

## DOCUMENT – REQUEST FOR BID SOLICITATION

Fairmont State University  
Facilities Department  
Physical Plant – 1201 Locust Avenue, Fairmont WV 26554

www.fairmontstate.edu  
[abby.haught@fairmontstate.edu](mailto:abby.haught@fairmontstate.edu)  
304-367-4778

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### ARTICLE 1 – INTRODUCTION

Fairmont State University (FSU), founded in 1865, is located Fairmont, West Virginia, a friendly city of nearly 19,000 residents. The cast (the name of a group of Falcons) soars at about 3700 students.

Fairmont State University, with a 120-acre main campus in Fairmont, is part of the state’s growing high technology corridor. With a long history of academic excellence, FSU is a place where teaching and learning matter and students are our first priority. FSU was the state’s first normal school in West Virginia.

#### Tobacco Free Campus

Fairmont State University reminds all contractors that all tobacco use will be prohibited on the campus as of August 1, 2015.

For additional information go to:

[https://www.fairmontstate.edu/files/bog/policies/fsu\\_policy\\_61.pdf](https://www.fairmontstate.edu/files/bog/policies/fsu_policy_61.pdf)

### ARTICLE 2 – GENERAL INFORMATION

Fairmont State University on behalf of its Board of Governors invites qualified contractors to submit a bid to provide labor, material, equipment, supplies, and services necessary for the incidental to the following Project:

Ruth Ann Musick Library Modernization

located at Fairmont State University. All Work shall take place in Marion County, West Virginia.

- A. **ISSUING DEPARTMENT.** Fairmont State University, Facilities Department, is issuing this Request for Bid Solicitation.
- B. **BID IDENTIFICATION NUMBER.** The identification number assigned by Fairmont State University for this project is RFB 458. Please use this number when communicating any information to the University regarding this project.

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- C. **PRE-BID CONFERENCE**. There will be a mandatory Pre-Bid Conference. The Conference will be held:

Location: Musick Library - Room #MMB - 1st Floor  
Date: April 23rd, 2026  
Time: 10:30 AM

- D. **BID DUE DATE**. Bids are due no later than 2:00 pm EST on May 12th, 2026.

Bids must be delivered to Fairmont State University, Physical Plant, 1201 Locust Avenue, Fairmont WV 26554. (For additional information see Instructions to Bidders).

- E. **QUESTIONS**. FSU will attempt to provide Bidders (4) business days for the completion of responses without any new information being included in the solicitation. Therefore, all questions regarding this RFB shall be submitted to FSU by the following date and time:

Date and time for cut-off for questions: May 1st, 2026  
6:00pm EST

- F. **ARCHITECT OF RECORD**. All Work shall be in accordance with the plans and specifications prepared by Silling Associates Inc., and this Request for Bid. Bidding Documents may be obtained from (If no Architect on this Project, all information shall be obtained through FSU)

Name: Brian Estep  
Address: 405 Capitol St. Upper Atrium  
City Charleston State WV Zip 25301  
Phone 304-721-4602  
Email bestep@silling.com; jkutz@silling.com

Special instructions for obtaining copies of specifications, drawings, project manuals, or other project information:

**Available via e-mail:** [jkutz@silling.com](mailto:jkutz@silling.com)

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G. **PROJECT COMPLETION**. The Contractor shall achieve Substantial and Final Completion of the entire Work as calculated or indicated below. The date of issuance of the FSU’s Notice to Proceed shall be used to calculate Substantial and Final Completion if contract time stated below is in number of calendar days. Time is of the essence.

Overall Project Substantial Completion Within 300 Consecutive Calendar Days  
Date Certain \_\_\_\_\_

Coffee Shop\* Substantial Completion Within \_\_\_\_\_ Consecutive Calendar Days  
Date Certain 8/28/2026

**\*Coffee Shop Renovation on Expedited Schedule**

Overall Project Final Completion Within 330 Consecutive Calendar Days  
Date Certain \_\_\_\_\_

Coffee Shop\* Final Completion Within \_\_\_\_\_ Consecutive Calendar Days  
Date Certain 9/25/2026

**\*Coffee Shop Renovation on Expedited Schedule**

H. **LIQUIDATED DAMAGES**. The Bidder does hereby agree that Liquidated Damages for this Request

for Bid Solicitation shall be assessed pursuant to the terms of the Contract Document as follows:  
(If blank, no liquidated damages shall apply to this Request for Bid Solicitation of any Contract entered into between Fairmont State University and the successful Bidder)

<b>\$1,000.00 per day</b>
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I. **BID OPENING**. Bid opening shall be held at 2:00 PM EST on May 12th, 2026

Location of bid opening:

**Facilities Conference Room #107 - Physical Plant Building**



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### ARTICLE 3 – SCOPE OF SERVICES

(For acquiring a full set of Contract Documents see Article 2, paragraph f.)

The Musick Library Modernization project consists of a first-floor coffee shop renovation and a complete second-floor renovation that includes associated mechanical, electrical, plumbing, fire alarm, fire protection and technology systems redistribution and upgrades. Two rooftop air handling units are to be replaced. The main electrical distribution is to be replaced.

Architectural upgrades will include new interior partitions, doors and frames, flooring, ceilings, light fixtures, and paint/finishes. The first-floor coffee shop consists of a new layout, including a back-of-house workroom. The second-floor renovation will include four new accessible restrooms, common spaces including study rooms, a conference room, a flexible classroom, offices, and testing center.

The first-floor coffee shop renovation is on an expedited schedule and shall have a separate Substantial Completion date of August 28, 2026. This project is Phase One of a multi-phase, whole-building renovation. Some systems and components are designed for installation during this phase for completion and use in future phase(s). Substantial Completion is to occur 300 days after Notice To Proceed is issued.

#### Federal Funding Requirements (THUD / CDS Funding):

This project is funded in whole or in part through Community Project Funding (CPF/CDS) under the Transportation, Housing, and Urban Development (THUD) appropriations and is therefore subject to the following federal requirements:

#### 1. Build America, Buy America (BABA) Act Compliance

The Contractor shall comply with the Build America, Buy America (BABA) Act (Pub. L. 117-58). All iron and steel, construction materials, and manufactured products permanently incorporated into the project must be produced in the United States in accordance with applicable federal regulations and guidance. The Contractor shall be responsible for ensuring compliance and maintaining appropriate documentation.

#### 2. Section 3 Labor Hour Requirements:

The Contractor shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, and all applicable implementing regulations.

- At a minimum: Not less than twenty-five percent (25%) of the total labor hours worked on the project shall be performed by Section 3 workers; and
- Of those hours, not less than five percent (5%) shall be performed by Targeted Section 3 workers.

The Contractor shall be responsible for tracking, documenting, and reporting labor hours in accordance with Section 3 requirements and any additional guidance provided by the Owner or applicable federal agencies.

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## Article I. DEFINITIONS

### Section 1. General Definitions

- I.1.1 Request for Bid Solicitation shall be defined as an official request issued by Procurement and/or Facilities Department requesting competitive bids pursuant to Chapter 18B of the West Virginia State Code to provide materials, equipment, services or other project related work specifically defined in and under the terms and conditions as stated in such Request for Bid Solicitation.
- I.1.2 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Request For Bid, Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.
- I.1.3 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, AIA Document A107, or in other Contract Documents which are specifically referenced in the Request for Bid Solicitation are applicable to the Bidding Documents.
- I.1.4 Addenda are written or graphic instruments issued by the Architect or Fairmont State University prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
- I.1.5 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- I.1.6 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.
- I.1.7 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

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- I.1.8 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.
- I.1.9 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.
- I.1.10 Work shall be defined as all labor, materials, supplies, services, equipment, and other services required by the Bidder to fully and completely perform the project as indicated by the Contract Documents.

## Article II. JURISDICTION

### Section 1. Applicable Law and Forum

- II.1.1 The rights of any Bidder or any party to a subsequent Contract shall be governed by the laws of the State of West Virginia and only West Virginia courts shall have jurisdiction over any action or proceeding related to the Bid or any subsequent Contract. The Bidder irrevocably consents to such jurisdiction.

## Article III. BIDDING PROCEDURES

### Section 1. Examination of Contract Documents and the Site

- III.1.1 Before submitting a Bid, the Bidder shall examine all Contract Documents, including, but not limited to, the Drawings, Specifications, all terms and conditions, and Addenda for all divisions of Work for the Project, noting in particular all requirements which may affect its Work in any way.
- III.1.2 The successful Bidder shall be required to execute a Contract with Fairmont State University for the services as described in the Request for Bid Solicitation. A sample Contract will be provided with the Request for Bid Solicitation or will be included in the project manual. Contract Documents do not include other documents such as bidding requirements unless specifically identified (advertisement or Request For Bid,

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Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

- III.1.3 Federal terms and conditions may apply to projects at Fairmont State University and if applicable, additional terms and conditions may apply to the Request for Bid Solicitation. Any terms and conditions that may apply will be provided with the Request for Bid Solicitation or will be included in the project manual.
- III.1.4 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
- III.1.5 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.
- III.1.6 The Bidder shall include in the Bid all applicable state, federal, or local taxes which may be assessed on the Work. Fairmont State University is exempt from taxation only if the materials, equipment, products, etc. are purchased directly by the University; therefore, unless otherwise exempt, Bidder must include all applicable taxes which may be incurred by Bidder as a result of the performance of the Work. Fairmont State University shall not be responsible for any such taxes or reimbursement of any costs due to the Bidder's failure to include such amounts in the Bid. Such taxes may include but not be limited to Business and Occupation Taxes, Consumer Sales and Use Tax, or similar taxes.
- III.1.7 Fairmont State University is not subject to any municipal building regulations or permits; therefore, no building permit as required by such entity shall not be required. Bidder may not include any charges for such items in the Bid.
- III.1.8 The Bidder's failure to become acquainted with the extent and nature of Work required to complete any portion of the Work in conformity with the requirements of the Contract Documents, shall not be a basis for additional compensation.

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## Section 2. Pre-Bid Meeting

- III.2.1 If conducted by Fairmont State University, the Bidder is encouraged to attend the pre-bid meeting, where the Architect or Engineer (“A/E”), if applicable, and Fairmont State University will receive questions regarding the Contract Documents. Fairmont State University reserves the right to require mandatory attendance to any pre-bid meeting held in relation to a project and no bid from any Bidder not represented at such meeting will be accepted by Fairmont State University.
- III.2.2 The A/E or Fairmont State University shall prepare minutes of the pre-bid meeting for the Project record. If questions raised by the prospective Bidders require changes to, or clarifications of, the Contract Documents, the A/E or Fairmont State University shall issue the changes by written Addendum, along with a list of pre-bid meeting attendees.
- III.2.3 Additional compensation shall not be based upon the Bidder’s failure to attend the pre-bid meeting, which results in the Bidder’s incomplete knowledge and familiarity with the Project requirements.

## Section 3. Request for Interpretation/Addenda

- III.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission, or discrepancy within the Contract Documents, including, but not limited to, the Drawings, Specifications, and Addenda, or between any of the Contract Documents and Applicable Law, the Bidder shall submit a written Request for Interpretation (“RFI”) to the A/E or Fairmont State University for an interpretation or clarification.
  - IV.3.1.a The Bidder is responsible for prompt delivery of the RFI.
  - IV.3.1.b The A/E or Fairmont State University shall respond to RFIs received more than four (4) business days before the bid opening.
- III.3.2 The A/E or Fairmont State University shall issue Addenda that modify or clarify the Contract Documents in response to RFIs. The Addenda may be delivered via facsimile, mail carrier, posted to a Web or file transfer protocol site (FTP site), sent by email, or otherwise furnished to each registered Plan Holder/Bidding Depository and to prospective Bidders.
- III.3.3 Any interpretation, correction, or change in a Request for Bid Solicitation will be made by formal addendum by Fairmont State University. Interpretations, corrections, or

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changes to a Request For Bid Solicitation made in any other manner will not be binding, and no Bidder may rely upon any such interpretation, correction, or change.

