



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: 08-13-2024

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 0310 6584 DNR2500000006 1 | Procurement Folder: | 1428290 |
| Document Name: | A&E - North Bend State Park New Wastewater Treatment Plant | Reason for Modification: | |
| Document Description: | A&E - North Bend State Park New Wastewater Treatment Plant | | |
| Procurement Type: | Central Purchase Order | | |
| Buyer Name: | Joseph E Hager III | | |
| Telephone: | (304) 558-2306 | | |
| Email: | joseph.e.hageriii@wv.gov | | |
| Shipping Method: | Best Way | Effective Start Date: | 2024-07-15 |
| Free on Board: | FOB Dest, Freight Prepaid | Effective End Date: | |

| VENDOR | DEPARTMENT CONTACT | | | | | | | | | | | | | | | | | | | | |
|--|--------------------|---------------------|---------------------|---------------|----|----|--------|---|----|-------------|--|--|----|-------------|--|--|----|-------------|--|--|---|
| Vendor Customer Code: 000000173443 POTESTA & ASSOCIATES INC 7012 MACCORKLE AVE SE CHARLESTON WV 25304 US Vendor Contact Phone: 999-999-9999 Extension: 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: James H Adkins Requestor Phone: (304) 558-3397 Requestor Email: jamie.h.adkins@wv.gov 2025 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 OF NATURAL RESOURCES PARKS & RECREATION-PEM SECTION 324 4TH AVE SOUTH CHARLESTON WV 25305 US | SUPERINTENDENT DIVISION OF NATURAL RESOURCES NORTH BEND STATE PARK 202 NORTH BEND PARK RD CAIRO WV 26337-9730 US |

8/14/24 62

Total Order Amount: \$312,900.00

Purchasing Division's File Copy

| | | |
|--|---|--|
| PURCHASING DIVISION AUTHORIZATION DATE: 8/14/24 ELECTRONIC SIGNATURE ON FILE | ATTORNEY GENERAL APPROVAL AS TO FORM DATE: 8/14/24 ELECTRONIC SIGNATURE ON FILE | ENCUMBRANCE CERTIFICATION DATE: 8/14/24 ELECTRONIC SIGNATURE ON FILE |
|--|---|--|

Extended Description:

The vendor, Potesta & Associates, agrees to enter into this contract with the agency, The West Virginia Division of Natural Resources, to provide necessary engineering, and other related professional services to design, specify and provide construction contract administration services for the construction of new wastewater treatment plant facilities at North Bend State Park, located in Cairo, West Virginia per the specifications, terms and conditions, and the vendors negotiated scope of work dated 7/15/2024 all incorporated by reference herein and made a part hereof.

| Line | Commodity Code | Quantity | Unit | Unit Price | Total Price |
|--------------|----------------|--------------|----------|------------|-------------|
| 1 | 81100000 | 0.00000 | | 0.000000 | 312900.00 |
| Service From | Service To | Manufacturer | Model No | | |
| | | | | | |

Commodity Line Description: Professional engineering services

Extended Description:

Design and contract administration services of new wastewater treatment plant facilities at North Bend State Park.

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, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), 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.

☒ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

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.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

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 of 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:

☐ **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.

☐☐☐☐

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.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below 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 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$500,000 per occurrence.

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$1,000,000 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.

☒ In accordance with State Supplemental Conditions to AIA B101-2017

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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. VENUE: 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.

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 www.state.wv.us/admin/purchase/privacy.

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 NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

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.

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 hearth, 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.

(Printed Name and Title) Dana L. Burns, PE, PS, Vice President

(Address) 7012 MacCorkle Avenue, SE, Charleston, WV 25304

(Phone Number) / (Fax Number) (304) 342-1400 / (304) 343-9031

(email address) dlburns@potesta.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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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.

Potesta & Associates, Inc.

(Company)



(Signature of Authorized Representative)

Dana L. Burns, PE, PS, Vice President

05/28/2024

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

(304) 342-1400 / (304) 343-9031

(Phone Number) (Fax Number)

dlburns@potesta.com

(Email Address)

EXPRESSION OF INTEREST
West Virginia DNR Parks and Recreation Section
North Bend State Park
Wastewater Treatment Upgrades

SECTION THREE: PROJECT SPECIFICATIONS

1. **Background:** This project will include the review, evaluation and design of a new wastewater treatment system associated with the North Bend State Park Lodge, Riverbend Campground and cabins. All work shall be consistent with the agency's needs, mission, and aesthetics and should meet all applicable regulations and codes.
2. **Project and Goals:** The project goals and objectives are listed below. Vendors should discuss any anticipated concepts and proposed methods of approach for achieving each of the listed goals and objectives:
 - 2.1. Goal/Objective 1: Review conditions and operation of the facility while communicating effectively with the owner to determine a plan that can be implemented in a manner that will minimize disruption to concurrent operation of the facility/structures and meet all objectives.
 - 2.2. Goal/Objective 2: As a portion of this process outlined in Objective 1, provide all necessary services to design the facilities described in this EOI in a manner that is consistent with The Division of Natural Resources needs, objectives, current law, and current code, while following the plan to design and execute the project within the project budget and time requirements.
 - 2.3. Goal/Objective 3: Provide Construction Contract Administrative Services with competent professionals that ensures the project is constructed and functions as designed.
3. **Qualifications, Experience, and Past Performance:** Vendors must include a statement of qualifications and performance data. The statement of qualifications and performance data may be presented through things like information regarding its employees, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and the project goals and objectives and how they were met.

EXPRESSION OF INTEREST

West Virginia DNR Parks and Recreation Section

North Bend State Park

Wastewater Treatment Upgrades

- 4. Oral Presentations/Interviews:** The Agency will conduct individual interviews with the three vendors that are determined to be the most qualified to provide the required service. During oral presentations/interviews, vendors may not alter or add to their submitted proposal, but only clarify information already submitted. A description of the materials and information to be presented is provided below:

4.1. Materials and Information Required at Oral Presentation/Interviews:

The Vendor must be prepared to discuss and clarify required items submitted with the EOI as indicated in Section 2.



Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 15 day of Jul in the year 2024
(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 Division of Natural Resources
324 4th Avenue
South Charleston, WV 25303

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

Potesta Engineers and Environmental Consultants
7012 MacCorkle Avenue, SE
Charleston, WV 25304

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

North Bend Wastewater System Improvements Design
North Bend State Park
Cairo, WV

(Paragraph Deleted)

The Owner and Architect agree as follows.
(Paragraph Deleted)

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.

