



Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

# State of West Virginia Purchase Order

Order Date: 09-09-2022

CORRECT ORDER NUMBER MUST APPEAR  
ON ALL PACKAGES, INVOICES, AND  
SHIPPING PAPERS. QUESTIONS  
CONCERNING THIS ORDER SHOULD BE  
DIRECTED TO THE DEPARTMENT  
CONTACT.

Order Number:	CPO 0603 0603 ADJ2300000011 1	Procurement Folder:	1039904
Document Name:	Huntington Tri-State Armory HVAC Renovation Design	Reason for Modification:	
Document Description:	Huntington Tri-State Armory HVAC Renovation Design		
Procurement Type:	Central Purchase Order		
Buyer Name:	David H Pauline		
Telephone:	304-558-0067		
Email:	david.h.pauline@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2022-08-02
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2024-08-01

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000206169 PICKERING ASSOCIATES INC 11283 EMERSON AVE  PARKERSBURG WV 26104 US Vendor Contact Phone: 304-464-5305 Extension: 1111 Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Charles A Bowman Requestor Phone: (304) 561-6654 Requestor Email: charles.a.bowman26.nfg@army.mil  <b>23</b> FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
DIVISION ENGINEERING & FACILITIES ADJUTANT GENERALS OFFICE 1707 COONSKIN DR  CHARLESTON WV 25311 US	BUILDING TRADE SPECIALIST KENOVA ARMED FORCES RESERVE CENTER 2194 BOOTH RD  KENOVA WV 25530 US

Total Order Amount: \$203,850.00

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: 9/13/2022 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: 9/22/2022 ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: 9/22/2022 ELECTRONIC SIGNATURE ON FILE
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**Extended Description:**

The Vendor, Pickering Associates, Inc., agrees to enter into this professional architectural/engineering contract to provide professional design services to develop construction documents to renovate all HVAC systems for the Huntington Tri-State Armory in Kenova, WV, per the CEOI advertised specifications, bid requirements, terms and conditions, and the Vendor's submitted CEOI proposal dated 05/17/2022, the AIA Document B101-2017 and Supplementary Conditions to AIA Document B101-2017, all incorporated herein by reference and made apart of hereof. see attached.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81101508	0.00000		0.000000	203850.00
Service From	Service To	Manufacturer		Model No	
2022-08-02	2024-08-01				

**Commodity Line Description:**     Huntington Tri-State Armory HVAC Renovation Design

**Extended Description:**

Provide professional architectural and engineering design services per the attached documentation.

	Document Phase	Document Description	Page 3
ADJ2300000011	Draft	Huntington Tri-State Armory HVAC Renovation Design	

# **ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☐ **Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of \_\_\_\_\_. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to \_\_\_\_\_ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for \_\_\_\_\_ years;

☐ the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited.

Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney

General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☒ **Other:** Contract Term specified in AIA-B101-2017

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:



☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

Revised 04/01/2022

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$1,000,000.00 per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

☒ WV Statutory requirement- WV Code §23-4-2 (Mandolidis)

☒ \*\*\*Please make Insurance Certificate Holder to Read\*\*\*  
West Virginia Army National Guard  
1707 Coonskin Drive, Charleston, WV 25311

☐☐



Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. [Reserved]**

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

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

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

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

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

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming 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, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.



- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES –** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

**ADDITIONAL TERMS AND CONDITIONS**  
**(Architectural and Engineering Contracts Only)**

**1. PLAN AND DRAWING DISTRIBUTION:** All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.

**2. PROJECT ADDENDA REQUIREMENTS:** The Architect/Engineer and/or Agency shall be required to abide by the following schedule in issuing construction project addenda. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the State Agency for which the contract is issued to allow the Agency to make any necessary modifications. The addendum and list shall then be forwarded to the Purchasing Division buyer by the Agency. The Purchasing Division buyer shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by the Purchasing Division at least fourteen (14) days prior to the bid opening date.