Fairmont State University shall make available all official formal addendums when released at the following site and at the following location:

<http://www.fairmontstate.edu/adminfiscalaffairs/procurement/bidding-opportunities> ; or

Fairmont State University  
Facilities Department – Physical Plant  
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- III.3.4 Bidders must acknowledge the receipt of any addenda issued by Fairmont State University on the [Addenda Acknowledgment Form](#) included in the Appendix. If the Bidder fails to acknowledge receipt of each Addendum, then the Bid may be rejected.
- III.3.5 The successful Bidder shall not be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting, or erroneous Contract Documents or proposed Contract Documents, or assumed conditions regarding the nature, extent, or character of the Work, if the Bidder did not submit a related RFI prior to the bid opening.
- III.3.6 Addenda will be issued no later than four (4) business days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

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## Section 4. Substitutions Prior to Bid Opening

- III.4.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture, or item other than as indicated in the Contract Documents or Acceptable Components named in the Specifications, the Bidder shall certify that the proposed item is equal in quality and all aspects of performance and appearance, to the item specified and **MUST** receive prior approval as specified under III.4.2.
- III.4.1.a If approval of a Substitution requires changes to the Contract Documents or affects the work of other trades, the Bidder is responsible for the additional costs.
- III.4.2 Proposed Substitutions must be submitted by Bidder to Fairmont State University or the A/E by the Cut Off for Question date listed in the Request for Bid Solicitation, which must include:
- III.4.2.a The name and complete description of the proposed Substitution, including Drawings, performance and test data, and other information necessary for a complete evaluation; and
- III.4.2.b A statement setting forth any changes that the Proposed Substitution will require in the Contract Documents or the Project.
- III.4.3 If the A/E or Fairmont State University approves the Proposed Substitution, the A/E or Fairmont State University shall issue an Addendum.
- III.4.4 If the A/E or Fairmont State University does not approve the Proposed Substitution, the A/E or Fairmont State University shall inform the Bidder of its decision, which is final. The A/E or Fairmont State University may reject a proposed Substitution because the Bidder failed to provide sufficient information to enable the A/E or Fairmont State University to completely evaluate the Proposed Substitution without causing a delay in the scheduled bid opening.

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## Section 5. Bid Form

- III.5.1 Each Bid shall be submitted on the Bid Form and all Bids and other required documents must be enclosed in a sealed opaque envelope or container and must contain the following all information as provided under [IV.1.3](#).
- III.5.1.a Any change, alteration, omission, or addition in the wording of the Bid Form shall cause the Bid to be rejected as non-responsive.
- III.5.1.b All pages of the Bid Form shall be submitted with the Bid. Failure to do so shall cause the Bid to be rejected as non-responsive.
- III.5.1.c Unless the Bidder withdraws the Bid as provided in Article V, the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.
- III.5.2 The Bidder shall fill in all relevant blank spaces on the Bid Form by printing in ink or by typewriting, and not in pencil.
- III.5.2.a The Bidder shall show all bid amounts in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where the words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions, or misspellings of words shall not render the words ambiguous.
- III.5.2.b The Bidder shall initial alteration or erasure of items filled in on the Bid Form.
- III.5.2.c All requested Alternates should be bid, if Bidder indicates “no bid” or otherwise indicates that such alternate will not be performed if requested by Bidder, Fairmont State University may reject any or all portions of Bidders bid for the project.
- III.5.3 If the Bidder is a corporation, partnership or sole proprietorship, an officer, partner or principal of the Bidder shall print or type the legal name of the Bidder on the line

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provided, and sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided, and sign the Bid Form on behalf of that member. All signatures must be original. All individuals executing the Bid Form shall be authorized to bind the entity on behalf of the Bidder.

## Section 6. Allowances

- III.6.1 If Allowances are provided on the Bid Form, the amount of each Allowance shall be included in the Base Bid amount. Allowances shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the amount of the Allowance and the actual cost of the related Work provided.

## Section 7. Unit Prices

- III.7.1 If Unit Prices are requested on the Bid Form, the amount of the scheduled quantities identified on the Bid Form shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the Bid Form and the actual quantities provided.
- III.7.2 Unit Prices shall include all materials, equipment, labor, delivery, installation, overhead, profit, and any other cost or expense, in connection with, or incidental to, the performance of that portion of the Work. The Bidder shall submit Unit Prices for all items listed.

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## Section 8. Alternates

- III.8.1 If an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an increased or decreased bid amount and indicate which by **circling the word “ADD” or the word “DEDUCT” as applicable**. Fairmont State University reserves the right to accept or reject any or all bid amounts for Alternates, in whole or in part, and in any order.
- III.8.1.a If no change in the bid amount is required, indicate "No Change" or "\$0."
- III.8.1.b Failure to make an entry or an entry of "No Bid," "N/A," or similar entry on any Alternate shall cause the Bid to be rejected as non-responsive if that Alternate is selected.
- III.8.1.c **Any statement of an amount for an alternate which has not been identified by circling the word ADD or DEDUCT, as applicable, shall be considered an ADD.**
- III.8.1.d If an Alternate is not selected, an entry as listed in [III.8.1.b](#) on that Alternate shall not, by itself, render a Bid non-responsive.

## Section 9. Submittals with Bid Form

- III.9.1 Fairmont State University shall reject a Bid as non-responsive if the Bidder fails to submit the following with the Bid Form in compliance with [Article III, Section 5](#):
- III.9.1.a Each Bid shall be accompanied by a Bid Guaranty that meets the requirements of [VI.1](#) below.
- III.9.1.b Contractor's License. West Virginia Code § 21-11-2 requires that all persons desiring to perform construction work in West Virginia must be duly licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor's license. Application for a contractor's license may be made by contacting the West Virginia Division of Labor, Building 6, Room B749, State Capitol Complex, Charleston, West Virginia, 25305. Telephone: (304) 558-7890.

West Virginia Code § 21-11-11 requires any prospective Bidder to include the contractor's license number on their bid. The successful Bidder will be required to furnish a copy of their contractor's license prior to issuance of a

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## Purchase Order/Contract.

It shall be the General Contractor's responsibility to ensure that all sub-contractors are duly licensed to perform work with the State of West Virginia and the appropriate city, if applicable.

- III.9.1.c Bidder must submit with the Bid Form the Fairmont State University Purchasing Affidavit, which shall be provided with the Request for Bid Solicitation, attesting to the Bidder's compliance with the information stated thereon. A sample of this document has been provided in the Appendix below. (see sample [Purchasing Affidavit](#))
- III.9.1.d Bidder must submit with the Bid Form the Fairmont State University Alcohol and Drug-Free Workplace Affidavit, which shall be provided with the Request for Bid Solicitation, attesting to the Bidder's compliance with the information stated thereon. A sample of this document has been provided in the Appendix below. (see sample [Alcohol and Drug-Free Workplace Affidavit](#)) **Only for bids exceeding One Hundred Thousand Dollars (\$100,000.00).**
- III.9.1.e Bid Breakdown – Bidder shall provide a breakdown of their base bid on the form provided. The form is form informational purposes and the Owner's analysis of the bid.
- III.9.1.f West Virginia State Code West Virginia Code §5-22-1 requires the apparent low bidder on a contract valued at more than \$250,000 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure shall submit a list of all subcontractors who will perform more than \$25,000 of work on the project including labor and materials. This information shall be provided to the Facilities Business Officer within one business day of the opening of bids for review prior to the awarding of a construction contract. Failure to submit the subcontractor list within one business day after the deadline for submitting bids may result
- III.9.1.g Declaration of Interested Parties: West Virginia Code §6D-1-2 requires that for contracts exceeding \$100,000, the vendor must submit to Fairmont State University a supplemental disclosure of interested parties during the pre-award of the contract and within 30 days following the completion or termination of the contract. A copy of that form is included with this RFB or can be obtained from the WV Ethics Commission.

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in disqualification of the bid. The list shall include the names of the bidders and the license numbers.

- III.9.2 If the apparent low Bidder does not submit a valid Power of Attorney of the agent signing for the Surety with its Bid, Fairmont State University shall direct the apparent low Bidder to deliver a valid and appropriate Power of Attorney to Fairmont State University within a period determined by Fairmont State University. Fairmont State University shall not enter into a Contract without a valid Power of Attorney.
- III.9.3 Fairmont State University reserves the right to request Pre-Qualification information from prospective Bidders. If applicable, Fairmont State University shall notify Bidders of the results of such Pre-Qualification prior to the Bid date and such Request for Bid Solicitation shall be limited to those Bidder's who have met or exceeded the Pre-Qualification requirements and have been determined by Fairmont State University to be a responsible Bidder.

## Section 10. Changes in the Bid Amount

- III.10.1 Any change to a previously submitted Bid shall be in writing and received by Fairmont State University before the time scheduled for the bid opening.
- III.10.2 Changes shall provide an amount to be added to, or subtracted from, the bid amount, so that the final bid amount may be determined only after the sealed envelope is opened.
- III.10.3 If the Bidder's written instruction to change the Bid Amount, provided under III.10.1, reveals the bid amount in any way prior to the bid opening, Fairmont State University may, in its sole discretion, reject the Bid as non-responsive.
- III.10.4 No modification, withdrawal or cancellation shall be allowed during the stipulated time period of sixty (60) calendar days or otherwise agreed upon by the parties following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid. If Bidder withdraws or otherwise terminates his performance the Bidder may not do so without forfeiture of Bid Security, not as a penalty, but as liquidated damages.

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## Article IV. BID OPENING AND EVALUATION

### Section 1. Delivery of Bid

- IV.1.1 The Bidder shall submit its Bid to Fairmont State University at Facilities Department – Physical Plant located at 1201 Locust Avenue, Fairmont WV 26554 prior to the time scheduled for the bid opening.
- IV.1.2 All bids must be delivered by **2:00 p.m. Eastern Standard** time on the due date identified in the Request for Bid Solicitation.
- IV.1.3 If the sealed bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope and the envelope containing the bid shall also be clearly marked as containing a Bid with the following information shown on the envelope:
  - IV.1.3.a “REQUEST FOR BID” must be clearly visible on the front of the submission;
  - IV.1.3.b Bid Identification Number as identified in the Request for Bid Solicitation must be on the front of the envelope or container;
  - IV.1.3.c Contractor name and address must be on the front of the submission;
  - IV.1.3.d and the opening date and time of the bid must be clearly visible on the front of the submission.
- IV.1.4 The Bidder is fully responsible for timely delivery at the location designated for receipt of Bids. Bids received after this date and time will not receive consideration. Oral, telephonic, facsimile, or telegraphic Bids are invalid and will not receive consideration. No exceptions are permitted.
- IV.1.5 Any and all costs incurred by the Bidder in preparation of a response to the Request for Bid Solicitation or for presentation of credentials are the responsibility of the Bidder and will not be reimbursed. All responses and documentation submitted by the Bidder become the property of Fairmont State University at the time the documents are submitted in response to a Request for Bid Solicitation.

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## Section 2. Bid Opening

- IV.2.1 Sealed Bids shall be received at the location designated in [IV.1.1](#) until the time stated when all Bids shall be opened, read aloud, and the tabulation made public. Bidders are encouraged to be present during bid opening but are not required to do so.
- IV.2.2 The public opening and reading of Bids is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.
- IV.2.3 The contents of the bid envelope are public records and open for inspection, upon request, at any time after the bid opening. Ownership of all data, materials, and documentation originated and prepared for Fairmont State University pursuant to the Request For Bid Solicitation shall belong exclusively to Fairmont State University and be subject to public inspection in accordance with the West Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Bidder shall not be subject to public disclosure under the West Virginia Freedom of Information Act; however, the Bidder must invoke the protections of Article 1, Chapter 29B of the Code of West Virginia in writing, either before or at the time the data or material is submitted. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information.

## Section 3. Bid Opening Extension

- IV.3.1 If an Addendum is issued without giving all Bidders four (4) business days prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall be extended to at least meet such requirement.