TABLE OF ARTICLES

(Paragraph Deleted)

1 INITIAL INFORMATION

(Paragraph Deleted)

2 ARCHITECT'S RESPONSIBILITIES

(Paragraph Deleted)

3 SCOPE OF ARCHITECT'S BASIC SERVICES

(Paragraph Deleted)

4 SUPPLEMENTAL AND ADDITIONAL SERVICES

(Paragraph Deleted)

5 OWNER'S RESPONSIBILITIES

(Paragraph Deleted)

6 COST OF THE WORK

(Paragraph Deleted)

7 COPYRIGHTS AND LICENSES

(Paragraph Deleted)

8 CLAIMS AND DISPUTES

(Paragraph Deleted)

9 TERMINATION OR SUSPENSION

(Paragraph Deleted)

10 MISCELLANEOUS PROVISIONS

(Paragraph Deleted)

11 COMPENSATION

(Paragraph Deleted)

12 SPECIAL TERMS AND CONDITIONS

(Paragraph Deleted)

13 SCOPE OF THE AGREEMENT

(Paragraph Deleted)

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ARTICLE 1 INITIAL INFORMATION
(Paragraph Deleted)

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

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

(Paragraph Deleted)

§ 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.)

Engineering and design services for improvements to the North Bend State Park wastewater treatment system and replacement of the existing plant

§ 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.)

The scope of the project and services as outlined in the attached proposal.

§ 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.)

estimated budget \$3.4 Million

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

.1 Design phase milestone dates, if any:

September 15, 2024

.2 Construction commencement date:

December 31, 2024

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 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.)

The project is intended to meet or exceed all effluent limits while maintaining low cost operation and maintenance

§ 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.)

Roger C. Wolfe
West Virginia Division of Natural Resources
Planning Engineering and Maintenance
324 4th Avenue
South Charleston, WV 25303
304-558-2764

§ 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.)

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(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.)

Dana L. Burns
Potesta Engineers and Environmental Consultants
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Telephone Number: 304-342-1400

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**§ 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:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.11.2 Consultants retained under Supplemental Services:

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

§ 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 written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

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

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User Notes:

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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 1 million dollars (\$ 1,000,000) for each occurrence and (\$) 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 five hundred thousand (\$ 500,000) 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.

§ 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.

§ 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 (\$) per claim and (\$) 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 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.

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§ 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.

§ 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.

§ 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.

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§ 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.

§ 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

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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.

§ 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.

§ 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.)

| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|--|---|
| § 4.1.1.1 Programming | Architect/Owner |
| § 4.1.1.2 Multiple preliminary designs | Architect/Owner |
| § 4.1.1.3 Measured drawings | N/A |
| § 4.1.1.4 Existing facilities surveys | Architect |
| § 4.1.1.5 Site evaluation and planning | Architect |
| § 4.1.1.6 Building Information Model management responsibilities | Not Provided |
| § 4.1.1.7 Development of Building Information Models for post construction use | Not Provided |
| § 4.1.1.8 Civil engineering | Architect |
| § 4.1.1.9 Landscape design | Architect |
| § 4.1.1.10 Architectural interior design | Not Provided |
| § 4.1.1.11 Value analysis | Not Provided |
| § 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3 | Not Provided |
| § 4.1.1.13 On-site project representation | Architect/ Owner |
| § 4.1.1.14 Conformed documents for construction | Architect |
| § 4.1.1.15 As-designed record drawings | Architect |
| § 4.1.1.16 As-constructed record drawings | Not Provided |
| § 4.1.1.17 Post-occupancy evaluation | Not Provided |
| § 4.1.1.18 Facility support services | Not Provided |
| § 4.1.1.19 Tenant-related services | Not Provided |
| § 4.1.1.20 Architect's coordination of the Owner's consultants | Architect |
| § 4.1.1.21 Telecommunications/data design | Not Provided |
| § 4.1.1.22 Security evaluation and planning | Not Provided |
| § 4.1.1.23 Commissioning | Not Provided |
| § 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 | Not Provided |
| § 4.1.1.25 Fast-track design services | Not Provided |
| § 4.1.1.26 Multiple bid packages | Not Provided |

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|------------|--|--------------|
| § 4.1.1.27 | Historic preservation | Not Provided |
| § 4.1.1.28 | Furniture, furnishings, and equipment design | Architect |
| § 4.1.1.29 | Other services provided by specialty Consultants | Not Provided |
| § 4.1.1.30 | Other Supplemental Services | Not Provided |
| | | |

§ 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.)

§ 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.)

§ 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 E204™-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.

§ 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,

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.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 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Twenty five (25) visits to the site by the Architect during construction
- .3 Two (2) 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 Two (2) 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.

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty Six (36) 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

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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 Architect 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.

§ 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.

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§ 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,
- .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 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.)

☒ [X] Arbitration pursuant to Section 8.3 of this Agreement

☐ [] Litigation in a court of competent jurisdiction

☒ [X] Other: (Specify) - As noted in Article 8.3.2 of the State of West Virginia Supplementary Conditions

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 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.

§ 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

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§ 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.

§ 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

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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)

Three-hundred and twelve thousand and nine hundred dollars and zero cents (\$312,900.00)

.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.)

§ 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.)

Additional services will be negotiated as needed

§ 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 percent (%), or as follows:

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

§ 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 | Thirty Five | percent (| 35 | %) |
| Construction Documents Phase | Twenty Five | percent (| 25 | %) |
| Procurement Phase | Five | percent (| 5 | %) |
| Construction Phase | Twenty | percent (| 20 | %) |
| 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.)*

Employee Billable Rates are attached

| 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:

(Paragraphs Deleted)

Included in proposal

(Paragraphs Deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (%) 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 N/A (\$) 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.)

%

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This will be addressed per West Virginia Supplementary Conditions.

§ 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.)

See State of West Virginia Supplementary Conditions

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
- .2 Building Information Modeling Exhibit, if completed:

- .3 Exhibits:

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

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

☐ Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- .4 Other documents:

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

Potesta Proposal Dated July 15th, 2024
Potesta Hourly Rates
Potesta Current COI
State of WV Purchasing Affidavit
AIA B101-2017 State of WV Supplementary Conditions

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

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OWNER (Signature)

Brett W. Macmillan, Director
(Printed name and title)



ARCHITECT (Signature)

Dana L. Burns, Vice President
(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 make final decisions on issues of consistency with intent and aesthetic effect.

§3.6.4 SUBMITTALS

§3.6.4.2 Make the following changes to Section 3.6.4.2:

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

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

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

§3.6.4.5 Make the following change to Section 3.6.4.5:

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

§3.6.5 CHANGES IN THE WORK

§3.6.5.2 Make the following changes to Section 3.6.5.2:

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

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

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

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

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

ARTICLE 4 ADDITIONAL SERVICES

§4.2 Architect's Additional Services

§4.2.1 Make the following changes to Section 4.2.1:

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

§4.2.2 Make the following changes to Section 4.2.2:

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

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

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

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

§5.2 Make the following change to Section 5.2:

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

Add the following Section to Article 5:

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

§5.5 Make the following changes to Section 5.5:

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

Add the following sentence at the end of Section 5.5:

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

§5.8 Make the following change to Section 5.8:

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

§5.9 Make the following change to Section 5.9:

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

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

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

§ 5.15 Remove § 5.15 in its entirety.