**3. PRE-BID MEETING RESPONSIBILITIES:** The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.

**4. 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 attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein. The terms and conditions of this document shall prevail over anything contained in the AIA Documents or the Supplementary Conditions.

**5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with West Virginia Code § 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.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Name, Title) Jeff Hosek, PE, LEED AP (BD+C)/Mechanical Engineering Department Manager/Project Mgr

(Printed Name and Title) Jeff Hosek, PE, LEED AP (BD+C)/Mechanical Engineering Department Manager/Project Mgr

(Address) 11283 Emerson Avenue / Parkersburg, WV 26104

(Phone Number) / (Fax Number) 740-541-2554 / 800-954-5305 / 304-464-4428

(email address) jhosek@pickeringusa.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Pickering Associates

(Company)

  
(Authorized Signature) (Representative Name, Title)

Jeff Hosek, PE, LEED AP (BD+C)/Mechanical Engineering Department Manager/Project Mgr May 17, 2022

(Printed Name and Title of Authorized Representative) (Date)

740-541-2554 / 800-954-5305 / 304-464-4428

(Phone Number) (Fax Number)

jhosek@pickeringusa.com

(Email Address)



# AIA Document B101™ – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the 2 day of August in the year 2022  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client (identified as the Owner:  
(Name, legal status, address and other information)

West Virginia Army National Guard  
Adjutant General's Office  
1707 Coonskin Drive  
Charleston, WV 25311

and the Architect:  
(Name, legal status, address and other information)

Pickering Associates  
11283 Emerson Avenue  
Parkersburg, WV 26104

for the following Project:  
(Name, location and detailed description)

WVANG - Huntington Armory  
Kenova, WV

The West Virginia Army National Guard (WVANG) is renovating the HVAC equipment at their Huntington Tri-State Armory facility in Kenova WV. They request that Pickering Associates (PA) to develop plans for renovation, bid, and facilitate construction meetings as well as perform construction administration throughout the construction process.

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes: (1316055601)

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

| See Exhibit A

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

| See Exhibit A

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

| See Exhibit A

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

| To Be Determined

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User Notes: (1316055801)



.2 Construction commencement date:

To Be Determined

.3 Substantial Completion date or dates:

To Be Determined

.4 Other milestone dates:

To Be Determined

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

Robert A. Skaggs, II NFG NG WVARNG  
Office: 304.561.6550  
Fax: 304.561.6344  
Cell: 304.719.8745  
Robert.a.skaggsii.nfg@army.mil

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

West Virginia State Fire Marshal  
1207 Quarrier Street, 2<sup>nd</sup> Floor  
Charleston, WV 25301

§ 1.1.9 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer: N/A

.2 Civil Engineer: N/A

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3 Other, if any: N/A

(List any other consultants and contractors retained by the Owner.)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

Jeffrey D. Hosack, PE  
2099 East State Street  
Suite B  
Athens, OH 45701  
p: 740.593.3327 x 2002  
f: 304.464.4428  
M: 740.541.2554  
jhosek@pickeringusa.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

- 1 Structural Engineer:  
Pickering Associates  
11283 Emerson Avenue  
Parkersburg, WV 26104
- 2 Mechanical Engineer: N/A  
Pickering Associates  
11283 Emerson Avenue  
Parkersburg, WV 26104
- 3 Electrical Engineer: N/A  
Pickering Associates  
11283 Emerson Avenue  
Parkersburg, WV 26104

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Exhibit A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set

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forth in AIA Document E203™ -2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ -2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000 ) for each occurrence and One Million Dollars (\$ 1,000,000 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

See State of West Virginia Supplementary Conditions to AIA B101-2017, dated October 10, 2018 and attached herein.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

- a) Statutory Limits
- b) WV Statutory Mandolisis - Per WV Code 23-4-2

§ 2.5.5 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and One Million Dollars (\$ 1,000,000 ) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional

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insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

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§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

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§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™ 2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201 2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

**§ 3.6.2 Evaluations of the Work**

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor**

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

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#### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work.

#### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

See Exhibit A for Services included in contract.

*(Table deleted)*

##### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

N/A

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document B204™ 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

##### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Bi-weekly ( Bi-weekly ) visits to the site by the Architect during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

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§ 4.2.5 If the services covered by this Agreement have not been completed within twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,

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.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

#### ARTICLE 8 CLAIMS AND DISPUTES

##### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case

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not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other: *(Specify)*

Per State of West Virginia Supplementary Conditions to AIA B101-2017, dated October 10, 2018, herein attached.

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

## § 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the

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date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### § 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

N/A

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- 1 Stipulated Sum  
(Insert amount)

Two Hundred Three Thousand Eight Hundred Fifty Dollars (203,850)  
See A/E Fee Breakdown attached herein.

- 2 Percentage Basis  
(Insert percentage value)

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

- 3 Other  
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Services designated as provided by the Architect shall be provided as a Basic Service under this Agreement.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

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Additional services and compensation for additional services will be approved by the Owner prior to proceeding.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as follows:

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

Compensation will be made in accordance with A/E Fee Breakdown attached herein and proper authorization of funding authorities.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Thirty-five	percent (	35	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty-five	percent (	25	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

N/A

Employee or Category

Rate (\$0.00)

#### § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of

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additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent ( 15 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

##### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon)*

As specified State of WV B101-2017 Supplementary Conditions, dated October 10, 2018, herein attached.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

*(Include other terms and conditions applicable to this Agreement.)*

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

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.2 State of West Virginia – Supplementary Conditions to AIA Document B101-2017  
Standard Form of Agreement Between Owner and Architect

.3 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)


[ X ]

(Paragraphs deleted)

Exhibit A - Agreement for the Provision of Professional Services

.4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

  
OWNER (Signature)

  
ARCHITECT (Signature)

Beckley, Michael CFPE  
(Printed name and title)

David A. Boggs, PE,  
Executive VP of Design  
(Printed name, title, and license number, if required)

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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 to 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."

§6.2 After the word "renegotiating" insert "(renegotiation being limited to 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:

David A. Boggs, P.E.

Vice President of Design

8/2/22

Pickering Associates

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 MORRISSEY, ATTORNEY GENERAL

BY:

DEPUTY ATTORNEY GENERAL



**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): *Adjutant General's Office*  
Vendor: *Pickering Associates*  
Contract/Lease Number ("Contract"): *CEC1A0522\*14 / CR A0523\*11*  
Commodity/Service: *Huntington Tri-State Armory HVAC Renovations FOI*

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

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.  
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.



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

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

State: Adjutant General's Office

Vendor: PICKERING ASSOCIATES

By: [Signature]

By: D. A. B.

Printed Name: BECKMAN, Michael

Printed Name: DAVID A. BOGGS

Title: CFMS

Title: EVP OF DESIGN / TREASURER OF BOARD

Date: 9/8/2022

Date: 8/17/22

## **Exhibit A – Agreement for the Provision of Professional Services**

Project Title: Huntington Armory HVAC  
PA Project No.: 2226055 Rev # 1

Client: West Virginia Army National Guard  
Billing Address: Adjutant Generals Office  
1707 Coonskin Dr  
Charleston, Wv 25311

Project Location: 2194 Booth Road  
Kenova, WV 25530

Contact Name: Robert A. Skaggs (Jim)  
304.561.6550  
Robert.a.skaggs.ii.nfg@mail.mil

Proposal Date: August 2, 2022

PA Project Manager Jeff Hosek, PE

### **1. Project Scope:**

The West Virginia Army National Guard (WWANG) is renovating the HVAC equipment at their Huntington Tri-State Armory facility in Kenova WV. They request that Pickering Associates (PA) to develop plans for renovation, bid, and facilitate construction meetings as well as perform construction administration throughout the construction process.

