

Concord University

Request for Expressions of Interest (RFEOI)

RFEOI Number: CU23-002

RFEOI Name: Open-End Architectural, Engineering, and Design Services

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Section 1 – Request for Expressions of Interest

1.1 Introduction

Concord University, hereinafter referred to as “University” is a higher education institution of the State of West Virginia. The “University” is located in Mercer County at 1000 Vermillion Street, Athens, WV 24712.

1.2 Purpose, Expectation, Intent, and Obligation

The purpose of the “Request for Expressions of Interest”, hereinafter, referred to as RFEOI, is to request Expressions of Interest for the services defined within the RFEOI.

The expectation of the “University” is that it will receive Expressions of Interest from various architectural and engineering firms, hereinafter referred to as the “Firm”.

The intent of the “University” is to procure the services as it is in the best interest of the “University”. However, the RFEOI does not obligate any party to procure or provide the services.

1.3 University Contact Person and Communication Limitations

The “University” contact person will be established in the “Schedule of Events’ and will act as a liaison between the “University” and the “Firm” throughout the RFEOI process. All communication must be submitted to designated “University” contact person in writing via email. The RFEOI number and name must be disclosed in the subject line of the email.

Any communication about the RFEOI prior to the award of a contract with any other “University” employee is strictly prohibited. The “Firm” is subject to disqualification if the “Firm” or a “University” employee does not comply with the communication limitations. Any verbal communication is not binding.

The following are exceptions to the communication limitations:

1.3.1 Conversations between the “University” and “Firms” during the RFEOI meeting or site.

1.3.2 Conversations initiated by the “University” with a “Firm” during interviews, discussions, negotiations, the intent to award a contract, or the final award of a contract.

1.3.3 The “University” may grant other exceptions to the communication limitations to a “Firm”. The “Firm” must submit a “Communication Exception Form” to the designated “University” contact person. The “Firm” will receive a copy of the “Communication Exception Form” indicating if the request is approved or denied. The “Firm” must adhere to and comply with the communication limitations until an approved “Communication Exception Form” is received by “Firm”. You may request this form from the “University” contact person.

1.4 Schedule of Events

The purpose of the “Schedule of Events” is to establish the major events of the RFEOI and the designated “University” contact person. The “Schedule of Events” is subject to change. Any changes to the “Schedule of Events” prior to the award of a contract will be made via addendum except in unforeseen or emergency cases.

Schedule of Events Dates are Subject to Change

1st Advertisement – June 20, 2023
Solicitation – June 20, 2023
2nd Advertisement – June 27, 2023
Question and Answer Period – June 15, 2023 to June 27, 2023
Addenda Due Date – June 27, 2023
Expression of Interest Due Date & Time – July 7, 2023 by 3:30 PM (EST)
Open Expressions of Interest – July 7, 2023
1st Evaluate Expressions of Interest/Rank Firms – July 9, 2023
Conduct Interviews/Discussions with Firms – July 10, 2023 thru July 14, 2023
2nd Evaluate Expression of Interest/Rank Firms – July 17, 2023
Negotiation Period – July 19, 2023 thru July 21, 2023
Intent to Award Notice – July 24, 2023
WVAGO Review – July 24, 2023 thru July 31, 2023
Final Award of Contract – August 1, 2023

University Contact Person

Name of Contact – Andrea Webb
Title – Chief Procurement Officer
Email Address – procurement@concord.edu
Phone Number – (304) 384-5233

1.5 Specifications

The “University” is seeking open-end architectural, engineering services, and interior design services for various deferred maintenance projects throughout the campus buildings, building equipment, technology, and grounds for repairs, alterations, transition, replacement, or maintenance. Such services may not be required for all projects. The primary goal of these projects is to make the campus buildings and grounds, more accessible, safe, efficient, economical, reliable, relevant, and functional. Any work performed must be closely coordinated with the “University” to avoid disruption to the overall operations of the “University”.

1.5.1 Project Funding, Selection, Timeline, and Budget

The projects are contingent upon the approval and funding of/by the State of West Virginia.

The ultimate selection of a project by the “University” will be based, in part, upon the projects approved by the State of West Virginia for the “University” and the funding allotted for each project. Projects may be added, modified, or deleted by the “University”.

The “University” currently anticipates the projects will begin in the Fall of 2023. Funding sources may have strict time limits for spending the funds. Projects with spending time limits must be completed on schedule.

The total estimated budget for all projects is \$19,680,000.00 (Nineteen Million, Six Hundred Eighty Thousand).

1.5.2 Project Objectives

The primary objectives for the projects currently under consideration are as follows:

Building Project	Description of Project in Building	Estimated Description Price	Estimated Project Total
Carter Center			
	Roof	\$750,000.00	
	Mansard Roof	\$1,500,000.00	
	HVAC Phase 1	\$750,000.00	
	Environmental Control	\$250,000.00	
	Indoor Practice Facility-Refurbish current unusable space	\$1,233,000.00	
	Boiler Replacement/HVAC Phase II	\$1,500,000.00	
	Generator	\$350,000.00	
	Door/Windows	\$600,000.00	
			\$6,933,000.00
Carter Center Bleacher System			
	Replace worn, unsafe, unstable safety hazard bleachers	\$350,000.00	
			\$350,000.00
Wooddell Hall			
	Roof	\$242,000.00	
	HVAC/Electrical Upgrade	\$2,500,000.00	
	New Windows	\$340,000.00	
			\$3,082,000.00

Beasley Student Center			
	Boilers/HVAC Upgrades	\$2,000,000.00	
	Electrical Upgrades	\$4,000,000.00	
	Generator	\$300,000.00	
	Elevator	\$210,000.00	
	Store Front New Windows	\$450,000.00	
			\$6,960,000.00
Wilson Hall			
	Roof	\$255,000.00	
	HVAC/Electrical	\$2,500,000.00	
	New Windows	\$500,000.00	
			\$3,255,000.00
Fine Arts			
	New Windows	\$500,000.00	
			\$500,000.00

Section 2 – General Information & Instructions

2.1 Purpose of the General Information & Instructions

The purpose of this section is to provide general information and instructions about the REFOI. All information and documents must be carefully read and examined as they contain important information about the RFEOI and the authority, rights and responsibilities of the “University” and the “Firm”.

