

CHARLESTON CITY COUNCIL

Regular Meeting

June 21, 2022

at 7:00 PM



THIS MEETING WILL TAKE PLACE IN PERSON AND CAN BE VIEWED LIVE VIA

<https://charlestonwv.civicclerk.com/web/home.aspx>

Council Chambers, Third Floor
City Hall, 501 Virginia St. E.
Charleston, WV

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

1. **INTERESTED PUBLIC SPEAKERS MUST REGISTER AT THE CLERK'S TABLE IN PERSON NO EARLIER THAN 15 MINUTES BEFORE THE MEETING STARTS. FIVE (5) SPEAKERS WILL BE PERMITTED (RULE NO. 22 (B)).**
2. Claims 6-21-2022

PROCLAMATIONS

1. 6-21-2022

COMMUNICATIONS

1. 6-21-2022

REPORTS OF STANDING COMMITTEES

FINANCE

1. Resolution No. 674-22 - Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division to provide partial salary reimbursement for the three Charleston Police Department Prevention Resource Officers assigned to George Washington High School,

West Side Middle School and Capital High School.

2. Resolution No. 675-22 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with the Kanawha County Board of Education for continued placement of three Prevention Resource Officers at schools in Charleston – George Washington High School, West Side Middle School and Capital High School.
3. Resolution No. 676-22 - Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division to provide partial salary reimbursement for four members of the Metropolitan Drug Enforcement Network Team.
4. Resolution No. 677-22 - Authorizing the Mayor or City Manager to grant American Rescue Plan Act (“ARPA”) funds to Fund for the Arts.
5. ~~Resolution No. 678-22 – Authorizing the Mayor or City Manager to grant American Rescue Plan Act (“ARPA”) funds to Charmco Lofts Limited Partnership.~~ REMOVED 6-21-22
6. Resolution No. 679-22 - Authorizing the Mayor or City Manager to grant American Rescue Plan Act (“ARPA”) funds to WV Music Hall of Fame.
7. Resolution No. 680-22 - Authorizing the Mayor to sign and submit to the U.S Department of Housing and Urban Development the Annual Action Plan for Program Year 2022.
8. Resolution No. 681-22 - Authorizing the Finance Director to amend the 2021 Community Development Block Grant budget.
9. Resolution No. 682-22 - Approving the proposed Fiscal Year 2022-2023 Coliseum & Convention Center and Municipal Auditorium budget.
10. Resolution No. 683-22 - Receiving the annual report of the City Center Business Improvement District, approving the proposed budget of the City Center Business Improvement District for the 2022-2023 fiscal year, and levying the rate of annual fees for the City Center Business Improvement District on each private for-profit property owner within the District.
11. Resolution No. 684-22 - The Mayor or City Manager is authorized to enter into a Construction Manager At Risk contract with Turf Alliance LLC to install synthetic turf on 9 City-owned athletic fields.
12. Resolution No. 685-22 - Authorizing the Mayor or City Manager to enter into a contract with Dell Marketing LP to replace various computer equipment.
13. Resolution No. 686-22 - That the Mayor or City Manager is authorized to enter into a contract with Miracle Recreation Equipment Company for the purchase of various equipment to be installed a Celebration Station.
14. Resolution No. 687-22 – Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with other participating agencies comprising the Metro Drug Enforcement Network Team.

15. Resolution No. 688-22 - Authorizing the Mayor or City Manager to enter into a contract with Martin Marietta Materials, Inc., to purchase various classes and sizes of aggregate stone.
16. Resolution No. 689-22 - Authorizing the Mayor or City Manager to enter into an as-needed contract with Hanson Ready Mix for the purchase of portland cement.
17. Resolution No. 690-22 - Authorizing approval of Amendment No. 9 of the FY 2021-2022 General Fund Budget.

REPORTS OF OFFICERS

1. 6-21-2022

NEW BILLS

1. 6-21-2022

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

REMARKS BY MEMBERS

ROLL CALL

ADJOURNMENT

THE NEXT REGULAR MEETING OF COUNCIL WILL BE JULY 5, 2022 AT 7:00 PM.

***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk.com>**

FAX 304-348-8038



AFFIDAVIT
City of Charleston



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,

Collette Pinkard, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 323 4th AVE Glasgow, WVA. 25086

Telephone Number (541) 368-0979

and that on the 02nd 08th 29th day of MARCH, 2022 at approximately _____ am/pm
in the City of Charleston, West Virginia, he/she sustained

Neglect, INCONVENIENCE, Emotional Distress

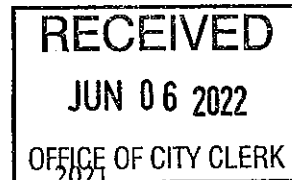
Nature Of Injury And/Or Damage

As A Result Of:

Attached

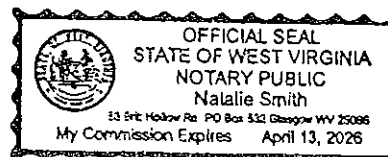
As a result of which accident, the Claimant, Collette Pinkard, does hereby
make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by
him/her in the future.

Collette Pinkard
Signature of Claimant



Taken, subscribed and sworn to before me this 6th day of June
My commission expires April 13, 2026

Natalie Smith
Notary Public





AFFIDAVIT City of Charleston



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,
Mark Casto, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 1817 Davis Circle, Charleston WV 25387

Telephone Number: 304-421-5777

and that on the 3rd day of June, 2021/2022 at approximately 8 @pm
in the City of Charleston, West Virginia, he/she sustained

The Tractor with the big mower attachment hit and destroyed
my over sized mail box. Michael Davis (304-348-0769) city
Nature Of Injury And/Or Damage

Supervisor

As A Result Of:

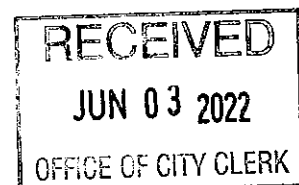
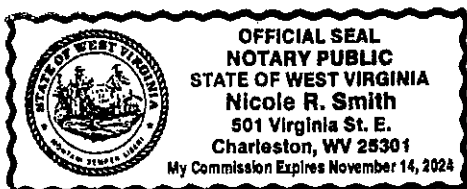
Came out and took pictures of the damaged mail box. The new
mail box will need 2 sets of number sides (1817) and one set
of smaller 1817 (on the front)

As a result of which accident, the Claimant, Mark Casto, does hereby
make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by
him/her in the future.

Mark Casto
Signature of Claimant

Taken, subscribed and sworn to before me this 3rd day of June, 2022.
My commission expires November 14, 2024.

[Signature]
Notary Public





AFFIDAVIT
City of Charleston



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,
William Wendling, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 4404 Washington Ave Charleston, WV 25301

Telephone Number: 804-925-0054 or 804-610-1491 (c)

and that on the around day of may, 2021 (2022) at approximately am/pm
in the City of Charleston, West Virginia, he/she sustained

water damage to basement due to back-up in
sewer line

Nature Of Injury And/Or Damage

As A Result Of:

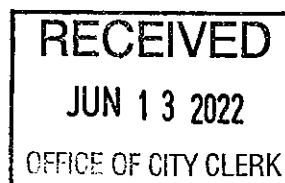
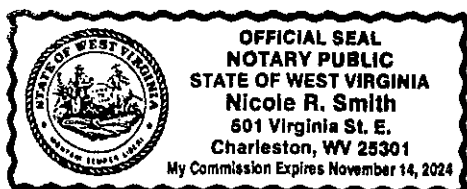
back-up of sewer line. Sanitary Board
has inspected.

As a result of which accident, the Claimant, William Wendling, does hereby
make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by
him/her in the future.

William Wendling
Signature of Claimant

Taken, subscribed and sworn to before me this 13th day of June, 2022.
My commission expires November 14, 2024.

Nicole R. Smith
Notary Public



**EXECUTIVE DEPARTMENT
CITY OF CHARLESTON
PROCLAMATION**

- WHEREAS:** Captain Calvin Hicks was born on May 21, 1924 and started his service to the Charleston Fire department 29 years later on August 25, 1953. Today, he has the honor of holding the title as the oldest living Charleston Firefighter at 98 years old; and
- WHEREAS:** During his time with the Charleston Fire Department, Mr. Hicks spent most of his career at "outside" stations and was known for rarely missing a day of work and never being late; and
- WHEREAS:** He was involved in a key part of the Charleston Fire Department's history by "pinning" Charleston's first black Fire Chief and current City Council representative Chuck Overstreet, when he first became Fire Chief in 2011; and
- WHEREAS:** Calvin is married to his wife, Jane Hicks, and has two daughters, Karen Lynette and Pamela Jane and has been a member of Ebenezer Baptist Church for over 65 years. He is a valued Trustee and until recently, was a mainstay on the maintenance where he helped with the upkeep of the church grounds; and
- WHEREAS:** Captain Hicks served the Charleston community for 23 years, retiring at the age of 54 on August 14, 1977. The City of Charleston is thankful for the brave individuals in firefighting who dedicate their lives to protect the safety and well-being of their fellow citizens.

NOW THEREFORE, I, Amy Shuler Goodwin, Mayor of the City of Charleston, do hereby recognize

Calvin Hicks

As the City of Charleston's oldest living Firefighter and encourage all citizens to take time to acknowledge all the City's outstanding first responders and the communities that support them.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 21st day of June 2022.

A blue ink signature of Amy Shuler Goodwin, written in a cursive style. Below the signature is a horizontal line, and underneath that line, the name "Amy Shuler Goodwin, Mayor" is printed in a black, sans-serif font.

Amy Shuler Goodwin, Mayor

**EXECUTIVE DEPARTMENT
CITY OF CHARLESTON
PROCLAMATION**

WHEREAS: The young people of our city and state are tomorrow's leaders; and

WHEREAS: Professional youth development services help guide many young people in their journey to realizing and achieving their full potential; and

WHEREAS: Boys & Girls Clubs instill young people with the self-confidence to believe they can achieve success through hard work and determination, and stand at the forefront of efforts in the areas of child safety, academia, fair play, healthy lifestyles and character; and

WHEREAS: Hundreds of young people in our Capital City and the surrounding areas are served, annually, by the Salvation Army Boys & Girls Clubs which are a part of a nationwide movement that annually serves over two million children and teens; and

WHEREAS: Boys & Girls Clubs help ensure our young people have a safe, positive, and supportive place to spend time and provide quality youth development programming.

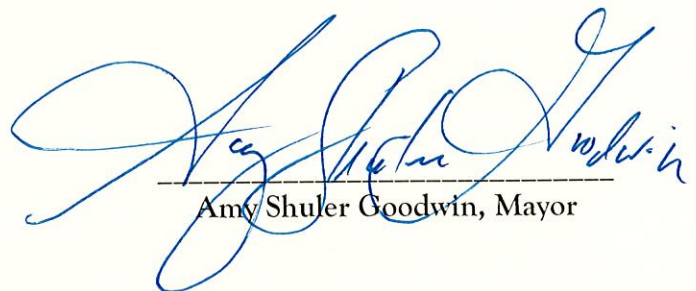
NOW THEREFORE, I, Amy Shuler Goodwin, Mayor of the City of Charleston, do hereby designate June 25 – July 1, 2022, as the

BOYS & GIRLS CLUB WEEK

In the City of Charleston and encourages all citizens to commit to bringing greater awareness to programming and available resources for our young people.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 21st day of June 2022.





Amy Shuler Goodwin, Mayor

**EXECUTIVE DEPARTMENT
CITY OF CHARLESTON
PROCLAMATION**

- WHEREAS:** The health and safety of all citizens in Charleston is important to the happiness, prosperity and well-being of our families, communities and economy; and
- WHEREAS:** Currently, more than 40,000 West Virginians are living with Alzheimer's disease, and more than 107,000 family and friends are providing care with over 80,000 residents providing 135 Million hours of unpaid care annually; and
- WHEREAS:** Alzheimer's disease is a progressive brain disease that slowly deteriorates brain cells, affecting one's reasoning skills and abilities to perform simple tasks, ultimately leading to memory loss—robbing men and women of their cherished memories; and
- WHEREAS:** Organizations such as the Alzheimer's Association, West Virginia Chapter provide education and support to those facing Alzheimer's and other dementias throughout our community, including those living with the disease, caregivers, health care professionals and families; and
- WHEREAS:** It is important to recognize the stories, strengths, and efforts of the individuals, families, friends, and caregivers impacted by Alzheimer's disease, as well as the tireless work of the researchers who are seeking a cause and cure.

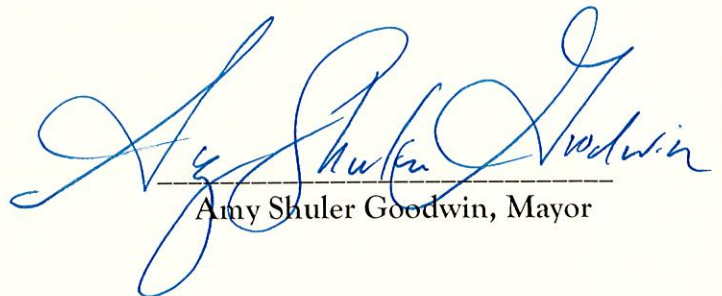
NOW THEREFORE, I, Amy Shuler Goodwin, Mayor of the City of Charleston, do hereby proclaim June 2022, as

ALZHEIMER'S & BRAIN AWARENESS MONTH

in Charleston, West Virginia and encourage all citizens to value mental health, brain health, and the ability of residents to age in place.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 21st day of June 2022.





Amy Shuler Goodwin, Mayor

Resolution No. 674-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 674-22 – Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of \$84,000 and administer any funds awarded. These funds will provide partial salary reimbursement for the three Charleston Police Department Prevention Resource Officers (PRO) assigned to George Washington High School, West Side Middle School and Capital High School. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed by the police department's salary and wage budget.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of \$84,000 and administer any funds awarded. These funds will provide partial salary reimbursement for the three Charleston Police Department Prevention Resource Officers (PRO) assigned to George Washington High School, West Side Middle School and Capital High School. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed by the police department's salary and wage budget.

Resolution No. 675-22

Introduced in Council:

June 21, 2022

Adopted by Council:

Introduced by:

Joseph Jenkins

Referred to:

Finance

Resolution No. 675-22 – Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with the Kanawha County Board of Education for continued placement of three Prevention Resource Officers at schools in Charleston – George Washington High School, West Side Middle School and Capital High School.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into a Memorandum of Understanding with the Kanawha County Board of Education for continued placement of three Prevention Resource Officers at schools in Charleston – George Washington High School, West Side Middle School and Capital High School.

Resolution No. 676-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 676-22 – Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of \$112,000 and administer any funds awarded. These funds will provide partial salary reimbursement for four members of the Metropolitan Drug Enforcement Network Team (MDENT) from Charleston, Nitro, St. Albans and South Charleston Police Departments. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed into each of those city's police salary and wage budgets.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of \$112,000 and administer any funds awarded. These funds will provide partial salary reimbursement for four members of the Metropolitan Drug Enforcement Network Team (MDENT) from Charleston, Nitro, St. Albans and South Charleston Police Departments. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed into each of those city's police salary and wage budgets.

1 Resolution No. 677-22

2
3 Introduced in Council:

Adopted by Council:

4
5 June 21, 2022

6
7 Introduced by:

Referred to:

8
9 Joseph Jenkins

Finance

10
11
12 Resolution No. 677-22 - Authorizing the Mayor or City Manager to grant American Rescue Plan
13 Act ("ARPA") funds to Fund for the Arts in the total amount of \$112,000 and to execute
14 appropriate agreements establishing the terms and conditions imposed upon the recipient,
15 including ongoing duties for reporting on expenditure and programmatic activities and binding
16 covenants to spend funds in accordance with the purposes for which such funds were granted.

17
18 Be it Resolved by the Council of the City of Charleston, West Virginia:

19
20 That the Mayor or City Manager is authorized to grant American Rescue Plan Act ("ARPA")
21 funds to Fund for the Arts in the total amount of \$112,000 and to execute appropriate
22 agreements establishing the terms and conditions imposed upon the recipient, including
23 ongoing duties for reporting on expenditure and programmatic activities and binding covenants
24 to spend funds in accordance with the purposes for which such funds were granted. The grant
25 is approved in full or in part based upon information submitted to the City in the grant
26 recipient's City of Charleston ARPA grant application, attached hereto as Exhibit A. The City
27 Manager is directed to withhold grant funding to the grant recipient should the City Manager
28 determine that the grant recipient has failed to adhere to the obligations established in the
29 agreement or fails to adhere to applicable local, state, or federal law.

Notice of Award

Beneficiary Name: Fund for the Arts Inc	Name of Awarding Agency: City of Charleston, West Virginia
Beneficiary's UEI Number: TP8JKMG2WHD1	Award Date: 6/6/2022
Program Name: Investing in the Future	Award Period of Performance: 6/6/2022 – 12/31/2024
Award Program Description: The City of Charleston Non-Profit Fund addresses the financial and programmatic needs of Non-Profit Organizations in the community, as required to implement programming consistent with the economic, social, and health goals identified by the City.	
Total Amount of Funds Obligated by this Agreement: \$112,000	Total Amount of Funds obligated to the Beneficiary: \$112,000
Terms & Conditions: All requirements imposed by the City of Charleston, West Virginia (the City) on the Beneficiary so that the award is used in accordance with the City of Charleston guidance, U.S. Treasury guidance, and the terms and conditions of the award of City of Charleston Non-Profit Fund.	
Incorporated Documents: 1. Notice of Award 2. Beneficiary Agreement 3. Exhibit A – Scope of Work 4. Exhibit B – Project Budget	

Beneficiary Agreement

Minimum Requirements include:

- All requirements imposed by the City of Charleston, West Virginia (the City) on the Beneficiary so that the award is used in accordance with the City of Charleston guidance, U.S. Treasury guidance, and the terms and conditions of the award of City of Charleston Non-Profit Fund.
- Any additional requirements imposed by the City on the Beneficiary, including identification of any performance requirements.
- Terms and conditions concerning the closeout the award.

THIS AGREEMENT is made by and between the City of Charleston, West Virginia (the City), with offices located at 501 Virginia St. E., WV 25301, Fund for the Arts Inc, (hereinafter referred to as “Beneficiary”) with administrative offices at 803 Quarrier St. Suite 100, Charleston, WV 25301 (each being at times referred to as “Party” or “Parties”).

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide for the award of financial assistance by the City to assist the Beneficiary with funding such necessary expenses to implement programming consistent with the economic, social, and health goals identified by the City, as are described in this Agreement and the attachments hereto, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the City and the Beneficiary agree as follows:

Section 1: Compliance

- A. Beneficiary acknowledges that Fund payments made by the City to the Beneficiary are not considered to be grants but are “other financial assistance”. The Beneficiary agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. The Beneficiary further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. During the performance of this Beneficiary Agreement, the Beneficiary shall comply with all applicable federal laws and regulations, including but not limited to the provisions in this Agreement and the required federal provisions. Violations of law will be referred to the proper authority in the applicable jurisdiction.
- C. Contracts awarded by the Beneficiary under this Agreement shall comply with all applicable Federal laws, regulations, executive orders, Department of Treasury policies, procedures, and directives. With respect to any conflict between such federal requirements and the terms of the contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control. The Beneficiary must comply with all applicable Federal law, regulations, executive orders, Department of Treasury policies, procedures, and directives.

Section 2: Term

- A. This Agreement shall begin upon the date last executed by the Parties (the “Effective Date”) and shall remain in effect until March 31, 2027 (the “Expiration Date”) unless terminated earlier as defined in Section 6.
- B. The Beneficiary shall be eligible to receive funding for eligible and allowable costs (as defined in Section 3) through December 31, 2024 (the “Covered Period”).

Section 3: Funding

- A. Subject to the terms and conditions of this Agreement, the City shall pay the Beneficiary, on an advance payment basis, up to a maximum of \$112,000 to implement the projects and/or activities described in the Scope of Work (SOW). It is understood and agreed that any additional funds necessary in connection with the projects and/or activities described in the SOW above and beyond this amount are the sole responsibility of the Beneficiary.

Section 4: Duplication of Benefits

- A. The Beneficiary hereby certifies and affirms that the projects and/or activities to be funded under this Agreement shall not result in a prohibited duplication of the benefits obtained by the Beneficiary, any sub-sub recipient (as defined in 2 C.F.R. §§ 200.92-93), or any individual or entity that is a beneficiary of such projects and/or activities from other programs (such as the American Rescue Plan Act), other local, state, or federal funding sources (e.g. the Stafford Disaster Relief and Emergency Assistance Act, etc.), private insurance, or other private organizations. It is the Beneficiary’s responsibility and obligation to implement processes to ensure compliance with this paragraph. The Beneficiary acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the City. In the event that the Beneficiary recovers costs incurred under this Agreement and reimbursed by the City from another source, the Beneficiary shall reimburse the City for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Beneficiary to the date repayment is made to the City by the Beneficiary.

Section 5: Reporting Requirements

- A. Performance Reports. Reports are due to the City no later than five (5) days after the end of each period listed below (until all funds are expended and project implementation goals are met):
 - June 30, 2022, due July 5, 2022
 - September 30, 2022, due October 5, 2022
 - December 31, 2022, due January 5, 2023
 - March 31, 2023, due April 5, 2023
 - June 30, 2023, due July 5, 2023
 - September 30, 2023, due October 5, 2023
 - December 31, 2023, due January 5, 2024
 - March 31, 2024, due April 5, 2024
 - June 30, 2024, due July 5, 2024
 - September 30, 2024, due October 5, 2024
 - December 31, 2024, due January 5, 2025

- March 31, 2025, due April 5, 2025
- June 30, 2025, due July 5, 2025
- September 30, 2025, due October 5, 2025
- December 31, 2025, due January 5, 2026
- March 31, 2026, due April 5, 2026
- June 30, 2026, due July 5, 2026
- September 30, 2026, due October 5, 2026
- December 31, 2026, due January 5, 2027

The report shall appear on the Beneficiary's letterhead and outline progress of items to date.

- B. Final Report. Within twenty (20) days following the close of project implementation by the Beneficiary under this Agreement, the Beneficiary shall submit a "Final Project Report," in which the Beneficiary shall describe the status of the Beneficiary's implementation of all projects and/or activities undertaken under this Agreement.

Section 6: Termination

- A. Termination for Cause. the City may terminate this Agreement for cause at any time if any covenant, warranty, or representation made by the Beneficiary in this Agreement, the SOW, or in any application materials for funding submitted to the City in connection with this Agreement shall at any time be false or misleading in any respect, or in the event of the failure of the Beneficiary to satisfactorily perform any task, deliverable, or activity under this Agreement or otherwise comply with the terms and conditions of this Agreement. Prior to termination, the City shall provide fifteen (15) days written notice of its intent to terminate and shall provide the Beneficiary an opportunity to consult with the City regarding the reason(s) for termination.
- B. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon providing the non-terminating Party with ten (10) days written notice.
- C. Effect of Termination. Costs incurred by the Beneficiary after termination of this Agreement shall not be reimbursable unless expressly authorized by the City prior to the effective date of termination.

Section 8: Contracting

- A. Contracting. In procuring goods and services under this Agreement, the Beneficiary shall use its own documented procurement procedures, provided that such procurements conform to applicable state and federal law.

The Beneficiary may Contract work under this Agreement as necessary without the prior written consent of the City, subject to the any conditions or limitations imposed by applicable state and federal law. Regardless of any Contract, the Beneficiary is ultimately responsible for all projects, programs, activities, and services undertaken by Contractors under this Agreement. The Beneficiary agrees to be responsible for the fulfillment of all work elements included in any Contract and agrees to be responsible for the payment of all monies due under any Contract. It is understood and agreed by the Beneficiary that the City shall not be liable to any Contractor for any expenses or liabilities incurred under the Contract and that the Beneficiary shall be solely liable to the Contractor for all expenses and liabilities incurred under the Contract.

For all procurements of \$10,000 or above, advice should be sought from the City of Charleston Finance Department, who must be notified of the intention to carry out the procurement at the earliest possible opportunity, and in any case prior to advertising or issuing a Request for Proposals.

Section 9: Closeout

- A. The City will close out this Agreement when it determines that all activities and all applicable administrative actions have been completed. Unless an extension is approved by the City, within twenty (20) calendar days after the Expiration Date, the Beneficiary must submit any outstanding reports, including the Final Project Report, as well as any required reporting on awards.

On behalf of the Beneficiary, I understand and agree to the foregoing terms and conditions of the award of a portion of the financial assistance obligated by the City under the City of Charleston Non-Profit Fund, and hereby certify my authority to execute this agreement on Beneficiary's behalf.

Name

Title

Date

Phone Number

Signature

Exhibit A – Scope of Work

With the funding received from the City, The Fund for the Arts Inc. will continue to provide the social, cultural, and economic services necessary to help recover the tourism, travel, and hospitality industries within the City. This includes the production of the Wine and Jazz Music Festival, which now coincides with FestivALL Charleston. In addition to providing employment opportunities to local and national musicians, the Festival injects more than \$100,000 into the local economy annually. With the funds provided, the Beneficiary intends to resume the production of the Wine and Jazz Music Festival in June 2022, after having to forego the in person event in 2020 and 2021 due to COVID-19.

The restrictions placed on the Beneficiary in producing the Wine and Jazz Music Festival during 2020 and 2021 severely impacted its ability to maintain its mission and annual giving to its 12 member art groups. The funding received will additionally serve to recompense this limitation in financial support.

The Beneficiary projects that it will require a period of one year to implement and achieve the goals of the program.