ARTICLE 6 COST OF WORK

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

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

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

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

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

§6.6.2 After the word "renegotiating" insert "(renegotiation being limited 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 8.1:

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

AIA B101-2017 Supplementary Conditions Standard form of Agreement Between
Owner and Architect

State of West Virginia

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.

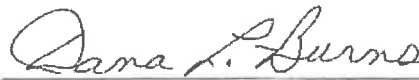
Owner: WV Div. of Natural Resources

Architect: Potesta Engineers and Environmental Consultants

By:



By:



Title:

Director

Title:

Vice President

Date:

July 23, 2024

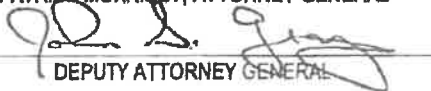
Date:

July 18, 2024

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



Engineers and Environmental Consultants

7012 MacCorkle Avenue, SE, Charleston, WV 25304 • (304) 342-1400 • www.potesta.com

VIA EMAIL ONLY

July 15, 2024

Mr. Roger Wolfe
West Virginia Division of Natural Resources
324 4th Avenue
South Charleston, West Virginia 25303

RE: Revision No. 2
Proposal for Professional Engineering Services
North Bend State Park Wastewater System Improvements
WVDNR2400000009
Ritchie County, West Virginia
Potesta Project No. 0101-19-0293

Dear Mr. Wolfe:

Potesta & Associates, Inc. (POTESTA) is pleased to provide the West Virginia Division of Natural Resources (WVDNR) with this proposal for professional engineering services pertaining to the improvements to the wastewater collection and treatment system at North Bend State Park. This proposal has been prepared based upon the above-referenced WVDNR Expression of Interest (EOI). This proposal supersedes our earlier submittals.

BACKGROUND

The WVDNR owns and operates North Bend State Park (North Bend) in Ritchie County, West Virginia, south of United States (US) Route 50 and approximately halfway between the towns of Cairo and Harrisville. The park was constructed in the 1960s and includes its own wastewater collection and treatment system that serves a shelter, pool, lodge, and campground/cabins. *(Note: There is a second wastewater collection and treatment system at North Bend that is not part of this proposal.)* The wastewater treatment plant (WWTP) discharges to a small tributary of the North Fork of Hughes River. Additional portions of the collection system are believed to have been constructed in the 1970s and 1980s after the park's establishment, and a pump station was replaced in the early 2000s. Portions of the collection system have failed or are damaged due to age or past flooding, and the WWTP reportedly experiences excessive infiltration/inflow when the river rises. WVDNR retained Potesta & Associates, Inc. (POTESTA) to provide engineering services associated with improvements to the wastewater system.

The WWTP treats wastewater from four areas of the park:

1. The 27-room lodge and associated offices (two), restaurant, and two public restrooms with two trailer dump stations (i.e., lodge)

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2. Pool area
3. Campground/cabins
4. Shelter area

WVDNR is now considering replacing the existing WWTP with either a WWTP which utilizes recirculating media in conjunction with pre-treatment via solids removal, or a WWTP which uses Rotating Biological Contactor (RBC) technology in conjunction with pre-treatment via solids removal. WVDNR has expressed satisfaction with both technologies while employing those technologies at other sites. WVDNR asked POTESTA to evaluate the concept of a new WWTP.

In early 2024, POTESTA re-estimated the project cost at \$3.43M. WVDNR now desires to bid the project by late summer 2024 to take into account a funding opportunity.

Due to space limitations around the existing WWTP, it was proposed that key components of the new WWTP be established at the site of the parking level for the existing pool (which is being closed).

WVDNR has requested POTESTA's assistance in providing preliminary design phase, regulatory phase, design phase, bidding phase, and construction phase services associated with upgrading the wastewater system.

SCOPE OF SERVICES

POTESTA proposes to perform the tasks described in the following sections in order to complete the requested scope of services. This proposal is based on the assumption that the following improvements will be made:

- Campground/Cabins
 - The piping for the river crossing will be replaced.
 - The sanitary sewer line extending up the hill to the cabins will not be replaced. However, minor rehabilitation is proposed at some manholes.
 - Septic tanks will be installed to remove solids prior to raw wastewater being pumped.
- Shelter Area
 - The grinder pump station and associated force main will be replaced in its entirety, including the river crossing. It is anticipated that the force main alignment will be relocated to discharge to the force main from the campground/cabin pump station.
- WWTP
 - A new WWTP will be constructed at the existing pool location, using RBC technology.

- Lodge Collection System
 - New line from the lodge.
 - Minor improvements are proposed and a separated joint at the trailer dump station is proposed to be rehabilitated.
 - A grease trap will be installed at the lodge.
- Equalization Tank
 - Pretreatment tanks for solids removal and a new concrete aerated EQ tank with screen and dosing pumps will be installed at the location of the existing WWTP.
 - Existing WWTP will be demolished.
- Emergency Power
 - A transfer switch for an emergency generator will be provided to allow emergency power to the WWTP.

Sampling/Review Results of Other WWTPs

We anticipate coordinating with vendors and reviewing proposals from WWTP technology vendor(s). We also anticipate visiting the site of other similar WWTP(s). We will compile results of historic effluent sampling at a similar existing WWTP, and compare this versus predicted limits. We will provide a recommendation to WVDNR on the technology for the WWTP.

It is proposed to sample raw wastewater to estimate the impacts of the RV wastewater on wastewater quality, as this can impact component sizing. It may be difficult to directly sample the RV wastewater, so it has been suggested to sample the influent to the existing WWTP. Use of a composite sampler is proposed.

1. Collection of nine raw wastewater samples for analysis for 5-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), chemical oxygen demand (COD), ammonia nitrogen, and pH. Samples from the influent to the WWTP will be collected with the assistance of a WVDNR employee.
2. Raw wastewater samples will be collected using a composite sampler. POTESTA proposes to conduct the composite sampling using an automatic composite sampler. The composite samples will consist of one draw every 30 minutes for a 24-hour sampling period. (This may need adjusted based on site conditions.) Analysis will be conducted via the appropriate ASTM methods, etc. POTESTA proposes visiting the site nine times over a 14-day period to collect the samples.
3. Two grab samples of the influent to the WWTP will be collected.
4. Development of tables summarizing results. This will be forwarded to WWTP vendor(s) to assist in sizing.

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Regulatory Phase Services

POTESTA has completed a preliminary review of required regulatory approvals, and our anticipated efforts are presented as follows.

Task R1 – Review of Discharge Monitoring Reports (DMR)

This was completed as a separate effort.

Task R2 – Agency Consultation

No “clearance” letter submittals to regulatory agencies are included in our scope of services.