2.2 Governing Authorities

The “Firm” is responsible to know, understand, and comply with all federal, state, local, or other governing authorities as applicable to the RFEOI and any subsequent contracts, goods, or services.

2.3 Debarment

The “Firm” cannot be debarred by the federal government or the West Virginia Purchasing Division to be eligible to submit an Expression of Interest. The federal debarment status can be verified in the General Services Administration (GSA) System Awards Management (SAMS) system. The West Virginia Purchasing Division debarment status can be verified on the West Virginia Purchasing Division website.

2.4 Authority and Rights of the University

The “University” has the right, authority, and sole discretion over any RFEOI to make decisions as it is in the best interest of the “University” including, but not limited to, the following:

- 2.4.1 Cancel an RFEOI in its entirety.
- 2.4.2 Waive informalities or irregularities in an Expression of Interest.
- 2.4.3 Reject or accept an Expression of Interest in whole or in part.
- 2.4.4 Split-Award a contract (award a single contract or award multiple contracts).

2.5 Freedom of Information Act {W.Va. Code §29B-1-1 et seq.}

Any document of information submitted to the “University” is considered a public document or public information and may be subject to disclosure through any Freedom of Information Act (FOIA) request including proprietary or confidential information. Do not disclose any proprietary or confidential information.

2.6 Vendor Preference {W.Va. Code §5A-3-37}

Vendor Preference does not apply to architectural, engineering, design, or construction services.

2.7 Vendor Registration

The purpose of this section is to provide limited, general information about the requirements to become a vendor of and to do business with the state of West Virginia. For additional guidance, the “Firm” must contact the governing state agency.

2.7.1 Business Registration

A business must be formed with the West Virginia Secretary of State or the West Virginia Tax Division, depending upon the type of business, to be eligible to receive a contract. See the chart below. The business must provide proof of compliance with these agencies.

West Virginia Secretary of State	West Virginia Tax Division
Corporation	Individual/Sole Proprietorship
Cooperative Association	General Partnership
Limited Liability Company (LLC/PLLC)	Joint Venture
Limited Partnership (LP)	Association
Limited Liability (LLP)	
Voluntary Association	
Business Trust	
Unincorporated Nonprofit Association	
Proof of Compliance	
Certificate of Existence	Statement of Good Standing
Certificate of Authority	
Exemption Certificate	

2.7.2 Unemployment and Workers’ Compensation

A business that employs one or more persons in the State of West Virginia is responsible to pay Unemployment Compensation Tax and to provide and pay for Workers' Compensation Insurance Coverage for its employee(s).

Workforce WV administers unemployment compensation. The West Virginia Office of the Insurance Commissioner administers workers' compensation. The business must provide a "Certificate of Good Standing" as proof of compliance with these agencies.

2.7.3 Vendor Registration

A business must be properly registered with the West Virginia Purchasing Division and pay the registration fee in accordance with the agency's policies and procedures. On-line registration is available on the West Virginia Purchasing Division's webpage.

2.7.4 Vendor File

All vendors are required to be on file in the state of West Virginia's vendor file. A "W-9 Request for Taxpayer Identification Number and Certification" form is required to add or change vendor information. The form should be submitted to the "University" Accounts Payable Office. For guidance, contact the "University" Accounts Payable Office by email at sbowles@concord.edu or by phone at 1 (304) 384-5380.

2.8 RFEOI Meeting

The "University" will not conduct a RFEOI meeting or a site visit.

2.9 Question & Answer Period, Addendum, and Addenda Due Date

The "Question & Answer Period" and the addenda due date is established in the "Schedule of Events". This is a specific time-period when "Firms" can ask questions and the "University" can answer questions. All questions must be submitted via email to the designated "University" contract person. The answer to all questions or any information provided by the "University" that changes the RFEOI will be made by written addendum.

Section 3 – Expression of Interest Information and Instructions

3.1 Purpose of the Expression of Interest Information & Instructions Section

The purpose of this section is to provide information and instructions about Expressions of Interest and the Expression of Interest process. All information and documents must be carefully read and examined as they contain important information about the Expression of Interest process.

3.2 Cost of Expressions of Interest and Multiple Expressions of Interest

The "University" is not responsible for any direct, indirect, or any other costs uncured by any "Firm" or any other party responding in any manner to an RFEOI issued by the "University". A "Firm" may submit more than one (1) Expression of Interest.

3.3 Due Date/Time for Expressions of Interest and Late Expressions of Interest

The date and time that Expressions of Interest must be received by the “University” is established in the “Schedule of Events”. “Firms” are responsible for the timely delivery of any Expression of Interest. Any Expression of Interest not received on time will be returned to the sender, unopened.

3.4 Packaging and Submitting Expressions of Interest

Each original “Expression of Interest” along with the required copies and electronic version must be packaged separately in an opaque, sealed envelope or package and submitted to the “University”. An “Expression of Interest” may be delivered by mail, a delivery service, or in-person. Faxed, emailed, or other electronic submissions will not be accepted for consideration. The following information must be on the outside of the envelope or package:

TO:	FROM:
Concord University	Business Name
PO BOX 1000	Business Address, City, State, Zip Code
Marsh Hall Room A223	RFEOI Number, Name, Due Date, & Time
Athens WV 24712	Expression of Interest Number (Ex: RFEOI 1 of 2)
Attention: CPO-Procurement	

3.5 Expression of Interest Requirements and Document Requirements

The “Expression of Interest” must be prepared in accordance with the RFEOI in a concise manner. The “Expression of Interest” information should be organized in the following manner:

Required Documentation to Submit		
Cover Letter or Brochure		
Description of Services		
Statement of Qualifications		
Performance Data		
References		
Addenda Acknowledgement		
Number of Copies Required		
Original	Copies	Electronic Version on a USB Flash Drive
1	5	1

3.6 Expression of Interest

The “Expression of Interest” should include the following information:

3.6.1 Cover Letter or Brochure

The purpose of the cover letter or brochure is to introduce the company, provide a brief company history, background information, organizational arrangement information, or other general information about the company and its services. The name and address of the business must be included in the cover letter.