The objectives to be tracked through performance reports include:

- Gross ticket sales (# of 2022 individual tickets sold; # of 2022 individual tickets sold)
- Net increase in ticket sales compared to 2019 (% increase in ticket sales)
- Amount of financial assistance provided to member art groups (\$ given during 2022)

Exhibit B – Project Budget

Purpose	Amount
2020 Funding Loss Replacement	\$44,000
2021 Funding Loss Replacement	\$58,000
2022 Wine and Jazz Music Festival Marketing & Promotional Materials	\$10,000
Total Program Cost	\$112,000

Risk Assessment Tool	
Grantee Name:	Fund for the Arts
Grant Program Name:	Art Show Promotion and Revenue Replacement
Grant #:	
Grant Amount:	\$112,000
Grant Period:	June 6, 2022 - December 31, 2026
Monitor Period:	June 6, 2022 - December 31, 2026
Date of Review:	8-Apr-22
Date of Last Review:	1-Jun-22

#	Question	Points	Assessment -- Yes; No; N/A (select from drop down)	Score (1=yes)	Comments
1	Has the applicant managed federally funded grant programming in the last 24 months?	1	No	0	Does receive multiple state level grants
2	Was the applicant subject to a financial statement audit in the last 24 months, and had no findings? If any findings, list the number and details.	1	No	0	
3	Was the applicant free of any audit findings received within the past 5 years? If findings were made, how many, and nature of finding(s).	1	N/A	0	
4	Does the applicant have the capacity to manage and implement federal regulations including 2 CFR 200 and other specific federal regulations pertaining to items such as (segregation of duties, cash handling, contracting procedures, and personnel and travel policies). (2 CFR 200.303 - Internal Controls)	1	Yes	1	Confirmed that the mandatory policies are maintained by the organization
5	Have key staff been instrumental in the funds process or generally remained stable in the past year?	1	Yes	1	Insturmental staff in place since fall 2020
6	Has the applicant's financial or grant management system (technology or other) remained unchanged in the last 12 months? If changes were made, please explain in the comments section.	1	Yes	1	
7	Does the applicant's accounting system segregate expenditures by funding source? (Per 2 CFR 200.302, system must be sufficient to permit the preparation of reports and tracing of funds.)	1	Yes	1	
8	Has SAM.gov been checked to determine that the applicant is not debarred, suspended, or does not show delinquent federal debt in Sam.gov? (2 CFR 200.214)	1	Yes	1	
9	Does the applicant have documented procurement policies in alignment with the procurement regulations of 2 CFR Part 200?	1	Yes	1	
10	Does the applicant maintain central file locations for all grants, loans or other types of financial assistance?	1	Yes	1	
11	Does the applicant have a Conflict-of-Interest Policy in place and is it documented?	1	Yes	1	
12	Does (or did) the applicant require, collect and document any expenditure/financial reports from subrecipients (from other current or past), and if so how frequently?	1	N/A	0	No Subrecipients
13	Has the applicant been consistent/timely with prior program reporting requirements?	1	N/A	0	Does not receive any federal grants requiring reporting
14	Have the applicant's financial reports for any previous programming been adequate, accurate and on time?	1	N/A	0	Does not receive any federal grants requiring reporting

Available Total 14

Total Risk Score

8

LEGEND

High Risk	Less than	4
Medium High	Between	4-7
Medium Low	Between	8-11
Low Risk	Greater than	11

Notes	The organization has not recently received or managed a federal grant. Does manage state level grants.
Concerns	Organization will be managing multiple scopes of work. Will need to be dilligent about differentiating costs.
Recommendations	Recipient should provide all invoices and receipts along with monthly reimbursement requests. All procurements for services or construction over \$10,000 should be coordinated with City personnel.

General Information

Name of Project/Program: Replace Lost Revenue to the Wine and Jazz Music Festival

Organization Name: Fund for the Arts

Address: 803 Quarrier St. Suite 100 Charleston WV, 25301

Primary Contact Person: Alex Mahaffey

Title: Executive Director

Phone: 681-710-4010

Email: amahaffey@fundfortheartswv.org

Federal Tax ID: 55-0614854

If Applicable DUNS #: 949397228

List the organization's owner(s), Board of Directors, senior staff members, and other key members:

Administrative Staff:

Alex Mahaffey, Executive Director

Board of Directors:

Dennise Smith, Craig Beeson, Margaret Lieberman, Kristen Babiak, Alan Kuhlman, Jennifer Hughes, Sarah Wright Magnus, Craig Kay, Jill McIntyre, Priya Arora, Brett Staples, Virginia Copley, Barry Kadel, Mallory Burka, Lynn Cvechko, Stuart Frazier, Martha Hall, Candice Harlow, Cathryn Harris, Claudette Hudson, Grace Hurney, John Hussell IV, Scot D. Jackson, Trip King, Hilary Malone, Edd McDevitt, Nora Myers, Melissa Orders, Jen Pharr, Richard Sinclair, Meg Stallard, Charles Stebbins, Jim Strawn, Zach Treister, Andrew Weber

Describe any partner organizations, their roles, and your relationship with them:

Fund for the Arts (the Fund) partners with a wide variety of businesses, non-profits, foundations, and government entities each year to continually deliver our mission of supporting the performance and visual arts sector. We work with firms like Jackson Kelly; Spilman Thomas & Battle, PLLC; Gray Griffith and Mays; and Suttle and Stalnaker to deliver the highest level of programming during our fundraising events. These businesses, many of which have received awards for their support of non-profits and charitable work, support the Fund through sponsorships and in-kind contributions.

The Wine and Jazz Music Festival has, in recent years, become the anchor event of FestivAll Charleston. The Fund and FestivAll use a cross-promotional strategy to help boost attendance and community awareness of events during the month of June. This partnership has proved to be mutually beneficial and encourages the economic growth of the arts throughout the Kanawha Valley.

Each year we ask our member art groups to support the Fund's fundraising initiatives through a variety of ways. Some of which include the following: volunteering, purchasing tickets, social media and email marketing, and circulating print materials.

Our member arts groups are:

1. Clay Center for the Arts and Sciences
2. Charleston Ballet
3. Chamber Music Society of Charleston
4. Charleston Civic Chorus
5. Charleston Chamber Music Society
6. Charleston Light Opera Guild
7. FOOTMAD (Friends of Old-Time Music and Dance)
8. Kanawha Players
9. River City Youth Ballet Ensemble
10. West Virginia Symphony Orchestra
11. West Virginia Youth Symphony
12. womanSong

Annually, the Fund applies to the City of Charleston, The Daywood Foundation, the Cecil I. Walker Foundation, the W.E. Stone Foundation, and the CRC Foundation. Funding received by the City of Charleston and the previously mentioned foundations ensures the vitality and stabilization of our member art groups.

Attach any additional information such as bids, concepts, designs, letters of support, etc. If submitting electronically the documents must be in PDF, Excel, or Word format and total file size must not exceed 10 megabytes.

Budgetary Overview

Total Funds Requested: \$112,000

Total Program/Project Cost: \$172,000

Total Annual Budget: \$257,400 (See Exhibit 3)

1. Provide a narrative overview/summary of the request.

This request has two components:

1. Provide marketing support for the 2022 Wine and Jazz Music Festival
2. Replace revenue lost in 2020 and 2021 due to the cancellation of the Wine and Jazz Music Festival so the Fund may ensure future financial stability of the Festival and the organization itself

Fund for the Arts produces The Wine and Jazz Music Festival ("Festival"), which now coincides with FestivAll Charleston. Often referred to as the "best summer party in Charleston," this popular event provides employment opportunities to local and national musicians. The Festival injects more than \$100,000 into the local economy. Additionally, the Festival provides a platform for West Virginia wineries, local restaurants, and artisans to showcase their goods and services. In 2019 the Fund sold tickets to Festival participants from thirteen states, creating a substantial opportunity for vendors to acquire a larger reach and customer base.

1a. Purpose and anticipated outcomes

The Fund intends to resume the production of the Wine and Jazz Music Festival in June 2022. After selling 2,714 tickets in 2019 we anticipate ticket sales to be approximately the same or more in the coming year. The Fund showcases over 45 local and national musicians each year. In addition, the Fund provides an opportunity for West Virginia wineries, local restaurants, artisans, and businesses to showcase their goods and services (see Exhibit 2).

1b. Individuals, entities, or communities served

The Festival serves Charleston and the surrounding areas. Festivalgoers come from across the country to enjoy West Virginia wine and music. Attendees inject more than \$100,000 into the local economy through their purchases within and surrounding the Festival.

Additionally, the Festival highlights the work of local jazz musicians, many of whom are people of color and underrepresented in the local arts community. For many of these musicians, the Festival is the largest audience they perform to all year.

Finally, proceeds from the Festival are used to support the Funds 12 member groups. The money raised provides important operating support allocations to these groups, which in turn offer hundreds of performances to the citizens of the Kanawha Valley.

1c. How the pandemic has necessitated this request

Due to COVID-19 restrictions on gatherings, the Fund has been unable to hold an in-person Festival for two consecutive years. Based on net income figures from 2019, the Fund has lost a total of \$102,000 in fundraising revenue. It is anticipated that the absence of the Festival for an extended period of time will necessitate the need to increase the amount of dollars spent on marketing and advertising. These funds will be used to ensure that past and prospective attendees know the Festival will be held in person in 2022. It will also encourage local sponsors and vendors to participate at the same level they did in 2019.

1d. Amount of any estimates and bids received to date

The Fund is requesting a total of \$112,000. Of that, \$102,000 is to recoup lost revenue and \$10,000 to cover marketing and advertising expenses for the Festival. The loss of revenue from the Festival for two consecutive years forced the Fund to dip into cash reserves in order to maintain allocations throughout 2021.

1e. Timeline for project completion (June 2022)

The Festival will take place on Saturday, June 25, 2022

Program/Project Details*** 1. The funding will be used to:**

- ☐ Start a new program/project
- ☒ Maintain an existing program/project
- ☐ Expand an existing program/project

*** 2. If funded, will the program/project be completed within FY 2022?**

- ☒ Yes
- ☐ No

3. Which eligible ARPA Expenditure Category does this program/project represent? Please check all that apply:

- ☐ Public Health
- ☒ Negative Economic Impacts
- ☒ Services to Disproportionately Impacted Communities
- ☐ Premium Pay
- ☐ Infrastructure
- ☒ Other

4. Briefly describe the program/project funds are being requested for:

This request has two components:

1. Provide marketing support for the 2022 Wine and Jazz Music Festival
2. Replace revenue lost in 2020 and 2021 by the cancellation of the Wine and Jazz Music Festival to ensure the future financial stability of the Festival and Fund for the Arts

5. Describe the need for this program/project:

The Wine and Jazz Music Festival serves as the principal fundraiser for the Fund. The money raised provides vital operating support for our 12-member art groups, many of which would not be operational without the monetary support the Fund annually allocates. Additionally, the Fund provides paid work for local performing artists and a large platform for West Virginia wineries, restaurants, and artisans to showcase their goods and services.

Due to COVID restrictions, the Fund shifted the 2020 Festival to an online format, with little success. The following year, in 2021, the University of Charleston announced it would not permit outside events to take place on its campus. Without a proper venue and limited time for planning, the Board of Directors decided the Fund would not be able hold the Festival for a second consecutive year. Normally, the in-person festival generates more than \$50,000 in net income annually. Currently, the Fund is exhausting dwindling cash reserves to maintain the same level of support provided to member groups pre-pandemic.

The Wine and Jazz Music Festival is a driving economic force for the City of Charleston and surrounding areas. The loss of the Festival for two consecutive years has negatively impacted individual artists, wine makers, local hotels, and restaurants. Throughout the lockdown in 2020 we saw an increase in people turning to local artists, musicians and artisans for entertainment and goods. Now, more than ever, we need to support those

artists by getting them back on a platform where they can thrive.

6. List other Charleston organizations in Charleston that address this need:

There is no other organization in the area putting on an event like the Wine and Jazz Music Festival or providing unrestricted operating support allocations to performing arts organizations in Charleston.

7. Describe the level of collaboration with other organizations on this program/project:

The Fund collaborates with a multitude of organizations, companies, individuals, and other service providers to produce the Wine & Jazz Music Festival. The City of Charleston has been a long-time supporter of the Fund. In recent years, the Festival has become the culminating event of FestivAll Charleston. All 12 of our member art groups provide volunteers and social media marketing. The fund plans to work with the same, if not more, of the businesses and sponsors as it did in 2019. A list of the 2019 businesses and sponsors is attached (see Exhibit 2).

8. How will duplication of services be prevented?

The Wine and Jazz Music Festival attracts patrons from across the country. Regionally, the Festival is one of few of its kind and there is no other festival in the state of West Virginia of its size or offering.

Program Requirements and Objectives

1. Identify the target recipients of proposed services. Specify the number of City residents the program will serve during the fiscal year and explain the basis upon which this number is calculated.

Target recipients of the Festival are residents of Charleston and the surrounding areas, local businesses, artists, and artisans. We anticipate serving approximately 3,000 attendees, 10 musical acts (comprised of 45 individual musicians), and utilizing over 70 vendors, businesses, city services, and local resources to produce the Festival.

2. List any eligibility requirements the program has with respect to age, gender, income, or residence.

Attendees must be 21+ to drink, however, all are welcome to come and enjoy the music and vendors.

3. If this is a continuing activity, describe a measurable outcome of the previous year's work regardless of funding source.

In 2019 we sold a total of 2,714 tickets including 1,654 individual tickets and 1,060 volunteer and sponsorship tickets. We will measure the success of the Festival in 2022 based on ticket sales. In 2020 the virtual festival did not have a ticket sales component and the in-person Festival was not held in 2021.

4. If this is a new program describe two anticipated measurable outcomes for the proposed program.

N/A

Budget

*** 1. Has the organization received funding from the City of Charleston in the past for a similar program/project?**

No

2. Has the organization requested funding from other Federal, State, or Local government entities for any program/project support related to COVID-19?

No

4. List any other Federal, State, Local, or private funding or grant awards received in the last three years and the amount and status of each award.

The Fund receives a variety of contributions from state, local and private sources Please see Exhibit 5-7 for a list of all 2020 and 2021 donations.

5. Briefly summarize project revenues and expenses related to this request. This should coincide with the budget worksheet.

The 2019 Wine & Jazz Music Festival (the last year we were able to have a full-scale fundraising event prior to the pandemic) was used as a baseline for calculations. In 2019, after all expenses, the Fund generated \$58,000 in net profits from the festival. In 2020, the Fund was unable to have the Festival and instead held a virtual event, only generating \$14,000 in net profits. In 2021, the Fund was unable to host the Festival due to the continued pandemic resulting in \$0 in net profits. In 2022, the goal is to return to pre-pandemic levels and earn \$58,000 in net profits. In summary, the numbers are as follows:

Budget

2019: \$58,000

2020: \$58,000

2021: \$58,000

Total: \$174,000

Actual

2019: \$58,000

2020: \$14,000

2021: \$0

Total: \$72,000 Difference: \$102,000

Therefore, this request will recoup \$102,000 that we have lost due to the pandemic. In addition to this amount, we expect to need an additional \$10,000 for marketing expenses to raise awareness that the festival has returned and to promote it accordingly. Thus, our total request is:

\$102,000 + \$10,000 = \$112,000

6. If this request is not fully funded, what adjustments to the program/project is the organization prepared to make?

If this request is not funded the Fund will be forced to scale back the amount of allocations awarded to our 12 member art groups. In addition, we will have to eliminate the marketing and advertising budget for the 2022 Festival. This directly impacts ticket sales and our ability to secure large sponsorships.

7. Describe the plan for sustainability of the program/project or initiative after the requested award has been exhausted

The Wine and Jazz Music Festival has been a long-standing, well-known Charleston event. Due to COVID-19 complications, the need to recoup our loss of revenue and cushion the current fiscal standing of the Fund has become a concern for the entire board of directors. If awarded, this grant will enable the Fund to financially get back on track to pre-pandemic levels. We will work tirelessly to ensure the future success of the Wine and Jazz Music Festival by utilizing a collaborative approach among local businesses, individuals, and government entities.

8. Briefly describe the organization's fiscal oversight / internal controls to minimize opportunities for fraud, waste, and mismanagement

Suttle and Stalnaker, an independent accounting firm, reviews our books monthly to ensure fiscal reliability. In addition, we have an annual financial review done by local accounting firm Gray Griffith and Mays a.c. We also provide in depth financial documentation to any entity that we request regular funding from.

9. How does your agency plan to separate ARPA funds from other agency funds for purposes of identification, tracking, reporting and auditing?

If awarded, the Fund will instruct our accounting firms to separate the ARPA into its own line item on our monthly financials and restrict the funds so they can only be used for the activities outlined in this request. A report will be requested with detailed explanations of how funds were used.

Requested Budget Worksheet

Revenue Source Projections

List all Estimated Funding for this Program/Project

Proposed City ARPA Funding: \$112,000

Internal Self Funding: \$0

Donations/Other Fundraising: \$60,000

Government Grants Other: \$0

Total Revenue: \$172,000

Expenses Projections

List all Estimated Expenses for this Program/Project

Salaries/Wages

Amount Requested from City: \$0

Amount From Other Sources: \$0

Total Estimated Expenses: \$0

Benefits and Matchings

Amount Requested from City: \$0

Amount From Other Sources: \$0

Total Estimated Expenses: \$0

Program Materials

Amount Requested from City: \$0

Amount From Other Sources: \$0

Total Estimated Expenses: \$0

Marketing

Amount Requested from City: \$10,000

Amount From Other Sources: \$0

Total Estimated Expenses: \$10,000

Supplies

Amount Requested from City: \$0

Amount From Other Sources: \$15,000

Total Estimated Expenses: \$15,000

Other (Negative Economic Impact due to COVID-19)

Amount Requested from City: \$102,000

Amount From Other Sources: \$0

Total Estimated Expenses: \$102,000

Total Expenses

Amount Requested from City: \$112,000

Amount From Other Sources: \$60,000

Total Estimated Expenses: \$172,00

Organizational Details**1. Describe the history of the organization and its current programs and activities.**

Fund for the Arts is a service organization that provides annual operating support to 12 member art groups throughout the greater Kanawha Valley. Founded in 1981 by the joint efforts of the Kanawha Arts Alliance and the then Charleston Chamber of Commerce (now the Charleston Area Alliance), the Fund raises funds from business, foundations, state and local governments, and individuals to provide operating support for our 12 member arts groups.

In addition to the Wine and Jazz Music Festival, the Fund kicked off a smaller but equally successful fundraiser in 2019 known as the Capital Cocktail Classic. Described by *The Charleston Gazette-Mail's* Food Guy as an "upscale pub crawl," the Fund partners with local restaurants to highlight the talents local chef's, mixologists, and others working in the culinary arts.

The Fund also produces a television show through Kanawha County Schools. *Arts A la Carte* highlights local art initiatives throughout the Kanawha Valley. The Fund features our member art groups, new and emerging artists, arts education initiatives, and provides information to the community on how to reach individual artists.

2. Provide the organization's mission statement/purpose.

The mission of Fund for the Arts is to provide "One Gift for all the Arts." We believe that artists and arts organizations enhance the beauty and cultural richness of our community and help drive its economic growth.

3. List any third-party references that can verify the organizations qualification or prior grant experience.

Rhoda Withrow, Fairs and Festival Coordinator (WV Department of Arts, Culture and History)

William Booker, The Daywood Foundation

Pat Walker, The Cecil I. Walker Foundation

COVID-19 Impact

1. Explain the impact of the COVID-19 pandemic and how it relates to your request. For example, reduction in services, closures, increased costs, community impact, etc.

Like many nonprofits, the Fund's 2020/2021 fundraising was drastically affected by the global pandemic. Because of COVID-19 restrictions, the Fund was unable to hold an in-person version of its principal fundraiser, the Wine & Jazz Music Festival for 2020 or 2021. The decrease in revenue totalled \$102,000. This change drastically undermined the Funds ability to maintain our mission and anticipated annual giving to our 12 member art groups. The Fund is hoping to decrease the pandemic's negative financial impact to our art groups through several new initiatives and funding sources, including this grant request. If awarded, this grant would help the Fund bridge the gap during these financially uncertain times and provide necessary support to the member groups as well as enriching cultural experiences to the citizens of Charleston and the surrounding areas.

2. If funds are being requested to replace revenue lost due to COVID-19, provide details, and attach supportive documentation.

The Festival typically generates more than \$50,000 in net revenue annually and injects approximately \$100,000 into the local economy (See Exhibit 4). Additionally, the Festival provides a platform for West Virginia wineries, musicians, local restaurants, and artisans to showcase their goods and services. In 2019 the Fund sold tickets to festival

participants from thirteen states, creating a substantial opportunity for vendors to acquire a larger reach and customer base.

3. If awarded, how will ARPA funding aid in the recovery from the COVID-19 pandemic?

Funding from ARPA will ensure the financial stability of Fund for the Arts and the Wine & Jazz Music Festival. The Festival's financial stability ensures the continuation of an important economic driver; one that puts more than \$100,000 into the local economy annually. More importantly, this funding will ensure there is no interruption or decrease in general operating support allocations provided to the Fund's 12 member art groups. Many of these groups depend on this funding to not only provide high-quality performing arts experiences to the people of Charleston but to survive.

**Fund for the Arts Board of Directors and Executive Committee
as of November 2021**

0	Name	Term Ends	Executive Committee Position
1	Mahaffey, Alexandra	N/A	Executive Director
2	Smith, Dennise	2022	President
3	Beeson, Craig	2022	Executive Vice President
4	Lieberman, Margaret	2023	VP for Campaign
5	Babiak, Kristen	2023	Assistant VP for Campaign
6	Kuhlman, Alan	2021	VP for Festivals
7	Hughes, Jennifer	2023	VP for Allocations
8	Wright, Sarah Mangus	2021	Assistant VP for Allocations
9	Kay, Craig	2023	VP for Foundations and Government
10	McIntyre, Jill	2022	Immediate Past President
11	Arora, Priya	2023	Chair, Individual Artists Initiative
12	Staples, Brett	2022	At Large
13	Copley, Virginia	2023	At Large
14	Kadel, Barry	2021	At Large
15	Burka, Mallory	2023	
18	Cvechko, Lynn	2022	
19	Frazier, Stuart	2023	
20	Hall, Martha	2023	Treasurer
21	Harlow, Candice	2023	
22	Harris, Cathryn	2021	
23	Hudson, Claudette	2022	
24	Hurney, Grace	2022	
25	Hussell, John IV	2023	
26	Jackson, D. Scot	2021	
27	King, Trip	2023	
28	Malone, Hilary	2022	

**Fund for the Arts Board of Directors and Executive Committee
as of November 2021**

2 9	McDevitt, Edd	2022	
3 0	Myers, Nora	2023	
3 1	Orders, Melissa	2022	
3 2	Pharr, Jen	2022	
3 3	Sinclair, Richard	2022	
3 4	Stallard, Meg	2023	
3 5	Stebbins, Charles	2022	
3 6	Strawn, Jim	2023	
3 7	Treister, Zach	2022	
3 8	Weber, Andrew	2021	

Exhibit 2
Wine and Jazz Music Festival
ARPA Grant-City of Charleston

Below is a comprehensive list of vendors, businesses and contracts necessary to produce the Wine and Jazz Music Festival

1. University of Charleston
2. City of Charleston
3. Charleston Area Convention and Visitors Bureau
4. FestivALL
5. KCEAA
6. Kanawha County Parks & Recreation
7. Kanawha Valley Regional Transportation Authority
8. IATSE Local 271
9. WV Alcohol Beverage Control Administration
10. WV Tourism Office
11. 138 individual volunteers
12. Commercial Insurance Services
13. Sound Rental Service, Inc.
14. Batton Hollow Winery, LLC
15. Chestnut Ridge Winery
16. Daniel Vineyards
17. Forks of Cheat Winery
18. Healthberry Farm LLC
19. Kenco Farms
20. Kirkwood Winery
21. Lambert's Vintage Wines
22. Stone Road Vineyard
23. Sweeter Side of the Feud Winery
24. West-Whitehill Winery Ltd.
25. WineTree Vineyards
26. B&C Kettle Corn
27. Creperi Café
28. Dave's Famous T&L Hot Dogs
29. Dem 2 Brothers & A Grill
30. Fatima's Rolled Ice Cream
31. Gil's Pit Beef
32. Just Drinks
33. Lil Bit of Heaven Cupcakes
34. Ms. Groovy's Kitchen
35. Ridgeview BBQ
36. Stella's Italian Café and Boutique
37. Dynamic Physical Therapy
38. McGriff Insurance
39. Audi Charleston
40. BB&T Wealth
41. C&H Taxi

Exhibit 2
Wine and Jazz Music Festival
ARPA Grant-City of Charleston

42. Express Employment Professionals
43. Lewis Glasser PLLC
44. United Bank
45. Woomer, Nistendirk & Associates, PLLC
46. TC Energy Corporation
47. BrickStreet Insurance
48. Thrasher Engineering
49. AARP
50. Capitol Beverage
51. John Empson CPA
52. Spriggs Distributing
53. Dixon Hughes
54. WV American Water
55. Zenergy Cycling
56. Appalachian Power
57. Charleston Marriott Town Center
58. Chase Bank
59. Dream Creative
60. Spilman Thomas & Battle
61. WSAZ
62. WV Radio Corp
63. Bridgeport Equipment
64. Sunbelt Rentals of Charleston
65. UHaul of Charleston
66. Charleston Ballet
67. Charleston Chamber Music Society
68. Charleston Civic Chorus
69. Charleston Light Opera Guild
70. Children's Theatre of Charleston
71. Clay Center's Avampato Discovery Museum
72. Friends of Old Time Music and Dance
73. Kanawha Players
74. River City Youth Ballet Ensemble
75. West Virginia Symphony Orchestra
76. West Virginia Youth Symphony
77. womanSong

FUND FOR THE ARTS, INC.
BUDGET FOR CALENDAR YEAR 2022 - FINAL - APPROVED 12/14/2021

	2019 FULL YEAR ACTUAL	2020 FULL YEAR ACTUAL	1/1 - 10/31/21 PARTIAL YR ACTUAL	2021 FULL YEAR ESTIMATE	2022 FULL YEAR BUDGET
	<i>Pre-COVID</i>	<i>COVID</i>	<i>COVID</i>	<i>COVID</i>	
REVENUES:					
Cash Contributions	187,980	204,768	181,202	200,000	200,000
Bequest from Donor's Estate*	0	0	0	0	0
PPP Loan Forgiveness	0	9,500	9,497	9,497	0
Wine & Jazz Music Festival**	57,885	14,013	0	0	40,000
Capital Cocktail Classic	5,760	0	8,477	8,477	8,500
TGKVF-interest on endowment	8,907	8,896	8,932	8,932	8,900
TOTAL REVENUES	260,532	237,177	208,108	226,906	257,400
LESS: ALLOCATIONS TO ARTS ORGANIZATIONS	157,561	164,998	137,945	165,000	165,000
REVENUES LESS ALLOCATIONS	102,971	72,179	70,163	61,906	92,400
EXPENSES:					
Payroll wages-Exec Dir & Asst	62,015	47,667	0	0	0
FICA (payroll tax)	4,744	3,646	0	0	0
SEP retirement plan	1,833	1,430	0	0	0
Worker's compensation	152	100	0	0	0
Contract labor-Executive Director	0	22,283	61,279	72,420	72,420
Postage	202	55	302	362	400
Dues & publications	506	0	0	0	0
Liability Insurance	2,475	2,496	1,854	1,854	2,500
Office rent - \$350/mo.	5,340	4,200	3,500	4,200	4,200
Office expenses, incl technology	3,058	514	1,057	1,268	1,500
Telephone and data	1,090	1,712	1,140	1,368	1,440
Logo creation & marketing exps	0	0	0	0	0
Bank & PayPal service charges	941	41	291	300	300
Bad debts	0	0	2,500	2,500	0
Miscellaneous	650	1,240	243	300	300
Campaign supplies	100	0	72	100	140
Donor software maintenance	900	3,400	900	900	900
Audit or review and tax services	3,500	9,500	0	2,500	3,500
Accounting services	4,611	10,550	3,000	3,600	3,600
Computer acquisition	0	0	1,200	1,200	0
Less: in-kind expenses incl above	(18,900)	(14,254)			
TOTAL EXPENSES	73,217	94,580	77,338	92,873	91,200
REVENUES LESS EXPENSES***	29,754	(22,401)	(7,175)	(30,967)	1,200
Net Assets, beginning of year***	211,863	241,617			
Net Assets, end of year***	241,617	219,216			
In-kind contributions (not incl above)	18,900	14,254			

*Long-time donor left a % bequest to the Fund, amount estimated at \$40,000, in 2022, not included above
 Bequest is being used as cushion for 2022 Wine & Jazz Music Festival due to uncertainty of holding it.