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## Section 4. Bid Evaluation Criteria

- IV.4.1 Fairmont State University reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to award the Contract to any remaining Bidder Fairmont State University determines, in its sole discretion, to have submitted the lowest responsive and responsible Bid.
- IV.4.2 Fairmont State University reserves the right to accept or reject any or all Alternates. Alternates may be accepted or rejected in any order.
- IV.4.3 If any Bidder has engaged in collusive bidding, Fairmont State University shall reject that Bidder's Bid as non-responsible for the Contract. A collusive bidder may also be debarred from future State Contracts.
- IV.4.4 Bidder affirms that to the best of its knowledge, there exists no actual or potential conflict of interest between Bidder business or financial interests, and its services under any Contract issued pursuant to this Request for Bid Solicitation, and in the event of change in either its private interests or service under the Contract, Bidder will inform Fairmont State University regarding possible conflict of interest which may arise as a result of such change. Bidder also affirms that there exists no actual or potential conflict between Fairmont State University's employees and Bidder.
- IV.4.5 Fairmont State University reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the bid amount, or otherwise give the Bidder a competitive advantage. Noncompliance with any material requirements of the Contract Documents shall cause a Bid to be rejected as non-responsive.
- IV.4.6 If, in the opinion of Fairmont State University, the award of the Contract to the lowest Bidder is not in its best interest, Fairmont State University may accept, in its discretion, another Bid so opened, or Fairmont State University may reject all Bids and advertise for other Bids. The advertisement shall be for the period, in the form, and in the publications directed by Fairmont State University.

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## Section 5. Bid Evaluation Procedure

- IV.5.1 The Contract shall be awarded to the lowest responsive and responsible Bidder as determined in the discretion of Fairmont State University, or all Bids may be rejected in accordance with Applicable Law.
- IV.5.1.a In determining which Bid is the lowest, Fairmont State University shall consider the Base Bid and the bid amounts for any Alternate, or Alternates, which the Owner decides, in its sole discretion, to accept.
- IV.5.1.b The total of the bid amounts for the accepted Alternate(s) shall be added to, or deducted from, the Base Bid, as applicable, for determining the lowest Bidder.
- IV.5.1.c If two Bidders submit the same bid amount and both are determined to be responsive and responsible, Fairmont State University may select one Bidder by the flip of a coin, which shall be conducted in the presence of both Bidders and shall be final.
- IV.5.1.c.i If one of the Bidders refuses to participate in, or fails to be present at, the flip of a coin, the remaining Bidder shall be selected.
- IV.5.2 A Bidder shall be considered responsive if the Bidder's Bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents that would affect the amount of the Bid or otherwise give the Bidder a competitive advantage.
- IV.5.2.a A Bid shall be rejected as non-responsive if the Bid contains a Bid Bond executed by a Surety not licensed in West Virginia or a Bid Bond that is otherwise determined to be insufficient by Fairmont State University, including but not limited to not on the form as provided in the "Request for Bid Solicitation".
- IV.5.2.b If the lowest Bidder is non-responsive, the Bidder shall be notified according [IV.6.1](#), below.

# Document – Instructions to Bidders – Construction Services

- IV.5.3 In determining whether a Bidder is responsible, factors to be considered include, without limitation:
- IV.5.3.a Preferences required by law, where applicable;
  - IV.5.3.b The experience of the Bidder;
  - IV.5.3.c The financial condition of the Bidder;
  - IV.5.3.d The conduct and performance of the Bidder on previous Contracts, including compliance with Equal Employment Opportunity in the Construction Industry, OSHA and Prevailing Wage laws;
  - IV.5.3.e The facilities of the Bidder;
  - IV.5.3.f The management skills of the Bidder; and
  - IV.5.3.g The Bidder's ability to execute the Contract properly, including past performance of the Bidder and the Subcontractors that the Bidder proposes to use on the Project.
- IV.5.4 The A/E or Fairmont State University shall obtain from the lowest responsive Bidder any information Fairmont State University determines appropriate to consideration of factors showing responsibility. If the lowest responsive Bidder is responsible, the Contract shall be awarded to that Bidder, unless all Bids are rejected. The Bidder shall provide all requested information within three (3) consecutive days of a request from the A/E of Fairmont State University, or a longer period, if Fairmont State University consents in writing.
- IV.5.5 If the lowest responsive Bidder is not responsible, Fairmont State University shall evaluate the next lowest Bidder according to the procedures set forth in this [Article IV, Section 5](#) until the Contract is awarded, all Bids are rejected, or all responsive Bidders are determined to be not responsible.

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## Section 6. Rejection of Bid

- IV.6.1 If the lowest Bidder is not responsive or responsible, Fairmont State University shall reject the Bid and notify the Bidder in writing by Certified Mail of the finding and the reasons therefor.
- IV.6.2 Bidder notified in accordance with [IV.6.1](#) may object to its rejection by filing a written protest, which must be received by Fairmont State University within five (5) consecutive days of the notification provided pursuant to [IV.6.1](#).
- IV.6.3 Upon receipt of a timely protest, Fairmont State University shall meet with the protesting Bidder to hear its objections.
  - IV.6.3.a No Contract award shall become final until after Fairmont State University has met with all Bidders who have timely filed protests and the award of the Contract is affirmed.
  - IV.6.3.b If all protests are rejected, the Contract shall be awarded to the lowest responsive and responsible Bidder, or all Bids shall be rejected.

## Section 7. Notice of Intent to Award

- IV.7.1 Fairmont State University shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract, within the time specified, the Bidder shall be awarded the Contract.
- IV.7.2 Fairmont State University reserves the right to rescind any Notice of Intent to Award if Fairmont State University determines it issued the Notice of Intent to Award in error, or if the conditions precedent for execution of Contract set forth in [Article VII](#) are not met.

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## Article V. WITHDRAWAL OF BID

### Section 1. Withdrawal prior to Bid Opening

- V.1.1 A Bidder may withdraw a Bid after Fairmont State University receives the Bid, provided the Bidder makes a request in writing and Fairmont State University receives the request prior to the time of the bid opening, as determined by Fairmont State University.

### Section 2. Late Bids, Late Withdrawals, and Late Modifications

- V.2.1 The Bid shall remain valid and open for acceptance for a period of sixty (60) calendar days after the bid opening. Any bid, withdrawal or modification received after the date and time set for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered. The clock in the University's Facilities Department Office shall be considered the official timepiece used to determine whether the bid, withdrawal, or modification was late.

### Section 3. Mistakes

- V.2.2 Mistakes after Bid Opening but Before Award: Correction or withdrawal of a bid because of an inadvertent mistake in the bid requires careful consideration to protect the integrity of the competitive bidding process, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. A bid correction or withdrawal because of a mistake is permissible but only to the extent that it is not contrary to the interest of Fairmont State University or the fair treatment of other bidders. When Fairmont State University knows or has reason to conclude that a mistake has been or may have been made, a request shall be made for the bidder to confirm the bid. Situations in which confirmation should be requested include obvious or apparent errors on the face of the bid or a bid unreasonably lower (or higher) than the

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other bids submitted. Unit price shall be the governing factor if an error is made in extending the unit price. If the bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth below are met:

V.2.2.a Minor Informalities or Irregularities: Minor informalities or irregularities, or significant mistakes that can be waived or corrected without prejudice to other bidders, which are evident after examining the bid, are considered matters of form rather than substance; that is, the effect on price, quantity, quality, or terms and conditions is negligible. The Chief Procurement Officer may waive such informalities or irregularities or allow the bidder to correct such mistakes, depending on which is in the best interest of the University. An example is the lack of specifications on alternate bids. Additional specifications may be requested to make an accurate determination.

V.2.2.b Mistakes Where Intended Correct Bid Is Evident: If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

V.2.2.c Mistakes Where Intended Correct Bid Is Not Evident: A bidder may be permitted to withdraw a low bid if:

1. mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident,; or
2. the bidder submits proof of evidentiary value which clearly and convincingly demonstrates the mistake.

V.2.2.d Notice of a request to withdraw a Bid shall be made in writing filed with Fairmont State University within two (2) business days after the bid opening. Fairmont State University reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.

V.2.3 The Chief Procurement Officer may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist:

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- V.2.2.a An error was made that materially affected the bid or proposal;
  - V.2.2.b Rejection of the bid or proposal would not cause a hardship on the University other than losing an opportunity to receive materials, supplies, equipment, services or printing at a reduced cost; and
  - V.2.2.c Enforcement of the part of the bid or proposal in error would be unconscionable.
- V.2.4 Mistakes Discovered After Award: Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
- V.2.5 If a Bidder withdraws its Bid under [Article V.2](#), Fairmont State University may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and advertise for other Bids. In the event Fairmont State University advertises for other Bids, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Contract Documents, required advertising, and printing and mailing of notices to prospective Bidders, if Fairmont State University finds that these costs would not have been incurred but for the withdrawal.
- V.2.6 A Bidder may withdraw the Bidder's Bid at any time after the 60 day period described in [Article V.2.1](#) by giving written notice to Fairmont State University if the Bidder has not previously received a notice of intent to award. Bidder may not withdraw its Bid any time after a notice of intent to award has been sent to the Bidder by Fairmont State University unless otherwise provided for by these instructions.

## Section 4. Refusal to Accept Withdrawal

- V.3.1 If Fairmont State University contests the right of a Bidder to withdraw a Bid pursuant to [Article V.2.1](#), a hearing shall be held within ten (10) consecutive days after the bid opening and Fairmont State University shall issue an order allowing or denying the claim of this right within five (5) consecutive days after the hearing is concluded. Fairmont State University shall give the withdrawing Bidder timely notice of the time and place of the hearing.

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- V.3.1.a Fairmont State University shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.
- V.3.1.b The ruling of Fairmont State University shall be final and binding upon the Bidder.

## Section 5. Refusal to Perform

- V.4.1 In the event Fairmont State University denies the request for withdrawal and the Bidder refuses to perform the Contract, Fairmont State University may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.

## Section 6. Effect of Withdrawal

- V.5.1 A Bidder, who is permitted to withdraw a Bid under [V.2.1](#), shall not supply material or labor to, or perform a subcontract or other work for, the Bidder to whom the Contract is awarded; or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted; without Fairmont State University's prior written consent.

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## Article VI. BID GUARANTY AND CONTRACT BOND

### Section 1. Bid Guaranty

- VI.1.1 The Bidder shall submit a Bid Guaranty as specified under [Article III.9.1a](#), with the Bidder's Bid, payable to Fairmont State University, in the form of either:
- VI.1.1.a The signed Bid Bond contained in the Contract Documents for an amount equal to 5% of the Base Bid plus all additive Alternates; or
- VI.1.1.b The Bid Bond shall be issued by a Surety Company having a minimum of an "A- (minus)" rating from an accredited rating company such as A.M. Best. Documentation of the rating shall be included with the Bid Bond.

If box is checked the following in VI.1.1.c applies to bid:

- VI.1.1.c For large projects (over \$5,000,000).
- Require all subcontractors over \$500,000 to be bonded by an A- or better rated surety
  - After bids are awarded, the General Contractor is required to certify that all key subcontractors meet Contractor qualification requirements included in Division 1, Subcontractor Requirement
- VI.1.2 The Bid Bond shall be in form and substance satisfactory to Fairmont State University and shall serve as an assurance that upon acceptance of the Bid, the Bidder shall comply with all conditions precedent for Contract execution, within the time specified by Fairmont State University.
- VI.1.3 If the blank line on the Bid Guaranty or Contract Bond is not filled in, the penal sum shall be the full amount of the Base Bid plus all additive Alternates. If the blank line is filled in, the amount shall not be less than the full amount of the Base Bid plus all

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additive Alternates, stated in dollars and cents or as 5% of Bidder's Bid. In the event the blank line is filled in for an amount less than the full amount of the Base Bid plus all additive alternates, the Bid shall be rejected as non-responsive.

- VI.1.4 An authorized agent must sign the Bid Bond, and the Bidder shall provide a Power of Attorney from the Surety. A Surety authorized to transact business in the State of West Virginia must issue the Bond.

## Section 2. Bond Forfeiture

- VI.2.1 If for any reason, other than as authorized by [Article V](#), the Bidder fails to execute the Contract Form, and Fairmont State University awards the Contract to another Bidder, which Fairmont State University determines is the lowest responsive and responsible Bidder:

VI.2.1.a The Bidder who failed to execute the Contract Form is liable to Fairmont State University for the difference between its Bid and the Bid of the next lowest responsive and responsible Bidder, or for a sum not to exceed 5% percent of Bidder's bid amount, whichever is less, not as a penalty but as liquidated damages.