Task R3– Preparation of Permit Applications

Task R3a – NPDES Permit Modification Application/West Virginia Division of Health and Human Resources (WVDHHR) Application

POTESTA anticipates consultations with West Virginia Department of Environmental Protection (WVDEP) and WVDNR regarding moving the location of the outfall, including confirmation on whether outfall limitations would change if the outfall was relocated.

POTESTA anticipates preparing the permit modification application to the WVDEP to modify WVDNR’s National Pollutant Discharge Elimination System (NPDES) Permit and preparing the WVDHHR EG-4 form “Sewage System Information and Design Data Sheet” and ES-77 form “Sewage Collection and Treatment Systems” application forms. Forms will be prepared for WVDNR’s signature and submittal.

We anticipate responding to comments of a minor nature.

Application fees will be paid by WVDNR.

Task R3b – Construction Stormwater National Pollutant Discharge Elimination System (NPDES) Permit

It is anticipated that the project will disturb greater than one but less than three acres of land. As such, it is believed that classification as a minor construction activity is appropriate. As such, we anticipate preparing the following:

- Application form, to include template for the sign
- Stormwater Pollution Prevention Plan
- Groundwater Protection Plan
- Pre-Construction Drainage Map
- Temporary Drainage Structure Maps
- Site Plan (Map) showing Limits of Disturbance and Receiving Waters
- Typical Design Details

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We will address comments provided by the regulatory agency.

Application fees will be paid by WVDNR.

Task R3c – Floodplain

At this point, we do not anticipate the need to obtain a floodplain permit.

Task R3d – Wetland Delineation at WWTP Site

Prior to the current WWTP being constructed, wastewater was treated in a lagoon/pond. The pond was later partially filled in but there is visual evidence that wetlands have developed, as is typical of low-lying areas. Such wetlands could impact options for improvements near the WWTP site; as such, a wetland delineation may be appropriate before final design advances. However, at this time, we have not included this effort in our proposal.

Task R3e – USACE/PLC Permits

Two river crossings are proposed. The USACE 404 Nationwide Permit is required for the water line stream crossings. The submittal consists of a permit application and drawing indicating the stream crossings. The WVDEP 401 Water Quality Certification is required for the stream crossing activity and is covered under the Nationwide Permit. The PLC Stream Activity Permit is required for the stream crossing activity. The PLC submittal consists of a permit application (PLC Form 1) and associated drawings. We will prepare both applications for WVDNR's signature and submittal.

Task R4– Mussel Survey

The North Fork Hughes in Ritchie County, West Virginia is identified by the WVDNR as a High-Quality Group 2 Mussel Stream. Group 2 Mussel Streams are listed by the WVDNR as small to medium sized rivers with known freshwater mussel populations and/or suitable habitat to support freshwater mussel populations, that also support known populations of federally listed threatened and endangered freshwater mussel species (FLS).

Due to the instream activity proposed by the project, including open cutting of the stream bottom and shoreline protection and stabilization, the WVDNR requires a freshwater mussel survey and subsequent relocation of any mussels found within the Project's area of direct impact (ADI) and associated salvage zone (SZ).

Task R4a – Scope and Plan Development and Agency Coordination

We will develop a Freshwater Mussel Survey Plan (Plan) for submittal to the WVDNR and USFWS for the North Fork Hughes Survey. After agency review and approval of the Plan, we will initiate the surveys.

Task R4b – Freshwater Mussel Survey (Phase I)

We will conduct the Freshwater Mussel Survey associated with the project per the approved Plan. The survey area will include the 10 meter (m) long, bank to bank area of direct impact (ADI), a 100 m long downstream buffer (DSB) and a 50 m long upstream buffer (USB). The Project survey areas will be delineated into survey cells and searched using waterscopes, snorkels, and/or SCUBA gear as applicable at a minimum rate of 0.2 min/m². The survey area will be accessed from the streambank where possible. If mussels are found, or if triggers for density or species diversity are met, survey effort will be adjusted and expanded per the Protocol (≥ 0.5 min/m² or ≥ 1.0 min/m², resp).

Task R4c – Freshwater Mussel Survey (Phase II)

Should density and diversity triggers (per the Protocol) be met during the Phase I survey on the North Fork Hughes, a Phase II survey will be initiated, provided prior approval by WVDNR and USFWS is received. Phase II Survey effort doubles the effort required by a Phase I survey (1.0 min/m²) and increases the likeliness of finding a FLS should they be present prior to conducting relocation efforts. However, Phase I results that trigger Phase II effort indicate the likeliness of FLS presence. It may be desirable to elect to avoid impacts to these areas and develop alternate construction measures to further avoid and minimize in-stream impacts.

Task R4d – Phase I/II Reporting

Reporting potentialities are outlined below and are dependent on individual survey results.

- In the event no live freshwater mussels are located within the Project SZ, we will prepare a Freshwater Mussel Survey Report for WVDNR's review, with subsequent agency submittal.
- In the event only state-protected freshwater mussels are located within the Project SZ, we will prepare a Freshwater Mussel Survey Report and a Freshwater Mussel Relocation Survey Plan for WVDNR's review, with subsequent agency submittal.

Task R4e – Potential Relocation Survey(s) and Reporting

In the event live mussels are found in the Project's proposed SZ, written approval and concurrence from the USFWS and the WVDNR will be required prior to any relocation survey activities. Due to the anticipated time necessary to complete the initial Phase I/II survey and the designation of the North Fork Hughes as a Group 2 mussel stream, relocation efforts will be conducted during a second mobilization and following agency review and approval of the Phase I/II survey results.

Immediately following the completion of the Phase I/II Survey, a relocation site will be identified, if required, upstream of the project areas by conducting a minimum of one hour of qualitative searches. Relocation site data will be provided to the USFWS and WVDNR in advance of Relocation Survey activities being initiated. The proposed relocation site will have equal or better habitat, mussel diversity and density, and overall size as the Project SZ. An approved relocation

site may also be recommended by the WVDNR or USFWS if one is known in the vicinity of the Project area.

Upon written (email) approval being granted by the USFWS and WVDNR, we will initiate a Relocation survey within an adjusted SZ within the North Fork Hughes survey areas. The adjusted SZ will be defined to include all survey cells within the SZ where mussels were found, connected by similar habitat and buffered by 10 m but not exceeding the original proposed SZ limits.

The Project SZ will be searched via moving transect for a minimum of 1 minute/m² in heterogeneous habitats, systematically covering the SZ in its entirety. Additional search time and passes will be added at each moving transect segment based on mussel density findings and associated search times as outlined in the Protocol.

Following the completion of all relocation activities, a Relocation Report will be prepared for submittal to WVDNR and USFWS.

It is assumed that the mussels can be relocated in two days.