3.6.2 Description of Services

The “Expression of Interest” should include the type of services the firm is interested in and capable of providing such as architectural, engineering, interior design, furniture, fixtures, and equipment (FFE), landscaping, pre-design, schematic design, design development, contract documents, bidding/negotiation services, contract administration services, post construction services, etc... Anticipated Concepts and Proposed methods of Approach to the project(s) may be included but are not required. The fee or cost for services cannot be disclosed in the “Expression of Interest” or any document with the “Expression of Interest”.

3.6.3 Statement of Qualifications

The “Statement of Qualifications” should include a resume for each of the key personnel who will provide the services for the projects. The resume should describe their relevant experience and list their credentials (licensure, education, certification, etc...) with similar projects. Any architect or engineer of the “Firm” or a consultant of the “Firm” must be licensed to perform architectural or engineering services in the State of West Virginia.

Design professionals must be Leadership in Energy and Environmental Design (LEED) accredited professionals, hold National Council for Interior Design Qualification (NCIDQ) certification, provide the NCIDQ Certificate Number, and should have at least five (5) years of experience working with agencies or higher education institutions of the State of West Virginia for commercial interior design services and in preparing furniture design and/or bid packages.

3.6.4 Performance Data

The “Performance Data” should clearly demonstrate that the “Firm’s” management and personnel have the expertise and flexibility to work with the “University” to meet program objectives and project schedules. A list and description of similar projects completed with the past five (5) years should be included in the performance data, in particular, any projects for West Virginia state agencies or higher education institutions.

3.6.5 References

At least three (3) references from recent clients for similar projects is required.

3.7 Addenda Acknowledgement Form

“Firms” must complete and sign the “Addenda Acknowledgement Form” and submit it with each “Expression of Interest”.

3.8 Open of Expressions of Interest

The “Expressions of Interest”: opening date is established in the “Schedule of Events”. “Expressions of Interest” eligible to be opened will be opened on the date established in the “Schedule of Events”. “Expressions of Interest” will not be read aloud.

3.9 Evaluation Committee

The “University” will establish an “Evaluation Committee” which will consist of three (3) to five (5) members who are employees of the “University” to evaluate the “Expression of Interest”.

3.10 Evaluate “Expressions of Interest” and Conduct Interview/Discussions

The evaluation date or period is established in the “Schedule of Events”. The evaluation of “Expressions of Interest” will be based on the factors and scoring method as follows:

Evaluation Factors	Points Available
Cover Letter	10
Description of Services	25
Statement of Qualifications	25
Performance Data	25
References	15
Total Points Available	100

3.10.1 First Evaluation

The “University” “Evaluation Committee” will evaluate, score, and rank the “Expressions of Interest” and select three (3) “Firms”, which are in their opinion, best qualified to perform the services which is commonly referred to as a “Short-List”.

3.10.2 Discussion/Interviews

The “University” will conduct discussion/interviews with the three (3) “Firms” selected in the first evaluation. Anticipated concepts and proposed methods of approach to the assignment shall be a part of the discussion.

3.10.3 Second Evaluation

The “University” “Evaluation Committee” will re-evaluate the “Expressions of Interest”. “Evaluation Committee” members may adjust their original score. The “University” “Evaluation Committee” will then rank the “Expressions of Interest”. Thereafter, the “University” may proceed to the “Negotiation” stage of the process if it chooses to do so.

Section 4 – Contract Negotiation and Contract Information and Instructions

4.1 Purpose of the Contract Negotiation and Contract Information and Instructions Section

The purpose of this section is to provide information about the negotiation of a contract, the contract process, the contract documents, and the terms and conditions of the contract.

4.2 Contract Negotiations and Best & Final Offer

The “University” may accept an “Expression of Interest” as it is submitted or begin the negotiation process with the highest ranked “Firm”.

The “University” will initiate the negotiation process with the next highest ranked “Firm” if a mutually acceptable contract cannot be negotiated with the highest ranked “Firm”, in whole or in part, within a reasonable time period.

This process may continue until a contract is awarded to one (1) or more “Firm(s)” with or without undertaking a new procurement process or the RFEOI is cancelled. The “University” may issue a new RFEOI or seek other options if all or part of negotiations fail or the RFEOI cancelled.

4.3 Intent to Award a Contract

The “University” will issue an “Intent to Award Letter” to the apparent successful “Firm(s)”. The “Intent to Award Letter” will indicate the “University’s” intent to enter into a contract, the documents required to finalize a contract, and outline any issues that must be resolved before a contract can be fully executed.

4.4 Documents Required for the Open-End Contract

This RFEOI documents are incorporated into the contract and are part of the contract. The following documents are required from each “Firm” and will form the open-end contract between the “University” and the “Firm”:

Documents Required for the Open-End Contract	
1	“University” Purchase Order
2	“University” Terms and Conditions
3	AIA B101-2017 Standard Form of Agreement Between Owner and Architect
4	AIA B101-2017 Supplementary Conditions Standard Form of Agreement Between Owner and Architect
5	AIA Document D401-2003 Certificate of Document’s Authenticity
6	AIA Document B101-2007 Exhibit A
7	Certificate of Liability Insurance
8	Purchasing Affidavit
9	The “University” has the authority and right to require other information or documentation that is required, desired, or necessary to comply with governing authorities or to protect the interests of the “University”. Failure to comply may result in the non-award of a contract.
Begin Date of Service	To be established in the AIA B101-2017 Standard Form of Agreement Between Owner and Architect
End Date of Service	Five (5) Years after the Begin Date of Service
Extension	The End Date of Service may be extended to complete a project.

4.5 Documents Required for Specific Projects

The RFEOI documents are incorporated into the contract and are part of the contract. When a “Firm” is assigned to a particular project or a group of projects, the services, the fee, and a not-to-exceed amount for expenses will be negotiated or re-negotiated with the “Firm”. The following documents are required when a “Firm” is awarded a specific project or a group of projects.