- VI.2.2 If Fairmont State University then awards a Contract to another Bidder, which Fairmont State University determines is the lowest responsive and responsible Bidder and that Bidder fails or refuses to execute the Contract Form:

VI.2.2.a The liability of the lowest responsive and responsible Bidder shall be the difference between the bid amount of the lowest responsive and responsible Bidder and another Bidder which Fairmont State University determines is the lowest responsive and responsible Bidder, but not in excess of the liability specified in [Article VI.2.1.a](#);

VI.2.2.b The liability on account of an award to the lowest responsive and responsible Bidder beyond the third lowest responsive and responsible Bidder shall be determined in like manner.

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- VI.2.3 If Fairmont State University does not award the Contract to another Bidder under [VI.2.2.a](#), but submits the Project for re-bidding:
- VI.2.3.a The Bidder failing or refusing to execute the Contract Form is liable to the Fairmont State University for a sum not to exceed 5 percent of the Bidder's bid amount or the costs in connection with the resubmission of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less.

## Section 3. Contract Bond

- VI.3.1 Prior to signing the Contract Form, the Bidder shall provide Bond(s) required by law issued by a Surety licensed to do business in the State of West Virginia in form and substance satisfactory to Fairmont State University. (See [VII.1.3](#))
- VI.3.2 The Bond must be in the full amount of the Contract to indemnify Fairmont State University against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract and in accordance with the Plans, Specifications, details, and bills of material therefore and pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in performing and completing the Contract.

## Article VII. CONTRACT AWARD AND EXECUTION

### Section 1. Conditions Precedent for Execution of Contract

- VII.1.1 The successful Bidder must submit or, if applicable, meet the obligation set-forth in this Article VII to Fairmont State University before the execution of any Contract with Bidder.
- VII.1.2 Contract Time. The successful Bidder, as a condition of the Contract, agrees that all Work is to be Substantially Complete within the Contract Time stated in the Request for Bid Solicitation.

Fairmont State University will suffer financial loss if the Work is not Substantially Complete within the Contract Time. Therefore, at the discretion of Fairmont State University, liquidated damages may be applicable to the Work and such terms and conditions shall be identified in the Request for Bid Solicitation and any Contract Documents issued pursuant thereto. The Bidder does hereby agree to such terms and conditions upon submitting a Bid pursuant to any Request for Bid Solicitation issued

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by Fairmont State University.

- VII.1.3 Performance, Payment and Maintenance Bonds. The successful Bidder will be required to furnish, at the Bidder's expense, a Performance Bond and a Labor and Material Payment Bond for One Hundred Percent (100%) of the contract award and, if applicable, a two (2)-year roofing Maintenance Bond for the full value of the roofing system. Bonds must be executed by a company licensed to transact surety insurance in the State of West Virginia.
- Bonds shall be written on the State of West Virginia approved forms bound in the Project Manual or provided with the Request for Bid Solicitation. No other form of bonds will be accepted by Fairmont State University.
- VII.1.4 Proof of West Virginia Workers' Compensation Coverage. The successful Bidder shall be in compliance with all rules and regulations of the State of West Virginia Workers' Compensation Fund and have all premiums paid and reports filed currently. The successful Bidder will be required to furnish a copy of their proof of coverage prior to execution of any Contract relating to the Request for Bid.
- VII.1.5 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured endorsement. Bidder, at its own expense, shall procure and maintain for the duration of the work insurance requirements as required by the Contract Documents. Bidder shall provide such other insurance as may be required by law. West Virginia University shall be named as an additional insured on all liability policies. Bidder shall provide a certificate of insurance confirming the minimum coverage limits specified in the Contract Documents and documenting additional insured status for Fairmont State University under each liability policy. All policies shall provide a minimum of (30) calendar day's written notice prior to cancellation.
- VII.1.6 Subcontractor Insurance. Bidder shall verify that all contractors and subcontractors of Bidder performing any work pursuant to any Contract entered into due to this Request for Bid have sufficient liability and worker's compensation insurance and shall obtain certificates evidencing such insurance. In addition, Bidder shall verify that all contractors and subcontractors to Bidder performing any work pursuant to any Contract are properly licensed under the laws of the State of West Virginia or any other applicable laws to do the work that such subcontractor is hired to complete.
- VII.1.7 Contractor's License. The successful Bidder shall furnish a copy of its contractor's license prior to issuance of a Purchase Order/Contract.
- VII.1.8 Purchasing Division 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

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- 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.
- VII.1.9 Secretary of State Registration. Prior to contract award, unless a waiver is obtained from the Secretary of State’s Office, every vendor organized as a business entity must have a certificate of authority and be in good standing with the WV Secretary of State’s Office. The Secretary of State requirement applies generally to businesses that operate as separate legal entities and does not apply to sole proprietors and general partnerships. <https://sos.wv.gov/Pages/default.aspx>
- VII.1.10 Federal Debarment/Suspension: Prior to contract award, for purchases over \$25,000, Vendor status shall be verified on [www.sam.gov](http://www.sam.gov) before award is made. Screen prints of the search results shall be printed and kept in the purchasing file for audit verification. If the vendor does not appear on SAM.gov, they must sign the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions. A sample of this document has been provided in the Appendix below. (see sample [Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions](#))
- VII.1.11 Wage Bond. If applicable, Bidders engaged in construction work in West Virginia less than five (5) years preceding the date of the Bid shall post a wage bond with the West Virginia Department of Labor. Proof of such compliance may be required by Fairmont State University.
- VII.1.12 West Virginia Jobs Act. All Bidders, when applicable, shall comply with the provisions of the West Virginia Jobs Act, West Virginia Code § 21-1C-1 et seq. It will be the contractor’s responsibility to file copies of certified payrolls with Fairmont State University’s Facilities Department.
- VII.1.13 West Virginia Alcohol and Drug-Free Workplace Act. Fairmont State University may not award a contract, as defined under West Virginia Code §21-1D-1 et. Seq., to a contractor who does not have a written plan for a drug-free workplace and who has not submitted that plan to Fairmont State University in a timely fashion; therefore, the successful Bidder must meet all requirements of West Virginia Code §21-1D-1 et. seq., if applicable.
- VII.1.14 Foreign Corporation. If a Bidder is a foreign corporation, e.g., not incorporated under the laws of West Virginia, it must submit a Certificate of Good Standing from the West Virginia Secretary of State showing the right of the Bidder to do business in

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the State of West Virginia.

- VII.1.15 Time of Delivery of Contract and Supporting Documents. The successful Bidder shall deliver the required bonds and all other Contract Documents, including but not necessarily limited to, Certificates of Insurance and Contractor's Licenses within fifteen (15) consecutive calendar days after receipt of West Virginia University notice of intent to award a contract. Failure to do so may cause: (1) forfeiture of the Bidder's security deposited with his Bid as liquidated damages, not a penalty, or (2) reduction of contract performance time proportionate to the additional time for Bidder to fully comply with this section.

## Section 2. Time Limits

- VII.2.1 Fairmont State University's failure to award the Contract and execute the Contract Form within 60 days of the bid opening invalidates the entire bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest responsive and responsible Bidder and Fairmont State University.
- VII.2.1.a If Fairmont State University awards the Contract within 60 days of the bid opening, increases in material, labor, and subcontract costs shall be borne by the Bidder.
- VII.2.1.b If failure to execute the Contract within 60 days of the bid opening is due to matters for which the Fairmont State University is solely responsible, Fairmont State University may authorize payment of verifiable increased costs in materials, labor, or subcontracts. Notwithstanding the foregoing, Fairmont State University may cancel any or all portions of such Bid for convenience.
- VII.2.1.c If failure to execute the Contract within 60 days of the bid opening is due to matters for which the Contractor is responsible, Fairmont State University shall not grant a request for increased costs.

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## Section 3. Notice to Proceed

VII.3.1 Fairmont State University shall issue a Notice to Proceed to the Contractor, which establishes the date for commencement and the calendar days allocated or actual calendar day for Contract Completion. Any Work performed or any materials contracted for prior to receipt of Fairmont State University's Notice to Proceed shall be at the Bidder's absolute and sole risk. Within ten (10) calendar days of the date of the Notice to Proceed, the Contractor shall furnish the following submittals to the A/E and/or Fairmont State University:

VII.3.1.a Schedule of Values

VII.3.1.b Preliminary schedule of Shop Drawings and other Submittals

VII.3.1.c Subcontractor and Material Supplier Declaration form

VII.3.1.d Qualifications of proposed project manager(s) and superintendent(s) and a comprehensive resume of each.

## Section 4. Wage Rates

~~VII.4.1 The successful Bidder and all subcontractors must pay the higher of the U. S. Department of Labor Minimum Wage Rates or the West Virginia Department of Labor Wage Rates pursuant to West Virginia Code § 21-5-1, et seq. established for the county where the work is performed.~~

~~VII.4.2 The Bidder shall not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law. The Bidder is responsible for compliance of its Subcontractors with prevailing wage requirements.~~

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Fairmont State University  
Facilities Department  
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## Article VIII. APPENDIX

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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** \_\_\_\_\_



**State of West Virginia  
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT  
West Virginia Code §21-1D-5**

I, \_\_\_\_\_, after being first duly sworn, depose and state as follows:

- 1. I am an employee of \_\_\_\_\_; and,  
(Company Name)
- 2. I do hereby attest that \_\_\_\_\_  
(Company Name)

maintains a written plan for a drug-free workplace policy and that such plan and policy are in compliance with **West Virginia Code** §21-1D.

The above statements are sworn to under the penalty of perjury.

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

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

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

Company Name: \_\_\_\_\_

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

STATE OF WEST VIRGINIA,

COUNTY OF \_\_\_\_\_, TO-WIT:

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

By Commission expires \_\_\_\_\_

(Seal)

\_\_\_\_\_  
(Notary Public)

**BID BOND PREPARATION INSTRUCTIONS**

AGENCY (A) \_\_\_\_\_  
RFQ/RFP# (B) \_\_\_\_\_

- (A) WV State Agency  
(Stated on Page 1 "Spending Unit")
- (B) Request for Quotation Number (upper right corner of page #1)
- (C) Your Business Entity Name (or Individual Name if Sole Proprietor)
- (D) City, Location of your Company
- (E) State, Location of your Company
- (F) Surety Corporate Name
- (G) City, Location of Surety
- (H) State, Location of Surety
- (I) State of Surety Incorporation
- (J) City of Surety's Principal Office
- (K) Minimum amount of acceptable bid bond is 5% of total bid. You may state "5% of bid" or a specific amount on this line in words.
- (L) Amount of bond in numbers
- (M) Brief Description of scope of work
- (N) Day of the month
- (O) Month
- (P) Year
- (Q) Name of Business Entity (or Individual Name if Sole Proprietor)
- (R) Seal of Principal
- (S) Signature of President, Vice President, or Authorized Agent
- (T) Title of Person Signing for Principal
- (U) Seal of Surety
- (V) Name of Surety
- (W) Signature of Attorney in Fact of the Surety

**Bid Bond**

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, \_\_\_\_\_ (C) of \_\_\_\_\_ (D), \_\_\_\_\_ (E), as Principal, and \_\_\_\_\_ (F) of \_\_\_\_\_ (G), \_\_\_\_\_ (H), a corporation organized and existing under the laws of the State of \_\_\_\_\_ (I) with its principal office in the City of \_\_\_\_\_ (J), as Surety, are held and firmly bound unto The State of West Virginia, as Obligee, in the penal sum of \_\_\_\_\_ (K) (\$ \_\_\_\_\_ (L)) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the Department of Administration a certain bid or proposal, attached hereto and made a part hereof to enter into a contract in writing for \_\_\_\_\_ (M)

**NOW THEREFORE**

(a) If said bid shall be rejected, or  
(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the agreement created by the acceptance of said bid then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the Obligee may accept such bid: and said Surety does hereby waive notice of any such extension.

WITNESS, the following signatures and seals of Principal and Surety, executed and sealed by a proper officer of Principal and Surety, or by Principal individually if Principal is an individual, the \_\_\_\_\_ (N) day of \_\_\_\_\_ (O), 20\_\_\_\_ (P).