**Wine & Jazz Music Festival: in person in 2019, virtual in 2020, not in 2021, planning for in person in 2022.

*** Revenues Less Expenses and Net Assets above for 2019 and 2020 agree to financial statements
 reviewed by Gray, Griffith, & Mays, a.c.

FUND FOR THE ARTS INC.

**FINANCIAL STATEMENTS
WITH SUPPLEMENTAL INFORMATION**

FOR THE MONTH ENDED JANUARY 31, 2020



A Professional Limited Liability Company

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The Board of Directors
Fund for the Arts, Inc.
Charleston, WV

Management is responsible for the accompanying financial statements of Fund for the Arts, Inc. (a nonprofit organization), which comprise the Statements of Financial Position as of January 31, 2020 and 2019, and the related Statements of Activities for the months then ended, in accordance with accounting principles generally accepted in the United States of America. We have performed the compilation engagements in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

Management has elected to omit substantially all the disclosures and the statement of cash flows required by accounting principles generally accepted in the United States of America. If the omitted disclosures and the statement of cash flows were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

The accompanying supplementary information contained in pages 7 through 9 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management. The supplementary information was subject to our compilation engagement. We have not audited or reviewed the supplementary information and do not express an opinion, a conclusion, nor provide any form of assurance on such information.

We are not independent with respect to Fund for the Arts, Inc.



Suttle & Stalnaker, PLLC
Charleston, WV
February 24, 2020

The Virginia Center
1411 Virginia Street, East | Suite 100
Charleston, WV 25301

MAIN (304) 343-4126
FAX (304) 343-8008

Towne Square | 201 Third Street
PO Box 149
Parkersburg, WV 26102

MAIN (304) 485-6584
FAX (304) 485-0971

Wharf District
68 Clay Street | Suite C
Morgantown, WV 26501

MAIN (304) 554-3371
FAX (304) 554-3410

suttlecpas.com
cpa@suttlecpas.com

**FUND FOR THE ARTS
STATEMENT OF FINANCIAL POSITION
AS OF JANUARY 31, 2020 AND 2019**

Assets

	2020	2019
Current Assets		
CASH - BB&T CHECKING	\$ 189,607.58	\$ 164,731.38
PLEDGES	37,799.02	39,109.98
ALLOWANCE FOR UNCOLLECTIBLE	<u>(3,500.00)</u>	<u>(3,500.00)</u>
Total Current Assets	223,906.60	200,341.36
Property and Equipment		
FURNITURE & EQUIPMENT	4,470.91	4,470.91
ACCUMULATED DEPRECIATION	<u>(4,470.91)</u>	<u>(4,470.91)</u>
Total Property and Equipment	-	-
Other Assets		
Total Assets	<u>\$ 223,906.60</u>	<u>\$ 200,341.36</u>

Liabilities and Net Assets

	2020	2019
Current Liabilities		
FICA WITHHOLDING	\$ 537.30	\$ 669.20
MEDICARE WITHHOLDING	125.67	156.53
FEDERAL WITHHOLDING TAXES	374.00	751.14
STATE WITHHOLDINGS	176.00	254.00
CHARLESTON SERVICE FEE WITHHELD	<u>13.40</u>	<u>26.40</u>
Total Current Liabilities	1,226.37	1,857.27
Total Liabilities	1,226.37	1,857.27
Net Assets		
WITH DONOR RESTRICTIONS ARTS COUNCIL	8,727.04	8,727.04
WITHOUT DONOR RESTRICTIONS	232,539.35	203,686.85
Change in Net Assets	<u>(18,586.16)</u>	<u>(13,929.80)</u>
Total Net Assets	<u>222,680.23</u>	<u>198,484.09</u>
Total Liabilities and Net Assets	<u>\$ 223,906.60</u>	<u>\$ 200,341.36</u>

See Accountant's Compilation Report

**FUND FOR THE ARTS
STATEMENT OF ACTIVITIES
ENDED JANUARY 31, 2020 AND 2019**

	Jan 31, 2020	Jan 31, 2019
Revenue		
CAPITAL COCKTAIL CLASSIC	\$ -	\$ 500.00
CONTRIBUTIONS	-	4,000.00
2020 CONTRIBUTIONS	750.00	-
RESTRICTED NET ASSETS RELEASED	5,834.48	5,866.80
RESTR'D NET ASSETS RELEASED W&J	<u>4,416.69</u>	<u>-</u>
Total Revenue	11,001.17	10,366.80
Cost of Goods Sold		
ALLOCATIONS	<u>13,793.98</u>	<u>11,788.00</u>
Total Cost of Goods Sold	<u>13,793.98</u>	<u>11,788.00</u>
Gross Profit	(2,792.81)	(1,421.20)
Operating Expenses		
PAYROLL WAGES	4,333.34	5,147.14
EMPLOYEE BONUSES	-	250.00
FICA	331.50	412.88
SEP	130.00	152.78
RENT	350.00	330.00
TELEPHONE	371.49	-
BANK SERVICE CHARGES	25.85	4.00
ACCOUNTING SERVICES	<u>-</u>	<u>345.00</u>
Total Operating Expenses	<u>5,542.18</u>	<u>6,641.80</u>
Operating Income (Loss)	(8,334.99)	(8,063.00)
Other Income		
NET ASSETS RELEASED FOR W&J	(4,416.69)	-
NET ASSETS RELEASED FROM RESTRICTIONS	<u>(5,834.48)</u>	<u>(5,866.80)</u>
Total Other Income	(10,251.17)	(5,866.80)
Change in Net Assets	<u><u>\$(18,586.16)</u></u>	<u><u>\$(13,929.80)</u></u>

See Accountant's Compilation Report

SUPPLEMENTARY INFORMATION

FUND FOR THE ARTS
SUPPLEMENTARY INFORMATION - DETAIL OF FINANCIAL POSITION
AS OF JANUARY 31, 2020 AND 2019

Assets		
	2020	2019
Current Assets		
CASH - BB&T CHECKING	\$ 189,607.58	\$ 164,731.38
PLEDGES 2019	37,799.02	500.00
PLEDGES 2018	-	38,609.98
ALLOWANCE FOR UNCOLLECTIBLE	<u>(3,500.00)</u>	<u>(3,500.00)</u>
Total Current Assets	223,906.60	200,341.36
Property and Equipment		
FURNITURE & EQUIPMENT	4,470.91	4,470.91
ACCUMULATED DEPRECIATION	<u>(4,470.91)</u>	<u>(4,470.91)</u>
Total Property and Equipment	-	-
Other Assets		
Total Assets	<u>\$ 223,906.60</u>	<u>\$ 200,341.36</u>
Liabilities and Net Assets		
	2020	2019
Current Liabilities		
FICA WITHHOLDING	\$ 537.30	\$ 669.20
MEDICARE WITHHOLDING	125.67	156.53
FEDERAL WITHHOLDING TAXES	374.00	751.14
STATE WITHHOLDINGS	176.00	254.00
CHARLESTON SERVICE FEE WITHHELD	<u>13.40</u>	<u>26.40</u>
Total Current Liabilities	1,226.37	1,857.27
Total Liabilities	1,226.37	1,857.27
Net Assets		
WITH DONOR RESTRICTIONS ARTS COUNCIL	8,727.04	8,727.04
WITHOUT DONOR RESTRICTIONS	232,539.35	203,686.85
Change in Net Assets	<u>(18,586.16)</u>	<u>(13,929.80)</u>
Total Net Assets	<u>222,680.23</u>	<u>198,484.09</u>
Total Liabilities and Net Assets	<u>\$ 223,906.60</u>	<u>\$ 200,341.36</u>

See Accountant's Compilation Report

FUND FOR THE ARTS
SUPPLEMENTARY INFORMATION - DETAIL OF ACTIVITIES
FOR THE MONTH ENDED JAN 31, 2020 AND 2019

	Jan 31, 2020	Jan 31, 2019
Revenue		
CAPITAL COCKTAIL CLASSIC	\$ -	\$ 500.00
2019 CONTRIBUTIONS	-	4,000.00
2020 CONTRIBUTIONS	750.00	-
RESTRICTED NET ASSETS RELEASED	5,834.48	5,866.80
RESTR'D NET ASSETS RELEASED W&J	<u>4,416.69</u>	<u>-</u>
Total Revenue	11,001.17	10,366.80
Cost of Goods Sold		
ALLOCATIONS	<u>13,793.98</u>	<u>11,788.00</u>
Total Cost of Goods Sold	<u>13,793.98</u>	<u>11,788.00</u>
Gross Profit	(2,792.81)	(1,421.20)
Operating Expenses		
PAYROLL WAGES	4,333.34	5,147.14
EMPLOYEE BONUSES	-	250.00
FICA	331.50	412.88
SEP	130.00	152.78
RENT	350.00	330.00
TELEPHONE	371.49	-
BANK SERVICE CHARGES	25.85	4.00
ACCOUNTING SERVICES	<u>-</u>	<u>345.00</u>
Total Operating Expenses	<u>5,542.18</u>	<u>6,641.80</u>
Operating Income (Loss)	(8,334.99)	(8,063.00)
Other Income		
NET ASSETS RELEASED FOR W&J	(4,416.69)	-
NET ASSETS RELEASED FROM RESTRICTIONS	<u>(5,834.48)</u>	<u>(5,866.80)</u>
Total Other Income	(10,251.17)	(5,866.80)
Change in Net Assets	<u><u>\$ (18,586.16)</u></u>	<u><u>\$ (13,929.80)</u></u>

See Accountant's Compilation Report

late Range Giving Report

Report Criteria

Date Range	1/1/2020 - 1/13/2021
Campaign	2020 Annual Campaign
Mini Campaign	2020 Campaign Businesses, 2020 Campaign Government, 2020 Campaign Foundations, 2020 Campaign Individuals

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
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Timothy Alderman

929 Ridgemont Road, Charleston, WV 25314

304-342-0041

FFTA1001691

11/20/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$100.00
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Total: \$100.00

Ann C. and Robert O. Orders Jr. Family Foundation

23 Quarry Ridge , Charleston, WV 25304

(304) 344-1350

FFTA1001959

12/17/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$2,500.00
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Total: \$2,500.00

Priya Arora

1388 Bedford Rd, Charleston, WV 25314

(215) 378-6468, priemptive@gmail.com

FFTA1000003

10/12/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$250.00
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Total: \$250.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Associated Properties Holdings, Inc. P. O. BOX 2709, CHARLESTON, WV 25330-2709 FFTA1000655						
	6/30/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$3,000.00
						Total: \$3,000.00
Kristen Babiak D.O. 701 Laurel Road, Charleston, WV 25314 (304) 395-4148, kristen.babiak@gmail.com FFTA1001270						
	12/8/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$500.00
						Total: \$500.00
Craig Beeson Robinson & McElwee PLLC, P. O. Box 1791, Charleston, WV 25326 (304) 415-4160, craigbeeson@yahoo.com FFTA1001375						
	11/5/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$300.00
						Total: \$300.00
Joseph Beeson Esq. P. O. Box 1791, Charleston, WV 25326 (304) 344-5800, jsb@ramlaw.com FFTA1001535						
	11/20/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$1,000.00
						Total: \$1,000.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Stewart Bloom D.D.S.						
1516 Kanawha Blvd., West, Charleston, WV 25302						
304-345-7272, bloomdentistry@aol.com						
FFTA1000322						
	10/5/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$150.00
						Total: \$150.00
Bob Bloom						
1516 Kanawha Blvd. W, Charleston, WV 25302						
304-345-7272						
FFTA1001237						
	10/5/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$150.00
						Total: \$150.00
Briar Mountain Coal & Coke Co.						
P. O. Box 831, Charleston, WV 25323						
304-342-2179						
FFTA1001037						
	12/30/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$1,500.00
						Total: \$1,500.00
Evan Buck						
605 Bendview Drive, Charleston, WV 25314						
FFTA1001433						
	4/9/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$600.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	6/9/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$400.00

Total: \$1,000.00

Mallory Burka

1106 Wilkie Dr., Charleston, WV 25314
mallory.burka@gmail.com
FFTA1001832

10/13/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$25.00
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Total: \$25.00

CAMB Fund (Charleston Arts Music Benefit, a trust fund)

7524 Hasentree Way, Wake Forest, NC 27587
FFTA1000730

12/7/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$400.00
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Total: \$400.00

Carbon Fuel Foundation

Prime One - 500 Va. St.E - 400, Charleston, WV 25301
(304) 340-6975
FFTA1000575

1/13/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$5,834.48
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Total: \$5,834.48

Catherine Caudill

catherinecaudill@gmail.com
FFTA1002034

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	6/8/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$25.00
						Total: \$25.00
Cecil I. Walker Charitable Trust						
Advisory Committee, 1617 Kirklee Road, Charleston, WV 25314						
(304) 949-6400						
FFTA1000721						
	6/1/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$50,000.00
						Total: \$50,000.00
Charleston Area Medical Center						
P. O. Box 1547, Charleston, WV 25326						
304-388-7627						
FFTA1000661						
	3/31/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$5,000.00
						Total: \$5,000.00
Courtland Company, The						
P. O. Box 6865, Charleston, WV 25314						
304-343-1433						
FFTA1001222						
	7/27/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$2,000.00
						Total: \$2,000.00
Crimmins Family Charitable Fund						
51 Abney Circle, Charleston, WV 25314						
FFTA1002062						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
William Davis P. O. Box 2491, Charleston, WV 25329 304-343-2955 FFTA1001717	12/30/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$100.00
	Total: \$100.00					
Daywood Foundation 1600 Chase Tower, 707 Va. St., Charleston, WV 25301 FFTA1001102	4/9/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$2,500.00
	Total: \$2,500.00					
Dearien & Company, AC 405 Capitol Street, Suite 605, Charleston, WV 25301 304-344-2281 FFTA1001045	12/18/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$16,000.00
	Total: \$16,000.00					
David DeBolt 1548 Quarrier St., Charleston, WV 25311 FFTA1001391	11/20/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$350.00
	Total: \$350.00					

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	9/18/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$1,500.00
						Total: \$1,500.00
Lee Diznoff						
Herman & Cormany, CPA, A.C., 8 Capitol Street, Suite 400, Charleston, WV 25301						
(304) 345-2320						
FFTA1001549						
	11/20/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$200.00
						Total: \$200.00
Paula Durst						
512 Linden Road, Charleston, WV 25314						
304-345-0404, pdurst@spilmanlaw.com						
FFTA1000020						
	12/15/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$250.00
						Total: \$250.00
Horace Emery						
S&S-1411 Virginia St., #100, Charleston, WV 25301						
(304) 343-4126						
FFTA1001470						
	6/9/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$1,500.00
						Total: \$1,500.00
C. Gaunch						
524 Woodbridge Drive, Charleston, WV 25311						
304-345-9316						
FFTA1001349						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	4/9/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$400.00
						Total: \$400.00
Gray, Griffith & Mays CPAs, A.C.						
707 Virginia Street, E #400, Charleston, WV 25301						
304-345-9400						
FFTA1000808						
	11/20/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$1,500.00
						Total: \$1,500.00
Martha Hall						
P. O. Box 75184, Charleston, WV 25375						
mmhall@jacksonkelly.com						
FFTA1001836						
	10/2/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$1,000.00
						Total: \$1,000.00
Cathryn Harris						
WVAW, P. O. Box 1906, Charleston, WV 25327						
FFTA1001769						
	11/25/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$150.00
						Total: \$150.00
Jennings Hart						
HealthSmart, 602 Virginia Street, Charleston, WV 25301						
(304) 541-3102, jenningshart2@gmail.com						
FFTA1001499						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Jennifer Hughes Jackson Kelly PLLC, P. O. Box 553, Charleston, WV 25301 (304) 543-9009, jlhughes@jacksonkelly.com FFTA1001798	12/29/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$250.00
						Total: \$250.00
Grace Hurney 1421 Longridge Road, Charleston, WV 25314 (304) 533-4848, gehurney@gmail.com FFTA1000028	12/8/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$50.00
						Total: \$50.00
Stephanie Hysmith 1568 Quarrier St, Charleston, WV 25311 stephaniejhysmith@gmail.com FFTA1000030	11/14/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$200.00
						Total: \$200.00
Jeffferds Corporation P. O. Box 757, St. Albans, WV 25177 304-755-8111 FFTA1000991	12/30/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Other	\$200.00
						Total: \$200.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	11/30/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$500.00
						Total: \$500.00
Barry Kadel 5313 Kanawha Ave, SE, Charleston, WV 25304 (304) 590-2172, barry.kadel@marriott.com FFTA1000034						
	8/24/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$250.00
						Total: \$250.00
Kanawha Roxalana Company 500 Virginia Street East, Suite 3, Charleston, WV 25301 304-348-8334 FFTA1000583						
	12/18/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$250.00
						Total: \$250.00
Kay Casto & Chaney PLLC P. O. Box 2031, Charleston, WV 25327 304-345-8900, mchaney@kaycasto.com FFTA1000948						
	12/30/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$2,500.00
						Total: \$2,500.00
Sandy Kinney Esq. 848 Spring Road, Charleston, WV 25314 (304) 552-1327, skinney@hensonkinneylaw.com FFTA1001869						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	10/12/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$200.00
						Total: \$200.00
Alan Kuhlman 4 Granville Dr, Elkview, WV 25071 (304) 965-6174, alankuhlman1950@gmail.com FFTA1000038						
	10/12/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$250.00
						Total: \$250.00
Jessica Lane Esq. 201 Brooks Street, Charleston, WV 25301 (304) 340-0310, jlane@psc.state.wv.us FFTA1001986						
	12/17/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$500.00
						Total: \$500.00
Sally Love 920 Newton Road, Charleston, WV 25314 FFTA1001867						
	10/29/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$500.00
						Total: \$500.00
Manpower 503 Pennsylvania Avenue, Charleston, WV 25302 304-346-9617 FFTA1001136						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	7/31/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$5,000.00
						Total: \$5,000.00
Edd McDevitt eddmcdevitt@gmail.com FFTA1002040						
	12/30/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$500.00
					Total: \$500.00	
L. Jill McIntyre 247 Pinnacle Drive, Lewisburg, WV 24901 (304) 550-5440, jmcintyre@jacksonkelly.com FFTA1001817						
	8/10/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$5.00
	10/19/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$1,000.00
					Total: \$1,005.00	
Total for each gift type						
Check					\$1,000.00	
Credit Card					\$5.00	
Julia Morton 2011 Kanawha Avenue, SE, Charleston, WV 25304 FFTA1001738						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	12/30/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$30.00
						Total: \$30.00
Moses Toyota-Lexus, LLC						
P.O. Box 111 , 1433 MacCorkle Ave., St. Albans, WV 25177						
FFTA1002061						
	12/18/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$275.00
						Total: \$275.00
Nora Myers						
1507 Susan Rd, South Charleston, WV 25303						
noramyers304@gmail.com						
FFTA1000046						
	10/1/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$200.00
						Total: \$200.00
NTV Assest Management LLC						
216 Brooks Street, Suite 300, Charleston, WV 25301						
304-353-9090						
FFTA1000980						
	5/15/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$400.00
						Total: \$400.00
Melissa Orders						
925 Newton Rd. , Charleston, WV 25314						
FFTA1002035						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	10/19/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$200.00
						Total: \$200.00
Louie Paterno Jr.						
P. O. Box 2791, Charleston, WV 25330						
FFTA1001552						
	6/1/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$100.00
						Total: \$100.00
PeeryTech						
5 Druid Place, Charleston, WV 25314						
304-345-6408, apeery@peerytech.com						
FFTA1000686						
	12/7/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Electronic Funds Transfer (EFT)	\$100.00
						Total: \$100.00
Jen Pharr						
3 Lambert Place, #3 , Charleston, WV 25314						
(304) 615-7574, jenpharr27@gmail.com						
FFTA1002038						
	12/29/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$25.00
						Total: \$25.00
Potesta & Associates, Inc.						
7012 MacCorkle Ave., SE, Charleston, WV 25304						
FFTA1001025						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	1/14/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$500.00
						Total: \$500.00
Terry Ricketts						
1802 Massey Circle, South Charleston, WV 25303						
304-744-7085						
FFTA1001682						
	12/22/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$100.00
						Total: \$100.00
Robinson & McElwee PLLC						
P. O. Box 1791, Charleston, WV 25326						
304-347-8326, jsb@ramlaw.com						
FFTA1000910						
	3/31/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$3,000.00
						Total: \$3,000.00
Rowland Land Company, LLC						
405 Capitol Street, Suite 609, Charleston, WV 25301						
304-346-6671						
FFTA1000771						
	12/30/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$250.00
						Total: \$250.00
K. Richard Sinclair						
P. O. Box 757, St. Albans, WV 25177						
FFTA1001537						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	5/4/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$1,000.00
						Total: \$1,000.00
Dennise Smith Esq.						
931 Churchill Circle, Charleston, WV 25314						
FFTA1001780						
1	6/29/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$50.00
2	7/21/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$50.00
3	8/10/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$50.00
4	8/27/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$50.00
						Total: \$200.00
South Charleston, City of						
P. O. Box 8597, South Charleston, WV 25303						
(304) 744-5301						
FFTA1000800						
	6/29/2020	2020 Annual Campaign /2020 Campaign Government	General	Donation	Check	\$2,500.00
						Total: \$2,500.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Charles Stebbins 1530 Mount Alpha Road, Charleston, WV 25304 (304) 925-1224 FFTA1001309						
	11/5/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$400.00
						Total: \$400.00
TC Energy Corporation 1700 MacCorkle Ave, SE, Charleston, WV 25314 FFTA1001913						
	12/23/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$182.00
						Total: \$182.00
Thomas Combs & Spann PLLC P. O. Box 3824, Charleston, WV 25338-3824 304-414-1800, dthomas@tcspllc.com FFTA1000753						
	11/30/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$1,000.00
						Total: \$1,000.00
S. Trammell 1678 S. City Park Blvd., Alexandria, LA 71301 FFTA1001291						
	4/9/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Credit Card	\$200.00
						Total: \$200.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Tri-State Roofing & Sheet Metal						
P. O. Box 1231, Charleston, WV 25324						
304-755-8135						
FFTA1001075						
	5/22/2020	2020 Annual Campaign /2020 Campaign Businesses	General	Donation	Check	\$1,500.00
						Total: \$1,500.00
W. E. Stone Foundation						
Security National Trust Co., H. Edward Johnson, 1300 Chapline Street, Wheeling, WV 26003						
FFTA1001094						
	2/20/2020	2020 Annual Campaign /2020 Campaign Foundations	General	Donation	Check	\$3,500.00
						Total: \$3,500.00
Stephen Weber						
1306 Mt. Vernon Place, Charleston, WV 25314						
FFTA1001660						
	11/25/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$150.00
						Total: \$150.00
Sarah Wright						
4204 Lancaster Avenue, Charleston, WV 25304						
(304) 542-1261, swright@oldcolony.com						
FFTA1001870						
	11/30/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$200.00
						Total: \$200.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
George Zaldivar 16 Norwood Road, Charleston, WV 25314 304-345-0829 FFTA1001932						
	2/20/2020	2020 Annual Campaign /2020 Campaign Individuals	General	Donation	Check	\$750.00
						Total: \$750.00
Grand Totals by Gift Type						
Check						\$123,621.48
Credit Card						\$3,430.00
Electronic Funds Transfer (EFT)						\$850.00
Other						\$200.00
Grand Totals by Transaction Type						
Donation						\$128,101.48
74 record(s)				Grand Total All		\$128,101.48