Assumptions:

1. Freshwater mussel surveys are weather and stream flow dependent. The project survey will be conducted during the 2024 Freshwater Mussel Survey Season (May 1 – October 1) during stream conditions that meet the Protocol's requirements for visibility and flow.
2. Cost estimates are based on the project information and ADI dimensions as available at the time of this proposal. Modifications to the project's ADI dimensions or methodologies may require a revision of this proposal.
3. This estimate assumes that the initial Phase I/II surveys will be completed over the course of two mobilizations. Any relocation activities associated with the project will be conducted at a later date and during additional mobilization(s).
4. Due to the classification of the North Fork Hughes as a Group 2 stream, estimated level of effort for the surveys assumes the presence of a moderately dense freshwater mussel bed within the project's survey areas.
5. An estimate of relocation cost, including reporting, will be provided to WVDNR following the completion of the Phase I/II surveys.
6. Costs provided include time and expenses required to coordinate the survey with the WVDNR and USFWS prior to conducting field efforts.
7. If a FLS of mussel is found at any point during the Phase I/II survey effort for the project, its location will be logged using a GPS unit capable of sub-meter accuracy and it will be returned to its exact location of collection. Following completion of

the Phase I (and Phase II) surveys, and within 48 hours, the USFWS, and WVDNR will be notified of the finding. If an FLS is first discovered during relocation survey activities, all salvage efforts will cease, and the USFWS and the WVDNR will be notified immediately. In either case, WVDNR would then need to enter formal consultation with USFWS before proceeding with the project.

8. Costs provided do not include a Biological Assessment (BA) or further USFWS coordination in the event a FLS of mussel is located during the surveys.
9. Costs assume WVDNR and USFWS accept the survey methodologies proposed.

Design Phase Services

The following proposes our final design phase services:

Task D1 – Surveying Services

Surveying services included with this proposal are for (a) hydraulic design and (b) use in development of drawings for construction.

However, an additional topographic survey will be required for design of the new WWTP at the pool parking area. Furthermore, it is believed additional topographic mapping will be required at the site of the river crossing and at a location in the cabins area where septic tanks might be installed.

POTESTA developed mapping of several areas in the 2020 design effort, and these can be salvaged for the current effort.

Available Google Earth mapping will be utilized for the force main of the grinder pump station, while we are proposing at this time to utilize the existing mapping for the collection system cabins (since only rehabilitation to some manholes is being considered). We are assuming no surveying of property lines or development of plats will be necessary.

Datum will be established by Global Positioning System (GPS).

We have included efforts to review the alignment of the gravity sanitary sewer line river crossing in the field to address concerns regarding mussels.

Note: We have not included costs to develop topographic mapping for a pump station for the cabins if this becomes necessary.

Task D2 – Prepare Hydraulic Calculations/Design Report

POTESTA will prepare hydraulic calculations to evaluate capacity of the campground/cabins pump stations to size the force main(s), EQ tank, grinder pump station, and to build-up to a design flow for the WWTP. We will need user information for the site for summer 2023, and will need

for WVDNR to confirm the pump models for the campground/cabins pump station. Hydraulic calculations will be summarized in a calculations brief, to be included in a Design Report. Hydraulic calculations will demonstrate predicted compliance with West Virginia Bureau for Public Health (WVBPH) design standards.

Task D3 – Drawings

POTESTA anticipates:

1. Two site meetings to kick-off design.
2. One site visit/meeting to confirm WVDNR's acceptance of the preliminary engineering effort and initiate the final design effort and to meet with WVDNR to gather further input and information.
3. Preparation of design construction drawings (assumed for the purposes of this proposal to include the following):
 - a. One title and index sheet.
 - b. One general notes and legend sheet.
 - c. Two site plan drawings showing proposed work associated with the existing WWTP and proposed EQ tank.
 - d. One master site plan (location) drawing.
 - e. Two site plan drawings of the new WWTP.
 - f. Nine detail drawings of the new WWTP.
 - g. Two site plan drawings presenting the new line from the lodge.
 - h. Two profile drawings of the new WWTP.
 - i. One site plan drawing showing proposed work associated with the grinder pump station replacement.
 - j. One site plan showing the proposed river crossing.
 - k. One site plan drawing showing the small diameter force main associated with the grinder pump station replacement.
 - l. Two profile drawings of the small diameter force main piping associated with the grinder pump station replacement and the new line from the lodge.

- m. Two detail drawings depicting the proposed EQ tank.
- n. One drawing presenting details of the grinder pump station.
- o. One drawing presenting the site plan and profile for the river crossing replacement.
- p. Two site plan drawings of the cabin collection system.
- q. One site plan and one detail drawing of upgrades of the campground/cabins pump station.*

* *May not be required.*
- r. One site plan drawing and one profile drawing of the effluent line from the WWTP.
- s. One drawing presenting a site plan of line connections at the lodge and details of the proposed grease trap.
- t. Three miscellaneous detail drawings, including general trenching details, anchoring, erosion and sedimentation control details, etc.
- u. Four electrical drawings.

POTESTA anticipates submitting the drawings draft to WVDNR for review and comment. We have budgeted one day's site visit to receive comments on the draft drawings. After receiving and implementing comments, we anticipate revising and finalizing the drawings.

Task D4 – Technical Specifications

We will prepare technical specifications for the project. We anticipate inclusion of the following sections:

- **DIVISION 1 – GENERAL REQUIREMENTS**
 - Section 01000 – Summary of Work
 - Section 01010 – Drawing Index
 - Section 01300 – Submittals
 - Section 01500 – Temporary Facilities
 - Section 01570 – Traffic Regulation
 - Section 01600 – Material and Equipment
 - Section 01700 – Project Close Out
 - Section 01782 – Operation and Maintenance Data
 - Section 01820 – Demonstration and Training

- **DIVISION 2 – SITE WORK**
 - Section 02020 – Dewatering
 - Section 02025 – Existing Utilities and Structures
 - Section 02105 – Clearing and Grubbing
 - Section 02210 – Trenching, Backfilling and Compacting
 - Section 02220 – Casing Pipe
 - Section 02221 – Building Demolition
 - Section 02225 – Horizontal Directional Drilling (HDD)
 - Section 02230 – Stream Crossing
 - Section 02260 – Excavation Support and Protection
 - Section 02300 – Earthwork
 - Section 02540 – Erosion and Sedimentation Control
 - Section 02610 – Paving and Surfacing
 - Section 02701 – Sewer Bypass Pumping
 - Section 02820 – Lawn Restoration
 - Section 02821 – Chain-Link Fences and Gates
- **DIVISION 3 – CONCRETE**
 - Section 03300 – Cast-in-Place Concrete
 - Section 03301 – Protection/Sealant
- **DIVISION 11 – EQUIPMENT**
 - Section 11243 – Chlorination/Dechlorination System
 - Section 11905 – Packaged Effluent Flow Meter
- **DIVISION 13 – SPECIAL CONSTRUCTION**
 - Section 13226 – Packaged Duplex Grinder Pump Station
- **DIVISION 15 – MECHANICAL**
 - Section 15000 – Piping - General Provisions
 - Section 15030 – Pressure and Leakage Tests for Force Mains
 - Section 15035 – Testing for Sanitary Sewer Gravity Lines
 - Section 15106 – Ductile Iron Fittings and Pipe
 - Section 15121 – Polyvinyl Chloride (PVC) Pipe
 - Section 15122 – High Density Polyethylene (PE) Pipe
 - Section 15131 – Piping Specialties
 - Section 15152 – Plug and Check Valves
 - Section 15183 – Manholes and Cleanouts
 - Section 15210 – Package Equalization Tank/Pump Station and Valve Vault
 - Section 15211 – Sanitary Sewage Pumps for Package Equalization Tank/Pump Station and Valve Vault
 - Section 15300 – Package Wastewater Treatment Plant

Electrical Specifications will be included in an appendix.