Principal Seal \_\_\_\_\_ (Q)  
(Name of Principal)

(R)

By \_\_\_\_\_ (S)  
(Must be President, Vice President, or Duly Authorized Agent)

\_\_\_\_\_  
Title

Surety Seal \_\_\_\_\_ (U)  
(Name of Surety)

\_\_\_\_\_  
Attorney-in-Fact

NOTE 1: **Dated Power of Attorney with Surety Seal must accompany this bid bond.**

**IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance, must affix its seal, and must attach a power of attorney with its seal affixed.**

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, as Principal, and \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_  
\_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, as Surety, are held and firmly bound unto the State  
of West Virginia, as Obligee, in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment of which,  
well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the  
Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE,

- (a) If said bid shall be rejected, or
- (b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal  
attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform  
the agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in  
full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no  
event, exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no  
way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby  
waive notice of any such extension.

WITNESS, the following signatures and seals of Principal and Surety, executed and sealed by a proper officer of Principal and  
Surety, or by Principal individually if Principal is an individual, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Principal Seal

\_\_\_\_\_  
(Name of Principal)

By \_\_\_\_\_  
(Must be President, Vice President, or  
Duly Authorized Agent)

\_\_\_\_\_  
(Title)

Surety Seal

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
Attorney-in-Fact

**IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance, must affix its seal, and  
must attach a power of attorney with its seal affixed.**

# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_  
(Contractor name, complete address including ZIP Code and legal title )

as Principal, hereinafter called Contractor, and \_\_\_\_\_  
(Surety name and complete address including ZIP Code)

\_\_\_\_\_ a corporation organized and existing under  
the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_

as Surety, hereinafter called Surety, are held firmly bound unto \_\_\_\_\_  
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as herein below defined in the amount of  
\_\_\_\_\_ Dollars ( \_\_\_\_\_ ),  
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_  
\_\_\_\_\_ entered into a contract with Owner for  
\_\_\_\_\_  
\_\_\_\_\_ in accordance with drawings and specifications prepared by \_\_\_\_\_

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.  
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, well and truly perform the contract, and shall pay off,  
satisfy and discharge all claims of subcontractors, labors, materialmen and all persons furnishing material or doing work pursuant to the  
CONTRACT and shall save Owner and its property harmless from any and all liability over and above the contract price thereof, between the Owner  
and the Contractor, for all of such labor and material, and shall fully pay off and discharge and secure the release of any and all mechanics liens  
which may be placed upon said property by any such subcontractor, laborer or materialmen, then this obligation shall be null and void. Otherwise, it  
shall remain in full force and effect.

Signed and sealed this \* \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Principal Corporate Seal

\_\_\_\_\_  
(Contractor Name) (Seal)

BY: \_\_\_\_\_ (Seal)  
(Must be President, Vice President, Owner, Partner, Manager, Member,  
or other duly Authorized Agent)

\_\_\_\_\_  
(Title)

Surety Corporate Seal

\_\_\_\_\_  
(Surety)

BY: \_\_\_\_\_ (Seal)

NOTE: Please attach Power of Attorney.

NOTE: Applicable sections of attached acknowledgments  
must be completed and returned as part of the bond.

\*Power of Attorney must be certified on this date or later.

# ACKNOWLEDGMENTS

## Acknowledgment by Principal if individual or Partnership

1. STATE OF \_\_\_\_\_
2. County of \_\_\_\_\_ to-wit:
3. I, \_\_\_\_\_, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that \_\_\_\_\_  
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_
6. Notary Seal 7: \_\_\_\_\_  
(Notary Public)
8. My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## Acknowledgment by Principal if Corporation

9. STATE OF \_\_\_\_\_
10. County of \_\_\_\_\_ to-wit:
11. I, \_\_\_\_\_, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that \_\_\_\_\_
13. who as, \_\_\_\_\_ signed the foregoing writing for
14. \_\_\_\_\_ a corporation, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_
16. Notary Seal 17: \_\_\_\_\_  
(Notary Public)
18. My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## Acknowledgment by Surety

19. STATE OF \_\_\_\_\_
20. County of \_\_\_\_\_ to-wit:
21. I, \_\_\_\_\_, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that \_\_\_\_\_
23. who as, \_\_\_\_\_ signed the foregoing writing for
24. \_\_\_\_\_ a corporation,  
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_
26. Notary Seal 27: \_\_\_\_\_  
(Notary Public)
28. My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## Sufficiency in Form and Manner of Execution Approved

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

By: \_\_\_\_\_  
(Deputy Attorney General)

Attorney General

## ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) THROUGH (8).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) THROUGH (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) THROUGH (28).
4. **Notaries must:**

---

### ACKNOWLEDGMENT BY PRINCIPAL, IF INDIVIDUAL OR PARTNERSHIP

---

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. (Must be Owner or General Partner of Sole Proprietorship or Partnership)
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

---

### ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

---

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond.
13. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company)
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission expiration date.

---

### ACKNOWLEDGMENT BY SURETY

---

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
28. Notary enters commission expiration date.

---

### POWER OF ATTORNEY INSTRUCTIONS

---

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Seal must be affixed.**

# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_  
(Contractor name, complete address including ZIP Code and legal title)

as Principal, hereinafter called Contractor, and \_\_\_\_\_  
(Surety name and complete address including ZIP Code)

\_\_\_\_\_ a corporation organized and existing under  
the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_

as Surety, hereinafter called Surety, are held firmly bound unto \_\_\_\_\_  
(Owner name, complete address including ZIP Code and legal title)

as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_

Dollars (\_\_\_\_\_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors,  
administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_  
\_\_\_\_\_ entered into a contract with Owner for \_\_\_\_\_

in accordance with drawings and specifications prepared by \_\_\_\_\_

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall, promptly and faithfully Perform and CONTRACT,  
then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations  
thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the CONTRACT in accordance with its terms and conditions, and
2. Shall save the Owner harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy the default or to  
complete the CONTRACT in accordance with its terms and conditions in a timely manner.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the successors of  
Owner.

Signed and sealed this \* \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Principal Corporate Seal

\_\_\_\_\_  
(Contractor Name) (Seal)

BY: \_\_\_\_\_ (Seal)

(Must be President, Vice President, Owner, Partner, Manager, Member,  
or other duly Authorized Agent)

\_\_\_\_\_  
(Title)

Surety Corporate Seal

\_\_\_\_\_  
(Surety)

BY: \_\_\_\_\_ (Seal)

NOTE: Please attach Power of Attorney.

NOTE: Applicable sections of attached acknowledgments must be  
completed and returned as part of the bond.

\*Power of Attorney must be certified on this date or later.

APPROVED AG 09-12-16

# ACKNOWLEDGMENTS

## Acknowledgment by Principal if individual or Partnership

1. STATE OF \_\_\_\_\_
2. County of \_\_\_\_\_ to-wit:
3. I, \_\_\_\_\_, a Notary Public in and for the
4. county and state aforesaid, do hereby certify that \_\_\_\_\_  
whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.
5. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_
6. Notary Seal
7. \_\_\_\_\_  
(Notary Public)
8. My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## Acknowledgment by Principal if Corporation

9. STATE OF \_\_\_\_\_
10. County of \_\_\_\_\_ to-wit:
11. I, \_\_\_\_\_, a Notary Public in and for the
12. county and state aforesaid, do hereby certify that \_\_\_\_\_
13. who as, \_\_\_\_\_ signed the foregoing writing for
14. \_\_\_\_\_ a corporation, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
15. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_
16. Notary Seal
17. \_\_\_\_\_  
(Notary Public)
18. My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## Acknowledgment by Surety

19. STATE OF \_\_\_\_\_
20. County of \_\_\_\_\_ to-wit:
21. I, \_\_\_\_\_, a Notary Public in and for the
22. county and state aforesaid, do hereby certify that \_\_\_\_\_
23. who as, \_\_\_\_\_ signed the foregoing writing for
24. \_\_\_\_\_ a corporation,  
has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.
25. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_
26. Notary Seal
27. \_\_\_\_\_  
(Notary Public)
28. My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## Sufficiency in Form and Manner of Execution Approved

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

By: \_\_\_\_\_  
Attorney General  
(Deputy Attorney General)

## ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (1) THROUGH (8).
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE LINES (9) THROUGH (18).
3. SURETY MUST HAVE NOTARY COMPLETE LINES (19) THROUGH (28).
4. **Notaries must:**

---

### ACKNOWLEDGMENT BY PRINCIPAL, IF INDIVIDUAL OR PARTNERSHIP

---

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of principal covered by bond if individual or partnership. (Must be Owner or General Partner of Sole Proprietorship or Partnership)
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

---

### ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

---

9. Enter name of State.
10. Enter name of County.
11. Enter name of Notary Public witnessing transactions.
12. Enter name of Corporate Officer signing bond.
13. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company)
14. Enter name of Company or Corporation.
15. Notary enters date bond was witnessed. Must be the same as or later than signature date.
16. Affix notary Seal.
17. Notary affixes his/her signature.
18. Notary enters commission expiration date.

---

### ACKNOWLEDGMENT BY SURETY

---

19. Enter name of State.
20. Enter name of County.
21. Enter name of Notary Public witnessing transactions.
22. Enter name of person having power of attorney to bind Surety Company.
23. Enter Title of person binding Surety Company.
24. Enter name of Insurance Company (Surety).
25. Notary enters date bond was witnessed. Must be the same as or later than signature date.
26. Affix Notary Seal.
27. Notary affixes his/her signature.
28. Notary enters commission expiration date.

---

### POWER OF ATTORNEY INSTRUCTIONS

---

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Seal must be affixed.**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER  INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED  CONTRACTOR'S NAME AND ADDRESS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER B: INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER C: INSURER'S NAME</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: INSURER'S NAME		INSURER B: INSURER'S NAME		INSURER C: INSURER'S NAME		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: INSURER'S NAME													
INSURER B: INSURER'S NAME													
INSURER C: INSURER'S NAME													
INSURER D:													
INSURER E:													

COVERAGES		THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.				
INSR LTR	ADD'L NSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000  BODILY INJURY (Per person) \$  BODILY INJURY (Per accident) \$  PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$  OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B		EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000  \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under SPECIAL PROVISIONS below Y/N <input type="checkbox"/>				<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Employers liability includes coverage for W. Va. Code §23-4-2 (Mandolidis). Owner, Architect and Architect's Consultants are to be named as additional insureds. (Insert project's name and address)

<b>CERTIFICATE HOLDER</b>  STATE AGENCY'S NAME AND ADDRESS	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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**ACORD™ CERTIFICATE OF PROPERTY INSURANCE** DATE

PRODUCER  INSURANCE AGENCY'S NAME AND ADDRESS	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.  <b>COMPANIES AFFORDING COVERAGE</b> COMPANY A INSURER'S NAME COMPANY B COMPANY C COMPANY D
INSURED  CONTRACTOR'S NAME AND ADDRESS	

**COVERAGES**  
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

GO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
	<input type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPECIAL <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD				<input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP	\$ \$ \$ \$ \$ \$ \$
A	<input checked="" type="checkbox"/> INLAND MARINE TYPE OF POLICY Inst/Builder's Risk CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER <input type="checkbox"/> CRIME TYPE OF POLICY	(if applicable)			<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> TRANSIT <input checked="" type="checkbox"/> OFF-SITE <input type="checkbox"/> STORAGE	CONTRACT AMT. \$ 20% \$ 20% \$ \$
	<input type="checkbox"/> BOILER & MACHINERY  <input type="checkbox"/> OTHER					\$ \$

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY  
  
 PROJECT NAME AND ADDRESS

SPECIAL CONDITIONS/OTHER COVERAGES  
  
 Owner is to be named as additional insured.

<b>CERTIFICATE HOLDER</b>  STATE AGENCY'S NAME AND ADDRESS	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower  
Tier Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a covered transaction by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this award had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall include an explanation with this document.