** The amounts with two leading asterisks are soft credits, which are not counted towards the totals.

Date Range Giving Report

Report Criteria

Date Range 1/1/2021 - 12/15/2021
 Campaign 2021 Annual Campaign

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
David DeBolt 1548 Quarrier St., Charleston, WV 25311 FFTA1001391	1/28/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$2,500.00

Total: \$2,500.00

Dennise Smith Esq.
 931 Churchill Circle, Charleston, WV 25314
 (304) 881-3242, denniserenee@gmail.com
 FFTA1001780

2/22/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$50.00
4/23/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$50.00
7/23/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$50.00
10/28/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$50.00

Total: \$200.00

Evan Buck
 605 Bendview Drive, Charleston, WV 25314
 FFTA1001433

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
K. Richard Sinclair P. O. Box 757, St. Albans, WV 25177 FFTA1001537	4/6/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$1,000.00
	Total: \$1,000.00					
John Briggs 1348 Morningside Drive , Charleston, WV 25314 FFTA1002064	4/6/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$1,000.00
	Total: \$1,000.00					
L. Jill McIntyre 247 Pinnacle Drive, Lewisburg, WV 24901 (304) 550-5440, jmac@adornhandcrafts.com FFTA1001817	4/6/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$100.00
	Total: \$100.00					
	4/6/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$250.00
	9/22/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$500.00
Total: \$750.00						
Total for each gift type						
Check						\$250.00
Electronic Funds Transfer (EFT)						\$500.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Margaret Lieberman 1410 Watts Street, Charleston, WV 25302 (304) 346-9216, artsfundwv@frontier.com FFTA1001833						
	4/9/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$200.00
						Total: \$200.00
William Davis P. O. Box 2491, Charleston, WV 25329 304-343-2955 FFTA1001717						
	4/23/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$2,500.00
						Total: \$2,500.00
S. Trammell 1678 S. City Park Blvd., Alexandria, LA 71301 (304) 545-0752, swtrammell@suddenlink.net FFTA1001291						
	5/11/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$200.00
						Total: \$200.00
Martha Hall P. O. Box 75184, Charleston, WV 25375 mmhall@jacksonkelly.com FFTA1001836						
	6/1/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$1,000.00
						Total: \$1,000.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Timothy Alderman 929 Ridgemont Road, Charleston, WV 25314 304-342-0041 FFTA1001691						
	6/25/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$125.00
						Total: \$125.00
David Brown 1410 Watts Street, Charleston, WV 25302 304-346-9216, leapinghorse2004@yahoo.com FFTA1001389						
	6/25/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$500.00
						Total: \$500.00
Horace Emery S&S-1411 Virginia St., #100, Charleston, WV 25301 (304) 343-4126 FFTA1001470						
	8/2/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$2,000.00
						Total: \$2,000.00
Thomas Wirts 47 RHL Boulevard, Charleston, WV 25309 304-345-4946 FFTA1001683						
	8/6/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$1,000.00
						Total: \$1,000.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Joseph Beeson Esq.						
P. O. Box 1791, Charleston, WV 25326						
(304) 344-5800, jsb@ramlaw.com						
FFTA1001535						
	8/6/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$1,000.00
						Total: \$1,000.00
Jennings Hart						
HealthSmart, 602 Virginia Street, Charleston, WV 25301						
(304) 541-3102, jenningshart2@gmail.com						
FFTA1001499						
	8/10/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$300.00
						Total: \$300.00
Craig Beeson						
Robinson & McElwee PLLC, P. O. Box 1791, Charleston, WV 25326						
(304) 415-4160, craigbeeson@yahoo.com						
FFTA1001375						
	9/14/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$300.00
						Total: \$300.00
Mallory Burka						
1106 Wilkie Dr., Charleston, WV 25314						
(304) 881-2667, mallory.burka@gmail.com						
FFTA1001832						
	9/14/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$25.00
						Total: \$25.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Alan Kuhlman						
4 Granville Dr, Elkview, WV 25071						
(304) 965-6174, alankuhlman1950@gmail.com						
FFTA1000038						
	9/14/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$200.00
						Total: \$200.00
Brett Staples						
301 McKinley Ave , Charleston, WV 25314						
(304) 543-4327, brett.staples@truist.com						
FFTA1001346						
	9/16/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$250.00
						Total: \$250.00
S. Andrew Weber						
1306 Mt. Vernon Pl., Charleston, WV 25314						
(304) 550-2414, sandrewweber@yahoo.com						
FFTA1002122						
	9/20/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$200.00
						Total: \$200.00
Charles Stebbins						
1530 Mount Alpha Road, Charleston, WV 25304						
(304) 925-1224						
FFTA1001309						
	9/22/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$400.00
						Total: \$400.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Priya Arora 1388 Bedford Rd, Charleston, WV 25314 (215) 378-6468, priemotive@gmail.com FFTA1000003						
	10/12/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$250.00
						Total: \$250.00
Daniel Stone 76 Cedar Street , Unit 1207, Seattle, WA 98121 FFTA1002123						
	10/12/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$130.03
						Total: \$130.03
Bob Bloom 1516 Kanawha Blvd. W, Charleston, WV 25302 304-345-7272 FFTA1001237						
	11/10/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$200.00
						Total: \$200.00
Kristen Babiak D.O. 701 Laurel Road, Charleston, WV 25314 (304) 395-4148, kristen.babiak@gmail.com FFTA1001270						
	11/11/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$489.56
						Total: \$489.56
Claudette Hudson 312 Buchanan, Charleston, WV 25302 (304) 345-4816, claudette@teegraphics.com FFTA1001772						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Sharon Mahaffey 105 Magnolia Lane, Daniels, WV 25832 (304) 674-1200, sharonmahaffey@hotmail.com FFTA1002125	11/29/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$250.00
	Total: \$250.00					
Terry Ricketts 4411 Virginia Street, SE, Charleston, WV 25304 (304) 590-1802, aricketts016@gmail.com FFTA1001952	11/30/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$48.52
	Total: \$48.52					
Robert Orders Jr. 23 Quarry Road, Charleston, WV 25304 304-345-4390 FFTA1001921	11/30/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$97.52
	Total: \$97.52					
Cathryn Harris 405 Rock Holly Road , Charleston, WV 25314-1535 cathairs405@aol.com FFTA1001769	12/1/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$1,000.00
	Total: \$1,000.00					

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	12/1/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Check	\$150.00
						Total: \$150.00

Melissa Orders

925 Newton Rd. , Charleston, WV 25314

(304) 539-0158, melissaorders@suddenlink.net

FFTA1002035

	12/1/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Credit Card	\$244.54
						Total: \$244.54

Grace Hurney

1421 Longridge Road, Charleston, WV 25314

(304) 533-4848, gehurney@gmail.com

FFTA1000028

	12/13/2021	2021 Annual Campaign /2021 Individuals	General	Donation	Electronic Funds Transfer (EFT)	\$200.00
						Total: \$200.00

Grand Totals by Gift Type

Check	\$15,805.03
Electronic Funds Transfer (EFT)	\$950.00
Credit Card	\$2,055.14

Grand Totals by Transaction Type

Donation	\$18,810.17
37 record(s)	Grand Total All \$18,810.17

** The amounts with two leading asterisks are soft credits, which are not counted towards the totals.

Date Range Giving Report

Report Criteria

Date Range	1/1/2021 - 12/15/2021
Campaign	2021 Annual Campaign

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Garner Family Foundation 2635 Fruitville Road , Sarasota, FL 34237 FFTA1002063						
	1/28/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$50.00
						Total: \$50.00
W. E. Stone Foundation Security National Trust Co., H. Edward Johnson, 1300 Chapline Street, Wheeling, WV 26003 FFTA1001094						
	2/5/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$3,500.00
						Total: \$3,500.00
Robinson & McElwee 700 Virginia Street E, Suite 400, Charleston, WV 25301 csb@ramlaw.com FFTA1001904						
	3/19/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$3,000.00
						Total: \$3,000.00
ZMM, Inc. 222 Lee Street, W, Charleston, WV 25302 304-342-0159 FFTA1000680						
	4/6/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$250.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Total: \$250.00						
Encova Foundation of West Virginia						
400 Quarrier Street , Charleston, WV 25301						
FFTA1002065						
	4/23/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$2,500.00
Total: \$2,500.00						
The Elliot Family Foundation						
240 Capitol Street, Charleston, WV 25301						
(304) 344-1623						
FFTA1001145						
	4/29/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$2,500.00
Total: \$2,500.00						
NTV Asset Management LLC						
216 Brooks Street, Suite 300, Charleston, WV 25301						
(304) 353-9090						
FFTA1000980						
	5/26/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$400.00
Total: \$400.00						
Tri-State Roofing & Sheet Metal						
P. O. Box 1231, Charleston, WV 25324						
304-755-8135						
FFTA1001075						
	5/26/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$1,500.00
Total: \$1,500.00						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Cecil I. Walker Charitable Trust						
Advisory Committee, 1617 Kirklee Road, Charleston, WV 25314						
(304) 949-6400						
FFTA1000721						
	6/1/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$60,000.00
						Total: \$60,000.00
Manpower						
503 Pennsylvania Avenue, Charleston, WV 25302						
304-346-9617						
FFTA1001136						
	7/23/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$5,000.00
						Total: \$5,000.00
Jefferds Corporation						
P. O. Box 757, St. Albans, WV 25177						
304-755-8111						
FFTA1000991						
	8/2/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$500.00
						Total: \$500.00
Courtland Company, The						
114 Monongalia Street , Charleston, WV 25302						
(304) 343-1433						
FFTA1001222						
	8/18/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$2,500.00
						Total: \$2,500.00
Charleston Area Medical Center						
P. O. Box 1547, Charleston, WV 25326						
(304) 388-7627, glenn.crotty@camc.org						
FFTA1000661						

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
	8/30/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$5,000.00
						Total: \$5,000.00
Thomas Combs & Spann PLLC						
P. O. Box 3824, Charleston, WV 25338-3824						
304-414-1800, dthomas@tcspllc.com						
FFTA1000753						
	10/12/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$1,000.00
						Total: \$1,000.00
United Bank						
500 Virginia Street East or P.O. Box 393, P.O. Box 393 25322, Charleston, WV 25301						
(304) 348-8400, janet.booker@bankwithunited.com						
FFTA1001163						
	10/28/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$1,000.00
						Total: \$1,000.00
CAMB Fund (Charleston Arts Music Benefit, a trust fund)						
7524 Hasentree Way, Wake Forest, NC 27587						
FFTA1000730						
	10/28/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$420.00
						Total: \$420.00
Kanawha Roxalana Company						
500 Virginia Street East, Suite 3, Charleston, WV 25301						
304-348-8334						
FFTA1000583						
	11/2/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$250.00

Constituent	Date	Campaign	Fund Type	Transaction	Gift Type	Amount
Total: \$250.00						
South Charleston, City of						
P. O. Box 8597, South Charleston, WV 25303						
(304) 744-5301						
FFTA1000800						
	11/17/2021	2021 Annual Campaign /2021 Government	General	Donation	Check	\$2,500.00
Total: \$2,500.00						
VMLY&R Foundation						
250 Richards Road , Kansas City, MO 64116						
(816) 218-6025						
FFTA1002124						
	11/17/2021	2021 Annual Campaign /2021 Foundations	General	Donation	Check	\$250.00
Total: \$250.00						
Dearien & Company, AC						
405 Capitol Street, Suite 605, Charleston, WV 25301						
304-344-2281						
FFTA1001045						
	12/1/2021	2021 Annual Campaign /2021 Business	General	Donation	Check	\$350.00
Total: \$350.00						
Grand Totals by Gift Type						
Check						\$92,470.00
Grand Totals by Transaction Type						
Donation						\$92,470.00
20 record(s)				Grand Total All		\$92,470.00

** The amounts with two leading asterisks are soft credits, which are not counted towards the totals.

1 Resolution No. 678-22

2
3 Introduced in Council:

Adopted by Council:

4
5 June 21, 2022

6
7 Introduced by:

Referred to:

8
9 Joseph Jenkins

Finance

10
11
12 Resolution No. 678-22 - Authorizing the Mayor or City Manager to grant American Rescue Plan
13 Act ("ARPA") funds to Charmco Lofts Limited Partnership in the total amount of \$600,000 and
14 to execute appropriate agreements establishing the terms and conditions imposed upon the
15 recipient, including ongoing duties for reporting on expenditure and programmatic activities
16 and binding covenants to spend funds in accordance with the purposes for which such funds
17 were granted.

18
19 Be it Resolved by the Council of the City of Charleston, West Virginia:

20
21 That the Mayor or City Manager is authorized to grant American Rescue Plan Act ("ARPA")
22 funds to Charmco Lofts Limited Partnership in the total amount of \$600,000 and to execute
23 appropriate agreements establishing the terms and conditions imposed upon the recipient,
24 including ongoing duties for reporting on expenditure and programmatic activities and binding
25 covenants to spend funds in accordance with the purposes for which such funds were granted.
26 The grant is approved in full or in part based upon information submitted to the City in the
27 grant recipient's City of Charleston ARPA grant application, attached hereto as Exhibit A. The
28 City Manager is directed to withhold grant funding to the grant recipient should the City
29 Manager determine that the grant recipient has failed to adhere to the obligations established
30 in the agreement or fails to adhere to applicable local, state, or federal law.

Risk Assessment Tool	
Grantee Name:	Woda Cooper Companies, Inc.
Grant Program Name:	Low Income Housing Development
Grant #:	
Grant Amount:	\$600,000
Grant Period:	June 6, 2022 - December 31, 2026
Monitor Period:	June 6, 2022 - December 31, 2026
Date of Review:	8-Apr-22
Date of Last Review:	1-Jun-22

#	Question	Points	Assessment -- Yes; No; N/A (select from drop down)	Score (1=yes)	Comments
1	Has the applicant managed federally funded grant programming in the last 24 months?	1	No	0	Does receive multiple state and municipal level grants
2	Was the applicant subject to a financial statement audit in the last 24 months, and had no findings? If any findings, list the number and details.	1	No	0	
3	Was the applicant free of any audit findings received within the past 5 years? If findings were made, how many, and nature of finding(s).	1	N/A	0	
4	Does the applicant have the capacity to manage and implement federal regulations including 2 CFR 200 and other specific federal regulations pertaining to items such as (segregation of duties, cash handling, contracting procedures, and personnel and travel policies). (2 CFR 200.303 - Internal Controls)	1	Yes	1	
5	Have key staff been instrumental in the funds process or generally remained stable in the past year?	1	Yes	1	
6	Has the applicant's financial or grant management system (technology or other) remained unchanged in the last 12 months? If changes were made, please explain in the comments section.	1	Yes	1	
7	Does the applicant's accounting system segregate expenditures by funding source? (Per 2 CFR 200.302, system must be sufficient to permit the preparation of reports and tracing of funds.)	1	Yes	1	
8	Has SAM.gov been checked to determine that the applicant is not debarred, suspended, or does not show delinquent federal debt in Sam.gov? (2 CFR 200.214)	1	Yes	1	
9	Does the applicant have documented procurement policies in alignment with the procurement regulations of 2 CFR Part 200?	1	Yes	1	
10	Does the applicant maintain central file locations for all grants, loans or other types of financial assistance?	1	Yes	1	
11	Does the applicant have a Conflict-of-Interest Policy in place and is it documented?	1	Yes	1	
12	Does (or did) the applicant require, collect and document any expenditure/financial reports from subrecipients (from other current or past), and if so how frequently?	1	N/A	0	No Subrecipients
13	Has the applicant been consistent/timely with prior program reporting requirements?	1	N/A	0	Does not receive any federal grants requiring reporting
14	Have the applicant's financial reports for any previous programming been adequate, accurate and on time?	1	N/A	0	Does not receive any federal grants requiring reporting

Available Total 14

Total Risk Score 8

LEGEND

High Risk	Less than	4
Medium High	Between	4-7
Medium Low	Between	8-11
Low Risk	Greater than	11

Notes	The organization has not recently received or managed a federal grant. Does manage several state level grants in multiple states.
Concerns	N/A
Recommendations	Recipient should provide all invoices and receipts along with monthly reimbursement requests. All procurements for services or construction over \$250,000 should be coordinated with City personnel.

American Rescue Plan Act (ARPA) Funding Application

Print

Submitted by:

Status: Open

Priority: Normal

Assigned To: Jonathan Storage

Due Date: Open



American Rescue Plan Act (ARPA)

Funding Application

Non-Profit, Community Groups, Neighborhood Associations, and Businesses

APPLICATION DEADLINE: December 15th 2021

Application must be completed in full to be considered. Applications may be submitted online using this fillable form. But forms and attachments may also be submitted by email to ARPA@cityofcharleston.org or by U.S. Mail to City Manager's Office, 501 Virginia Street East Charleston, WV 25301.

All requests for funding **must be directly related to COVID-19 mitigation or recovery efforts** and must fall within the parameters of at least one of the goals set by the treasury department along with other requirements listed within this application.

GENERAL INFORMATION

*** Name of Project/Program:**

Charmco Lofts

*** Organization Name:**

Charmco Lofts Limited Partnership

*** Address:**

500 S. Front Street, 10th Floor, Columbus, Ohio 43215

*** Primary Contact Person:**

Thomas Simons

Title:

Sr. Vice President

*** Phone:**

6144060562

*** Email:**

tsimons@wodagroup.com

Federal Tax ID:

85-1019988

If applicable: DUNS Number:

118458150

To obtain a DUNS number please visit <https://fedgov.dnb.com/webform> After obtaining, please register your organization with the System for Award Management at <https://sam.gov/SAM/>

List the organization’s owner(s), Board of Directors, senior staff members, and other key members:

Attached is the Organization Chart for Charmco Lofts Limited Partnership (Property Ownership Chart)

Describe any partner organizations, their roles, and your relationship with them:

The Woda Group, Inc is the developer and a related entity to Charmco Lofts Limited Partnership. Jeffrey J. Woda (51%) and David Cooper, Jr. (49%) are Shareholders of The Woda Group, Inc. The resume for Woda Cooper Companies, Inc. ("WCCI")is also attached. WCCI has been developing, constructing, managing and affordable housing in West Virginia since the 1990s. Attached is the Developer Ownership Chart

BUDGETARY OVERVIEW - Must match Budget Worksheet

* Funds Requested	* Total Program/Project Cost	Annual Organization Budget
\$600,000.00	\$13,906,958.00	\$188,278.00

Request Summary

1. Provide a narrative overview/summary of the request.

Topics that may be included but not limited to:

- a. Purpose and anticipated outcomes
- b. Individuals, entities, or communities served
- c. How the pandemic has necessitated this request
- d. Amount of any estimates and bids received to date
- e. Timeline for project completion

Attached you will find a Request Summary Narrative, funding letters, Site Plan and Concept Drawings, SHPO Documents, Market Study, Supportive Services Agreement with Mountain Mission and evidence that Charmco Lofts meets the intent of the Imagine Charleston Comprehensive Plan .

Attach any additional information such as bids, concepts, designs, letters of support, etc. If submitting electronically the documents must be in PDF, Excel, or Word format and total file size must not exceed 10 megabytes.

Program/Project Details

* 1. The funding will be used to:

- ☒ Start a new program/project
- ☐ Maintain an existing program/project
- ☐ Expand an existing program/project

* 2. If funded, will the program/project be completed within FY 2022?

- ☐ Yes ☒ No

If no, when is expected completion year?

2023

3. Which eligible ARPA Expenditure Category does this program/project represent (See <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf> for further details)? Please check all that apply:

*

- ☐ Public Health
- ☒ Negative Economic Impacts
- ☒ Services to Disproportionately Impacted Communities

- ☐ Premium Pay
- ☒ Infrastructure
- ☐ Other

4. Briefly describe the program/project funds are being requested for:

The funds are being requested to offset the increase in construction costs including both labor and materials due to the COVID-19 pandemic to rehabilitate the abandoned historic Charmco building in downtown Charleston to provide much needed affordable housing to families earning 50-60% of Kanawha County’s median income.

5. Describe the need for this program/project:

This development is needed to ensure that families with low to moderate incomes receive quality, safe homes in a desirable neighborhood. Furthermore, the development will save a historic city icon by repurposing it for affordable housing. Also attached is the market study showing the need for this important housing.

6. List other Charleston organizations in Charleston that address this need:

There are other developers of affordable housing that are active in Charleston, WV as well as Kanawha County including but not limited to the Public Housing Authority, Pison Development and the Sadd Brothers, LLC.

7. Describe the level of collaboration with other organizations on this program/project:

Attached is an agreement between Charmco Lofts and Mountain Mission for services to be provided to the residents of Charmco Lofts. Mountain Mission Incorporated is a 501(c)(3) non-profit, faith-based, charitable organization whose mission is to serve families and individuals in the Kanawha Valley by assisting with unexpected emergency needs such as financial and in-kind.

8. How will duplication of services be prevented?

These services are solely for the residents of Charmco Lofts. Mountain Mission will provide the services as well as a service coordinator to ensure duplication is prevented.

Program Requirements and Objectives

1. Identify the target recipients of proposed services. Specify the number of City residents the program will serve during the fiscal year and explain the basis upon which this number is calculated.

Kanawha County residents earning 50-60% of county median income are the targeted recipients of our services. The development will house 39 families once complete. That number was calculated based on the number of units in the development.

2. List any eligibility requirements the program has with respect to age, gender, income, or residence.

Residents will have to make less than or equal to 60% of the county median income, adjusted for family size. As of today, that income limit is \$36,660 for a family of 4. There are no age, gender, or residence requirements to move into the Charmco Lofts once they are complete.

3. If this is a continuing activity, describe a measurable outcome of the previous year's work regardless of funding source.

Maintaining a fully leased property would demonstrate success of previous work developing and maintaining the Charmco Lofts.

4. If this is a new program describe two anticipated measurable outcomes for the proposed program.

Outcome #1 – Receipt of a Part III from the National Park Service would demonstrate that all standards for historic rehabilitation have been met. This will result in the property receiving federal and state historic tax credits. Outcome #2 – Receipt of an IRS Form 8609 from the West Virginia Housing Development Fund would demonstrate that the development meets all IRS requirements of the Low Income Housing Tax Credit Program. This would cause the property to generate Federal Low Income Housing Tax Credits.

Budget

* 1. Has the organization received funding from the City of Charleston in the past for a similar program/project?

- ☐ Yes
- ☒ No

* 2. Has the organization requested funding from other Federal, State, or Local government entities for any program/project support related to COVID-19?

☐ Yes ☒ No

3. If yes, explain from which entities and the amounts requested for each program/project.

N/A

4. List any other Federal, State, Local, or private funding or grant awards received in the last three years and the amount and status of each award.

Please see attached Other Funding Spreadsheet

5. Briefly summarize project revenues and expenses related to this request. This should coincide with the budget worksheet.

The project has an upfront development cost of \$13,906,958. This includes \$600,000 for land/building acquisition, \$9,601,538 for construction, \$3,559,776 for soft costs (architect, engineering, etc...), and \$145,644 for project reserves. Upon completion, annual revenue is expected to be \$263,753 and annual expenses will be \$188,278.

6. If this request is not fully funded, what adjustments to the program/project is the organization prepared to make?

If the request is not fully funded, the developer will be forced to contribute the remaining gap out of pocket. If the gap is sufficiently large, the entire viability of the project may be jeopardized. The City of Charleston money is being requested to fund rehabilitation of the historic building upfront; not as an ongoing operating subsidy.

7. Describe the plan for sustainability of the program/project or initiative after the requested award has been exhausted.

The Charmco Lofts will be a permanent residential community located in the Charmco Building/Site.

8. Briefly describe the organization’s fiscal oversight / internal controls to minimize opportunities for fraud, waste, and mismanagement.

To minimize opportunities for fraud, waste and mismanagement, Woda Development accounting department has segregate accounting duties for bookkeeping, cash management and accounts payable functions. Bank accounts are reconciled, reviewed, and filed on monthly basis. Cash reports are generated twice per week to ensure the accuracy of cash balances. We use bank positive pay system to prevent fraudulent checks. Access controls on vendor approvals, payment processing have been implemented. Accounts payable workflow has been established to segregate payable requesting, entering, approving, and processing. We also conduct monthly financial reviews to reconcile each GL account with external documentation. Trainings for risks of fraudulence has been conducted as well.

9. How does your agency plan to separate ARPA funds from other agency funds for purposes of identification, tracking, reporting and auditing?

The accounting system has specific GL account code for the ARPA funds, which is separated from other agency funds. The project draw worksheet also identifies the ARPA funds, and the Sr. Development Accountant and Development Controller would record and track the ARPA funds on the draw package and GL. Draw packages, general ledger and loan statements are reconciled monthly. We also have secured shared drive to save all executed legal documents for ARPA funds. Third party CPA firm conducts annual audit/tax return for the property.