Documents Required for Specific Projects	
1	“University” Change Order
2	“University” Terms and Conditions
3	The “Firm’s” Proposal
4	“University” Acceptance Letter of the “Firm’s” Proposal
5	Certificate of Liability Insurance
6	The “University” has the authority and right to require other information or documentation that is required, desired, or necessary to comply with governing authorities or to protect the interests of the “University”. Failure to comply may result in the non-award of a contract.
Begin Date of Service	To be established in the “Firm’s” Proposal.
End Date of Service	To be established in the “Firm’s” Proposal
Extension	The End Date of Service may be extended to complete a project.

4.6 Liability Insurance Requirements

The successful firm(s) shall provide professional liability, general liability, automobile liability, and workers compensation insurance for the duration of the contract/project(s), or as otherwise prescribed by law, as identified below, and provide Acord certificates of insurance to document such coverage. The “University” must be named as an additional insured. Minimum limits of insurance required are as follows:

- 4.6.1. General Liability: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- 4.6.2. Automobile Liability: \$1,000,000 combined single limit.
- 4.6.3. Workers Compensation: West Virginia Statutory Requirements including WV Code §23-4-2 (Mandolidis).
- 4.6.4. Employer’s Liability: \$500,000 each accident, \$500,000 disease – each employee, and \$500,000 disease – policy limit.
- 4.6.5. Professional Liability: \$1,000,000 each occurrence on a claims-made basis.

4.7 West Virginia Attorney General’s Office Approval

The “University” will submit the required documentation to the West Virginia Attorney General’s Office (WVAGO) for review/approval. If the WVAGO’s approves the purchase, the “University” will award the contract. If the WVAGO’s does not approve the purchase, the “University” will try to resolve the issues. The purchase will be cancelled if all the issues cannot be resolved.

4.8 Final Award of a Contract and Notice to Proceed

The documentation approved by the West Virginia Attorney General’s Office will be issued to the successful “Firm” to place the order. The purchase order will serve as the “Final Award Notice” and the “Notice to Proceed”.

Section 5 – Billing and Payment Information and Instructions

5.1 Purpose of the Billing and Payment Information Section

The purpose of this section is to provide information about the “University’s” billing and payment process.

5.2 Billing and Payment Process Overview

The “University” processes invoices for payment through the West Virginia State Auditor’s Office accounting and reporting system. The West Virginia State Auditor’s Office reviews the transaction and either rejects the transaction for payment or approves the transaction for payment. If the transaction is rejected, the “University” works with the vendor and/or the West Virginia State Auditor’s Office to resolve the issues. If the transaction is approved, the West Virginia Treasury Office will issue the payment in the form of a warrant (check) or Electronic Funds Transfer (EFT). Checks are issued on a weekly basis. EFT’s are processed on a daily basis. You may visit the West Virginia State Auditor’s Office for more information or to apply for EFT payments.

5.3 Billing Frequency

Services must be billed in arrears on a monthly, quarterly, biennially, or annual basis unless otherwise mutually agreed upon in writing by both parties.

5.4 Invoices

The business must submit an itemized invoice to the “University” Accounts Payable Office. The invoice must include the business name and address, contact information, and itemized description of the services, the itemized amount being billed for the services, the total amount being billed for the services, and the date of service. The business name and address on the invoice must match the business name and address on file in the state of West Virginia’s vendor file.

5.5 Payment

All services must be paid for in arrears except for licenses, subscriptions, or maintenance for software which may be paid annually in advance.

5.6 Late Payment or Penalty Fees

Late payment or penalty fees cannot be billed or paid. The West Virginia Code does not allow payment of late payment penalties and fees.

5.7 Sales Tax

The “University” is a member of the “Multi-State Tax Commission”. The “University” will issue a “Streamline Sales and Use Tax Agreement Certificate of Exemption” (common known as a “Tax Exempt Form”) to the vendor upon request.

Section 6 – Exhibits

Exhibit “A” – Document Overview

Exhibit “B” – Addenda Acknowledgement

Exhibit “C” – University Purchase Order Example

Exhibit “D” – University Terms and Conditions

Exhibit “E” – AIA B101-2017 Supplementary Conditions Standard Form of Agreement Between Owner and Architect

Exhibit “F” – Purchasing Affidavit

Exhibit "A" – Document Overview**Documents to Submit to Express an Interest**

1	Expression of Interest
2	Addenda Acknowledgement

Number of Copies Required

Original	Copies	Electronic Version on a USB Flash Drive
1	5	1

Documents Required for Open-End Contract Services

1	"University" Purchase Order
2	"University Terms and Conditions"
3	AIA B101-2017 Standard Form of Agreement Between Owner and Architect
4	AIA B101-2017 Supplementary Conditions Standard Form of Agreement Between Owner and Architect
5	Certificate of Liability Insurance
6	Purchasing Affidavit
7	The West Virginia Secretary of State Certificate issued to the business
8	The "Statement of Good Standing" issued to the business from the West Virginia Tax Department, WorkForce WV, and the West Virginia Office of the Insurance Commissioner.
9	The "University" has the authority and right to require other information or documentation that is required, desired, or necessary to comply with governing authorities or to protect the interests of the "University". Failure to comply may result in the non-award of a contract.

Documents Required for Specific Projects

1	"University" Change Order
2	"University Terms and Conditions"
3	The "Firm's" Proposal
4	"University" Acceptance Letter of the "Firm's" Proposal
5	Certificate of Liability Insurance
6	Purchasing Affidavit
9	The "University" has the authority and right to require other information or documentation that is required, desired, or necessary to comply with governing authorities or to protect the interests of the "University". Failure to comply may result in the non-award of a contract.

Other Documents

1	Invoice
2	W-9 Request for Taxpayer Identification Number and Certification form
3	Communication Exception Form

Concord University Addenda Acknowledgement Form

RFEOI CU23-002 Open-End Architectural, Engineering, and Design Services

EXHIBIT "B"

I, hereby, acknowledge receipt of the following addenda and have made the necessary revisions to my bid, proposal, or expression of interest documents (as applicable).

Place a checkmark beside each addendum received.

	Addendum #1
	Addendum #2
	Addendum #3
	Addendum #4
	Addendum #5
	Addendum #6
	Addendum #7
	Addendum #8
	Addendum #9
	Addendum #10

I understand that failure to confirm the receipt of addenda may be cause for rejection of the bid, proposal, or expression of interest (as applicable).