Organization Name: \_\_\_\_\_

PO/Contract Number or Project Name: \_\_\_\_\_

Name(s) and Title(s) of Authorized Representative(s): \_\_\_\_\_

\_\_\_\_\_

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

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

**ADDENDA ACKNOWLEDGEMENT FORM**

**SOLICITATION NO.:** \_\_\_\_\_

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

- |   |  |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

**ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)**

- 1. CONTRACTOR’S LICENSE:** West Virginia Code § 21-11-2 requires that all persons desiring to perform contracting work in this state be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor’s license. Applications for a contractor’s license may be made by contacting the West Virginia Division of Labor.

West Virginia Code § 21-11-11 requires any prospective Vendor to include the contractor’s license number on its bid. Failure to include a contractor’s license number on the bid shall result in Vendor’s bid being disqualified. Vendors should include a contractor’s license number in the space provided below.

**Contractor’s Name:** \_\_\_\_\_

**Contractor’s License No.** \_\_\_\_\_

The apparent successful Vendor must furnish a copy of its contractor’s license prior to the issuance of a purchase order/contract.

- 2. DRUG-FREE WORKPLACE:** W. Va. Code § 21-1D-5 provides that any solicitation for a public improvement contract requires each Vendor that submits a bid for the work to submit at the same time an affidavit that the Vendor has a written plan for a drug-free workplace policy. To comply with this law, Vendor must either complete the enclosed drug-free workplace affidavit and submit the same with its bid or complete a similar affidavit that fulfills all of the requirements of the applicable code. Failure to submit the signed and notarized drug-free workplace affidavit, or a similar affidavit that fully complies with the requirements of the applicable code, with the bid shall result in disqualification of Vendor’s bid.
- 3. AIA DOCUMENTS:** All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the AIA A101-2017 and A201-2017 or the A107-2017 documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

**4. SUBCONTRACTOR LIST SUBMISSION:** In accordance with W. Va. Code § 5-22-1, The apparent low bidder on a contract for the construction, alteration, decoration, painting or improvement of a new or existing building or structure valued at more than \$250,000.00 shall submit a list of all subcontractors who will perform more than \$25,000.00 of work on the project including labor and materials. This provision shall not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.

**c. Required Information.** The subcontractor list shall contain the following information:

- i. Bidder's name
- ii. Name of each subcontractor
- iii. License numbers as required by W. Va. Code § 21-11-1 et. seq.
- iv. Notation that no subcontractors will be used if the bidder will perform the work

**ci. Submission.** The completed subcontractor list shall be provided to the Facilities Business Office within one business day of the opening of bids for review. Failure to submit the subcontractor list within one business day after the deadline for submitting bids shall result in disqualification of the bid.

**cii. Substitution of Subcontractor.** Written approval must be obtained from the Facilities Business Office before any subcontractor substitution is permitted. Substitutions are not permitted unless:

- i. The subcontractor listed in the original bid has filed for bankruptcy;
- ii. The subcontractor in the original bid has been debarred or suspended; or
- iii. The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform his subcontract.

**5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: *Provided*, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

State of West Virginia

Supplementary Conditions to AIA Document A201-2017  
General Conditions of the Contract for Construction

The following Supplementary Conditions modify the General Conditions of the Contract for Construction, AIA Document A201, 2017 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

Order of Precedence: The documents contained in the contract to which this document has been attached shall be interpreted in the following order of precedence:

First Priority – Documents developed by the State or agency and utilized to provide public notice of the solicitation, along with other general terms and conditions shall be first in priority.

Second Priority – This document "Supplementary Conditions to the AIA Document A201-2017 General Conditions of the Contract for Construction" shall be second in priority.

Third Priority – all other AIA documents including, but not limited to, the AIA Document A201-2017 General Conditions of the Contract for Construction and the A101-2017 Standard Form of Agreement Between Owner and Contractor (when utilized) shall be third or lower in priority.

**ARTICLE 1  
GENERAL PROVISIONS**

**§1.1.2 THE CONTRACT**

§1.1.2 Make the following changes to Section 1.1.2:

In the last sentence, insert "and the Contractor" after "The Architect" and delete "the Architect's" and insert "their respective".

**§1.2 Correlation and intent of Contract Documents**

§1.2.1.1 In the second sentence, remove "any law" and insert "West Virginia law or any applicable federal law". In the last sentence, remove "by law" and insert "West Virginia law or any applicable federal law".

**§1.7 Digital Data Use and Transmission**

§1.7 Delete the last sentence of this section in its entirety.

**§1.8 Building Information Models Use and Reliance**

§ 1.8 Remove this section in its entirety and replace it with the following:

"Any use of, or reliance on, all or a portion of a building information model must be approved in advance by Owner and will only be permitted if the Parties have agreed upon and executed written documents to memorialize protocols governing the use of, and reliance on, the information contained in the model."

Add the following Section to Article 1:

**§1.05 PARTY RELATIONS**

§1.05 The Owner and their consultants, the Architect and their Consultants, and the Contractor and their Subcontractors agree to proceed with the Work on the basis of mutual trust, good faith and fair dealing.

**§1.1 BASIC DEFINITIONS**

**§1.1.1 THE CONTRACT DOCUMENTS**

§1.1.1 Delete the last sentence of this Section and substitute the following:

The Contract Documents also include the Bidding Documents (Advertisement or Invitation to Bid, Request for Quotations/Bids, Instructions to Bidders, Form of Proposal, Bid Bond and Sample Forms), Performance Bond, Payment Bond, Maintenance Bond (if applicable), Certificates of Insurance, Special Provisions For Disadvantaged and Women Business Enterprise Utilization (if bound herein).

**ARTICLE 2**  
**OWNER**

**§2.1 GENERAL**

§ 2.1.1 Add the following after the last sentence:

Notwithstanding the foregoing, the parties understand that since Owner is a government entity, change orders will often require approval by entities in addition to owner. When owner is a state agency, those entities may include, but are not limited to, the West Virginia Attorney General's Office and the West Virginia Purchasing Division. Additionally, approval may be required by agencies providing project funding, including but not limited to, West Virginia School Building Authority and agencies of the United States federal government.

§2.1.2 Delete Section 2.1.2 in its entirety.

§2.1 Add the following Section to 2.1:

§2.1.3 The Owner and the agency funding the project reserve the right to maintain a full time or part time project representative (sometimes referred to as the "Clerk of the Works") at the project site who shall keep the Owner informed of the progress and quality of the Work and responsibilities. The Contractor shall cooperate and assist the Clerk of the Works in the performance of his/her duties. The Clerk of the Works will not interfere with or be responsible for the Contractor's supervision and direction of the Work, and the Contractor's means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. The Clerk of the Works may facilitate communications between the Owner, Architect, and Contractor but has no authority to make decisions for the Owner, approve modifications to the Contract Documents, the Contract Time, or Contract Sum. Additionally, Contractor is not permitted to rely on or consider decisions made by the Clerk of the Works on behalf of Owner

§2.2 Evidence of the Owner's Financial Arrangements: Delete § 2.2 and all of its subsections in its entirety.

**§2.3 Information and Services Required of Owner**

§2.3.2 Make the following changes to Section 2.3.2:

In first sentence, delete the period and add ", when required pursuant to West Virginia Code §30-12-1 et seq." Add the following sentence at the end of Section 2.3.2: "If the Owner does not retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, the Owner will appoint an individual to assume the role and obligations of the Architect pursuant to this Agreement."

§2.3.3 Delete this section in its entirety.

§2.3.4 Delete the last sentence of Section 2.3.4 and substitute the following:

The Contractor shall confirm the locations of each utility. If the Owner has provided geotechnical and other tests to determine subsurface conditions, the Owner will provide such documents to the Contractor; the Contractor acknowledges that it will make no claims for any subsurface or any other conditions revealed by these tests.

**ARTICLE 3**  
**CONTRACTOR**

**§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§3.2.2 Add the following sentence to the end of Section 3.2.2:

Claims by Contractor resulting from its failure to familiarize itself with the site shall be deemed waived. Additionally, by submitting a bid or otherwise entering into this contract, Contractor acknowledges that it has reviewed and understands the contract documents and the work required by those documents. Any claims arising from Contractor's failure to review and understand the contract documents shall be deemed waived.

§3.2.3 Delete Section 3.2.3 in its entirety and substitute the following:

§3.2.3 The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during performance of its services and shall immediately notify the Owner and the Architect about any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

§ 3.2.4 Add the following clauses to Section 3.2.4:

§3.2.4.1 If the Contractor performs any Work which it knows or should have known involves a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and the Architect prior to receiving written authorization from the Architect to proceed, the Contractor shall be responsible for the consequences of such performance.

§3.2.4.2 Before ordering any materials or doing any Work, the Contractor and Subcontractors shall verify all measurements at the site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Architect prior to proceeding with the Work. No extra charge or compensation will be

entertained due to differences between actual measurements and dimensions indicated on the drawings, if such differences do not result in a change in the scope of Work or if the Architect failed to receive written notice before the Work was performed.

**§3.4 LABOR AND MATERIALS**

§3.4.1 Vendor must review and comply with the following statutory requirements affecting public construction projects, as well as any other applicable laws that are not referenced herein:

- W. Va. Code § 5-19-1 et seq., relating to domestic steel preference.
- W. Va. Code § 5A-3-56 relating to domestic steel preference, provided that the Owner is a state agency subject to Chapter 5A, Article 3 of the W. Va. Code.
- W. Va. Code § §21-1C-1 et seq., relating to local hiring preference
- W. Va. Code §21-1D-1 et seq., relating to drug free workplace requirements.

§3.4 Add the following Sections to 3.4:

§3.4.4 Where materials and equipment are to be provided by the Owner under the Contract Documents, the Contractor shall notify the Owner in writing as to when materials and equipment are required on the project site in sufficient time to avoid delay in the Work.

§3.4.5 The Contractor shall employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts and implement policies and practices to minimize the likelihood of any strike, work stoppage or other labor disturbance. Except as specifically provided in this Agreement, Contractor shall not be entitled to any adjustment in the Contract sum or Contract time and shall be liable to the Owner for all damages suffered by the Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its Subcontractors.

**§3.5 WARRANTY**

§3.5 Add the following sentence at the end of Section 3.5:

The Contractor agrees to assign to the Owner at time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

**§3.8 ALLOWANCES**

§3.8.3 Make the following change to Section 3.8.3:

§3.8.3 Delete "with reasonable promptness" and insert "in sufficient time to avoid delay in the Work."

Add the following Section to 3.8:

§3.8.4 The Contractor shall promptly submit to the Owner an itemized account of any expenditure by the Contractor of the Contract allowance in sufficient detail to allow the Owner to properly account for such expenditure.

**§3.9 SUPERINTENDENT/PROJECT MANAGER**

§3.9.1 Add the following sentence to the end of Section 3.9.1:

The Contractor may also employ a competent project manager.

§3.9.2 Make the following changes to Section 3.9.2:

In the first sentence, add "and project manager, if applicable" after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9.3 Make the following changes to Section 3.9.3:

In the first sentence, add "or project manager, if applicable," after "superintendent." In the second sentence, add "or project manager, if applicable," after "superintendent."

§3.9 Add the following Section to 3.9:

§3.9.4 The Owner shall have the right, at any time, to direct a change in the Contractor's representatives if their performance is deemed unsatisfactory.

**§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

§3.10.1 Make the following changes to Section 3.10.1:

In the first sentence, delete the word "promptly" and substitute "by the earliest reasonable date".

Add the following sentence to the end of Section 3.10.1: "The Contractor shall submit an updated construction schedule with each payment application, unless waived by the Owner."

Add the following Sections to 3.10:

§3.10.4 At any time after the first thirty (30) days of the Contract Time, if it is found that the project is two (2) weeks or more behind schedule, beyond approved time extensions, or if at any time during

the last thirty (30) days of the scheduled Contract Time the Contractor is one (1) week or more behind schedule, the Contractor shall immediately submit a plan to the Owner describing how the Work will be placed back on schedule within the remaining Contract Time.

§3.10.5 If the Owner and the Architect determine that the performance of the Work during any stage of the construction schedule last approved by the Owner has not progressed or reached the level of completion required by the Contract Documents, the Owner will have the right to order the Contractor to take corrective measures (hereinafter referred to collectively as Extraordinary Measures) necessary to expedite the progress of the Work, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment and facilities; and (3) other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the last approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule after allowing for approved extensions of Contract Time as provided elsewhere in this Agreement. The Contractor is not entitled to an adjustment in the Contract Sum in connection with any Extraordinary Measures required by the Owner. The Owner may exercise its rights under this Section as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the construction schedule.