REQUESTED BUDGET WORKSHEET
Revenue Source Projections

List all Estimated Funding for this Program/Project

* Proposed City ARPA Funding	Internal/Self-Funding
\$600,000	\$220,715
Donations/Other Fundraising	Government Grants/Other
\$0.00	\$13,086,243
* TOTAL REVENUE	
\$263,753 (rent)	

Expenses Projections

List all Estimated Expenses for this Program/Project

Salaries/Wages

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$40,850	\$44,850

Benefits & Matchings

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$4,000	\$4,000

Contracted Services

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$84,270	\$84,270

Program Materials

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$7,020	\$7,020

Marketing

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$1,170	\$1,170

Supplies

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$6,045	\$6,045

Other

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$0.00	\$44,923	\$44,923

Total Expenses

* Amount Requested from City	* Amount from Other Sources	* Total Estimated Expenses
\$0.00	\$188,278	\$188,278

NOTE: Revenues and Expenses must balance, and the use of requested funds must be directly related to COVID-19 recovery efforts.

Organizational Details

1. Describe the history of the organization and its current programs and activities.

Woda Cooper Companies, Inc. and its affiliates specialize in the development, design, construction, and management of high-quality affordable multi-family apartments, senior communities, and single-family homes. The company marked 30 years in business May 2, 2020, with operations in 16 states and a portfolio of approximately 400 communities and 16,000 units. Green building is standard with certifications including Passive House, Zero Energy Ready Homes, LEED, Enterprise Green, EarthCraft, and ENERGY STAR.

2. Provide the organization’s mission statement/purpose.

Woda Cooper Companies, Inc. is dedicated to developing, constructing, and managing high quality affordable housing. Our residents are our ultimate customer. It is a privilege to provide each household we serve with a safe, modern, and well-maintained place to live. We recognize the importance of our relationships with state housing agencies and federal, state, and local governmental entities. We understand the trust placed in us by local communities, and we seek to become valued members of those communities. As an employee owned company, we endeavor to create a positive and diverse work environment that allows individuals to achieve personal and professional growth. Our investors, lenders, and other financial partners can count on us to be good stewards of their resources. We strive to constantly improve in all aspects of our business so that we remain at the forefront of the affordable housing industry.

3. List any third-party references that can verify the organizations qualification or prior grant experience.

West Virginia Housing Development Fund - Nate Testman - Senior Division Manager - Multifamily Lending - 304-391-8737 City of Columbus (Ohio) - Rita Parise - Department of Development - 614-645-6115 WVHDF - HOME and HTF Programs - Cathy Colby - Senior Manager - 304-391-8663 City of Wheeling (WV) - Robert Herron - City Manager - 304-234-2116

COVID-19 Impact

1. Explain the impact of the COVID-19 pandemic and how it relates to your request. For example, reduction in services, closures, increased costs, community impact, etc.

When we were asked in early March of 2020 to stay at home 15 days to stop the spread of COVID, we never envisioned Delta, Omicron, and other variants continuing to disrupt our workplaces 20 months later. When construction activity was slowed down along with supplies and materials in the spring of 2020, we never envisioned major supply chain disruptions would endure into 2022. When inflation raised its ugly head in the spring of 2021, we heard that it was “transitory,” and we did not expect that it would persist through 2022 as the Federal Reserve now expects that it will. We have heard repeatedly that we are living through “unprecedented” times, and it certainly feels that way. Over the past 18 months we have experienced the tripling of lumber prices (Random Lengths closed over \$900 again today), double digit increases in the price of almost all building products, shortages in drywall, plywood, drywall mud, electrical breakers, roofing, siding, windows, appliances, and just about everything else related to construction, including labor. We had to absorb additional overhead and general requirements in 2020 when our jobs were shut down and our employees were not allowed to work. In short, we have experienced massive cost and price increases that there was no way to foresee at the time we submitted our applications for Charmco Lofts and before COVID-19. The construction budgets submitted at the time of application should always be based on the conditions present at the time of submission. To do otherwise would be to waste valuable resources. Our company has been developing affordable housing for 31 years. We believe strongly that every developer, contractor, and property manager has an obligation and responsibility to state housing agencies, local municipalities, taxpayers, and all stakeholders. We take that responsibility seriously and think carefully about tax credit and other resource requests. The West Virginia Housing Development Fund has been very supportive of Charmco Lofts and has made an obligation to fund a

mixture of HOME Funds and Housing Trust Funds to help fill the gap created by the Covid-19 impact. Unfortunately, even with these funds we are still facing a funding gap that has necessitated this request.

2. If funds are being requested to replace revenue lost due to COVID-19, provide details, and attach supportive documentation.

Funds are not being requested to replace revenue lost.

3. If awarded, how will ARPA funding aid in the recovery from the COVID-19 pandemic?

It will provide much needed affordable housing. Even as the American economy continues its recovery from the devastating impact of the pandemic, there are those in Charleston that face deep rental debt, fear eviction and the loss of basic housing security. COVID-19 has exacerbated an affordable housing crisis that predated the pandemic and that has exacerbated deep disparities that threaten the strength of an economic recovery that must work for everyone.

THE APPLICANT UNDERSTANDS:

- *

☒ 1. This application and other materials submitted to the City may constitute public records which may be subject to disclosure under the West Virginia Freedom of Information Act. Documents containing sensitive information may be marked as “confidential.”

*

☒ 2. Submitting false or misleading information in connection with an application may result in the applicant being found ineligible for financial assistance under the funding program, and the applicant or its representative may be subject to civil and/or criminal prosecution.

THE APPLICANT CERTIFIES THAT:

- *

☒ 1. I have reviewed the US Treasury guidelines regarding the eligible uses of American Rescue Plan State and Local recovery funds. <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/request-funding>

*

☒ 2. By submitting this request, I represent that I am an authorized officer, or member of the organization for which I am submitting, and the information contained in my submittal is true and correct to the best of my knowledge and belief.

*

☒ 3. The information submitted to the City of Charleston (“City”) in this application, and substantially in connection with this application, is true and correct.

*

☒ 4. The applicant is in compliance with applicable laws, regulations, ordinances and orders applicable to it that could have an adverse material impact on the project. Adverse material impact includes lawsuits, criminal or civil actions, bankruptcy proceedings, regulatory action by a governmental entity or inadequate capital to complete the project.

*

☒ 5. The applicant is not in default under the terms and conditions of any grant or loan agreements, leases or financing arrangements with its other creditors that could have an adverse material impact on the project.

*

☒ 6. I understand and agree that I must disclose, and will continue to disclose, any occurrence or event that could have an adverse material impact on the project.

*

☒ 7. I certify that the requested funding is needed to ensure this program/project will occur within the City limits of Charleston West Virginia.

*

☒ 8. The Board of Directors or governing body of the organization has approved submission of this application. Please attach a copy of the authorizing resolution or meeting minutes using the file upload.

* **Signature**

Thomas S Simons

Authorized representative of Applicant/Organization

* **Date**

12/15/2021

Format: MM/DD/YYYY

* **PRINTED NAME:**

Thomas S. Simons

* **TITLE OF APPLICANT:**

Sr. Vice President

* **ORGANIZATION NAME:**

Charmco Lofts Limited Partnership / The Woda Group, Inc.

Upload a File

Choose File

No file chosen

Notice of Subaward

Subrecipient Name: Woda Cooper Co. Inc. dba CharmCo Lofts Limited Partnership	Name of Federal Awarding Agency: Department of Treasury
Subrecipient's UEI ID: P61LWHHLXU86	Federal Award Date: 5/18/2021
Federal Award Identification Number (FAIN): SLFRP0368	Name of Pass-Through Entity: The City of Charleston, WV
Catalog of Federal Domestic Assistance (CFDA) Number: 21.027	Contact Information for Pass-Through Entity: Andy Wood Finance Director (304) 348-8014
Program Name: Coronavirus State and Local Fiscal Recovery Funds	Subaward Period of Performance: 6/6/2022 – 12/31/2026
Federal Award Program Description: The Coronavirus Local Fiscal Recovery Fund addresses the continued impact of COVID-19 (i.e., coronavirus disease 2019) on the economy, public health, state and local governments, individuals, and businesses.	
Total Amount of Federal Funds Obligated by this Agreement: \$600,000	Total Amount of Federal Funds obligated to the Subrecipient: \$600,000
Approved Budget Categories: EC 2.23 - Strong Healthy Communities: Demolition and Rehabilitation of Properties	
Is the award for Research and Development (R&D)? (Y/N) No	Indirect Cost Rate for federal award: Not applicable to the Local Fiscal Recovery Fund
Terms & Conditions: All requirements imposed by the City of Charleston, WV (the City) on the subrecipient so that the Federal award is used in accordance with the American Rescue Plan Act, U.S. Treasury guidance, and the terms and conditions of the Federal award of American Rescue Plan Act Fiscal Recovery Funds.	
Incorporated Documents: 1. Notice of Subaward 2. Subrecipient Agreement 3. Exhibit A – Scope of Work 4. Exhibit B – Project Budget	

Subrecipient Agreement

Minimum Requirements include:

- All requirements imposed by the City of Charleston, WV (the City) on the subrecipient so that the Federal award is used in accordance with the American Rescue Plan Act, U.S. Treasury guidance, and the terms and conditions of the Federal award of American Rescue Plan Act Fiscal Recovery Funds.
- Any additional requirements imposed by the City on the subrecipient in order for the City to meet its own responsibility to the U.S. Treasury, including identification of any required financial and performance requirements.
- A requirement that the subrecipient permit the City and auditors to have access to the subrecipient's records and financial statements as necessary for the City to meet the requirements of 2 CFR 200.331.
- Terms and conditions concerning the closeout of the subaward.

THIS AGREEMENT is made by and between the City of Charleston, WV (the City), with offices located at 501 Virginia St. E., Charleston, West Virginia 25301, and CharmCo Lofts Limited Partnership, (hereinafter referred to as "Subrecipient") with administrative offices at 500 S. Front Street, 10th Floor, Columbus, Ohio 43215, United States (each being at times referred to as "Party" or "Parties").

WITNESSETH:

WHEREAS, on or about March 21, 2021, the President of the United States signed into law the *American Rescue Plan Act of 2021*, Public Law 117-2, (hereinafter referred to as "ARPA") to provide additional relief to address the continued impact of COVID-19 (i.e., coronavirus disease 2019) on the economy, public health, state and local governments, individuals, and businesses; and

WHEREAS, Section 9901 of ARPA amended Title VI of the Social Security Act to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds); and

The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) at 501 Virginia St. E., Charleston, West Virginia 25301 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).; and

WHEREAS, the U.S. Department of the Treasury is authorized to distribute \$45.57 billion funding from the Fiscal Recovery Funds to Metropolitan Cities utilizing a population based formula; and

WHEREAS, the City of Charleston, WV was allocated \$36,801,358 for distribution; and

WHEREAS, the purpose of this Agreement is to provide for the sub-award of a portion of the financial assistance obtained by the City under the Fiscal Recovery Funds to assist Subrecipient with funding such necessary expenses to respond to the continued impact of the COVID-19 public health emergency as are described in this Agreement and the attachments hereto, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the City and Subrecipient agree as follows:

Section 1: Compliance

- A. Subrecipient acknowledges that Fund payments made by the City to the Subrecipient are not considered to be grants but are “other financial assistance” under 2 C.F.R. 200.40. This Agreement requires compliance with certain provisions of Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”). Subrecipient agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. During the performance of this Subrecipient Agreement, the Subrecipient shall comply with all applicable federal laws and regulations, including but not limited to the provisions in this Agreement and the required federal provisions. Violations of law will be referred to the proper authority in the applicable jurisdiction.
- C. Contracts awarded by Subrecipient under this Agreement shall comply with all applicable Federal laws, regulations, executive orders, Department of Treasury policies, procedures, and directives. With respect to any conflict between such federal requirements and the terms of the contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control. The Subrecipient must comply with all applicable Federal law, regulations, executive orders, Department of Treasury policies, procedures, and directives. The Subrecipient shall comply with all federal requirements including, but not limited to, the following:
 - Fund payments are considered to be federal financial assistance subject to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507).
 - Subrecipients are subject to a single audit or program specific audit pursuant to 2 C.F.R. 200.501(a) when Subrecipient spends \$750,000 or more in federal awards during their fiscal year.
 - Fund payments are subject to 2 C.F.R. 200.303 regarding internal controls.
 - Fund payments are subject to 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
 - Fund payments are subject to Subpart F regarding audit requirements.
- D. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Agreement, including but not limited to 2 C.F.R. 200.303, 2 C.F.R. 200.330-332, and 2 C.F.R. Part 200 Subpart F.

Section 2: Term

- A. This Agreement shall begin upon the date last executed by the Parties (the “Effective Date”) and shall remain in effect until March 31, 2027 (the “Expiration Date”) unless terminated earlier as defined in Section 6.

- B. The Subrecipient shall be eligible to receive funding for eligible and allowable costs (as defined in Section 3) from the period commencing March 3, 2021, through the Expiration Date (the “Covered Period”).

Section 3: Funding

- A. Subject to the terms and conditions of this Agreement, the City shall pay the Subrecipient, on a cost reimbursement basis, up to a maximum of \$600,000 to implement the projects and/or activities described in the Scope of Work (SOW). It is understood and agreed that any additional funds necessary in connection with the projects and/or activities described in the SOW above and beyond this amount are the sole responsibility of the Subrecipient. Advance payment of funds to the Subrecipient under this Agreement shall not be permitted unless expressly described in the SOW. Subrecipient shall be reimbursed on a cost reimbursement basis for eligible and allowable costs incurred by Subrecipient in the implementation of the projects and/or activities described in the SOW as such costs are incurred.
- B. Eligible and allowable costs are defined as costs that are necessary Eligible Uses under one of the following cost categories:
 - 1. To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 - 2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
 - 3. For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency;
 - 4. To make necessary investments in water, sewer, or broadband infrastructure;

And

- 1. Are described in the SOW; and
 - 2. Are otherwise in accordance with the terms and conditions of this Agreement, Title VI of the Social Security Act, and all other applicable laws, rules, regulations, and guidance.
- C. Non-allowable uses of Fiscal Recovery Funds include, without limitation, the following:
 - 1. Usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase;
 - 2. Damages covered by insurance;
 - 3. Usage of funds as a deposit into any pension fund;
 - 4. Expenses that have been or will be reimbursed under any federal program;
 - 5. Debt service cost;
 - 6. Contributions to a “rainy day” fund; and
 - 7. Legal settlements
- D. All reimbursement requests shall be submitted to the City at the following address: City of Charleston City Manager’s Office, 501 Virginia Street East, Charleston, WV 25301. To be

eligible for reimbursement under this Agreement, the Subrecipient shall submit sufficient documentation to the satisfaction of the City demonstrating that the Subrecipient is legally obligated to pay the costs for which reimbursement is sought. All reimbursement requests must include a certification, signed by an official who is authorized to legally bind the Subrecipient, that reads as follows:

1. “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”
- E. All requests for reimbursement under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. All costs must be obligated on or before December 31, 2024. For a cost to have been “obligated,” contracting for goods or services must occur during the Covered Period, but payment of funds need not be made during that time. All goods or services must be delivered on or before September 30, 2026, and final payment shall occur within 90 days of delivery.
- F. The City of Charleston, WV requires detailed documentation of all costs for which reimbursement is sought under this Agreement (“Supporting Documentation”). Each payment request submitted by the Subrecipient shall be accompanied by sufficient Supporting Documentation (Invoices, Receipts, Bills, Expense Reports, etc.) substantiating all costs incurred and for which reimbursement is sought, to the satisfaction of the City. In the event the City determines the Supporting Documentation submitted by the Subrecipient is insufficient to enable it to evaluate the allowability and eligibility of costs, the Subrecipient shall furnish additional Supporting Documentation to the satisfaction of the City.
- G. No more frequently than once every month, the Subrecipient may request reimbursement from the City for costs incurred by Subrecipient under this Agreement for which actual payment has been made. All payment requests shall be submitted using the Payment Request Form made available by the City and shall be accompanied by sufficient Supporting Documentation (collectively the Payment Request Form and any Supporting Documentation shall hereinafter be referred to as the “Payment Request”). Additionally, at the time of each Payment Request, Subrecipient shall submit a “Progress Report” utilizing a form for same made available by the City, which shall describe the nature of the projects and/or activities being funded.
- H. Within 15 days after receipt of the Payment Request, the City shall, in its sole discretion, determine if the Payment Request, or any portion thereof, is acceptable and in strict compliance with the terms of this Agreement. If it is determined there are any errors in the Payment Request or if additional Supporting Documentation is required, the City shall notify the Subrecipient within 30 days of receipt of such Payment Request. The Subrecipient shall submit a revised Payment Request within 15 days of receipt of notice from the City. The City reserves the right to delay or deny any Payment Request containing errors or lacking sufficient Supporting Documentation until such deficiencies are corrected to the satisfaction of the City.

- I. Upon determination by the City that the Payment Request is sufficient, the City shall initiate the reimbursement process in accordance with applicable policies and procedures.

Section 4: Accounting; Duplication of Benefits

- A. Subrecipient's accounting and financial management system shall be sufficient to permit the preparation of reports required in connection with this Agreement and the tracing of funds to a level of expenditures adequate to establish that such funds have been used pursuant to the terms of this Agreement. All payments to Subrecipient contemplated under this Agreement may be contingent upon certification of the Subrecipient's financial management system in accordance with this requirement. Subrecipient must ensure that all sub-subrecipients comply with the provisions of this paragraph.
- B. Subrecipient hereby certifies and affirms that the projects and/or activities to be funded under this Agreement shall not result in a prohibited duplication of the benefits obtained by Subrecipient, any sub-sub recipient (as defined in 2 C.F.R. §§ 200.92-93), or any individual or entity that is a beneficiary of such projects and/or activities from other American Rescue Plan Act programs, other local, state, or federal funding sources (e.g. the Stafford Disaster Relief and Emergency Assistance Act, etc.), private insurance, or other private organizations. It is Subrecipient's responsibility and obligation to implement processes and procedures to select and subsequently monitor all sub-subrecipients, individuals, and entities receiving funds under this Agreement to ensure compliance with this paragraph. All agreements entered into between Subrecipient and any sub-subrecipient, individual, or entity providing for the subaward or payment of funds under this Agreement shall contain provisions permitting the Subrecipient to recapture funds provided under this Agreement in the event an impermissible duplication of benefit is discovered. Subrecipient acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the City. In the event that the Subrecipient recovers costs incurred under this Agreement and reimbursed by the City from another source, the Subrecipient shall reimburse the City for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Subrecipient to the date repayment is made to the City by the Subrecipient.

Section 5: Reporting Requirements

- A. Performance Reports. Reports are due to the City no later than five (5) days after the end of each period listed below:
 - June 30, 2022, due July 5, 2022
 - September 30, 2022, due October 5, 2022
 - December 31, 2022, due January 5, 2023
 - March 31, 2023, due April 5, 2023
 - June 30, 2023, due July 5, 2023
 - September 30, 2023, due October 5, 2023
 - December 31, 2023, due January 5, 2024
 - March 31, 2024, due April 5, 2024
 - June 30, 2024, due July 5, 2024
 - September 30, 2024, due October 5, 2024
 - December 31, 2024, due January 5, 2025
 - March 31, 2025, due April 5, 2025

- June 30, 2025, due July 5, 2025
- September 30, 2025, due October 5, 2025
- December 31, 2025, due January 5, 2026
- March 31, 2026, due April 5, 2026
- June 30, 2026, due July 5, 2026
- September 30, 2026, due October 5, 2026
- December 31, 2026, due January 5, 2027

The report shall appear on subrecipient letterhead and outline progress of items to date. The report should also contain a schedule of total subaward; list request(s) for reimbursements submitted and remaining award. The report should list each cash receipt from the City with date received and receipt number.

- B. Final Report. Within twenty (20) days following the final cash payment to Subrecipient under this Agreement, Subrecipient shall submit a “Final Project Report,” in which the Subrecipient shall describe the status of the Subrecipient’s implementation of all projects and/or activities undertaken under this Agreement. The Final Project Report shall further include an accounting of all costs and expenses incurred by Subrecipient.

Section 6: Termination

- A. Termination for Cause. the City may terminate this Agreement for cause at any time if any covenant, warranty, or representation made by Subrecipient in this Agreement, the SOW, or in any application materials for funding submitted to the City in connection with this Agreement shall at any time be false or misleading in any respect, or in the event of the failure of the Subrecipient to satisfactorily perform any task, deliverable, or activity under this Agreement or otherwise comply with the terms and conditions of this Agreement. Prior to termination, the City shall provide fifteen (15) days written notice of its intent to terminate and shall provide the Subrecipient an opportunity to consult with the City regarding the reason(s) for termination.
- B. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon providing the non-terminating Party with ten (10) days written notice.
- C. Effect of Termination. Costs incurred by the Subrecipient after termination of this Agreement shall not be reimbursable unless expressly authorized by the City prior to the effective date of termination.

Section 7: Audits

- A. In the event that the Subrecipient expends \$750,000.00 or more in Federal awards in its fiscal year, the Subrecipient must have a single or program-specific audit conducted within nine (9) months of the end of the Subrecipient’s audit period, in accordance with the provisions of 2 C.F.R. Part 200. In determining the Federal awards expended in its fiscal year, the Subrecipient shall consider all sources of Federal awards, including Federal financial assistance received from the City under this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 C.F.R. Part 200.
- B. If the Subrecipient expends less than \$750,000.00 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 C.F.R. Part 200, as revised, is not required for that year, except as noted in 2 C.F.R. §200.503. In the event that the Subrecipient expends less than \$750,000.00 in Federal awards in its fiscal year and elects to have an audit conducted in

accordance with the provisions of 2 C.F.R. Part 200, as revised, the cost of the audit must be paid from non-Federal resources. In accordance with 2 C.F.R. § 200.501(d), records must be available for review or audit by appropriate officials the City of Charleston, WV, USDOT, and the U.S. Government Accountability Office (GAO).

- C. Upon completion of the audit required in this Section, Subrecipient shall promptly transmit a copy of the audit report to the City.
- D. In addition to reviews of audits conducted in accordance with 2 C.F.R. Part 200, monitoring procedures under this Agreement may include, but not be limited to, on-site visits by the City; limited-scope audits as defined by 2 C.F.R. Part 200; submittal and review of financial management statements; and/or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any reasonable monitoring procedures/processes deemed appropriate by the City. In the event the City determines that a limited-scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the City to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the City.

Section 8: Subcontract; Subawards

- A. Subcontract. In procuring goods and services under this Agreement, the Subrecipient shall use its own documented procurement procedures, provided that such procurements conform to applicable state and federal law.

The Subrecipient may subcontract work under this Agreement as necessary without the prior written consent of the City, subject to the any conditions or limitations imposed by applicable state and federal law. Regardless of any subcontract, the Subrecipient is ultimately responsible for all projects, programs, activities, and services undertaken by subcontractors under this Agreement. The Subrecipient agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Subrecipient that the City shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Subrecipient shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

In selecting and monitoring subcontractors, the Subrecipient shall comply with 2 C.F.R. §§ 200.330-332. The Subrecipient shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports maintained by the Subrecipient and supported with documented evidence of follow-up actions taken to correct areas of noncompliance, where applicable.

For all procurements of \$250,000 or above, advice should be sought from the City of Charleston Finance Department, who must be notified of the intention to carry out the procurement at the earliest possible opportunity, and in any case prior to advertising or issuing a Request for Proposals.

- B. Sub-Awards. The Subrecipient may enter into subaward agreements to provide for the distribution of funds under this Agreement to eligible sub-subrecipients (as defined in 2 C.F.R. §§ 200.92-93) without the prior written consent of the City. Regardless of any subaward, the Subrecipient is ultimately responsible for all projects, programs, services, and activities

undertaken by sub-subrecipients under this Agreement. All such sub-subrecipients shall be subject to the same performance, financial, and reporting requirements as the Subrecipient. In selecting, monitoring, and contracting with sub-subrecipients, the Subrecipient shall comply with 2 C.F.R. §§200.330-332. The Subrecipient shall monitor all sub-subrecipients on a regular basis to ensure compliance with this Agreement and all applicable laws, rules, and regulations. Results of monitoring efforts shall be summarized in written reports maintained by the Subrecipient and supported with documented evidence of follow-up actions taken to correct areas of noncompliance, where applicable. Such summaries and documents shall be submitted to the City upon request.

Subrecipient agrees and acknowledges that payments made under this Agreement are from federal funds and contingent upon prior approval as to the allowability and eligibility of the costs for which payment is requested by both parties.

Section 9: Closeout

- A. The City will close out this Agreement when it determines that all activities and all applicable administrative actions have been completed. Unless an extension is approved by the City, within twenty (20) calendar days after the Expiration Date, the Subrecipient must submit any outstanding reports, including the Final Project Report, as well as any required reporting on sub-awards, and must refund to the City any balances of unobligated cash that the City paid in advance or paid and that is not authorized to be retained by the Subrecipient entity for use in other projects. Within thirty (30) calendar days after receipt of all outstanding reports, the City will make upward or downward adjustments to the allowable costs, and then make prompt payments to Subrecipient for remaining allowable reimbursable costs. The closeout of this Agreement does not affect any of the following:
 - a. The right of the City to disallow costs and recover funds on the basis of a later audit or other review;
 - b. The obligation of the Subrecipient to return any funds due as a result of later refunds, corrections, or other transactions; or
 - c. The Subrecipient's obligations regarding audits, property management and disposition (if applicable), and records retention.
- B. Unless an extension is approved by the City, the Subrecipient must liquidate all obligations incurred under this agreement within ninety (90) calendar days after the Expiration Date.

