*Annual Fixed Fee \$	\$
*Variable Fee:	
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Total Variable Fee:	\$
Total Management Fee (Fixed Fee + Total Variable Fee)	\$
Amount Due: (YTD Sales less Total Management Fee)	\$
Previously Paid	\$
Total Due	\$

**Annual Management Fee Statement**  
**Fairmont State University**  
**July 2026 – June 2027**  
**FY 2027**

Management Fee Calculation	Amount
YTD Net Sales Deposited	\$
Less Management Fee:	
*Annual Fixed Fee \$ _____	\$
*Variable Fee:	
Year to date sales between: \$ _____-\$ _____	\$
Variable Fee on Excess Amount _____%	\$
Year to date sales between: \$ _____-\$ _____	\$
Variable Fee on Excess Amount _____%	\$
Year to date sales between: \$ _____-\$ _____	\$
Variable Fee on Excess Amount _____%	\$
Total Variable Fee:	\$
Total Management Fee (Fixed Fee + Total Variable Fee)	\$
Amount Due: (YTD Sales less Total Management Fee)	\$
Previously Paid	\$
Total Due	\$

**Annual Management Fee Statement**  
**Fairmont State University**  
**July 2027 – June 2028**  
**FY 2028**

Management Fee Calculation	Amount
YTD Net Sales Deposited	\$
Less Management Fee:	
*Annual Fixed Fee \$	\$
*Variable Fee:	
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Total Variable Fee:	\$
Total Management Fee (Fixed Fee + Total Variable Fee)	\$
Amount Due: (YTD Sales less Total Management Fee)	\$
Previously Paid	\$
Total Due	\$

**Annual Management Fee Statement**  
**Fairmont State University**  
**July 2028 – June 2029**  
**FY 2029**

Management Fee Calculation	Amount
YTD Net Sales Deposited	\$
Less Management Fee:	
*Annual Fixed Fee \$	\$
*Variable Fee:	
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Year to date sales between: \$ - \$	\$
Variable Fee on Excess Amount %	\$
Total Variable Fee:	\$
Total Management Fee (Fixed Fee + Total Variable Fee)	\$
Amount Due: (YTD Sales less Total Management Fee)	\$
Previously Paid	\$
Total Due	\$