I further understand that any verbal representation made or assumed to be made during any oral discussion is not binding. Only the information issued in writing and added by an official addendum is binding.

Authorized By:

Name (Type or Print):

Title (Type or Print):

Signature:

Date of Signature:

Telephone Number:

Email Address:

Exhibit "C" Concord University Purchase Order

ORDER DATE		PURCHASE ORDER #		VERSION #	
REQUISITION #		GAE #		GAE VERSION #	
PURCHASE ORDER CONTACT INFORMATION		SHIPPING INFORMATION		ACCOUNTS PAYABLE INFORMATION	
Concord University PO BOX 1000 Athens, WV 24712		Concord University 1000 Vermillion Street Athens, WV 24712		Concord University PO BOX 1000 Athens, WV 24712	
Attention	Andrea Webb	Attention		Attention	Accounts Payable
Phone #	(304) 384-5233	Phone #		Phone #	(304) 384-5233
Email	webba08@concord.edu	Email		Email	sbowles@concord.edu

VENDOR NUMBER			
VENDOR NAME			
VENDOR ADDRESS			
Vendor Contact Name	Vendor Contact Phone	Vendor Contact Email	

The Terms and Conditions of Concord University apply to this Purchase Order and the WV 96 1/1/2019 State of West Virginia Addendum to Vendor's Standard Contractual Forms applies to this Purchase Order. These forms are available on the Concord University website.

ORDER INFORMATION

Dates of Service				
Description	UOM	Qty	Unit Price	Extended Price
				\$0.00
				\$0.00
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TOTAL THIS ORDER				\$0.00
TOTAL PREVIOUS ORDER				\$0.00
TOTAL PURCHASE ORDER AMOUNT				\$0.00

Fund	<input type="text"/>	Unit	<input type="text"/>	Object/Sub-Object	<input type="text"/>	Function	<input type="text"/>	Program	<input type="text"/>	Amount
Fund	<input type="text"/>	Unit	<input type="text"/>	Object/Sub-Object	<input type="text"/>	Function	<input type="text"/>	Program	<input type="text"/>	Amount

AUTHORIZED PURCHASING SIGNATURE REQUIRED

NAME & TITLE	SIGNATURE	DATE OF SIGNATURE
Andrea Webb Chief Procurement Officer		

Exhibit "D" TERMS AND CONDITIONS

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

APPROVED BY:

Agency: _____

Authorized Signature of Agency

Printed Name

Title

Date of Signature

APPROVED BY:

Vendor: _____

Authorized Signature of Vendor

Printed Name

Title

Date of Signature

State of West Virginia

Supplementary Conditions to AIA Document B101-2017
Standard Form of Agreement Between Owner and Architect

The following Supplementary Conditions modify the Standard Form of Agreement Between Owner and Architect, AIA Document B101-2017 Edition. Where a portion of the Agreement is modified or deleted by these Supplementary Conditions, the unaltered portions of the Agreement 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 B101-2017 Standard Form of Agreement Between Owner and Architect” shall be second in priority.

Third Priority – all other AIA documents including the AIA Document A201-2017 General Conditions of the Contract for Construction shall be third or lower in priority.

**ARTICLE 1
INITIAL INFORMATION**

§1.1.3 Section 1.1.3 is removed in its entirety.

§1.1.6.1 Section 1.1.6.1 is removed in its entirety.

§1.2 Make the following changes to Section 1.2:

In the second and third sentences, delete “shall” and substitute “may” and delete the period at the end of each sentence and add “, if applicable.”

§1.3 Remove the last sentence from Section 1.3

§1.3.1 Make the following change to Section 1.3.1:

Remove the phrase “in AIA Document E203TM-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM-2013, Project Building Information Modeling Protocol Form” and replace it with “in this Agreement”

**ARTICLE 2
ARCHITECT’S RESPONSIBILITIES**

§2.1 Add the following sentences to the end of Section 2.1. Notwithstanding the foregoing, Architect is not authorized to hire

other design professionals unless doing so was expressly included in the scope of this agreement, or this agreement is appropriately modified by Change Order to include the hiring of other expressly identified design professionals. The Architect shall also satisfy the requirements for the lawful practice of architecture in the State of West Virginia.

§ 2.5 Make the following changes to Section 2.5:

Delete the section in its entirety and replace it with the following: “The Architect shall maintain the insurance specified in this Agreement either below or in other documentation included herewith.

§ 2.5.7 Make the following change to Section 2.5.7

Remove § 2.5.7 in its entirety and replace it with the following: “The Owner must be listed as an additional insured on all insurance mandated by this Agreement, excluding professional liability insurance.”

Add the following Sections to Article 2:

§2.6 The format and minimum standard of quality to be used by the Architect in preparing specifications for the Project shall be AIA MASTERSPEC or equal, and the Architect shall use the CSI

Masterformat numbering system, unless a different standard is approved in writing by the owner

§2.7 The Architect shall review laws, codes and regulations applicable to the Architect's services and shall comply in the design of the Project with applicable provisions and standards of the West Virginia Building Code, the West Virginia Fire Code and the Americans with Disabilities Act (ADA). The most stringent application of these codes and standards shall apply. In the design of the Project, the Architect shall comply with the requirements imposed by governmental authorities having jurisdiction.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§3.1.1 Add the phrase "consult with Owner," after the word "services" in the first sentence.

§3.1.2 Make the following change to Section 3.1.2:

In the third sentence, after "shall" add "thoroughly review the services and information for completeness and sufficiency and".

§3.1.6 Delete Section 3.1.6 in its entirety and substitute the following:

§3.1.6 The Architect shall furnish and submit substantially completed construction documents to all governmental agencies having jurisdiction over the Project, shall assist the Owner in securing their approval, and shall incorporate changes in the Construction Documents as may be required by such authorities.