On behalf of the Subrecipient, I understand and agree to the foregoing terms and conditions of the award of a portion of the financial assistance obligated by the City under the American Rescue Plan Act, and hereby certify my authority to execute this agreement on Subrecipient's behalf.

Name

Title

Date

Phone Number

Signature

Exhibit A – Scope of Work

With the funding received from the City, CharmCo Lofts Limited Partnership will help fund the redevelopment of the abandoned historic CharmCo building in downtown Charleston, and provide much needed affordable housing to families earning 50-60% of Kanawha County's median income. The goal of this project is to help ensure that families with low to moderate incomes receive quality, safe homes in a desirable neighborhood. Furthermore, the development will save a historic city icon by repurposing it for affordable housing

The objectives to be tracked through performance reports include:

- Number of families earning less than 60% of county median income housed within the development – goal of 39 families (# of families/leased year)
- Receipt of a Part III from the National Park Service demonstrating that all standards for historic rehabilitation have been met.
- Receipt of an IRS Form 8609 from the West Virginia Housing Development Fund demonstrating that the development meets all IRS requirements of the Low Income Housing Tax Credit Program

Exhibit B – Project Budget

Item	Amount
CharmCo Land/Building Acquisition	\$600,000
Total Program Cost	\$600,000

1 Resolution No. 679-22

2
3 Introduced in Council:

Adopted by Council:

4
5 June 21, 2022

6
7 Introduced by:

Referred to:

8
9 Joseph Jenkins

Finance _____

10
11 Resolution No. 679-22 - Authorizing the Mayor or City Manager to grant American Rescue Plan
12 Act ("ARPA") funds to WV Music Hall of Fame in the total amount of \$32,000 and to execute
13 appropriate agreements establishing the terms and conditions imposed upon the recipient,
14 including ongoing duties for reporting on expenditure and programmatic activities and binding
15 covenants to spend funds in accordance with the purposes for which such funds were granted.

16
17 Be it Resolved by the Council of the City of Charleston, West Virginia:

18
19 That the Mayor or City Manager is authorized to grant American Rescue Plan Act ("ARPA")
20 funds to WV Music Hall of Fame in the total amount of \$32,000 and to execute appropriate
21 agreements establishing the terms and conditions imposed upon the recipient, including
22 ongoing duties for reporting on expenditure and programmatic activities and binding covenants
23 to spend funds in accordance with the purposes for which such funds were granted. The grant
24 is approved in full or in part based upon information submitted to the City in the grant
25 recipient's City of Charleston ARPA grant application, attached hereto as Exhibit A. The City
26 Manager is directed to withhold grant funding to the grant recipient should the City Manager
27 determine that the grant recipient has failed to adhere to the obligations established in the
28 agreement or fails to adhere to applicable local, state, or federal law.

American Rescue Plan Act (ARPA) Funding Application

[Print](#)

Submitted by:

Status: Open

Priority: Normal

Assigned To: Jonathan Storage

Due Date: Open

Attachments

- [ARPA-Charleston-WVMHOF-Attachments-2021-1215.pdf](#) - 2021-12-15 07:03:16 pm



American Rescue Plan Act (ARPA)

Funding Application

Non-Profit, Community Groups, Neighborhood Associations, and Businesses

APPLICATION DEADLINE: December 15th 2021

Application must be completed in full to be considered. Applications may be submitted online using this fillable form. But forms and attachments may also be submitted by email to ARPA@cityofcharleston.org or by U.S. Mail to City Manager's Office, 501 Virginia Street East Charleston, WV 25301.

All requests for funding **must be directly related to COVID-19 mitigation or recovery efforts** and must fall within the parameters of at least one of the goals set by the treasury department along with other requirements listed within this application.

GENERAL INFORMATION

*** Name of Project/Program:**

Revitalizing the WV Music Hall of Fame & Museum of Music

*** Organization Name:**

West Virginia Music Hall of Fame Inc.

*** Address:**

1427 Lee Street E, Charleston, WV 25301

*** Primary Contact Person:**

Michael Lipton

Title:

Executive Director

* Phone:

(304) 444-5474

* Email:

mlipton@gmail.com

Federal Tax ID:

510523797

If applicable: DUNS Number:

014620305

To obtain a DUNS number please visit <https://fedgov.dnb.com/webform> After obtaining, please register your organization with the System for Award Management at <https://sam.gov/SAM/>

List the organization’s owner(s), Board of Directors, senior staff members, and other key members:

WV MUSIC HALL OF FAME BOARD OF DIRECTORS BOARD CHAIR Bob Brunner TV Journalist/author (retired) VICE CHAIR Joshua Barrett DiTrapano, Barrett & DiPiero, PLLC FISCAL OFFICER Patrick Donahoe, CPA SECRETARY Mary Clare Finly BOARD MEMBERS Danny Cline, Farmer, Cline, & Campbell Todd Burge, Musician Parkersburg John Cuthbert, Curator and director WV University Libraries Ted Harrison, Musician St. Albans John Lilly, Editor (retired) Golden Seal Magazine John T Miesner, Esq. Charleston John Inghram, Musician South Charleston Tim O’Brien, Musician Nashville Bob Thompson, Musician Charleston Charles Bockway Charleston Barbara Bayes Charleston Rick Modesitt Parkersburg EX OFFICIO Michael Lipton, Director

Describe any partner organizations, their roles, and your relationship with them:

THE CHARLESTON TOWN CENTER - The mall is currently providing in-kind support of \$102,000 a year by foregoing rent for the two museum spaces (former storefronts). THE WV HUMANITIES COUNCIL - The council awarded the WVMHoF a grant of \$18,200 to create the WV Museum of Music. THE JAMES F.B. PEYTON FUND - The fund awarded the WVMHoF a grant of \$5,000 to create the WV Museum of Music. THE HAMILTON FAMILY FOUNDATION - The fund awarded the WVMHoF a grant of \$5,050 to create the WV Museum of Music. THE CHARLESTON CONVENTION & VISITORS BUREAU – pro bono marketing support. WV ARTS & CULTURE – Funding support for exhibits, and arts and event programming. THE WV DEPARTMENT OF EDUCATION – Funding support for educational programming.

BUDGETARY OVERVIEW - Must match Budget Worksheet

* Funds Requested	* Total Program/Project Cost	Annual Organization Budget
\$ 32,000	\$ 91,879	\$120,000 (2022)

Request Summary

1. Provide a narrative overview/summary of the request.
- Topics that may be included but not limited to:
- a. Purpose and anticipated outcomes

b. Individuals, entities, or communities served

c. How the pandemic has necessitated this request

d. Amount of any estimates and bids received to date

e. Timeline for project completion

In 2017, The Charleston Town Center invited The WV Music Hall of Fame to take over a 3,600 square foot former storefront. With displays featuring the current inductees, computer stations and displays of memorabilia, it became the Hall of Fame's most visible and accessible public and event space to date. A pre-COVID monthly concert series attracted 50-75 attendees per show. In 2020, based on the success of the Music Hall of Fame, the Town Center offered a second store front, the 5,600 square foot space that previously housed Books-A-Million. With \$28,000 in grant monies from the WV Humanities Council, the Hamilton Family Foundation and the James Peyton Fund, we created The WV Museum of Music. The new space includes a 10' x 20' stage and a resident sound system, and museum-quality display cases. The grand opening in June 2021 drew nearly 250 guests. Both the Music Hall of Fame and Museum of Music serve to attract visitors into downtown Charleston and The Charleston Town Center, provide a welcoming and holistic space for City of Charleston community members of all ages and background, and offer a unique “West Virginia experience” to tourists, hotel guests, and convention attendees from the nearby Charleston Coliseum and Convention Center and area hotels. The ‘Hall of Fame’ and museum business model has been a proven economic driver in both major and small cities across the U.S. But besides out-of-state visitors, these two music destinations together have attracted both City of Charleston and state-wide West Virginia residents as many of the featured artists have had extremely successful careers and

have influenced the music of both the state and the country. We look forward to creating a positive impact on West Virginia in collaboration with the City of Charleston and the West Virginia Division of Tourism. The WV Music Hall of Fame and Museum requests ARPA funds to respond to and recover from the impact of the pandemic by being able to recover lost operating income that would have paid staff. Our programming, and therefore our income, was severely impacted when we were required to cancel our live events and convert them to virtual online presentations. Adding The Museum of Music allowed us to expand our presentation space in order to reach a wider audience and provide sufficient social distancing. However, this expanded space has required us to add staffing hours. The ARPA funding support would allow us to bring back our programming, add virtual programming and displays, and also keep our museum spaces safe for visitors. Specifically, this grant will fund the operating expenses required for the staffing to produce the programs and keep the doors to the Music Hall of Fame and Museum open. The timeline for implementing the ARPA funding would be through May 2023, to account for getting past the after-effects of the pandemic.

Attach any additional information such as bids, concepts, designs, letters of support, etc. If submitting electronically the documents must be in PDF, Excel, or Word format and total file size must not exceed 10 megabytes.

Program/Project Details

* 1. The funding will be used to:

- ☐ Start a new program/project
- ☒ Maintain an existing program/project
- ☐ Expand an existing program/project

* 2. If funded, will the program/project be completed within FY 2022?

- ☐ Yes
- ☒ No

If no, when is expected completion year?

2023

3. Which eligible ARPA Expenditure Category does this program/project represent (See <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf> for further details)? Please check all that apply:

*

- ☐ Public Health
- ☒ Negative Economic Impacts
- ☐ Services to Disproportionately Impacted Communities
- ☐ Premium Pay
- ☐ Infrastructure
- ☐ Other

4. Briefly describe the program/project funds are being requested for:

The WV Music Hall of Fame and Museum of Music would use the ARPA funds to respond to and recover from the impact of the pandemic by being able to meet staffing costs. As a non-profit cultural institution, we do not charge entrance fees for our Hall of Fame and Museum. We have several grantors who regularly fund our programming, but none provide support for personnel. Because of this, during normal times all our staffing costs are covered by fundraising events. But during 2020 and 2021 the covid pandemic required us to cancel our fundraising events, therefore severely impacting our income and ability to pay staff. In addition, we are currently under agreement with the owner of The Charleston Town Center to operate at \$0 rental cost in exchange for us keeping our two museum storefronts open and staffed for a minimum of 29 hours per week. Therefore our request for staff funding is based on a 30 hour weekly pay schedule.

5. Describe the need for this program/project:

This project demonstrates how the arts can impact a city in three major ways: (1) Community Development, (2) Jobs, (3) Economic Development. Visitors to the Hall of Fame and Museum quickly understand the important role that music plays in the lives of West Virginians, the rich international heritage of our people, and the important role that West Virginians have played in the music of this country. They learn about these people - perhaps not unlike themselves - who frequently came from poverty but were able to forge a career that brought them to national attention. They experience the unity and the legacy these artists bring to the people of our State. And when they attend our events, they experience this unity together, as a community. Recent examples of our museums being utilized by the community included visits from public school classes. The teachers arranged for tours of our exhibits along with time for the children to work with the interactive displays. The field trip included time for the students to eat in the food court of the mall. Having the Hall of Fame and Museum of Music spaces required us to add four jobs to our staff to cover the management, event planning, technical support, and customer service needs. An additional job requirement is for the employees to expand their knowledge and gain a sense of community development. Downtown Charleston revitalization efforts include attracting visitors to support economic development endeavors. The Charleston Town

Center in particular has seen a mass exodus of retail tenants and is in need of tenants that will increase traffic. Based on our surveys, we have seen the shift toward people visiting our Hall of Fame and Museum as a destination. This adds to the downtown area attractions which draw people to additional events, restaurants, and lodging.

6. List other Charleston organizations in Charleston that address this need:

The only other non-profit arts organizations in Charleston that address these needs would possibly be FestivALL, or concerts and other events at various venues. But those are not year-round physical spaces dedicated to museum-quality exhibits along with events. WV Culture and History is a State organization that houses the state museum, but they are not focused on music or presenting community-based events. The WV Music Hall of Fame and Museum of Music is unique in what it presents to the community and how the programming and events are offered.

7. Describe the level of collaboration with other organizations on this program/project:

THE CHARLESTON TOWN CENTER - The mall is currently providing in-kind support of \$102,000 a year by foregoing rent for the two museum spaces (former storefronts). THE WV HUMANITIES COUNCIL - The council awarded the WVMHoF a grant of \$18,200 to create the WV Museum of Music and continually awards grant funding for museum exhibits and special presentations. THE CHARLESTON CONVENTION & VISITORS BUREAU – pro bono marketing support. WV DIVISION OF ARTS & CULTURE – Provides funding support for arts and event programming. THE WV DEPARTMENT OF EDUCATION – Provides funding support for educational programming. KANAWHA COUNTY SCHOOLS – Provides funding support for educational programming.

8. How will duplication of services be prevented?

Because the WV Music Hall of Fame and Museum of Music is unique in what it presents to the community, we do not foresee how services could be duplicated in this case. But through annual programming planning any potential for duplication would be kept in check.

Program Requirements and Objectives

1. Identify the target recipients of proposed services. Specify the number of City residents the program will serve during the fiscal year and explain the basis upon which this number is calculated.

Because of the nature of our programs and services, we have a wide-ranging target audience, appealing to middle-school ages through senior adults. And the data we collect on our visitors proves this: our public-school groups include both middle and high school ages; young adults and millennials find the music topics appealing; older adults identify with the WV musicians being honored for their life’s work. All ages enjoy the performances as well as the museum displays. We do not cater only to Charleston residents – our Hall of Fame and Museum spaces welcome visitors from outside the city, outside the State, and even outside the country. But we do offer the opportunity for all Charleston residents to easily visit and participate in our programs at no cost. Based on recent demographic data from the Charleston Area Alliance, the potential number of Charleston residents who fit our core target audience is 120,360. According to that data, the total population of the Charleston region is approximately 177,000 with nearly 22% of the population over age 65, 10% of the population under age 10, and the remaining population, 68%, quite equally distributed between ages 10-65. Because of the nature of our programs and topic areas, our core audience covers that age 10 to 65 range or 68% of the Charleston area population (120,360).

2. List any eligibility requirements the program has with respect to age, gender, income, or residence.

We have absolutely no eligibility requirements for our programs. Even though we identify our core audience range to be ages 10-65, we have many senior citizens age 65+ who regularly visit and contribute to our efforts. And when families visit with children under age 10 there are plenty of interactive displays to interest them; and they are especially attracted to our live feature performances. Music is a universal language and the mission and goals of our organization provide citizens of all ages, gender, ethnicity, income level and residence, access to the message of West Virginia’s role in the world of music.

3. If this is a continuing activity, describe a measurable outcome of the previous year's work regardless of funding source.

Two measurable outcomes from the previous year, based on visitor surveys, are (1) total number of visitors to the Hall of Fame and Museum spaces, and (2) number of destination visitors. When we first opened the Music Hall of Fame in the Charleston Town Center in 2017, we averaged 200 visitors per weekend, based on being open only Saturdays and Sundays, or an estimated 10,000 visitors per year. When we have been open four days per week our numbers naturally increase. By funding the staff needed for more consistent open hours, based on four days per week, we should be able to increase our annual visitors to well over 15,000. With additional event planning our total attendance could be easily estimated at over 20,000. Based on visitor surveys, an increasing number of people are coming to the Hall of Fame and Music Museum as a planned destination. When we first opened at The Charleston Town Center people would happen to discover us during their trip to the mall. This change is significant in proving a Hall of Fame and Museum are an ideal attraction for ‘destination marketing’ to Charleston’s downtown.

4. If this is a new program describe two anticipated measurable outcomes for the proposed program.

N/A - This is not a new program.

Budget

* 1. Has the organization received funding from the City of Charleston in the past for a similar program/project?

☐ Yes ☒ No

* 2. Has the organization requested funding from other Federal, State, or Local government entities for any program/project support related to COVID-19?

☒ Yes ☐ No

3. If yes, explain from which entities and the amounts requested for each program/project.

WV DIVISION OF ARTS, CULTURE & HISTORY October 2021. \$20,527. ARPA funding for restoring operations of the main office (not for the two museum spaces). WV HUMANITIES COUNCIL September 2021. \$20,000. ARPA funding for restoring operations of the two museum spaces (not for the main office).

4. List any other Federal, State, Local, or private funding or grant awards received in the last three years and the amount and status of each award.

Please note: The following grants were for programs offered for free to the public. None covered operating costs such as staffing. In addition to the following grants, we have a WV legislative line-item annual funding of \$20,792, representing our only unrestricted funding. THE GREATER KANAWHA VALLEY FOUNDATION September, 2018. \$11,000. Music Career Counseling/Traveling Museum. (completed) November, 2019. \$7,000. Music Career Counseling Program. (completed) June, 2020. \$7,000. Interactive Map Distant Learning Project. (completed) May, 2021. \$5,000. Music Career Counseling Video Project. (ongoing) JEANNE C. AND LARSON W. HAMILTON JR. FAMILY FOUNDATION February, 2020. \$6,000. Music Career Counseling Program/Traveling Museum. (completed) November, 2020. \$5,050. WV Museum of Music. (completed) THE JAMES F.B. PEYTON FUND November, 2020. \$5,000. Creation of The WV Museum of Music. (completed) THE WV DIVISION OF ARTS, CULTURE & HISTORY July, 2018. \$12,520. Arts in Education Project/Music Career Counseling Project/Traveling Museum. (completed) June, 2020. \$4,038. Covid Aid Grant. (completed) February, 2021. \$2,019. CARES. (completed) THE WV HUMANITIES COUNCIL October, 2019. \$9,100. Vignettes for 2020 Induction Ceremony. (completed) February, 2020. \$2,275. CARES. (completed) May, 2020. \$7,750. CARES Act. (completed) April, 2021. \$18,297. Creation of The WV Museum of Music. (completed) CHARLESTON CREATIVITY CONNECTIONS / CITY OF CHARLESTON May, 2021. \$5,000. Local Artist Concert Series. (ongoing) THE GLOTFELTY FOUNDATION June, 2020. Interactive Map. \$3,600. (completed)

5. Briefly summarize project revenues and expenses related to this request. This should coincide with the budget worksheet.

Our project funding consists of two components: staffing and equipment. Our greatest need is for unrestricted funds for staffing. Most granting organizations provide support for programming or capital needs but not for personnel. To truly revitalize and expand the Hall of Fame and Museum presence in downtown Charleston, we need consistent and expanded hours of operation. In addition, we are currently under agreement with the owner of The Charleston Town Center to operate at \$0 rental cost in exchange for us keeping our two museum storefronts open and staffed for a minimum of 29 hours per week. While this puts an additional demand on expanded and consistent hours of operation (and staffing), it also equates to an in-kind donation of \$8,500/mo (\$5,000 storefront 1, \$3,500 storefront 2) or \$102,000 per year. STAFFING/PERSONNEL Each of the jobs listed below assumes the following: 2 days per week (Wed, Thursday) x 6 hour days x 52 weeks per year = 624 hrs/yr per job 2 days per week (Friday, Saturday) x 7 hour days x 52 weeks per year = 728 hours/year per job 1 days per week (Sunday) x 5 hour days x 52 weeks per year = 260 hrs/yr per job Total Hours/Year Each Job: 1,612 hours (624 hrs + 728 hrs + 260 hrs) Job 1: Curator/Technician = \$15/hr x 1,612 hrs = \$24,180 Job 2: Manager/Operations = \$15/hr x 1,612 hrs = \$24,180 Job 3: Docent/Sales Clerk 1 = \$11/hr x 1,612 hrs = \$17,732 Job 4: Docent/Sales Clerk 2 = \$11/hr x 1,612 hrs = \$17,732 ----- \$ 83,824 annual wages (no benefits) EQUIPMENT Today, interactive displays are necessary components in all museums, especially when a large portion of the intended audience is under age 50. For better or worse, these are the exhibits they are drawn to, and which keep their attention. The items we would like to purchase are floor-standing kiosks that will be loaded with videos of the eight WVMHoF induction ceremonies, the biographical vignettes of each of the 56 WVMHoF inductees, the WVMHoF documentary "WV My Home: Musicians and the Mountain State," and future original programming created by the WV Music Hall of Fame. The items are: 6 iPads x \$525 each = \$3,150 6 kiosks (for iPads) x \$400 = \$2,400 3 A/V kiosks x \$835 each = \$2,505 ----- \$8,055 total equipment costs PROJECT BUDGET \$ 83,824 wages (annual) 8,055 equipment ===== \$91,879 TOTAL PROJECT EXPENSE - 24,500 SBA EIDL received - 20,000 WV Humanities ARPA funds - 15,379 Internal funding - 32,000 This Request ===== \$ 91,879 TOTAL PROJECT INCOME

6. If this request is not fully funded, what adjustments to the program/project is the organization prepared to make?

As a non-profit arts council, we continually research and write grants for on-going funding support. If we are unable to secure replacement funds and our funding drops below what is required for staffing both the main office and the Hall of Fame and Museum spaces, we can resort to two interim options. One is reducing hours and/or days of operation at the museum spaces, and the other option is to temporarily reduce staff and filling the void with volunteers. Many times in the past our board members and other supporters have volunteered their time to continue our programming. Neither of these options are desirable or sustainable.

7. Describe the plan for sustainability of the program/project or initiative after the requested award has been exhausted.

As the name suggests, this is a cultural museum with few options for funding. To truly reach the local population and to attract visitors (both in-state and out-of-state) to downtown Charleston, it is not reasonable at this juncture to charge an entrance fee. There will be membership support campaigns, donation jars, and merchandise but to match actual expenses will require more. The nature of non-profit funding is to continually research for and write grants, and that is what we will continue to do to support this project. More significantly, by strengthening our operations now through this funding request, we will gain more presence and more exposure to attract an increased number of visitors which in turn builds on our reputation and suitability for ongoing and possibly more advanced collaborations and support funding.

8. Briefly describe the organization’s fiscal oversight / internal controls to minimize opportunities for fraud, waste, and mismanagement.

The WV Music Hall of Fame is a registered 501c3 with executive oversight by a full board of directors. Board meetings are held monthly and include review of financial accounts through reports prepared and presented by the board treasurer, Patrick Donahue, CPA. Bookkeeping is handled by the Office Administrator while account disbursements, including check signing, is authorized by the Executive Director. All financial accounts are audited annually by an independent third-party CPA.

9. How does your agency plan to separate ARPA funds from other agency funds for purposes of identification, tracking, reporting and auditing?

The WV Music Hall of Fame office utilizes the Quickbooks accounting software program for all financial accounting. All funding, including grant funds such as ARPA, have individual sub-accounts to ensure the funds received from each source can be identified, tracked and reported on. Monthly review by the board of directors verifies the funds reporting by program.

REQUESTED BUDGET WORKSHEET

Revenue Source Projections

List all Estimated Funding for this Program/Project

* Proposed City ARPA Funding	Internal/Self-Funding
\$ 32,000	\$ 15,379
Donations/Other Fundraising	Government Grants/Other
\$ 24,500	\$ 20,000
* TOTAL REVENUE	
\$ 91,879	

Expenses Projections

List all Estimated Expenses for this Program/Project

Salaries/Wages

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$ 32,000	\$ 51,824	\$ 83,324

Benefits & Matchings

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses

Contracted Services

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses

Program Materials

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses
\$ 0	\$ 8,055	\$ 8,055

Marketing

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses

Supplies

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses

Other

Amount Requested from City	Amount from Other Sources	Total Estimated Expenses

Total Expenses

* Amount Requested from City	* Amount from Other Sources	* Total Estimated Expenses
\$ 32,000	\$ 59,879	\$ 91,879

NOTE: Revenues and Expenses must balance, and the use of requested funds must be directly related to COVID-19 recovery efforts.

Organizational Details

1. Describe the history of the organization and its current programs and activities.

Founded in 2005, The West Virginia Music Hall of Fame (WVMHoF) is a non-profit organization dedicated to documenting and preserving the rich and lasting contributions West Virginians have made to all genres of music, from country, classical and jazz to rock, R&B, gospel and traditional. One of the primary goals of the WVMHoF is to provide education through themed displays, curriculum development, and outreach sessions with students and teachers around the state. The WV Music Hall of Fame has proven itself time and again over the course of its 16 years of existence through an impressive array of accomplishments reaching a national audience, all with extremely limited resources. In 2021 the Charleston Area Alliance honored the organization with their "Arts to the Max" award for its efforts to chronicle and celebrate the rich history of West Virginia music and for creating two attractive museums in The Charleston Town Center. The organization's most notable, ongoing projects include:

- Eight induction ceremonies (52 inductees) that have been broadcast live on WV Public Broadcasting.
- Production of five music album projects. Each of these projects capture and present some of the most significant music and musicians to come out of The Mountain State. The two most recent are: "The Rhinestone Hillbilly: A Tribute to Little Jimmy Dickens"; and "Courting the Muse: The Songs of Billy Edd Wheeler."
- Collaboration with the WV Department of Education to create a Traveling Museum to present innovative programs for K-12 and WV's at-risk youth. To date, the Traveling Museum has visited more than 650 schools in all 55 West Virginia counties and reached approximately 20,000 students.
- Creative programs for WV Public Broadcasting including the documentary "WV My Home: Musicians and the Mountain State Experience." The film was screened at festivals in West Virginia, Kentucky, Ohio and Indiana.
- The "Music Career Counseling Program" (MCCP) was created in response to the need for new and innovative career opportunities for WV's emerging job force. It utilizes music industry professionals to introduce students to performing and non-performing careers in music.
- In 2017, the WV Music Hall of Fame partnered with The Charleston Town Center to turn a vacant mall store into The Hall of Fame's first public space, reaching approximately 10,000 visitors a year in its first year.
- Following the success of the Music Hall of Fame in the Town Center, the companion WV Museum of Music was established. In addition to the museum-quality displays and educational programming, a 10'x20' stage was constructed for performances. The opening day drew more than 200 people, and together the museums continue to attract hundreds of visitors weekly.