All work will be coordinated with Jim Skaggs, Project Manager.

### **A. Title I Services (Site investigation, planning, and building design development)**

#### **Basic Services**

##### **Architectural services**

1. Site visit to review and document existing conditions.
2. Review existing drawings.
3. Develop demolition drawings indicating removal of finishes needed for HVAC demolition.
  - a. Coordinate with WWANG on demo in place and/or alternates.



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4. Develop construction drawings and details indicating patching of flooring, painting of walls, filling exterior walls with insulated panels, roof flashing, and reinstallation of ceilings as necessary for HVAC modifications.
  - a. Coordinate with WWANG on alternates for flooring and wall protection to be included.
5. Estimates of probable costs of construction at 35%, 65%, 95% and bid documents.
6. Develop book type project specifications.

#### **Structural Engineering**

1. Perform one (1) site visit to review and document existing conditions.
2. Review existing drawings of project area.
3. Perform analysis on roof framing to verify capacity for proposed loading.
4. Provide minimal framing design and details to support proposed equipment.
5. Assist with estimates of probable costs of construction at 35%, 65%, 95% and bid documents.
6. Develop book type project specifications.

#### **Plumbing Engineering**

1. Site visit to review and document existing conditions.
2. Review existing drawings.
3. Develop demolition drawings of existing gas piping associated with the removal of HVAC equipment.
4. Estimates of probable costs of construction at 35%, 65%, 95% and bid documents.
5. Develop book type project specifications.

#### **Mechanical Engineering**

1. Site visit to review and document existing conditions
2. Review existing drawings
3. Perform heating and cooling calculations
4. Develop demolition plans
  - a. Demolition/abandonment includes existing chillers, boilers, fan coils, piping, VAVs, etc. throughout the facility.
  - b. Coordinate with WWANG on demo in place and/or alternates
5. Develop construction plans indicating VRF systems in combination with dedicated outdoor air systems (DOAS). Integrate into existing ASI controls.
6. Estimates of probable costs of construction at 35%, 65%, 95% and bid documents.
7. Develop book type project specifications.

#### **Electrical Engineering**

1. Site visit to review and document existing conditions.
2. Review existing drawings.
3. Develop demolition plan drawings for associated HVAC equipment
4. Development the following of construction drawings
  - a. Power plans



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- b. Tables, schedules and installation details as required
5. Estimates of probable costs of construction at 35%, 65%, 95% and bid documents.
6. Develop book type project specifications.
7. Provided sealed drawings for construction and permitting.

## B. Title II Services (Bidding and Construction) Additional Services

1. These services would include:
  - a. Pre-Bid meeting agenda.
  - b. Pre-Bid meeting.
  - c. Bidding addenda.
  - d. Submittal reviews.
  - e. Construction Administration Services as defined in the AIA B101 document (i.e. construction visits/meetings).

## 2. Project Budget

The project budget is based upon services outlined for the project under Title I, and II:

Title I:	\$142,695.00
Title II: (Bidding and Construction Services)	\$ 61,155.00
Project Total:	\$203,850.00

## 3. Project Schedule

The project schedule outlined below reflects an estimate based on communications with the client at time of proposal. Each milestone may take more or less time than outlined in this estimate based on multiple variables and the involvement of future stakeholders. As the project progresses, Pickering will update this schedule to reflect actual milestone achievement dates and adjust future milestone dates accordingly.