Add the following Section to Article 3:

§3.1.7 The Architect is responsible for the coordination of all drawings and design documents relating to Architect's design used on the Project, regardless of whether such drawings and documents are prepared or provided by Architect, by Architect's consultants, or by others. If preliminary or design development Work has been performed by others, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier Work when Architect performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic, and design development Work had been performed by the Architect itself. Architect is responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect is responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

§3.2 SCHEMATIC DESIGN PHASE SERVICES

§3.2.2 Make the following change to Section 3.2.2:

In the second sentence, after the word "Architect" add "shall review such information to ascertain that it is consistent with the requirements of the Project and".

§3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§3.4.2 Delete Section 3.4.2 in its entirety and substitute the following:

§3.4.2 Construction drawings, specifications, or other Construction Documents submitted by Architect must be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws. By submitting the same, Architect certifies that Architect has informed the Owner of any tests, studies, analyses, or reports that are necessary or advisable to be performed by or for the Owner at that point in time. Architect shall confirm these facts in writing to the Owner.

§3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§3.5.1 Make the following change to Section 3.5.1:

In the first sentence, delete the period at the end of the sentence and add "which may include the development and implementation of a prequalification process."

§3.5.2 Make the following changes to § 3.5.2.

§3.5.2.2.1 Remove section 3.5.2.2.1 in its entirety and replace it with the following:

"§ 3.5.2.2.1 facilitating the distribution of plans and specifications (and in cases where Owner expressly authorizes it, distribution of bid documents) to prospective bidders per the Owner's instructions;"

§3.5.2.2.2 Remove section 3.5.2.2.2 in its entirety and replace it with

"§ 3.5.2.2.2 attending and assisting Owner in conducting a pre-bid conference for prospective bidders (and in cases where Owner expressly authorizes it, conduct the pre-bid conference);"

§3.5.2.2.3 Remove section 3.5.2.2.3 in its entirety and replace it with the following:

preparing responses to technical questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents that will be released to the prospective bidders in the form of addenda by the Owner (and in cases where Owner expressly authorizes it, releasing the addenda on Owner's behalf).

§3.5.2.2.4 Remove Section 3.5.2.4 in its entirety and replace it with the following:

if expressly authorized by Owner, and permitted by applicable procedure and law, organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§3.5.2.3. Remove the phrase "and distribute" and include the phrase "for distribution by Owner (and in cases where Owner expressly authorizes it, distributing the addenda on Owner's behalf)" at the end of the sentence.

§3.5.3 Negotiated Proposals. Remove Section 3.5.3 in its entirety.

§3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 Delete the last sentence in its entirety and substitute the following:

The State of West Virginia's Supplementary Conditions to the General Conditions of the Contract for Construction shall be adopted as part of the Contract Documents and shall be enforceable under this Agreement.

Add the following Section to 3.6.1:

§3.6.1.4 The Architect shall be responsible for conducting progress meetings as needed and for the preparation, distribution, and accuracy of minutes pertaining thereto to all parties as directed by the Owner.

§3.6.2 EVALUATIONS OF THE WORK

§3.6.2.1 Delete the second sentence in its entirety and substitute the following:

Although the Architect is not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, the Architect shall carefully review the quality and quantity of the Work at appropriate intervals necessary for Architect to remain aware and knowledgeable of issues or problems that have developed, or could reasonably be foreseen, during construction as part of the Architect's design and contract administration services, shall issue written reports of such reviews to the Owner, Owner representatives, and the Contractor, and further shall conduct any additional reviews at any other time as reasonably requested by the Owner. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents

§ 3.6.2.2 Delete the first sentence of 3.6.2.2 in its entirety and substitute the following:

The Architect shall have the authority and obligation to reject Work that does not conform to the Contract Documents.

§3.6.2.4 Delete Section 3.6.2.4 in its entirety and substitute the following:

§3.6.2.4 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. Architect shall also make initial decisions on matters relating to consistency with intent of contract documents, including aesthetic effect, however, the Owner, reserves the right make final decisions on issues of consistency with intent and aesthetic effect.

§3.6.4 SUBMITTALS

§3.6.4.2 Make the following changes to Section 3.6.4.2:

Delete the first sentence in its entirety and substitute the following:

The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. The Architect's review of Contractor's submittals must determine the following: (1) if such submittals are in compliance with applicable laws, statutes, ordinances, codes, orders, rules, regulations; and (2) if the Work affected by and represented by such submittals is in compliance with the requirements of the Contract Documents. Architect shall promptly notify the Owner and Contractor of any submittals that do not comply with applicable laws, statutes, ordinances, codes, orders, rules, regulations, or requirements of the Contract Documents. Architect is responsible for determining what aspects of the Work will be the subject of shop drawings or submittals. Architect shall not knowingly permit such aspects of the Work to proceed in the absence of approved shop drawings and submittals. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

In the second sentence, delete the words "or performance".

§3.6.4.5 Make the following change to Section 3.6.4.5:

Add ", including a submittal log," after "The Architect shall maintain a record of submittals".

§3.6.5 CHANGES IN THE WORK

§3.6.5.2 Make the following changes to Section 3.6.5.2:

Section 3.6.5.2 shall now be Section 3.6.5.3. Section 3.6.5.2 shall read as follows:

§3.6.5.2 If the Architect and the Owner determine that the implementation of the requested change would result in a change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner who may authorize further investigation of such change.

§ 3.6.5.3 Add the following to the end of Section 3.6.5.3:

Additionally, the Architect shall review and, upon request by Owner, provide written documentation of the same of all change order requests and proposals with respect to the following criteria:

- .1 confirm proposed change is a material change to the Contract;
- .2 confirm appropriate credits are included for Work not completed;
- .3 verify that the proposed additional cost or credit is reasonable with respect to industry standards. Cost verifications may, as authorized by Owner, include independent estimates and/or consultations with contractors and vendors; and
- .4 confirm that the appropriate back up documentation is included and mathematically correct including mark ups and taxes pursuant to the requirements of the Contract Documents.

ARTICLE 4 ADDITIONAL SERVICES

§4.2 Architect's Additional Services

§4.2.1 Make the following changes to Section 4.2.1:

- .6 Before the semicolon insert ", provided such alternate bids or proposals are not being used for budget control"
- .9 Delete this provision in its entirety and replace it with "assist owner with owner's evaluation of the qualifications of entities providing bids or proposals.