Mr. Roger Wolfe
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We will collate the draft technical specifications with the draft submittal of the drawings. We will revise and finalize the technical specifications after receiving WVDNR's comments on the draft submittal.

In addition, we have assumed for this proposal that WVDNR will collate our final technical specifications with site specifications provided by WVDNR regarding site safety procedures and other specifications and contract documents that WVDNR deems necessary.

Task D5 – Preliminary Opinion of Probable Construction Costs (Optional)

We will prepare a preliminary opinion of probable construction cost and submit it to WVDNR.

Task D6 – Geotechnical

Task D6a – Subsurface Exploration and Laboratory Testing

This task will involve the collection of subsurface soils information from the associated structures for the proposed WWTP. POTESta proposes three borings be advanced within the footprint of the proposed structures. One will be advanced in the area of the proposed pre-treatment tank at the WWTP site, one will be advanced in the area of the proposed disinfection unit and one will be advanced within the footprint of the secondary treatment unit. Two other borings will be advanced at the WWTP, but closer to the outslope. This work will involve the monitoring of a drilling crew at the site so that each of the borings is advanced at the correct location and that each is terminated at the intended depth. The POTESta field technician will also provide full-time direction and evaluation of the collection of soil samples during the drilling operations. Each of the borings will be logged on-site during the drilling. Field tests, such as pocket penetrometer readings and standard penetration tests, including visual observations of USCS classification and soil moisture conditions, will also be performed. The results of the aforementioned observations will be noted on POTESta's standard field boring log forms. These log forms will also include additional information, such as static water levels, approximate surface elevations of changes in strata, and locations of soil samples collected during the drilling process. Each boring location will be staked in the field to indicate the boring number. The location of the completed borings will be surveyed in the field by a POTESta survey crew and will be placed on a site location map for reference. The cost to survey the boring locations is included in the survey task.

The repair and reclamation of damage to the ground surface including lawn areas which occur as a result of establishing, accessing, or demobilizing the drill rig from the site shall be the responsibility of the owner. The drill crew will patch holes in the asphalt once drill cuttings have been placed back in the holes. POTESta will contact Miss Utility of West Virginia prior to beginning the drilling to obtain clearance from underground utilities.

POTESta has assumed, except for two borings that will be advanced in rock, for the purposes of this proposal, that each of the borings will be advanced to 15 feet below the grade. Two of the borings will be rock cored 5 feet should bedrock be encountered. POTESta has included the cost for lab analysis on representative soil samples collected during the subsurface exploration.

Undisturbed soils samples will be collected by pushing a Shelby tube for additional laboratory testing.

Soil samples will be collected from various locations in each of the borings during the drilling program to provide visual descriptions of the soils encountered. During the drilling process, split spoons will be sampled on 3.0-foot centers until a boring depth of 15 feet and then 5-foot centers to a depth of 25 feet below the ground surface.

Once the individual borings have been completed and the drill tools have been withdrawn, the entire boring will be backfilled with drill cuttings. The standard penetration counts will be documented on the boring logs, and the samples will be individually examined, logged, and placed in sample jars by POTEOTA field personnel.

Task 6b – Geotechnical Recommendations Report

POTEOTA will provide a geotechnical recommendations report which will include the results of the subsurface exploration, as well as the field and laboratory testing, and will be presented in a written geotechnical summary report which will be prepared and issued following completion of the field exploration and associated laboratory testing. The report will include a general description of the site and a description of the subsurface soil conditions encountered during the field work. The report will also include, but is not limited to, the recommendations for site preparation, foundation design, slab-on-grade design, structural fill, the use of on-site soils, and seismic design criteria. Boring logs, including a visual description of the materials encountered and methods of sample collections utilized during the drilling operations, as well as the soils testing results, will be presented and summarized as per location and type of tests. The report will also include design parameters based on information gathered to assist in the foundation design of the proposed tank. POTEOTA assumes the anticipated WWTP vendors will provide loading information associated with the proposed new structure.

The scope of the existing geotechnical effort does not include facilities proposed to be constructed at the existing WWTP site.

Bidding Phase Services

Task B1 – Bidding Phase Services

POTEOTA anticipates providing the following services:

1. Attending a pre-bid meeting at the North Bend State Park site, providing a technical presentation of proposed construction, and answering contractor questions. We have assumed one contract will be bid and, hence, one pre-bid meeting.
2. Preparing a memorandum summarizing the pre-bid meeting, that will be issued to WVDNR.
3. Helping WVDNR answer contractor questions after the pre-bid meeting.

4. Preparing and forwarding proposed revisions to drawings and technical specifications for WVDNR's use in issuance of addenda to potential bidders.

It is assumed that revisions to and reissuance of drawings, if necessary, would be completed under a construction phase task. (We have budgeted preparing small scale revisions as 8-inch by 11-inch figures for attachment to an addendum.) It is also assumed WVDNR will prepare a compilation of bids, and review them for acceptance.

Construction Phase Services

Task C1 – Construction Administration/Observation Services

POTESTA anticipates limited onsite presence during construction, as we have included monies for a resident project representative to be onsite only part of the time. We have budgeted twenty-five 10-hour days, including travel and downloading daily reports and photographs. This will have the benefit of saving WVDNR substantial monies, but will possibly put some burden on WVDNR site staff to help observe construction as it progresses, and develop documentation of such. We do not anticipate attending a pre-construction meeting, or reviewing contractor schedules or work plans. We are proposing to complete the following construction administration and observation tasks during construction of the project.

- Review and approve shop drawings and samples (if required), including review of revised shop drawings if necessary. We anticipate a nominal 25 submittals (EQ tank, WWTP, disinfection system, effluent flow meter, concrete, marker tape, tracer wire, manholes, casing pipe, rebar, pipe, fittings, seed, stone, electrical, pumps, etc.). Reviewed submittals will be saved as PDF files for WVDNR's use in storing project records.
- Review substitutes and "or equal" items, and issue written acceptance/denials.
- Provide a "tracking" form for the status of shop drawing submittals.
- Attend construction progress meetings at the project site. We have assumed POTESTA's engineer will attend and there will be 12 progress meetings/site visits.
- Issue written clarifications or interpretations of the requirements of the contract documents, including issuance of additional specifications and drawings.
- Help prepare change orders for the work of a minor nature, including issuance of additional specifications and drawings, if necessary.
- Review contractor invoices (i.e., Applications for Payment) and issue written recommendations for payment or denial.