	Earliest Date
Project Start: 2 weeks Receipt of Signed Agreement/PO est.	11/15/22
35% Schematic Design Package/Estimate:	start+4 weeks
65% Drawing Package/Estimate:	start+8 weeks
95% Package/Estimate/Review with Client:	start+12 weeks
100% Package/Issued for Bid:	start+14 weeks



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#### **4. Proposal Clarifications, Assumptions and Special Conditions**

1. This proposal includes reasonable costs associated with the management of the project, including the development and articulation of the project scope, budget and overall project schedule. Additionally, coordination meetings with the client and important stakeholders as well as internal project coordination are included as they pertain to the development and communication of the scope of work. Project Management outside these conditions may be provided as an additional cost.
2. Unless specifically indicated otherwise in the proposal, the cost of any fees and/or permits associated with the project will be paid for or reimbursed by the client in addition to the fees herein proposed. All permits shall be issued in the name of the Client.
3. Pickering Associates will provide drawings for the Client's review and approval at various phase gates. Client will be responsible for approving the drawings prior to proceeding with the next design stage unless this approval is waived.
4. A Site Environmental Analysis is not included. The Owner will be responsible for determining if there is any site contamination and correction of same if required. If the site is found to contain existing environmental issues, Pickering Associates shall be compensated for all additional time and expenses associated with working with and rectifying the respective issues.
5. Revisions to this proposal may be required as site conditions and/or project design requirements change which are considered by Pickering Associates to be beyond the scope of this proposal. Project scope revisions will be handled in writing between both parties.
6. The project schedule is an estimate based on information known at the time of the proposal and subject to validation at the time the contract is executed and change with changing project conditions, resource constraints and progressive elaboration.
7. Unless noted otherwise, special studies, life cycle cost analysis or other studies which may be requested by the Client shall be provided at an additional cost.
8. An allowance for normal reimbursable expenses is included in the project budget. Normal reimbursable expenses included are as follows: document reproduction expenses and mileage for site visits and client review meetings. Additional reimbursable expenses such as photographic processing, overnight delivery fees, etc. are not included in the lump sum fee above and will be invoiced on a time and materials basis with prior client approval.
9. Unless noted otherwise, this proposal does not include construction inspection or other construction engineering services. Construction engineering or inspection services can be provided on a time and expense basis as requested by the Client. Submittal review and "as-built" drawing creation shall be considered construction engineering.
10. An analysis of the entire building will not be conducted.
11. The existing structure is sufficient to support the proposed loading and no reinforcement will be required.





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## 5. Execution of Agreement:

Project Title: Huntington Armory HVAC  
PA Project No.: 2226055 Rev # 1  
Project Budget: \$ 203,850.00 Lump Sum  
Proposal Date: August 2, 2022  
Proposal Expiration Date: 30 days from Proposal Date

By witness below each of the parties have agreed to the above terms and conditions:

Offered by:

Accepted by:

  
(Signature) 08/02/22  
(Date)

  
(Signature) 7 Sep 2022  
(Date)

David A. Boggs, P.E.  
Executive VP of Design  
Pickering Associates

The Professional Services Terms and Conditions that follow are part of this agreement.



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## **Professional Services Terms and Conditions**

Pickering Associates shall perform the services outlined in this agreement for the stated proposed architectural/engineering scope. This proposal shall only be valid for 30 days after the proposal Issue Date.

### **Project Scope Changes**

Revisions to this proposal may be required if site conditions and/or project requirements change and create extreme challenges considered beyond the scope of this proposal. Pickering Associates shall be immediately informed of any design changes or additional information. The engineering budget does not include any engineering, design, and/or drafting services for the proposed work unless specifically mentioned and detailed in this proposal. This proposal is based on our understanding of the project scope of work as provided by the Client at the time of this proposal.

### **Time-and-Materials Fee**

If proposed as a time-and-materials quotation the total fee shall be understood to be an estimate, based upon Scope of Services, and shall not be exceeded without written approval of the Client. The Client will be notified when fees reach 90% of the estimate, at which time the Client shall direct Pickering Associates concerning proceeding. The Client shall be responsible for all fees to date at any given time. Pickering Associates has the right to modify rates at regular annual intervals.