§4.2.2 Make the following changes to Section 4.2.2:

- .3 After the last sentence in the first paragraph, insert the following:

This provision only applies to the extent that such services required or requested from the Architect represent a material

change in the services that are already required of the Architect for completion of the Project"

- .4 Before the semicolon insert ", provided such claims are not the result of the Architect's action, inaction, errors, or omissions"

ARTICLE 5 OWNER'S RESPONSIBILITIES

§5.2 Make the following change to Section 5.2:

In the first sentence, after "The Owner" add ", with Architect's assistance,"

Add the following Section to Article 5:

§5.3.1 The Owner has the right to reject any portion of the Architect's Work on the Project, including but not limited to Schematic Design Documents, Design Development Documents, Construction Documents, or the Architect's provision of services during the construction of the Project, or any other design Work or documents on any reasonable basis, including, but not limited to aesthetics or because in the Owner's opinion, the construction cost of such design is likely to exceed the budget for Cost of the Work. If at any time the Architect's Work is rejected by the Owner, the Architect must proceed when requested by the Owner, to revise the design Work or documents prepared for that phase to the Owner's satisfaction. These revisions shall be made without adjustment to the compensation provided hereunder, unless revisions are made to Work previously approved by the Owner under previous phases, in which case such revision services will be paid as a Change in Services. Should there be substantial revisions to the original program after the approval of the Schematic Design Documents, which changes substantially increase the scope of design services to be furnished hereunder, such revision services will be paid as a Change in Services. The Architect must so notify the Owner of all Changes in Services in writing and receive approval from Owner before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to the Architect for additional Work or Changes in Services without such written approval by Owner.

§5.5 Make the following changes to Section 5.5:

In the first sentence, delete "shall" and substitute "may".

Add the following sentence at the end of Section 5.5:

The Owner may, in its sole discretion, request that the Architect secure these services by contracting with a third party.

§5.8 Make the following change to Section 5.8:

In the third sentence, delete "shall" and substitute "may".

§5.9 Make the following change to Section 5.9:

At the beginning of this sentence, insert "Unless otherwise provided in this Agreement,"

§5.11 Add the following sentence to the beginning of Section 5.11:

The Owner shall be entitled to rely on the accuracy and completeness of services and information provided by the Architect.

§ 5.15 Remove § 5.15 in its entirety.

ARTICLE 6 COST OF WORK

§ 6.1 Delete the phrase "and shall include contractors' general conditions costs, overhead and profit" from Section 6.1. Delete the second sentence of Section 6.1 in its entirety and replace it with the following:

"In the event that Owner plans to utilize its own resources (labor, machinery, or materials) for part of the project, Owner and Architect must discuss the impact of that choice on the design and Cost of the Work prior to executing this Agreement. If Owner and Architect agree that such amounts will be included in the Cost of the Work, then that cost will be determined in advance and incorporated into this Agreement. Failure to do so will result in such costs being excluded from the Cost of the Work."

§6.3 Delete Section 6.3 in its entirety and substitute the following:

§6.3 In preparing estimates for the cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation, and in consultation with the Owner, to determine what materials, equipment, component systems and types of construction to be included in the Construction Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimate of Cost of the Work to meet the Owner's adjusted budget. If an increase in the Contract Sum occurring after execution of the Contract for Construction caused the Project budget to be exceeded, the Project budget shall be increased accordingly.

§ 6.5 Remove the phrase "shall cooperate with the Architect in making such adjustments" and replace with "may cooperate with Architect in making such adjustments, at its sole discretion."

§6.6.2 After the word "renegotiating" insert "(renegotiation being limited of instances where Owner is legally authorized to renegotiate)"

§6.7 Delete Section 6.7 in its entirety and substitute the following:

§6.7 If the Owner chooses to proceed under Section 6.6.2, the Architect, without additional compensation, shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner's budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding or renegotiating of the Project shall be the limit of the Architect's responsibility under Section 6.6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§7.3 Make the following changes to Section 7.3:

In the first sentence, insert "irrevocable, royalty-free, right and" after the word "nonexclusive" and delete the words "solely and exclusively".

Delete the last sentence of Section 7.3 and substitute the following:

Upon completion of the Project, or upon termination of this Agreement for any reason prior to the completion of the Project, Owner shall be entitled to retain copies of all Instruments of Service and shall have an irrevocable, royalty-free, right and license to use all of the Instruments of Service for any and all purposes related to the Project in any manner the Owner deems fit, including the following:

- a. Electronics Filing and Archiving for the purpose of record keeping at Owner designated areas;
- b. Any future renovation, addition, or alteration to the Project; and
- c. Any future maintenance or operations issue as it pertains to the Project.

Architect or Architect's Consultants shall not be responsible for any modifications to the Work made by Owner or Owner's representatives using the Architect's Instruments of Service.

§7.3.1 Delete the second sentence of Section 7.3.1.

ARTICLE 8 CLAIMS AND DISPUTES

§8.1 GENERAL

§8.1.1 Delete Section 8.1.1 in its entirety and substitute the following:

§8.1.1 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued

and the applicable statutes of limitations shall commence to run pursuant to applicable provisions of the West Virginia Code.

§8.1.3 Make the following change to Section 8.1.3:

At the beginning of the first sentence, insert "Unless otherwise agreed by the Parties,"

Add the following Section to Article 8.1:

§8.1.4 The Owner may suffer financial loss if the Architect's services are not completed within the schedule approved by the Owner in accordance with Section 3.1.3. If so provided, the Architect shall be liable for and shall pay the Owner, as liquidated damages and not as a penalty, any sum(s) stated in this Agreement.

Allowances may be made for delays beyond the control of the Architect. All delays and adjustments to the Architect's schedule must be properly documented and approved by the Owner in accordance with Section 3.1.3.

§8.2 MEDIATION

§8.2 Make the following changes to Section 8.2:

§8.2.1 In both instances where it appears, delete "binding dispute resolution" and substitute "litigation in a court of competent jurisdiction."

§8.2.2 Delete this Section in its entirety and substitute the following:

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.