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It is understood that the contractor will develop and forward the record drawings.

POTESTA is not proposing to provide the following testing as part of providing a construction technician onsite:

- Soils Testing
- Aggregate Testing
- Concrete Testing
- Asphalt Testing (if required)

This is because these type tests are anticipated (or may be required) to be provided by the contractor.

POTESTA is not proposing to provide construction layout services as this will be contractor's responsibility. We anticipate providing survey control on the drawings.

It is assumed WVDNR will:

- Prepare the contract documents, or provide them to POTESTA to collate with technical specifications.
- Receive delivery of bonds and certificates of insurance from contractor.
- Provide legal services with regard to issues pertaining to the work as WVDNR requires, contractor raises, or POTESTA reasonably requests.
- Attend pre-construction conference, construction progress, and other related meetings.

COST AND SCHEDULE

We are prepared to commence work on this project upon receipt of written notice to proceed, and proposed dates of completion are noted in the following table. POTESTA proposes to perform this work on a lump-sum basis in accordance with the attached standard terms and conditions, which are considered a part of this proposal. Costs are summarized below. No additional costs will be incurred without your prior approval.

We will invoice monthly based on progress.

We anticipate completing our draft drawings and technical specifications 60 days after receiving our notice to proceed on that phase of the effort.

***Costs Associated with Sampling Review,
 Regulatory, Design, Bidding, and Construction Phase Services for the
 North Bend State Park Wastewater System Improvements Project***

| Task | Description | Estimated Cost |
|-------------|--|-----------------------|
| S | Sampling/Review Results of Other WWTPs | |
| | Sampling/Review Results of Other Services | \$ 16,500 |
| | Total Cost: | \$ 16,500 |
| R | Regulatory Phase Services | |
| R1 | Review of Discharge Monitoring Reports | --- |
| R2 | Agency Consultation | --- |
| R3 | Preparation of Permit Applications | --- |
| R3a | NPDES Permit Modification Application/WVDHHR Application | \$ 3,500 |
| R3b | Construction Stormwater NPDES Permit | \$ 6,000 |
| R3c | Floodplain | --- |
| R3d | Wetland Delineation at WWTP Site | --- |
| R3e | USACE/PLC Permits | \$ 2,000 |
| R4 | Mussel Survey | \$ 29,000 |
| | Total Cost: | \$ 40,500 |
| D | Design Phase Services | |
| D1 | Surveying Services | \$ 13,000 |
| D2 | Prepare Hydraulic Calculations/Design Report | \$ 5,000 |
| D3 | Drawings | \$ 105,000 |
| D4 | Technical Specifications | \$ 15,000 |
| D5 | Preliminary Opinion of Probable Construction Cost | \$ 1,000 |
| D6 | Geotechnical | \$ 19,400 |
| | Total Cost: | \$ 158,400 |
| B | Bidding Phase Services | |
| B1 | Bidding Phase Services | \$ 9,000 |
| | Total Cost: | \$ 9,000 |

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| Task | Description | Estimated Cost |
|------|-----------------------------|--------------------------|
| C | Construction Phase Services | |
| C1 | Construction Administration | \$ 62,500 |
| C2 | Construction Observation | \$ 26,000 |
| | <i>Total Cost:</i> | <i>\$ 88,500</i> |
| | <i>TOTAL COST:</i> | <i>\$ 312,900</i> |

*N/A Not Applicable at this time.
All costs are lump sum.*

Our current rate schedule/sheets are included in Attachment A.

CLOSING

POTESTA is prepared to commence with this project upon receipt of the authorization to proceed. Services by POTESTA on this project will be completed in accordance with the enclosed AIA Document B101-2017.

We appreciate this opportunity to submit a proposal and look forward to working with you on this project.

Sincerely,

POTESTA & ASSOCIATES, INC.



Terence C. Moran, PE
Senior Engineer

TCM/cia
Enclosures

ATTACHMENT A
POTESTA & ASSOCIATES, INC.
2024 RATE SCHEDULE

| | |
|--------------------------------|--------------------|
| Principal | \$280 - \$300/hour |
| Chief Engineer/Scientist | \$220 - \$260/hour |
| Senior Engineer/Scientist..... | \$90 - \$220/hour |
| Staff Engineer/Scientist | \$100 - \$125/hour |
| Engineer/Scientist | \$60 - \$105/hour |
| Professional Surveyor | \$110 - \$150/hour |
| Senior Technician | \$65 - \$110/hour |
| Technician..... | \$45 - \$70/hour |
| Two-Man Survey Crew..... | \$140/hour |
| Three-Man Survey Crew..... | \$190/hour |
| Senior CADD Designer | \$105 - \$125/hour |
| CADD Designer..... | \$55 - \$110/hour |
| Clerical Support | \$55 - \$130/hour |

(Any changes in hourly rates will be made on January 1 of each year.)

NOTE: Engineer/Scientist includes engineer, scientist, technical designers, engineering associates, planners, health and safety specialists, and information technologists.