### **Lump Sum Fee**

The total fee shall be understood to be a lump sum, based upon Scope of Services. Fees shall be invoiced at various milestones based on percent completion to date with the full fee due upon completion of the Scope. Work outside the Scope of Services shall only be completed under supplemental fees as specified in this proposal by written approval of the Client. For the portion of the work that is being performed on a time-and-materials basis, Pickering Associates has the right to modify rates at regular annual intervals.

### **Billings/Payments**

Invoices will be submitted monthly for services and reimbursable expenses and are due when rendered. Invoice shall be considered past due if not paid within 30 days after the invoice date and Pickering Associates may, without waiving any claim or right against Client and without liability whatsoever to the Client, suspend work or service provision until payment terms are reached. Retainers, if included in the contract, shall be credited on the final invoice. A service charge will be charged at 1.5% (or the highest legal rate allowed) per month on the unpaid balance for all accounts over 30 days. In the event any portion of an account remains unpaid 90 days after billing, the Client shall pay the amounts including the cost of collection, including reasonable attorneys' fees.

### **Standard of Care**

In providing services under this agreement, Pickering Associates will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Pickering Associates will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of Pickering Associates' part of the Project. Regardless of any other term or condition of this Agreement, Pickering Associates makes no express or implied performance guarantee or warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed. Field surveys by Pickering Associates shall consist of measurements using standard tape measures, measuring wheels, levels, and existing drawings. Tolerances of created objects shall be based on accuracy of existing drawings and reasonable human/recording measurement method error. Unless specifically stated, Pickering Associates shall not be responsible for any work associated with additional property, easement, and/or right-of-way acquisition. All specifications provided or identified by the Client at the time of project inception shall be incorporated into the design.



2022 Billing Rates  
West Virginia Army National Guard

Staff Type	Billing Rates 2022
Drafter	\$63.00
Senior Drafter	\$72.00
Designer	\$97.00
Senior Designer	\$128.00
Piping Designer	\$107.00
Senior Piping Designer	\$121.00
Controls Specialist In Training	\$114.00
Control Specialist	\$125.00
Senior Controls Specialist	\$156.00
Control Specialist - Call Out Rate	\$178.00
Senior Controls Specialist - Call Out Rate	\$223.00
Environmental Specialist	\$91.00
Engineer Intern (EI)	\$106.00
Engineer Level 1	\$119.00
Engineer Level 2	\$128.00
Professional Engineer	\$140.00
Process Engineer	\$140.00
Senior Engineer	\$165.00
Principal in Charge	\$184.00
Forensic Professional	\$212.00
Professional Landscape Architect	\$128.00
Architectural Associate	\$106.00
Architect	\$140.00
Senior Architect	\$184.00
BIM Coordinator	\$106.00
BIM Manager	\$140.00
Interior Designer	\$80.00
Project Manager	\$140.00
Senior Project Manager	\$184.00
Construction Administrator	\$128.00
Senior Construction Administrator	\$140.00
Project Administrator	\$89.00
Project Scheduler	\$119.00
Safety Specialist	\$140.00
Administrative	\$51.00
Field Tech	\$51.00
Lead Surveyor (Crew Chief)	\$107.00
Survey Designer	\$100.00
Professional Surveyor (Office)	\$135.00
Senior Professional Surveyor (Office)	\$161.00

Additional Information:

- (1) Incidental and Mileage Reimbursement at cost.
- (2) Materials & Sub-Consultants charged at cost with applicable taxes plus 10%.
- (3) When services require special facilities, the extra expenses will be billed to the customer with all associated utilities.
- (4) Rates effective until 12-31-2022.
- (5) All time worked over 40 hours per week or on Saturday will be charged at 1-1/2 times the rate above. Hours worked on Sunday and holidays will be billed at two (2) times the bill rates above. This excludes call-out time. The call-out rate above will not be marked-up for overtime, but instead Callouts will be charged at a minimum of 4 hours per occurrence.