**§3.11 DOCUMENTS AND SAMPLES AT THE SITE**

§3.11 Insert the following sentence at the end of Section 3.11:

The Contractor's compliance with this Section 3.11 shall be a condition precedent to any obligation of the Owner to make Final Payment pursuant to this Agreement.

**§3.15 CLEANING UP**

§3.15.2 Delete Section 3.15.2 in its entirety and substitute the following:

§3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and may withhold such reasonable costs as necessary for the fulfillment of the Contractor's obligation under this Section 3.15. If the reasonable costs of such cleaning exceed the Contract Sum then due the Contractor, the Contractor shall reimburse the Owner the difference within thirty (30) consecutive calendar days of the Owner's written request.

Any materials, tools, supplies, or other personal property left by the Contractor shall be deemed abandoned property and the Owner shall have no obligation to hold or store the property on behalf of Contractor and may dispose of the abandoned property as if it were property of the State of West Virginia. Provided however, that prior to treating property as abandoned and disposing of it, Owner must

first provide Contractor with 10 days notice of its intent to do so. If any materials, tools, supplies or other personal property belong to a subcontractor, then Contractor is obligated to communicate this notice to its subcontractor immediately.

§3.15 Add the following Section to 3.15:

§3.15.3 In order to achieve Substantial Completion, as defined by Section 9.8, for any portion of the Work, the Contractor must have the area where the Work is located fully cleaned and all materials and/or debris removed from site. The Certificate of Substantial Completion will not be issued until the Contractor has met this obligation.

**ARTICLE 4  
ARCHITECT**

**§4.1 GENERAL**

**§4.2 ADMINISTRATION OF THE CONTRACT**

§4.2 Make the following changes to Section 4.2:

§4.2.1 In the first sentence of Section 4.2.1 after the word Architect add ", unless otherwise indicated by the Owner,".

§4.2.2 In the first sentence of Section 4.2.2 strike the word "generally."

§4.2.3 In the first sentence of Section 4.2.3 strike the word "reasonably."

§4.2.5 Add the following sentence at the end of Section 4.2.5:

The Architect upon receipt of an Application for Payment from the Contractor shall either review and certify such amounts due for payment or return such Application for Payment to the Contractor for correction(s) within five (5) consecutive business days of receipt.

§4.2.7 Delete the first sentence of Section 4.2.7 and substitute the following:

The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents.

Modify the second to last sentence by removing it in its entirety and replacing it with the following: The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures, unless the Architect has established the required construction means, methods, techniques, sequences, or procedures, or the Contract Documents require such approval.

§4.2.8 Make the following change to Section 4.2.8:

In the first sentence, after the word Architect add ", in consultation with the Owner,".

ARTICLE 5  
SUBCONTRACTORS

§5.2 Award of Subcontracts and Other Contracts for Portions of Work

§5.2.1 Add the following sentence to Section 5.2.1.

This provision in no way limits the Contractor's legal obligations to report subcontractors and labor/material suppliers under W. Va. Code § 5-22-1(f) and obtain approval under W. Va. Code § 5-22-1(g) prior to any subcontractor substitution.

§5.4 Contingent Assignment of Subcontracts: This section is removed in its entirety and replaced with the following:

§5.4 Emergency Contracts with Subcontractors:

In the event that the general contractor fails to fulfill its contractual obligations and the performance bond has failed to provide an adequate remedy, Owner has the right to execute emergency contracts with subcontractors to ensure continuation of the work, provided that doing so is in compliance with the laws, rules, and procedures governing emergency contracting authority for Owner, and the emergency contract terms comply with all other applicable laws, rules, and procedures.

ARTICLE 7  
CHANGES IN THE WORK

§7.1 General

§7.1.2. In Section 7.1.2. remove the word "alone" and insert "with approval by the Owner."

§7.2 CHANGE ORDERS

§7.2 Add the following Section to 7.2:

§7.2.2 A written Change Order as defined under 7.2.1 above constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to general conditions, all direct or indirect costs associated with such change and any and all adjustment to the Contract Sum and Contract Time. The parties also understand and agree that if Owner is a state agency, change orders may require approval by entities in addition to Owner. Those entities may include, but are not limited to, the West Virginia Purchasing Division, and the West Virginia Attorney General's Office. Owner

and Contractor must discuss the change order approval requirements prior to executing this agreement.

Add the following section to § 7.2

§7.2.3. Allowance for Overhead and Profit: Contractor's overhead and profit for a change order issued under this Article included in the total cost to the Owner shall not exceed based on the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

.9 Under no circumstances is Contractor permitted to charge for the passage of time (often referred to as general conditions or winter conditions) without an identified, itemized, and concretely provable cost borne by Contractor. Contractor has a duty to mitigate costs during a delay period to the fullest extent possible and Contractor will not be paid for costs that could have been mitigated. Calculating a daily delay rate without properly identifying, itemizing, and proving actual, unmitigateable costs, is prohibited. Contractor understands and accepts that it has the responsibility to prove that costs could not be mitigated prior to submitting a request for payment.

### §7.3 CONSTRUCTION CHANGE DIRECTIVES

#### §7.3.4 Make the following change in Section 7.3.4:

In the fourth line of the first sentence, delete the words "an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount" and substitute "an allowance for overhead and profit in accordance with clauses 7.3.11.1 through 7.3.11.9 below."

#### §7.3.7 Delete the word "recorded" and replace it with "processed".

#### §7.3.9 Delete Section 7.3.9 in its entirety and substitute the following:

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment provided these amounts have been added to the Contract by Change Order and a purchase order has been issued for the Change Order.

#### §7.3.10 Add the following sentence to the end of Section 7.3.10:

The Parties will utilize their best efforts to issue a change order within 60 days of agreement being reached, but failure to do so will not give rise to grounds for contract cancellation, penalties, or any other cause of action.

#### Add the following Section to 7.3:

§7.3.11 In Section 7.3.7, the allowance for overhead and profit for a change directive issued under this Article included in the total cost to the Owner shall not exceed the following schedule:

.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, ten percent (10%) of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-Subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

.4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, ten percent (10%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the allowance for Overhead and Profit. Hand tools are defined as equipment with a value of \$1,000 or less. For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be not more than the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, material, equipment and Subcontractors. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.) Where major cost items are Subcontracts, they shall also be itemized as prescribed above. In no case will a change involving over \$10,000 be approved without such an itemization.

.7 Local Business and Occupation Taxes, if applicable, shall be calculated on the cost of the Work, overhead and profit.

.8 Overhead and profit shall not be calculated on changes in the Work involving unit prices. Unit prices are to have overhead and profit included in the price quoted.

.9 Under no circumstances is Contractor permitted to charge for the passage of time (often referred to as general conditions or winter conditions) without an identified, itemized, and concretely provable cost borne by Contractor. Contractor has a duty to mitigate costs during a delay period to the fullest extent possible and Contractor will not be paid for costs that could have been mitigated. Calculating a daily delay rate

without properly identifying, itemizing, and proving actual, unmitigateable costs, is prohibited. Contractor understands and accepts that it has the responsibility to prove that costs could not be mitigated prior to submitting a request for payment.

**§7.4 Minor Changes in Work.** Insert the following sentence at the end of section 7.4:

"Contractor may request that Architect provide written confirmation that Owner has agreed to the minor change, and if requested, Architect will provide it."

**ARTICLE 8  
TIME**

**§8.3 DELAYS AND EXTENSIONS OF TIME**

§8.3.1 In the first sentence, delete "unusual delay in deliveries," and add "unmitigatable costs attributable to" before the words "adverse weather conditions."

**ARTICLE 9  
PAYMENTS AND COMPLETION**

**§9.1 Contract Sum**

§9.1.2 Add the following sentence to the end of section 9.1.2:

"Any equitable adjustment of unit prices must be processed as a change order to the contract"

**§9.2 SCHEDULE OF VALUES**

§9.2 Make the following changes to Section 9.2:

In the first sentence add "and the Owner" after the first reference to the Architect. In the second sentence add "or the Owner" after Architect. Remove the last sentence in its entirety and replace it with the following:

"Any changes to the schedule of values shall be submitted to the Architect and the Owner and supported by such data to substantiate its accuracy as the Architect or owner may require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment."

**§9.3 APPLICATIONS FOR PAYMENT**

§9.3 Make the following changes to Section 9.3:

§9.3.1 In the first sentence add "and the Owner" after the first reference to the Architect and add "and other required documents" after the words "schedule of values."

§9.3.1.1 Delete clause 9.3.1.1 in its entirety and substitute the following:

§9.3.1.1 Such applications may include requests for payment on account of changes in the Work authorized by Construction Change Directives and Change Orders only after a purchase order has been issued for the Work affected.

§9.3.1 Add the following clauses to Section 9.3.1:

§9.3.1.3 Until the Work is fifty percent (50%) complete, the Owner will withhold as retainage 10% of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

§9.3.1.4 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, if the Surety withholds its consent, or for other good and sufficient reasons.

**§9.4 CERTIFICATES FOR PAYMENT**

§9.4.1 After the phrase "in the full amount of the Application for Payment," insert the phrase "less any retainage withheld pursuant to section 9.3.1.3,"

**§9.6 PROGRESS PAYMENTS**

§9.6.7 Delete Section 9.6.7 in its entirety.

§9.6.8 Delete Section 9.6.8 in its entirety.

**§9.7 FAILURE OF PAYMENT**

§9.7 Make the following changes in Section 9.7:

In line two, change "seven days" to "sixty days." In line four, delete "binding dispute resolution" and substitute "the West Virginia Claims Commission"

**§9.8 SUBSTANTIAL COMPLETION**

§9.8.3 Add the following clause to Section 9.8.3:

If Architect is required to perform more than one inspection under this subsection, Contractor shall be responsible for paying the Owner for the cost of the additional inspection, which will be paid by Owner to Architect, at the hourly rate established in the contract between Owner and Architect.

**§9.8.5** Add the following clause to Section 9.8.5:

§9.8.5.1 The payment of retainage shall be sufficient to increase the total payments to ninety-five percent (95%) for the Work or designated portion thereof being accepted as Substantially Complete, less any amounts as the Architect shall determine for any Work that is not complete, not in accordance with the Contract Documents, or for unsettled claims.

**§9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§9.10.1** Add the following to the end of Section 9.10.1:

If Architect is required to perform more than one inspection under this subsection, Contractor shall be responsible for paying the Owner for the cost of the additional inspection, which will be paid by Owner to Architect, at the hourly rate established in the contract between Owner and Architect.

**§9.10.2** Make the following changes in Section 9.10.2:

In the first sentence, delete "for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner)."

Add the following clause to Section 9.10.2:

§9.10.2.1 Before final payment is due the Contractor, all applicable State and local taxes must be paid. If requested by the Owner, the Contractor shall present evidence that payment or satisfaction of all such tax obligations has been made.

**§9.10.3** Add the following clause to Section 9.10.3:

9.10.3.1 Unless and to the extent final completion is delayed through no fault of the Contractor as provided in Section 9.10.3, the Owner shall be under no obligation to increase payments above ninety-five percent (95%) until final completion of the Work is Certified by the Architect.

**§9.10.4** Make the following changes in Section 9.10.4:

In the first sentence, delete the word "the" and replace it with "Unless and until the Contractor makes a subsequent Claim against the Owner, the".

Add the following as the last sentence. "Neither the Owner's offer of a final payment nor its acceptance by the Contractor shall legally prevent or limit the Owner's right to assert any and all counterclaims in litigation filed by the Contractor as allowed in section 15.1.8."

Add the following Sections to Article 9:

**§9.11 LIQUIDATED DAMAGES**

§9.11.1 The Owner will suffer financial loss if the Work is not Substantially Complete within the Contract Time as defined in Article 8, and if final completion is not achieved within the specified time frame following Substantial Completion. As liquidated damages, and not as a penalty, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sum(s) stated in this Agreement and/or purchase order.