POTESTA & ASSOCIATES, INC.
FIELD EQUIPMENT RENTAL RATE SHEET

| Description | Rate | | |
|---|----------|----------|-------------------|
| | Per Unit | Day | Week ¹ |
| 1-Point Proctor Kit | N/A | \$20.00 | \$75.00 |
| 12' Motorized Boat (includes fuel) | N/A | \$300.00 | \$700.00 |
| 16' Motorized Boat (includes fuel) | N/A | \$500.00 | \$2,000.00 |
| 22"x34" Internal Plots | \$0.75 | N/A | N/A |
| 24"x36" Ammonia Mylar | \$2.50 | N/A | N/A |
| 24"x36" Internal Plots | \$0.75 | N/A | N/A |
| 30"x42" Internal Plots | \$1.15 | N/A | N/A |
| 36"x48" Internal Plots | \$2.10 | N/A | N/A |
| 4-Gas Meter | N/A | \$85.00 | \$275.00 |
| Air Meter (Concrete) | N/A | \$25.00 | N/A |
| Air Purifying Respirator with Cartridges | N/A | \$25.00 | N/A |
| Air Velocity Meter | N/A | \$50.00 | \$150.00 |
| Asbestos Sampling Equipment | N/A | \$20.00 | \$60.00 |
| Automated Composite Sampler | N/A | \$95.00 | \$350.00 |
| Bladder Pump with Controller and Compressor | N/A | \$225.00 | \$800.00 |
| Bomb Water Sampler | N/A | \$25.00 | \$75.00 |
| Chlorine Meter | N/A | \$25.00 | \$75.00 |
| Company Vehicles - Car (includes fuel) | N/A | \$155.00 | \$620.00 |
| Company Vehicles - Truck/Van/SUV (includes fuel) | N/A | \$175.00 | \$765.00 |
| Company Vehicles - Truck/Van/SUV (includes fuel) with Trailer | N/A | \$205.00 | \$1,025.00 |
| Cone Penetrometer | N/A | \$75.00 | N/A |
| CORMIX/CorHyd Software Utilization (per run) | \$300.00 | N/A | N/A |
| Depth and Velocity Flow Meter | N/A | \$80.00 | N/A |
| Electro Fishing Equipment | N/A | \$100.00 | \$350.00 |
| Field Data Interface Unit (for Data Loggers) | N/A | \$50.00 | N/A |
| Fish Rearing (per Tank) | N/A | \$5.00 | N/A |
| Flow Cell for Water Quality Meter | N/A | \$20.00 | \$50.00 |
| Generator | N/A | \$30.00 | \$120.00 |
| Hand Auger | N/A | \$10.00 | \$30.00 |
| Handheld GPS | N/A | \$30.00 | N/A |
| Inclinometer | N/A | \$500.00 | N/A |
| Interface Probe | N/A | \$55.00 | \$120.00 |
| Internal Color Copies | \$1.00 | N/A | N/A |
| Kemmerer Water Sampler | N/A | \$25.00 | \$75.00 |
| Laser Range Finder | N/A | \$20.00 | N/A |
| Level Loggers | N/A | \$50.00 | \$200.00 |
| Level Loggers (Reader) | N/A | \$50.00 | N/A |
| Lodging | N/A | \$90.00 | N/A |
| Low-Flow DC Purge Pump with Controller | N/A | \$75.00 | \$300.00 |

| Description | Rate | | |
|--|----------------|------------|-------------------|
| | Per Unit | Day | Week ¹ |
| Manual Direct-Push Sampler | N/A | \$50.00 | \$200.00 |
| Microscopic Evaluation Laboratory Supplies | \$5.00 | N/A | N/A |
| Nets/Aquatic Samplers/Miscellaneous Equipment | N/A | \$50.00 | \$150.00 |
| Nuclear Gauge | N/A | \$60.00 | \$200.00 |
| Opacity Kit | N/A | \$10.00 | N/A |
| Other | Cost + 12% | Cost + 12% | N/A |
| Other Boat Rental | Cost + 12% | Cost + 12% | Cost + 12% |
| Oversize Bluelines | \$2.40 | N/A | N/A |
| Ponar Sampler | N/A | \$25.00 | \$75.00 |
| PH/Temperature/Conductivity Meter | N/A | \$75.00 | \$250.00 |
| pH/Temperature/Conductivity Meter/DO/ORP Meter | N/A | \$125.00 | \$500.00 |
| PID/FID | N/A | \$100.00 | \$400.00 |
| Pressure Gauges | N/A | N/A | \$50.00 |
| Sludge Sampler | N/A | \$20.00 | \$75.00 |
| Small Row Boat | N/A | \$125.00 | \$300.00 |
| Speedy Moisture Gauge | N/A | \$25.00 | N/A |
| Sub-Centimeter GPS Equipment | N/A | \$400.00 | N/A |
| Sub-Meter GPS Unit | N/A | \$150.00 | \$500.00 |
| Surface Velocity Meter (SVR) | N/A | \$90.00 | N/A |
| Temperature Loggers | N/A | \$10.00 | \$35.00 |
| Temperature Loggers (Reader) | N/A | \$50.00 | N/A |
| Treatability Study Equipment | N/A | \$200.00 | \$800.00 |
| Turbidity Meter | N/A | \$25.00 | \$75.00 |
| UTV | N/A | \$50.00 | \$375.00 |
| Vehicle Mileage (if daily rates are not used) | IRS Rate + 12% | N/A | N/A |
| Water Level Indicator | N/A | \$35.00 | \$75.00 |
| Whale Pump System | N/A | \$35.00 | \$100.00 |

(Any changes in rates will be made January 1 of each year.)

¹ Weekly rental rate implies calendar week.

POTESTA & ASSOCIATES, INC.

FIELD SUPPLY RATE SHEET

| Description | Rate | |
|---|------------|---------|
| | Per Unit | Day |
| 2" Free Product Absorbent Socks (2') | \$6.00 | N/A |
| 4" Free Product Absorbent Socks (2') | \$8.00 | N/A |
| 24"-36" Passive Diffusion Sampler Bladder and Deionized Water (Excludes Sampler Harness) | \$40.00 | N/A |
| 55-Gallon Steel Drum | \$75.00 | N/A |
| Asbestos Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Plastic Bags, Etc. | N/A | \$20.00 |
| Benthic Survey Supplies (Per Sample) Forms, Containers, Ethyl Alcohol, Nitrile Gloves, Flagging, Distilled Water, Decon Supplies, Marking Utensils, Plastic Bags | \$15.00 | N/A |
| Bentonite (50 lb. Bag) | \$20.00 | N/A |
| Bladder Pump Sampling Supplies (Badders, Grab Plates, Tubing) - Per Well | \$50.00 | N/A |
| Concrete Testing Supplies | \$25.00 | N/A |
| Discharge Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc. | N/A | \$35.00 |
| Disposable Bailers 3' (1.5" diameter) | \$9.00 | N/A |
| Disposable Bailers 3' (0.75" diameter) | \$6.50 | N/A |
| Disposable Bailers 7' (1.5" diameter) | \$12.50 | N/A |
| Fish Survey Supplies (Per Site Per Day) Buckets, Waders, Bottles, Formalin, Ethyl Alcohol, Forms, Marking Utensils, Plastic Bags | \$35.00 | N/A |
| Groundwater Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc. | N/A | \$35.00 |
| GW Filters | \$17.50 | N/A |
| HGM Stream Assessment Supplies Tape, Clinometer, Densimeter, Diameter Tape, Flagging, Quadrat, Etc. | N/A | \$25.00 |
| Other | Cost + 12% | N/A |
| Petroleum Soil Field Test Kit (Per Sample) | \$45.00 | N/A |
| Soil Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc. | N/A | \$35.00 |
| Stream Sampling Supplies Forms, Field Notebooks, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Plastic Bags, Etc. | N/A | \$35.00 |
| Stream Delineation Supplies Hip Chain, Clinometer, Flagging, Forms, Etc. | N/A | \$20.00 |
| Survey Supplies Hubs, Stakes, Flagging, Iron Pins, Monuments, Marking Paint, Traffic Control | N/A | \$25.00 |
| Wetland Delineation Supplies Flagging, Forms, Reference Materials, Plastic Bags, Etc. | N/A | \$20.00 |

(Any changes in rates will be made January 1 of each year.)