§ 8.2.3 Add to the end of the first sentence in Section 8.2.3. the phrase

"unless fee sharing is prohibited due to a lack of a specific Legislative appropriation for the expenses. In the event that Owner determines that fee sharing is prohibited, the Architect may choose to mediate and pay the entire fee, or the parties will forgo mediation and pursue other available remedies."

§8.2.4 Delete this Section in its entirety and substitute the following:

If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of litigation shall be in accordance with Section 8.3.

§8.3 ARBITRATION

§8.3 Delete Section 8.3 in its entirety and substitute the following:

§8.3 SETTLEMENT OF CLAIMS

§8.3.1 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 B101-2017 or another related document are hereby deleted

§8.3.2 Any claim, dispute or other matter in question arising out of this Agreement which cannot be settled between the parties shall, in the case of the Architect, be submitted to the West Virginia Claims Commission, and in the case of the Owner, to the Circuit Court of Kanawha County or any other court of competent jurisdiction as the Owner may elect.

**ARTICLE 9
TERMINATION OR SUSPENSION**

§9.1 Make the following changes to Section 9.1:

In the first sentence, after "If the Owner fails to make payments to the Architect" add "of undisputed amounts". In the third sentence, after "In the event of a suspension of services," add "in accordance herewith". In the fourth sentence, after "Before resuming services, the Architect shall be paid all sums due prior to suspension and" add "shall negotiate with the Owner for".

§9.2 Make the following changes to Section 9.2:

In the first sentence, after "If the Owner suspends the Project" add "for more than 30 consecutive days".

Delete the last two sentences in Section 9.2 and substitute the following:

When the Project is resumed, the Owner and the Architect shall negotiate the amount of any compensation the Owner will pay the Architect for expenses incurred in the interruption and resumption of the Architect's services. The Owner and the Architect shall negotiate any adjustments to the Architect's fees for the remaining services and the time schedules for completion.

§9.6 Make the following changes to Section 9.6:

Delete "costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements".

§9.7 Delete Section 9.7 in its entirety and substitute the following:

§9.7 Service performed under this Agreement may be continued in succeeding fiscal years for the term of the Agreement contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated or otherwise available for this service, the Agreement shall terminate without penalty on June 30. After such date the Agreement becomes null and void.

Add the following Section to Article 9:

§9.10 In the event of any termination under this Article, the Architect consents to the Owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project and consents to the making of any reasonable changes to the design of the Project by Owner and such other architect as Owner may desire in accordance with applicable practice laws contained in Chapter 30, Article 12 of the West Virginia Code, or elsewhere. Any services provided by Architect that are requested by Owner after termination will be fairly compensated by Owner in accordance with Article 11.

ARTICLE 10 **MISCELLANEOUS PROVISIONS**

§ 10.1 Make the following changes to Section 10.1:

Remove the last sentence referencing arbitration in its entirety.

§10.2 Make the following changes to Section 10.2:

At the end of the sentence, delete the period and add ", as modified by the State of West Virginia Supplementary Conditions to the AIA Document A201-2017, General Conditions of the Contract for Construction."

§10.3 Add the following sentence to the end of Section 10.3:

The Architect shall execute all consents reasonably required to facilitate such assignment.

§10.6 Add the following sentence to the end of Section 10.6:

The Architect shall immediately report to the Owner's project manager the presence, handling, removal or disposal of, or exposure of persons to and location of any hazardous material which it discovers.

§10.8.1 Remove the phrases "after 7 days' notice to the other party," and "arbitrator's order" from Section 10.8.1.

ARTICLE 11

COMPENSATION

§11.4 Make the following changes to Section 11.4:

After the word "shall", insert "not exceed a multiple of 1.15 times the amount billed to the Architect for such Additional Services" and delete the rest of that sentence.

§11.6.1 Delete the last sentence of Section 11.6.1 in its entirety.

§11.7 Delete Section 11.7 in its entirety and substitute the following:

§11.7 The Architect's rates and multiples for service as set forth in this Agreement shall remain in effect for the life of this Agreement unless unforeseen events which are not the fault of the Architect delay the Project completion. In such event, an equitable adjustment in the Architect's rates may be negotiated with the Owner.

§11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§11.8.1 Delete Sections 11.8.1.4 and 11.8.1.5 in their entirety and substitute the following:

§11.8.1.4 The expense of reproductions, postage and handling of bidding documents shall be a Reimbursable Expense, however, the expense of reproductions, plots, standard form documents, postage, handling, and delivery of Instruments of Service for the Owner's use and for review of governmental agencies having jurisdiction over the Project shall not be a Reimbursable Expense but shall be covered in the Architect's Compensation under §11.1.

§11.8.2 Delete Section 11.8.2 in its entirety and substitute the following:

§11.8.2 For Reimbursable Expenses described in Section 11.8.1.1, compensation to the Architect shall be at actual cost and shall be made pursuant to the Owner's travel regulations. For those expenses described in Sections 11.8.1.2 through 11.8.1.11, the compensation shall be computed as a multiple of 1.15 times the expenses incurred by the Architect, the Architect's employees and consultants.

§11.9 Architect's Insurance

§11.9 Delete Section 11.9 in its entirety.

§11.10 PAYMENTS TO THE ARCHITECT

§11.10.1 Delete Section 11.10.1 in its entirety.

§11.10.2 Delete Section 11.10.2 in its entirety and substitute the following:

§11.10.2 Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice by the Owner.

§11.10.2.2 Delete Section 11.10.2.2 in its entirety.

ARTICLE 13
SCOPE OF THE AGREEMENT

Add the following Section to 13.2:

§13.2.4 State of West Virginia Supplementary Conditions to AIA Document B101-2017, Standard Form of Agreement Between Owner and Architect; Other documents included by the Owner in the solicitation requesting expressions of interest, and the contract award to Architect.

END OF SUPPLEMENTARY CONDITIONS TO AIA
DOCUMENT B101-2017

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

IN WITNESS WHEREOF, the Owner and Architect have entered into this Agreement as of the date and year as written below.

Owner:

Architect:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Supplementary Conditions to AIA Document B101-2017, Standard Form of Agreement Between Owner and Architect, has been approved as to form on this 10th day of October, 2018, 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

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 _____