§9.11.2 Allowances may be made for delays due to shortages of materials and/or energy resources, subject to proof by documentation, and also for delays due to strikes or other delays beyond the control of the Contractor. All delays and any claim for extension of Contract Time must be properly documented in accordance with Section 15.1.5 by the Contractor and must be made within the time limits stated in Section 15.1.2.

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

**§10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

**§10.2.8** Make the following changes to Section 10.2.8:

In the first sentence, delete "within a reasonable time not exceeding 21 days" and substitute "immediately".

**§10.3 HAZARDOUS MATERIALS**

**§10.3.3** Delete Section 10.3.3 in its entirety.

**ARTICLE 11**

**INSURANCE AND BONDS**

**§11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§11.1.2** Add the following to the end of §11.1.2.

At a minimum the Contract shall provide, at the Contractor's Expense:

§11.1.2.1. a Performance Bond and a Labor and Material Payment Bond for 100% of the Contract Sum and, if applicable, a two-year roofing Maintenance Bond for the full value of the roofing system.

§11.1.2.2 An attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of power of attorney.

§11.1.2.3 The bonds shall be issued on State of West Virginia forms. The Contractor shall deliver the required bonds and all other contract documents to the Owner not later than 15 days following receipt of the Owner's notice of intent to award a Contract.

§11.2 Owner's Insurance Delete section 11.2 in its entirety.

§11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

§11.4 Section 11.4 is deleted in its entirety.

§11.5.1 Make the following changes in Section 11.5.1:

In the first sentence, substitute "Contractor" for "Owner" each time the latter word appears.

§11.5.2 Delete Section 11.5.2 in its entirety and substitute the following:

§11.5.2 Prior to settlement of insured loss, the Contractor shall notify the parties of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The parties shall have 14 days from the receipt of notice to object. If no objection is made, the Contractor shall proceed as proposed and allocate the settlement accordingly. If such objection is made, the dispute shall be resolved as provided in Section 15.4. The Contractor, in that case, shall make settlement with insurers in accordance with directions of the Court. If distribution of the insurance proceeds as directed by the Court is required, the Court will direct such distribution. Any work to repair the damage will be incorporated into the contract as a change order.

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **§13.4 TESTS AND INSPECTIONS**

§13.4.1 Remove the phrase "so require" and insert in its place "prohibit delegation of the test to Contractor"

#### **§13.6 INTEREST**

§13.6 Delete Section 13.5 in its entirety and substitute the following:

Notwithstanding any other provision in the Contract Documents, West Virginia Code does not authorize the payment of interest on late payments. Accordingly, interest charges for late payment are prohibited.

Add the following Sections to Article 13:

#### **§13.6 WORKERS COMPENSATION**

The Contractor shall provide proof of compliance with West Virginia Worker's Compensation laws and regulations.

#### **§13.7 CONTRACTOR'S LICENSE**

§13.7.1 West Virginia Code §21-11-2 requires that all persons desiring to perform contractual work in West Virginia shall be duly licensed. The West Virginia Contractor's Licensing Board is empowered to issue a contractor's license.

§13.7.2 West Virginia Code §21-11-11 requires any prospective Bidder to include the Bidder's contractor's license number on its Bid. The successful Bidder will be required to furnish a copy of its contractor's license in a classification appropriate to the Work prior to issuance of a purchase order/contract.

### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **§14.1 TERMINATION BY THE CONTRACTOR**

§14.1.1 Make the following changes in Section 14.1.1:

At the end of clause 14.1.1.3 delete "; or" and insert a period.

Delete clause 14.1.1.4 in its entirety.

§14.1.3 Delete Section 14.1.3 in its entirety and substitute the following:

§14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exist, the Contractor may, upon seven days written notice to the Owner and Architect, terminate the Contract. In such event, the Contractor shall be paid for all Work performed in accordance with the Contract Documents, for reasonable and proven termination expenses and a reasonable allowance for overhead and profit. However, such payment, exclusive of termination expenses, shall not exceed the Contract Sum as reduced by other payments made to the Contractor and further reduced by the value of Work as yet not completed. The Contractor shall be entitled to reasonable overhead, but not profit, on Work not performed.

#### **§14.2 TERMINATION BY THE OWNER FOR CAUSE**

§14.2.4 Delete Section 14.2.4 in its entirety and substitute the following:

§14.2.4 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other

damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### §14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§14.4.1 Delete Section 14.4.1 in its entirety and substitute the following:

§14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon thirty days written notice.

§14.4.3 Delete Section 14.4.3 in its entirety and substitute the following:

§14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 14.1.3 above.

Add the following Section to Article 14:

#### §14.5 FISCAL YEAR FUNDING

§14.5 Work performed under this Contract is to continue in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this Work. In the event funds are not appropriated for this Work, this Contract becomes of no effect and is null and void after June 30.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### §15.1 Claims

##### §15.1.2 TIME LIMITS ON CLAIMS

§15.1.2 Delete Section 15.1.2 in its entirety and substitute the following:

Any applicable statute of limitations shall be in accordance with West Virginia Code.

§15.1.3 NOTICE OF CLAIMS Add the following to § 15.1.3:

§15.1.3.3 All claims, and notice of claims that require an increase in contract time, contract scope, or contract sum must be made in writing.

§ 15.1.8 is added to the Contract as follows:

§ 15.1.8 Counterclaims – In the event that Contractor makes a claim, Owner reserves the right to make a counterclaim and will not be barred from doing so even if final payment has been made.

#### §15.2 INITIAL DECISION

§15.2.1 In the third sentence of Section 15.2.1, insert "or litigation" following the word "mediation" and remove the phrase "binding dispute resolution" and replace it with "or litigation".

§15.2.5 Delete the last sentence in Section 15.2.5 and substitute the following:

Approval or rejection of a claim by the Initial Decision Maker shall be final and binding on the parties unless it is pursued further by either party in accordance with Section 15.2.6.

§15.2.6 Make the following change to clause 15.2.6.1:

In the last sentence, delete "or pursue binding dispute resolution proceedings."

§15.2.8 Delete Section 15.2.8 in its entirety.

#### §15.3 MEDIATION

§15.3.1 Delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§15.3.2 Delete Section 15.3.2 in its entirety and substitute the following:

§15.3.2 The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

§ 15.3.3 Remove section 15.3.3 in its entirety

#### §15.4 ARBITRATION

§15.4 Delete Section 15.4 in its entirety and substitute the following:

#### §15.4 SETTLEMENT OF CLAIMS

§15.4.1 The Constitution of West Virginia grants the State sovereign immunity from any and all Claims against the public treasury. This immunity applies and is extended to all agencies of the State, including the Owner. It shall be in full force and effect as it relates to this Contract. The West Virginia Legislature, recognizing that certain Claims against the State may constitute a moral obligation of the State and should be heard, has established the West Virginia Claims Commission for this purpose. The Parties understand that this sovereign immunity and the Constitution of the

State of West Virginia prohibit the State and Owner, from entering into binding arbitration. Notwithstanding any provision to the contrary in the Contract Documents, all references to arbitration, regardless of whether they are included in the AIA Document A201-2017 or another related document are hereby deleted and all Claims of the Contractor for monetary relief, and only of the Contractor, arising out of or related to this Contract shall be decided by the West Virginia Claims Commission. The following Sections have been rewritten to bring them into conformance with the foregoing.

§15.4.2 Claims by the Owner may be brought against the Contractor in the Circuit Court of Kanawha County, West Virginia, or in any other court that has jurisdiction, as the Owner may elect.

§15.4.3 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 15.1.6, 9.10.4 and 9.10.5, shall, within 30 days after submission of the decision by the Initial Decision Maker, be settled for the Contractor by the West Virginia Claims Commission or, for the Owner, by the Circuit Court of Kanawha County or any other court of jurisdiction as the Owner may elect.

§15.4.4 Notice of such action shall be filed in writing with the other party to the Contract, and a copy of such notice shall be filed with the Initial Decision Maker and the Architect, if applicable.

§15.4.5 During court proceedings, the Owner and the Contractor shall comply with Section 15.1.3.

§15.4.6 Claims shall be made within the time limits specified in Section 15.2.6.1.

§15.4.7 The party filing a Claim must assert in the demand all Claims then known to that party on which action is permitted.

Add the following Article:

**ARTICLE 16**  
**EQUAL OPPORTUNITY**

**§16.1 COMPLIANCE WITH REGULATIONS UNDER TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 65-2 BY THE GOVERNOR OF WEST VIRGINIA DATED DECEMBER 15, 1965**

§16.1.1 The Contractor agrees that it will comply with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88352) and the regulations of the State of West Virginia, to the end that no person in the State, or in the United States, shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the Contractor receives any recompense or other consideration of value, either directly or indirectly from the State; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this Agreement.

§16.1.2 If any real property or structure thereon is provided or improved, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which any State payment is extended or for another purpose involving the provision of similar services or benefits. If any other goods or services are so provided, this assurance shall obligate the Contractor for the period during which it supplies such goods or services.

§16.1.3 The Contractor recognizes and agrees that such right to provide property, goods or services to the State will be extended in reliance on the representations and agreements made in assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This is binding on the Contractor, its successors, transferee, and assignee, or any authorized person on behalf of the Contractor.

END OF SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-2017

Any provisions of the Contract Documents that conflict with these Supplementary Conditions shall be null and void unless they have been approved in writing by the applicable State purchasing officer and the Attorney General, and are clearly identified as such in the bid documents.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the effective date as stated in the A101-2017 (when utilized) or other Contract Documents.

Owner:	Contractor:
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

This Supplementary Conditions to AIA Document A201-2017, General Conditions of the Contract for Construction, has been approved as to form on this 20th day of February, 2019, by the West Virginia Attorney General's office as indicated in the signature line below. Any modification of this document is void unless expressly approved in writing by the West Virginia Attorney General's Office.

PATRICK MORRISEY, ATTORNEY GENERAL

BY:  \_\_\_\_\_  
 DEPUTY ATTORNEY GENERAL

# West Virginia Ethics Commission



## Disclosure of Interested Parties to Contracts

Pursuant to *W. Va. Code* § 6D-1-2, a state agency may not allow a vendor to perform work on a contract, or a series of related contracts, that has/have an actual or estimated value of \$1 million or more until the business entity submits to the state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

*"Business entity"* means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

*"Interested party" or "Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

*"State agency"* means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of *W. Va. Code* § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the state agency prior to beginning work under a contract and to complete another form within 30 days of contract completion or termination.

*This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: [ethics@wv.gov](mailto:ethics@wv.gov); website: [www.ethics.wv.gov](http://www.ethics.wv.gov).*

West Virginia Ethics Commission  
**Disclosure of Interested Parties to Contracts**

(Required by *W. Va. Code* § 6D-1-2)

Name of Contracting Business Entity: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

Name of Authorized Agent: \_\_\_\_\_ Address: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Contract Description: \_\_\_\_\_

Governmental agency awarding contract: \_\_\_\_\_

Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (*attach additional pages if necessary*):

**1. Subcontractors or other entities performing work or service under the Contract**

Check here if none, otherwise list entity/individual names below.

**2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**

Check here if none, otherwise list entity/individual names below.

**3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)**

Check here if none, otherwise list entity/individual names below.

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

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

***Notary Verification***

State of \_\_\_\_\_, County of \_\_\_\_\_:

I, \_\_\_\_\_, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

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

\_\_\_\_\_  
Notary Public's Signature

**To be completed by State Agency:**

Date Received by State Agency: \_\_\_\_\_

Date submitted to Ethics Commission: \_\_\_\_\_

Governmental agency submitting Disclosure: \_\_\_\_\_

*Revised April 1, 2022*

# RFB BID OPENING / AWARD REQUIREMENTS

## **Opening:**

Prebid Meeting Attendance

Bid Bond

Purchasing Affidavit

Drug Free Workplace Policy Affidavit

Bid Form

Addenda Acknowledgement Form

Contractor's License

## **Post-Opening (within 24 hours):**

Subcontractor List (Name, Licenses number)

*or*

Notation that no subcontractors will be used

## **Award:**

Labor & Material Bond

Performance Bond

Maintenance Bond (Contracts with Roof Penetration Only)

Insurance

WV Purchasing Division Registration

WV Secretary of State Registration

Debarment Certification (if vendor is not registered with SAM.gov)

Disclosure of Interested Parties