2. Provide the organization's mission statement/purpose.

The WV Music Hall of Fame's founding mission is documenting and preserving the rich and lasting contributions West Virginians have made to all genres of music. We accomplish our mission through these goals:

- Inducting important West Virginian musicians into the WV Music Hall of Fame
- Providing educational outreach through themed exhibits, curriculum, and specialized programming
- Collecting, preserving, and displaying historic music memorabilia

3. List any third-party references that can verify the organizations qualification or prior grant experience.

- The WV Humanities Council – Eric Waggoner (letter of support attached)
- Charleston Convention & Visitors Bureau – Tim Brady (letter of support attached)
- Kanawha County Schools – Mark Davis (letter of support attached)
- WV Division of Culture & History – Lance Schrader
- The Greater Kanawha Valley Foundation – Stephanie Hyre
- The Glotfelty Foundation – Sue Sergie

COVID-19 Impact

1. Explain the impact of the COVID-19 pandemic and how it relates to your request. For example, reduction in services, closures, increased costs, community impact, etc.

Prior to the pandemic our main source of operating funds came from fundraising events we planned and produced, including our most significant and expansive event, the WV Music Hall of Fame Induction Ceremony. We were forced to cancel all those live and in-person events in both 2020 and 2021. The biennial Induction Ceremony was postponed until Fall 2020 and repurposed as an on-line event with no live audience and very limited groups of performers. This means there were no ticket sales, and a greatly reduced number of sponsors from normal years. Some sponsorship monies that had been sent in early was requested to be refunded. In addition, as we began to reopen in 2021 and bring back staff, our staffing costs increased in order to satisfy the operational needs of the public-facing Hall of Fame and Museum of Music.

2. If funds are being requested to replace revenue lost due to COVID-19, provide details, and attach supportive documentation.

N/A – We are not requesting revenue replacement.

3. If awarded, how will ARPA funding aid in the recovery from the COVID-19 pandemic?

With ARP Act funding, the WV Music Hall of Fame and Museum will produce and present culturally significant programs and events in order to educate and inspire West Virginians and non-West Virginians, directly advancing our mission to spread the word about West Virginia’s contribution to American music while contributing to the community and economic development of downtown Charleston. Adjusting to post-pandemic economic realities requires flexibility and creative use of resources. This funding helps us re-establish our programming and will possibly allow us to come back even stronger.

THE APPLICANT UNDERSTANDS:

- *
☒ 1. This application and other materials submitted to the City may constitute public records which may be subject to disclosure under the West Virginia Freedom of Information Act. Documents containing sensitive information may be marked as “confidential.”
- *
☒ 2. Submitting false or misleading information in connection with an application may result in the applicant being found ineligible for financial assistance under the funding program, and the applicant or its representative may be subject to civil and/or criminal prosecution.

THE APPLICANT CERTIFIES THAT:

- *
☒ 1. I have reviewed the US Treasury guidelines regarding the eligible uses of American Rescue Plan State and Local recovery funds. <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/request-funding>
- *
☒ 2. By submitting this request, I represent that I am an authorized officer, or member of the organization for which I am submitting, and the information contained in my submittal is true and correct to the best of my knowledge and belief.
- *
☒ 3. The information submitted to the City of Charleston (“City”) in this application, and substantially in connection with this application, is true and correct.
- *
☒ 4. The applicant is in compliance with applicable laws, regulations, ordinances and orders applicable to it that could have an adverse material impact on the project. Adverse material impact includes lawsuits, criminal or civil actions, bankruptcy proceedings, regulatory action by a governmental entity or inadequate capital to complete the project.
- *
☒ 5. The applicant is not in default under the terms and conditions of any grant or loan agreements, leases or financing arrangements with its other creditors that could have an adverse material impact on the project.
- *
☒ 6. I understand and agree that I must disclose, and will continue to disclose, any occurrence or event that could have an adverse material impact on the project.
- *
☒ 7. I certify that the requested funding is needed to ensure this program/project will occur within the City limits of Charleston West Virginia.
- *
☒ 8. The Board of Directors or governing body of the organization has approved submission of this application. Please attach a copy of the authorizing resolution or meeting minutes using the file upload.

* Signature

Michael Lipton

* Date

12/15/2021

Authorized representative of Applicant/Organization

Format: MM/DD/YYYY

* PRINTED NAME:

Michael Lipton

* **TITLE OF APPLICANT:**

Executive Director

* **ORGANIZATION NAME:**

West Virginia Music Hall of Fame Inc.

Upload a File

Choose File

No file chosen



WEST VIRGINIA HUMANITIES COUNCIL

November 20, 2021

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Development Director

Erin Riebe
Grants Administrator

Tricia Stringer
Operations Manager

Kyle Warmack
Program Officer

To whom it may concern:

I'm pleased to write in support of the West Virginia Music Hall of Fame. Since its founding in 2005 the WVMHOF has worked steadily to curate, preserve, and promote the story of West Virginia musicians, and their many contributions to music of all traditions and genres. Over its sixteen-year life, the WVMHOF has become an established and respected "brand" within and beyond the Mountain State, representing committed and high-quality work in cultural preservation and education.

As its primary place-making initiative, WVMHOF maintains the West Virginia Music Hall Of Fame storefront, featuring its 56 inductees; and the West Virginia Museum of Music, a brick-and-mortar space displaying instruments, sound recordings, and various other material and ephemera from West Virginia's rich and varied musical history for public view. The organization's Traveling Museum brings that history, as well as interactive educational tools, to West Virginia schools in all 55 counties. Indeed, the WVMHOF's programming is among the most mobile offered by state cultural institutions: Documentaries, albums, digital recordings, live performances, touring exhibits, and public showcases are among the many diverse productions the institution has delivered to the public throughout the years.

WVMHOF has done much to preserve and promote what is often popularly thought of as West Virginia's "traditional" music, the playing styles and ballad traditions derived from Scots-Irish music. But the institution has also succeeded in showcasing the full range of music, performance styles, and creative innovators in West Virginia music's past and present. The WVMHOF's annual induction ceremonies honor West Virginia musicians whose work has enjoyed public fame. Equally importantly, the ceremonies also celebrate and promote musicians whose contributions to state and national music might otherwise be little known by the listening public. In large measure, WVMHOF is a special champion of musicians whose work deserves wider recognition, and through its commemoration and educational work has rescued many excellent West Virginia artists from potential historic erasure.

Through grantmaking, the West Virginia Humanities Council has partnered with the WVMHOF many times over the years, for projects ranging from the West Virginia Museum of Music to documentary film projects on Hall of Fame inductees. We know the WVMHOF to be an organization whose work reaches audiences worldwide, and whose programs are looked to by similar state organizations around the country as models of cultural preservation and promotion. I am glad to offer this letter in support of the West Virginia Music Hall of Fame, and would be happy to elaborate on any of these comments on request.

Dr. Eric Waggoner
Executive Director, West Virginia Humanities Council
waggoner@wvhumanities.org
304.346.8500 (o)



November 16, 2021

To Whom it May Concern:

On behalf of The Charleston Convention & Visitors Bureau (CVB) I would like to offer my support for the West Virginia Music Hall of Fame (WVMHF) in their quest to receive *American Recovery Plan* funding through the City of Charleston.

As the region's primary tourism marketing entity, the Charleston CVB sees this project as an opportunity to grow visitation and service tourists in the city. We further understand and support the mission of the WVMHF to preserve West Virginia's rich musical heritage, thereby educating and engaging music fans for generations to come.

As our state and the country navigate a post-pandemic economy, we know that people are looking for not only an escape from their more urban lifestyles but are seeking out authentic experiences. The WVMHF is a key piece in telling the authentic story of West Virginia and the Appalachian region.

The Charleston CVB stands in strong support of the WVMHF.

Sincerely,

Tim Brady
President & CEO, Charleston Convention & Visitors Bureau



November 19, 2021

To Whom It May Concern:

Please consider this a letter of support with reference to the West Virginia Music Hall of Fame's impact in regards to economic impact in the Kanawha Valley. As a music educator previously and now the Kanawha County Schools Fine Arts Curriculum Specialist, I have worked with the WV Music Hall of Fame on various projects since 2009 and have found the organization an amazing asset in terms of what it brings to the community at large, and in particular, what it offers to the educational community of WV.

One example of this programming is the Music Career Counseling Program. This initiative has been wonderful in terms of educating students as to the many West Virginia artists who have contributed to the great body of American music, all while introducing them to the many career opportunities that are available in the music industry. Schools in Kanawha County were among the first locations in the state to be offered this innovative program.

The museum's current location in the Town Center has the potential to influence even more WV youth in a positive direction as well as bring business and foot traffic into the mall. Though field trips were curtailed the last couple of years due to the Covid-19 pandemic, restrictions in our district are now easing up and these types of educational trips are starting to occur again. Having the WV Hall of Fame located in our downtown mall is a fantastic option for our schools! Teachers can reserve a time to tour the museum with their students, then venture upstairs to the food court to grab some lunch all in one stop. This is a win for everyone as the students learn about WV music and musicians all while supporting the mall's businesses during their trip. After having such a positive experience, it leaves me no doubt that these students will wish to return again to the WV Hall of Fame Museum with their families while taking time to shop and dine in the mall while they are there.

Please know that I, as well as many others in the educational community, appreciate all the WV Music Hall of Fame offers from its convenient location within our downtown mall. If there is anything else I can do to further show my support of this valuable resource, please feel free to contact me via email or phone.

Sincerely,

Mark Davis
Fine Arts Curriculum Specialist
Kanawha County Schools
304-348-6152
mbdavis@mail.kana.k12.wv.us

WEST VIRGINIA MUSIC HALL of FAME

C/O MICHAEL LIPTON, 1427 LEE STREET, CHARLESTON, WV 25301 • 304.342.4412 • INFO@WVMUSICHALLOFFAME.COM

December 14, 2021

To whom it may concern,

As board chair of The West Virginia Music Hall of Fame, I declare that the IRS has not revoked our tax-exempt status, nor changed that status since the issuance of the tax determination letter. In addition, the Board of Directors of the organization has approved submission of this application.



Bob Brunner

West Virginia Music Hall of Fame

Board Chair



Risk Assessment Tool	
Grantee Name:	West Virginia Music Hall of Fame
Grant Program Name:	Museum Facility Staffing and Improvements
Grant #:	
Grant Amount:	\$32,000
Grant Period:	June 6, 2022 - December 31, 2026
Monitor Period:	June 6, 2022 - December 31, 2026
Date of Review:	8-Apr-22
Date of Last Review:	1-Jun-22

#	Question	Points	Assessment -- Yes; No; N/A (select from drop down)	Score (1=yes)	Comments
1	Has the applicant managed federally funded grant programming in the last 24 months?	1	No	0	Does receive multiple foundation level grants
2	Was the applicant subject to a financial statement audit in the last 24 months, and had no findings? If any findings, list the number and details.	1	No	0	
3	Was the applicant free of any audit findings received within the past 5 years? If findings were made, how many, and nature of finding(s).	1	N/A	0	
4	Does the applicant have the capacity to manage and implement federal regulations including 2 CFR 200 and other specific federal regulations pertaining to items such as (segregation of duties, cash handling, contracting procedures, and personnel and travel policies). (2 CFR 200.303 - Internal Controls)	1	Yes	1	Financial Operations Manual Reviewed and covers policies
5	Have key staff been instrumental in the funds process or generally remained stable in the past year?	1	Yes	1	
6	Has the applicant's financial or grant management system (technology or other) remained unchanged in the last 12 months? If changes were made, please explain in the comments section.	1	Yes	1	
7	Does the applicant's accounting system segregate expenditures by funding source? (Per 2 CFR 200.302, system must be sufficient to permit the preparation of reports and tracing of funds.)	1	Yes	1	
8	Has SAM.gov been checked to determine that the applicant is not debarred, suspended, or does not show delinquent federal debt in Sam.gov? (2 CFR 200.214)	1	Yes	1	
9	Does the applicant have documented procurement policies in alignment with the procurement regulations of 2 CFR Part 200?	1	Yes	1	
10	Does the applicant maintain central file locations for all grants, loans or other types of financial assistance?	1	Yes	1	
11	Does the applicant have a Conflict-of-Interest Policy in place and is it documented?	1	Yes	1	
12	Does (or did) the applicant require, collect and document any expenditure/financial reports from subrecipients (from other current or past), and if so how frequently?	1	N/A	0	No Subrecipients
13	Has the applicant been consistent/timely with prior program reporting requirements?	1	N/A	0	Does not receive any federal grants requiring reporting
14	Have the applicant's financial reports for any previous programming been adequate, accurate and on time?	1	N/A	0	Does not receive any federal grants requiring reporting

Available Total 14

Total Risk Score 8

LEGEND

High Risk	Less than	4
Medium High	Between	4-7
Medium Low	Between	8-11
Low Risk	Greater than	11

Notes	The organization has not recently received or managed a federal grant. Does manage foundation level grants.
Concerns	Staff size limits ability for separation of duties. Internal controls policies in place to limit risk.
Recommendations	Recipient should provide all invoices and receipts along with monthly reimbursement requests. All procurements for services or construction over \$10,000 should be coordinated with City personnel.

Notice of Subaward

Subrecipient Name: West Virginia Music Hall of Fame Inc	Name of Federal Awarding Agency: Department of Treasury
Subrecipient's UEI ID: F69QVYJSA5V4	Federal Award Date: 5/18/2021
Federal Award Identification Number (FAIN): SLFRP0368	Name of Pass-Through Entity: The City of Charleston, WV
Catalog of Federal Domestic Assistance (CFDA) Number: 21.027	Contact Information for Pass-Through Entity: Andy Wood Finance Director (304) 348-8014
Program Name: Coronavirus State and Local Fiscal Recovery Funds	Subaward Period of Performance: 6/6/2022 – 12/31/2026
Federal Award Program Description: The Coronavirus Local Fiscal Recovery Fund addresses the continued impact of COVID-19 (i.e., coronavirus disease 2019) on the economy, public health, state and local governments, individuals, and businesses.	
Total Amount of Federal Funds Obligated by this Agreement: \$32,000	Total Amount of Federal Funds obligated to the Subrecipient: \$32,000
Approved Budget Categories: EC 2.35 - Aid to Tourism, Travel, or Hospitality	
Is the award for Research and Development (R&D)? (Y/N) No	Indirect Cost Rate for federal award: Not applicable to the Local Fiscal Recovery Fund
Terms & Conditions: All requirements imposed by the City of Charleston, WV (the City) on the subrecipient so that the Federal award is used in accordance with the American Rescue Plan Act, U.S. Treasury guidance, and the terms and conditions of the Federal award of American Rescue Plan Act Fiscal Recovery Funds.	
Incorporated Documents: 1. Notice of Subaward 2. Subrecipient Agreement 3. Exhibit A – Scope of Work 4. Exhibit B – Project Budget	

Subrecipient Agreement

Minimum Requirements include:

- All requirements imposed by the City of Charleston, WV (the City) on the subrecipient so that the Federal award is used in accordance with the American Rescue Plan Act, U.S. Treasury guidance, and the terms and conditions of the Federal award of American Rescue Plan Act Fiscal Recovery Funds.
- Any additional requirements imposed by the City on the subrecipient in order for the City to meet its own responsibility to the U.S. Treasury, including identification of any required financial and performance requirements.
- A requirement that the subrecipient permit the City and auditors to have access to the subrecipient's records and financial statements as necessary for the City to meet the requirements of 2 CFR 200.331.
- Terms and conditions concerning the closeout of the subaward.

THIS AGREEMENT is made by and between the City of Charleston, WV (the City), with offices located at 501 Virginia St. E., Charleston, West Virginia 25301, and West Virginia Music Hall of Fame Inc, (hereinafter referred to as "Subrecipient") with administrative offices at 1427 Lee S E. Charleston, West Virginia 25301, United States (each being at times referred to as "Party" or "Parties").

WITNESSETH:

WHEREAS, on or about March 21, 2021, the President of the United States signed into law the *American Rescue Plan Act of 2021*, Public Law 117-2, (hereinafter referred to as "ARPA") to provide additional relief to address the continued impact of COVID-19 (i.e., coronavirus disease 2019) on the economy, public health, state and local governments, individuals, and businesses; and

WHEREAS, Section 9901 of ARPA amended Title VI of the Social Security Act to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds); and

The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) at 501 Virginia St. E., Charleston, West Virginia 25301 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).; and

WHEREAS, the U.S. Department of the Treasury is authorized to distribute \$45.57 billion funding from the Fiscal Recovery Funds to Metropolitan Cities utilizing a population based formula; and

WHEREAS, the City of Charleston, WV was allocated \$36,801,358 for distribution; and

WHEREAS, the purpose of this Agreement is to provide for the sub-award of a portion of the financial assistance obtained by the City under the Fiscal Recovery Funds to assist Subrecipient with funding such necessary expenses to respond to the continued impact of the COVID-19 public health emergency as are described in this Agreement and the attachments hereto, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the City and Subrecipient agree as follows:

Section 1: Compliance

- A. Subrecipient acknowledges that Fund payments made by the City to the Subrecipient are not considered to be grants but are “other financial assistance” under 2 C.F.R. 200.40. This Agreement requires compliance with certain provisions of Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”). Subrecipient agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. During the performance of this Subrecipient Agreement, the Subrecipient shall comply with all applicable federal laws and regulations, including but not limited to the provisions in this Agreement and the required federal provisions. Violations of law will be referred to the proper authority in the applicable jurisdiction.
- C. Contracts awarded by Subrecipient under this Agreement shall comply with all applicable Federal laws, regulations, executive orders, Department of Treasury policies, procedures, and directives. With respect to any conflict between such federal requirements and the terms of the contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control. The Subrecipient must comply with all applicable Federal law, regulations, executive orders, Department of Treasury policies, procedures, and directives. The Subrecipient shall comply with all federal requirements including, but not limited to, the following:
 - Fund payments are considered to be federal financial assistance subject to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507).
 - Subrecipients are subject to a single audit or program specific audit pursuant to 2 C.F.R. 200.501(a) when Subrecipient spends \$750,000 or more in federal awards during their fiscal year.
 - Fund payments are subject to 2 C.F.R. 200.303 regarding internal controls.
 - Fund payments are subject to 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
 - Fund payments are subject to Subpart F regarding audit requirements.
- D. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Agreement, including but not limited to 2 C.F.R. 200.303, 2 C.F.R. 200.330-332, and 2 C.F.R. Part 200 Subpart F.

Section 2: Term

- A. This Agreement shall begin upon the date last executed by the Parties (the “Effective Date”) and shall remain in effect until March 31, 2027 (the “Expiration Date”) unless terminated earlier as defined in Section 6.

- B. The Subrecipient shall be eligible to receive funding for eligible and allowable costs (as defined in Section 3) from the period commencing March 3, 2021, through the Expiration Date (the “Covered Period”).

Section 3: Funding

- A. Subject to the terms and conditions of this Agreement, the City shall pay the Subrecipient, on a cost reimbursement basis, up to a maximum of \$32,000 to implement the projects and/or activities described in the Scope of Work (SOW). It is understood and agreed that any additional funds necessary in connection with the projects and/or activities described in the SOW above and beyond this amount are the sole responsibility of the Subrecipient. Advance payment of funds to the Subrecipient under this Agreement shall not be permitted unless expressly described in the SOW. Subrecipient shall be reimbursed on a cost reimbursement basis for eligible and allowable costs incurred by Subrecipient in the implementation of the projects and/or activities described in the SOW as such costs are incurred.
- B. Eligible and allowable costs are defined as costs that are necessary Eligible Uses under one of the following cost categories:
 - 1. To respond to the COVID-19 public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 - 2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
 - 3. For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency;
 - 4. To make necessary investments in water, sewer, or broadband infrastructure;

And

- 1. Are described in the SOW; and
 - 2. Are otherwise in accordance with the terms and conditions of this Agreement, Title VI of the Social Security Act, and all other applicable laws, rules, regulations, and guidance.
- C. Non-allowable uses of Fiscal Recovery Funds include, without limitation, the following:
 - 1. Usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase;
 - 2. Damages covered by insurance;
 - 3. Usage of funds as a deposit into any pension fund;
 - 4. Expenses that have been or will be reimbursed under any federal program;
 - 5. Debt service cost;
 - 6. Contributions to a “rainy day” fund; and
 - 7. Legal settlements
- D. All reimbursement requests shall be submitted to the City at the following address: City of Charleston City Manager’s Office, 501 Virginia Street East, Charleston, WV 25301. To be

eligible for reimbursement under this Agreement, the Subrecipient shall submit sufficient documentation to the satisfaction of the City demonstrating that the Subrecipient is legally obligated to pay the costs for which reimbursement is sought. All reimbursement requests must include a certification, signed by an official who is authorized to legally bind the Subrecipient, that reads as follows:

1. “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”
- E. All requests for reimbursement under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. All costs must be obligated on or before December 31, 2024. For a cost to have been “obligated,” contracting for goods or services must occur during the Covered Period, but payment of funds need not be made during that time. All goods or services must be delivered on or before September 30, 2026, and final payment shall occur within 90 days of delivery.
- F. The City of Charleston, WV requires detailed documentation of all costs for which reimbursement is sought under this Agreement (“Supporting Documentation”). Each payment request submitted by the Subrecipient shall be accompanied by sufficient Supporting Documentation (Invoices, Receipts, Bills, Expense Reports, etc.) substantiating all costs incurred and for which reimbursement is sought, to the satisfaction of the City. In the event the City determines the Supporting Documentation submitted by the Subrecipient is insufficient to enable it to evaluate the allowability and eligibility of costs, the Subrecipient shall furnish additional Supporting Documentation to the satisfaction of the City.
- G. No more frequently than once every month, the Subrecipient may request reimbursement from the City for costs incurred by Subrecipient under this Agreement for which actual payment has been made. All payment requests shall be submitted using the Payment Request Form made available by the City and shall be accompanied by sufficient Supporting Documentation (collectively the Payment Request Form and any Supporting Documentation shall hereinafter be referred to as the “Payment Request”). Additionally, at the time of each Payment Request, Subrecipient shall submit a “Progress Report” utilizing a form for same made available by the City, which shall describe the nature of the projects and/or activities being funded.
- H. Within 15 days after receipt of the Payment Request, the City shall, in its sole discretion, determine if the Payment Request, or any portion thereof, is acceptable and in strict compliance with the terms of this Agreement. If it is determined there are any errors in the Payment Request or if additional Supporting Documentation is required, the City shall notify the Subrecipient within 30 days of receipt of such Payment Request. The Subrecipient shall submit a revised Payment Request within 15 days of receipt of notice from the City. The City reserves the right to delay or deny any Payment Request containing errors or lacking sufficient Supporting Documentation until such deficiencies are corrected to the satisfaction of the City.

- I. Upon determination by the City that the Payment Request is sufficient, the City shall initiate the reimbursement process in accordance with applicable policies and procedures.

Section 4: Accounting; Duplication of Benefits

- A. Subrecipient's accounting and financial management system shall be sufficient to permit the preparation of reports required in connection with this Agreement and the tracing of funds to a level of expenditures adequate to establish that such funds have been used pursuant to the terms of this Agreement. All payments to Subrecipient contemplated under this Agreement may be contingent upon certification of the Subrecipient's financial management system in accordance with this requirement. Subrecipient must ensure that all sub-subrecipients comply with the provisions of this paragraph.
- B. Subrecipient hereby certifies and affirms that the projects and/or activities to be funded under this Agreement shall not result in a prohibited duplication of the benefits obtained by Subrecipient, any sub-sub recipient (as defined in 2 C.F.R. §§ 200.92-93), or any individual or entity that is a beneficiary of such projects and/or activities from other American Rescue Plan Act programs, other local, state, or federal funding sources (e.g. the Stafford Disaster Relief and Emergency Assistance Act, etc.), private insurance, or other private organizations. It is Subrecipient's responsibility and obligation to implement processes and procedures to select and subsequently monitor all sub-subrecipients, individuals, and entities receiving funds under this Agreement to ensure compliance with this paragraph. All agreements entered into between Subrecipient and any sub-subrecipient, individual, or entity providing for the subaward or payment of funds under this Agreement shall contain provisions permitting the Subrecipient to recapture funds provided under this Agreement in the event an impermissible duplication of benefit is discovered. Subrecipient acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the City. In the event that the Subrecipient recovers costs incurred under this Agreement and reimbursed by the City from another source, the Subrecipient shall reimburse the City for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Subrecipient to the date repayment is made to the City by the Subrecipient.

Section 5: Reporting Requirements

- A. Performance Reports. Reports are due to the City no later than five (5) days after the end of each period listed below:
 - June 30, 2022, due July 5, 2022
 - September 30, 2022, due October 5, 2022
 - December 31, 2022, due January 5, 2023
 - March 31, 2023, due April 5, 2023
 - June 30, 2023, due July 5, 2023
 - September 30, 2023, due October 5, 2023
 - December 31, 2023, due January 5, 2024
 - March 31, 2024, due April 5, 2024
 - June 30, 2024, due July 5, 2024
 - September 30, 2024, due October 5, 2024
 - December 31, 2024, due January 5, 2025
 - March 31, 2025, due April 5, 2025

- June 30, 2025, due July 5, 2025
- September 30, 2025, due October 5, 2025
- December 31, 2025, due January 5, 2026
- March 31, 2026, due April 5, 2026
- June 30, 2026, due July 5, 2026
- September 30, 2026, due October 5, 2026
- December 31, 2026, due January 5, 2027

The report shall appear on subrecipient letterhead and outline progress of items to date. The report should also contain a schedule of total subaward; list request(s) for reimbursements submitted and remaining award. The report should list each cash receipt from the City with date received and receipt number.

- B. Final Report. Within twenty (20) days following the final cash payment to Subrecipient under this Agreement, Subrecipient shall submit a “Final Project Report,” in which the Subrecipient shall describe the status of the Subrecipient’s implementation of all projects and/or activities undertaken under this Agreement. The Final Project Report shall further include an accounting of all costs and expenses incurred by Subrecipient.

Section 6: Termination

- A. Termination for Cause. the City may terminate this Agreement for cause at any time if any covenant, warranty, or representation made by Subrecipient in this Agreement, the SOW, or in any application materials for funding submitted to the City in connection with this Agreement shall at any time be false or misleading in any respect, or in the event of the failure of the Subrecipient to satisfactorily perform any task, deliverable, or activity under this Agreement or otherwise comply with the terms and conditions of this Agreement. Prior to termination, the City shall provide fifteen (15) days written notice of its intent to terminate and shall provide the Subrecipient an opportunity to consult with the City regarding the reason(s) for termination.
- B. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon providing the non-terminating Party with ten (10) days written notice.
- C. Effect of Termination. Costs incurred by the Subrecipient after termination of this Agreement shall not be reimbursable unless expressly authorized by the City prior to the effective date of termination.

Section 7: Audits

- A. In the event that the Subrecipient expends \$750,000.00 or more in Federal awards in its fiscal year, the Subrecipient must have a single or program-specific audit conducted within nine (9) months of the end of the Subrecipient’s audit period, in accordance with the provisions of 2 C.F.R. Part 200. In determining the Federal awards expended in its fiscal year, the Subrecipient shall consider all sources of Federal awards, including Federal financial assistance received from the City under this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 C.F.R. Part 200.
- B. If the Subrecipient expends less than \$750,000.00 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 C.F.R. Part 200, as revised, is not required for that year, except as noted in 2 C.F.R. §200.503. In the event that the Subrecipient expends less than \$750,000.00 in Federal awards in its fiscal year and elects to have an audit conducted in

accordance with the provisions of 2 C.F.R. Part 200, as revised, the cost of the audit must be paid from non-Federal resources. In accordance with 2 C.F.R. § 200.501(d), records must be available for review or audit by appropriate officials the City of Charleston, WV, USDOT, and the U.S. Government Accountability Office (GAO).

- C. Upon completion of the audit required in this Section, Subrecipient shall promptly transmit a copy of the audit report to the City.
- D. In addition to reviews of audits conducted in accordance with 2 C.F.R. Part 200, monitoring procedures under this Agreement may include, but not be limited to, on-site visits by the City; limited-scope audits as defined by 2 C.F.R. Part 200; submittal and review of financial management statements; and/or other procedures. By entering into this Agreement, the Subrecipient agrees to comply and cooperate with any reasonable monitoring procedures/processes deemed appropriate by the City. In the event the City determines that a limited-scope audit of the Subrecipient is appropriate, the Subrecipient agrees to comply with any additional instructions provided by the City to the Subrecipient regarding such audit. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the City.

Section 8: Subcontract; Subawards

- A. Subcontract. In procuring goods and services under this Agreement, the Subrecipient shall use its own documented procurement procedures, provided that such procurements conform to applicable state and federal law.

The Subrecipient may subcontract work under this Agreement as necessary without the prior written consent of the City, subject to the any conditions or limitations imposed by applicable state and federal law. Regardless of any subcontract, the Subrecipient is ultimately responsible for all projects, programs, activities, and services undertaken by subcontractors under this Agreement. The Subrecipient agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Subrecipient that the City shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Subrecipient shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

In selecting and monitoring subcontractors, the Subrecipient shall comply with 2 C.F.R. §§ 200.330-332. The Subrecipient shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports maintained by the Subrecipient and supported with documented evidence of follow-up actions taken to correct areas of noncompliance, where applicable.

For all procurements of \$10,000 or above, advice should be sought from the City of Charleston Finance Department, who must be notified of the intention to carry out the procurement at the earliest possible opportunity, and in any case prior to advertising or issuing a Request for Proposals.

- B. Sub-Awards. The Subrecipient may enter into subaward agreements to provide for the distribution of funds under this Agreement to eligible sub-subrecipients (as defined in 2 C.F.R. §§ 200.92-93) without the prior written consent of the City. Regardless of any subaward, the Subrecipient is ultimately responsible for all projects, programs, services, and activities

undertaken by sub-subrecipients under this Agreement. All such sub-subrecipients shall be subject to the same performance, financial, and reporting requirements as the Subrecipient. In selecting, monitoring, and contracting with sub-subrecipients, the Subrecipient shall comply with 2 C.F.R. §§200.330-332. The Subrecipient shall monitor all sub-subrecipients on a regular basis to ensure compliance with this Agreement and all applicable laws, rules, and regulations. Results of monitoring efforts shall be summarized in written reports maintained by the Subrecipient and supported with documented evidence of follow-up actions taken to correct areas of noncompliance, where applicable. Such summaries and documents shall be submitted to the City upon request.

Subrecipient agrees and acknowledges that payments made under this Agreement are from federal funds and contingent upon prior approval as to the allowability and eligibility of the costs for which payment is requested by both parties.

Section 9: Closeout

- A. The City will close out this Agreement when it determines that all activities and all applicable administrative actions have been completed. Unless an extension is approved by the City, within twenty (20) calendar days after the Expiration Date, the Subrecipient must submit any outstanding reports, including the Final Project Report, as well as any required reporting on sub-awards, and must refund to the City any balances of unobligated cash that the City paid in advance or paid and that is not authorized to be retained by the Subrecipient entity for use in other projects. Within thirty (30) calendar days after receipt of all outstanding reports, the City will make upward or downward adjustments to the allowable costs, and then make prompt payments to Subrecipient for remaining allowable reimbursable costs. The closeout of this Agreement does not affect any of the following:
 - a. The right of the City to disallow costs and recover funds on the basis of a later audit or other review;
 - b. The obligation of the Subrecipient to return any funds due as a result of later refunds, corrections, or other transactions; or
 - c. The Subrecipient's obligations regarding audits, property management and disposition (if applicable), and records retention.
- B. Unless an extension is approved by the City, the Subrecipient must liquidate all obligations incurred under this agreement within ninety (90) calendar days after the Expiration Date.

On behalf of the Subrecipient, I understand and agree to the foregoing terms and conditions of the award of a portion of the financial assistance obligated by the City under the American Rescue Plan Act, and hereby certify my authority to execute this agreement on Subrecipient's behalf.

Name

Title

Date

Phone Number

Signature

Exhibit A – Scope of Work

With the funding received from the City, WV Music Hall of Fame will continue to provide its essential contributions to the regional tourism, travel, and hospitality industries. The funds received will serve to allow the subrecipient to resume and grow programming by bringing the workforce to full staffing levels. In the wake of COVID-19, the organization was forced to cancel events and programming, leading to a reduction in revenue, and as a result reduced staffing capacity.

In 2017, The WV Music Hall of Fame established a 3,600 square foot former storefront within The Charleston Town Center. With displays featuring the current inductees, computer stations and displays of memorabilia, it has become the Hall of Fame's most visible and accessible public and event space to date. A pre-COVID monthly concert series attracted 50-75 attendees per show. In 2020, based on the success of the Music Hall of Fame, the organization opened a 5,600 square foot Museum of Music within the Town Center. Both the Music Hall of Fame and Museum of Music serve to attract visitors into downtown Charleston and The Charleston Town Center, provide a welcoming and holistic space for City of Charleston community members of all ages and background, and offer a unique “West Virginia experience” to tourists, hotel guests, and convention attendees from the nearby Charleston Coliseum and Convention Center and area hotels.

The subrecipient projects that it will require a period of one to fully implement the programs and successfully benefit the tourism, travel, and hospitality industries of the Charleston area.

The objectives to be tracked through performance reports include:

- Number of annual visitors (# of visitors June 2022-May 2023)
- Number of surveyed visitors whose planned itineraries included visiting the Hall of Fame and/or Museum (# of visitors June 2022-May 2023)

Exhibit B – Project Budget

Item	Amount
Staff Salary and Benefits	\$32,000
Total Program Cost	\$32,000

Resolution No. 680-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 680-22 – Authorizing the Mayor to sign and submit to the U.S Department of Housing and Urban Development the Annual Action Plan for Program Year 2022 (FY 2022 to 2023), Year 3 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action Plan.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign and submit to the U. S. Department of Housing and Urban Development the Annual Action Plan for Program Year 2022 (FY 2022 to 2023), Year 3 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action Plan.

2022-2023 List of Projects

Activity	Proposed Funded Amount
<u>CD ADMIN</u> - These funds will be used for the administration of the Community Development Block Grant Program.	\$ 298,999.20
<u>CORP REHAB ADMIN (Charleston Owner-Occupied Rehabilitation Program) Administration</u> - These funds will be used for the services and delivery costs of the CORP Rehab Program & MOECD Salaries.	\$ 125,000.00
<u>CORP Rehab</u> - (Charleston Owner-Occupied Rehabilitation Program) – Funding for rehabilitation projects for low-to-moderate income families living in the city of Charleston to include Emergency Rehab up to \$5,000 each <u>and an ADA PROJECT</u>	\$ 312,496.80
<u>CAPITOL MARKET</u> - Funding for this non-profit public market, located at 800 Smith Street, 25301 will enhance ADA access at both the East & West entrances.	\$ 10,802.88
<u>CHARLESTON KANAWHA HOUSING AUTHORITY</u> - Funding for this public housing complex located at 680 South Park road will assist with the purchase of materials and equipment to upgrade the basketball court	\$ 32,890.00
<u>CITY ENGINEERING</u> - This activity will provide for the repair and/or replacement of ADA Accessible Ramps & Sidewalks in low income areas of Charleston.	\$ 485,000.00
<u>BOB BURDETTE CENTER, INC.</u> - Funding for this afterschool program with locations at 1401 Washington Street, W, 1009 Woodward Drive, 100 Florida Street, and 550 Hawks Ridge Road will assist with direct provider salary, benefits, and payroll taxes.	\$ 8,800.00
<u>COVENANT HOUSE</u> - Funding will assist with the direct provider salary, benefits and payroll taxes for the Health Equity Outreach Coordinator and food pantry items. The position is based at Covenant House, which is located at 600 Shrewsbury Street, Charleston, WV.	\$ 8,000.00
<u>DAYMARK - PATCHWORK</u> - Funding for this crisis intervention center and shelter for youth, located at 1583 Lee Street, 25311, will assist with direct provider salaries, benefits & payroll taxes	\$ 19,000.00
<u>GIRL SCOUTS OF BLACK DIAMOND COUNCIL</u> - Funding for the GirlZone located at 321 Virginia St, 25302 will assist with equipment & furniture used to create a safe, accessible space to girls of all abilities & needs.	\$ 15,600.00

<u>KANAWHA VALLEY COLLECTIVE</u> - Funding will assist with acquiring birth certificates, IDs, and bus tickets for transportation for the homeless for the Identification and Transportation program, which is located at 1 United Way Square, Charleston, WV.	\$ 5,000.00
<u>MANNA MEAL, INC.</u> - Funding will assist with direct provider salary expenses and food costs for the soup kitchen that serves breakfast and lunch, 365 days a year, located at 1105 Quarrier Street, Charleston, WV.	\$ 48,500.00
<u>MIDIAN LEADERSHIP PROJECT</u> - Funding for this community center located at 711 Park Ave that serves students and young adults will assist with utilities.	\$ 15,000.00
<u>REA OF HOPE, INC.</u> - Funding for this halfway house for women in recovery from alcohol and/or drug addiction, located at 1429 Lee Street, Charleston 25301, will assist with utility expenses.	\$ 9,000.00
<u>RCCR - SMITH ST STATION</u> - Funding for this 29 unit low income apartment building, located at 801 Smith Street, Charleston, 25301, will assist with utility expenses.	\$ 23,000.00
<u>WEST VIRGINIA HEALTH RIGHT, INC.</u> - Funding for this facility which offers health care and medications and to the homeless and needy citizens in Charleston and surrounding areas is located at 1520 Washington Street, East, 25311. Funding will assist with the purchase of medications and medical supplies/dental supplies & consumables.	\$ 45,000.00
<u>WEST VIRGINIA WOMEN WORK</u> - Funds will assist with salary, benefits, payroll taxes, and rent for the Step Up for Women program, which offers a skilled trade training class for women and helps them overcome barriers to non-traditional employment. The class will be held at Step Up for Women in the Plumbers and Pipefitters LU 625, located at 3601 James Avenue, Charleston, WV.	\$ 6,830.00
<u>YWCA - RFAP</u> - This program provides emergency shelter to victims of domestic violence who are fleeing from an abusive relationship or environment. This funding will assist with utilities for the shelter.	\$ 10,000.00
<u>YWCA - SOJOURNER'S</u> - Emergency shelter for homeless women and families, located at 1418 Washington Street, East, Charleston, WV 25301. Funding provided will assist salary, benefits & payroll expenses of the substance abuse counselor.	\$ 10,500.00
<u>Unprogrammed Funds</u> - Funds for emergency projects and overruns during the program year.	\$ 5,577.12
HOME	
<u>HOME Admin</u> - Administrative funds for the Home program	\$ 78,882.80

<u>HOME/PROJECT</u> - Funds allocated to qualified persons/families in the city of Charleston and Kanawha County to assist first-time homebuyers with downpayment, closing costs and mortgage subsidies.	\$ 591,621.00
<u>HOME/CHDO</u> - Funds allocated to qualified Community Housing Development Organizations (CHDO's) in the city of Charleston and Kanawha County.	\$ 118,324.20

Resolution No. 681-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 681-22 – Authorizing the Finance Director to amend the 2021 Community Development Block Grant budget as indicated on the accounts listed below.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the 2021 Community Development Block Grant budget as indicated on the accounts listed below:

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	
009-021-00-002-0-999	City Owned Buildings	\$10,000.00	Decrease
Giltinan Center			
009-021-00-002-0-999	City Owned Buildings	\$10,000.00	Decrease
Mel Wolf CDC			
009-021-00-002-0-999	City Owned Buildings	\$10,000.00	Decrease
Smith Street Station			
009-021-00-0059-999	Kanawha City Rec Ctr	\$9,345.68	Decrease
ADA bathroom			
009-021-00-199-0-999	Unprogrammed Funds	\$39,345.68	Increase

The city proposes to re-program these remaining funds to unprogrammed funds for future projects, including cost overruns or emergency projects.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign and submit to the U. S. Department of Housing and Urban Development the Annual Action Plan for Program Year 2022 (FY 2022 to 2023), Year 3 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action Plan.

Resolution No. 682-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

- 1 Resolution No. 682-22 – Approving the proposed Fiscal Year 2022-2023 Coliseum & Convention
- 2 Center and Municipal Auditorium budget as indicated within the attached document.
- 3
- 4 Be it Resolved by the Council of the City of Charleston, West Virginia:
- 5
- 6 That the proposed Fiscal Year 2022-2023 Coliseum & Convention Center and Municipal
- 7 Auditorium budget as indicated within the attached document is approved.



Charleston
Coliseum

—◆—
Convention Center



[CHARLESTON COLISEUM & CONVENTION COMPLEX BUDGET PROPOSAL]

The following budget proposal for the Charleston Coliseum & Convention Complex is based on financial analytics performed by the Management Team through FY2021-2022. Our recommendations reflect the results of those analytics, as well as an overall evaluation of indirect expenses incurred by the facility during the pre-covid event activities.

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FISCAL YEAR JULY 2021 – JUNE 2022

OVERVIEW

As the selected management company for the Charleston Coliseum and Convention Complex, OVG360 has positioned the facility as the live event and meeting destination in West Virginia and the Mid-Atlantic & Appalachian Region. In order to accomplish this goal, the OVG360 management team has identified and implemented several key factors that have built the foundation for the Charleston Coliseum and Convention Complex to succeed:

- Position the Charleston Coliseum Convention Center and Municipal Auditorium, through the philosophy of “All Roads Lead to Charleston” for events and shows in the Mid-Atlantic & Appalachian region.
- Direct relationships with touring promoters, agents, and partners to build a significant volume of event count in FY2021-2022 and establishment of confirmed and potential show activity for FY2022-2023
- Review of rental rates and services, adjusting where needed to better reflect the regional market.
- Proactively working with City Leaders, Departments and Community partners to provide the best experiences possible for visitors to the facility, downtown Charleston and Kanawha County, and the larger Metro Valley Region.
- Actively updating marketing strategies, digital media, rental packages and rates, group sales and operations to generate increased facility activity and awareness.
- Establishment of the Municipal Auditorium as a positive income generating business and development of the outside garden space in the parking lot of the Auditorium to return concessions revenue that is unattainable without the expanded service area.

FISCAL YEAR JULY 2021 – JUNE 2022

REVIEW

A significant development in FY2021 - 2022 was the gradual lifting of restrictions placed on large gatherings and events as a result of the COVID pandemic. Operationally, the CCCC saw an increase in activity from the budgeted **294** events, projecting to end the 2021-2022 year with **308** events spanning **743** total event days of activity within the Convention Center, Auditorium and Coliseum venues. The CCCC was allocated **\$903,000** in budgeted funding from the City of Charleston to support monthly costs associated with the center based on the Cash accounting method utilized by the City to fund the Center's operational cash flow requirements. The positive momentum of event activity achieved in the 3rd and 4th quarters of FY2021 - 2022 resulted in a decrease in actual cash support for operations required by **\$(183,233)**. The overall cash support for operations needed for FY2021 - 2022 has been determined and forecasted at **\$719,767**, with the operational loss based on revenues over expenses, anticipated to be **\$(602,766)**.

This past fiscal year's successful live event schedule, contributed significantly to the facilities success with the CCCC hosting 10 events selling 90% or more of available capacity, 5 of which were designated as **sell outs** during the FY2021 - 2022 fiscal year. Highlights include:

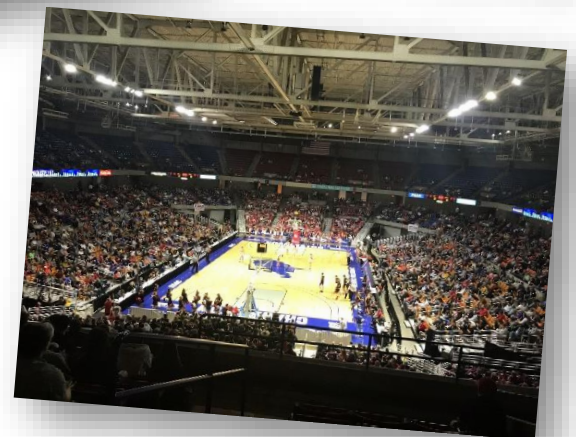
- Blippi the Musical, 1st sell out the year in July 2021 – Family show in the Municipal Auditorium
- Morgan Wallen resulted in gross ticket sales above \$1 million and was the single highest grossing show in facility history.
- Cocomelon, a widely popular kids show, One of only 6 performances in the USA performed in the Municipal Auditorium to a sold-out audience in March 2022.

This continued positive momentum in activity has resulted in some positive gains in the final months of the FY2021-2022 resulting in 2 straight records in concessions and catering revenue generated in two consecutive months. This activity provides a good outlook for the upcoming year with future bookings looking stronger than ever.

ACTIVITY YEARS FY

2021 – 2022 NOTABLE EVENTS

- WV State High School Basketball Tournament
- Morgan Wallen – **SELL OUT**
- Cocomelon Mellon – **SELL OUT**
- EXPO – WV Contractors
- WVSSAC State Volleyball Tournament
- Professional Bull Riding – **SELL OUT**
- Tsubasacon
- Bert Krescher – **SELL OUT**
- Dancing with the Stars
- Elkview Middle School Archery Tournament
- Shinedown
- WV Auto and Truck Dealers Association
- Disney on Ice
- Blippi – **SELL OUT**
- TBT West Virginia Regional
- WV Hunting and Fishing Show
- Alabama - over 90%
- For King and Country
- Jurassic Quest
- WV Music Educators Association
- WV State Science Fair
- Capital City Youth Convention
- Tracy Lawrence and Clay Walker - over 90%
- Kevin Gates - over 90%
- Jason Aldean - over 90%
- NRA Dinner
- YWCA Women of Achievement
- Tom Segura over -90%
- WVSU Black and Gold Gala
- WV American Choral Directors Conference
- American Dairy Association Mideast
- American Cornhole Organization Charleston Major
- National Beta Club – Annual Meeting
- Vantage Volleyball



FISCAL YEAR 2022 - 2023 BUDGET PROJECTIONS

As hoped, FY2021 - 2022 has proven to be a year of recovery, notably in the 3rd and 4th quarters. The local hotel market is rebounding, amusement tax collection continues to see significant gains and activity overall in downtown Charleston continues to indicate a positive momentum. The FY2022 - 2023 budget is based upon the same premise that the meeting and event recovery will continue at a moderate pace, an assumption that is consistent with predictions by industry leaders and evident in the long-term bookings and activity seen on the CCCC calendar and ticketing platform.

The FY2022 - 2023 budget is built on the faith that the economy will improve; and while the first several months of bookings at the CCCC prove strong, questions remain in the industry as to the possibility of what is to come later in the year with higher costs of goods, services and possible COVID winter surge and the marketplace reaction to these factors. Given all the factors and careful evaluation of each of the event categories, we continue to remain positive that the CCCC will maintain, a similar path towards growth and financial stability over this coming and future years. The forecast also proposes that OVG360 along with the CCCC team will continue to protect and improve the CCCC through continued increases in CIF fund generation; providing for capital improvement and maintenance, proving the City's investment to the market and region a shining example of the growth and development in Charleston.

The FY2022 - 2023 CCCC budget is summarized in the following:

Conference Center forecasted revenue for the FY2022 - 2023 period of **\$1,479,453** from a total of **179** events. Categories include Banquets, Conference Events, Meetings Large and Small and Convention activity.

Consumer and Tradeshows are anticipated to generate revenue of **\$1,003,425** from **27** budgeted events. Returning this coming year among others will be Tsubasacon, Brick fest, Jurassic Quest, and The WV International Auto Show.

Coliseum Concerts and Family shows We anticipate gross ticket sales activity of **\$6,532,400** from **33** budgeted events. This activity will also provide revenue to the capital improvement fund collection, convenience and ancillary income revenue categories including concessions revenue. Continued updates to Grab and Go opportunities, new concept development and concession stand updates will continue in FY2022 - 2023.

Municipal Auditorium shows have an anticipated gross Ticket sales of **\$2,210,657** through **22** shows. This will also provide revenue to the capital improvement fund collection, convenience and ancillary income revenue categories. Challenges with access for show production, adequate concession and merchandise space and servicing the event needs through easy access to internet or network infrastructure are anticipated to continue through the FY2022 - 2023 season.

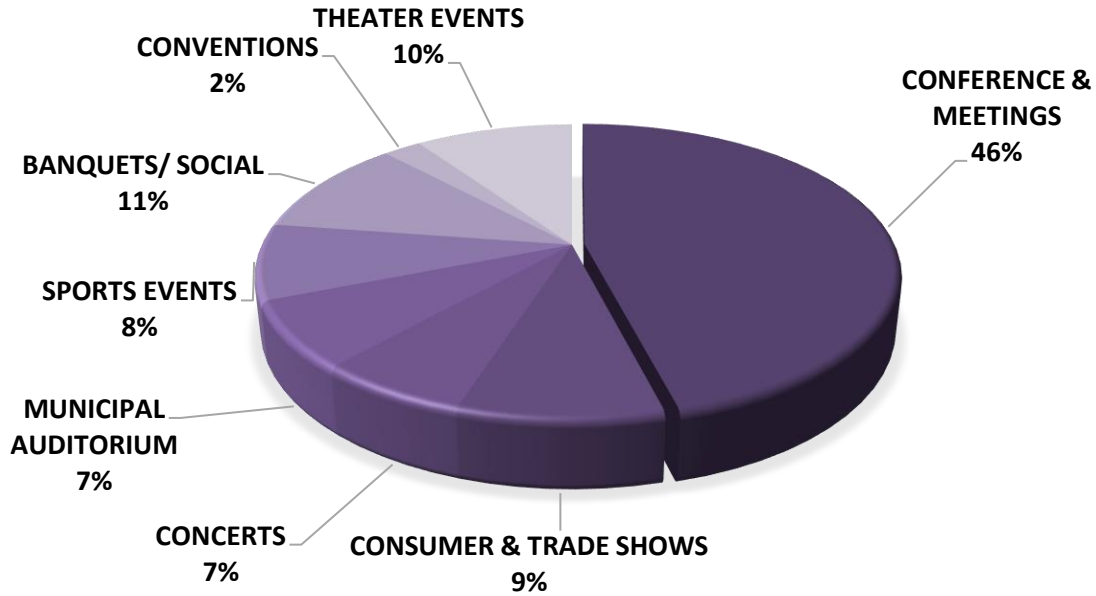
Miscellaneous Sporting Events. For the FY2022 - 2023 we will continue to see anticipated growth in youth sport activity, projected to generate approximately **\$518,793** in net event activity from **25** events.

With growth projected in these categories for FY2022 - 2023 and all revenue sources, we anticipate a **\$4,806,307** in gross operating income for FY2022 - 2023. The increase reflects an anticipated 21.13% growth in annual operating income. Please refer to the charts on page 5 for a comparison of actual even income in comparison year FY2021-2022 and FY 2022-23 budget.

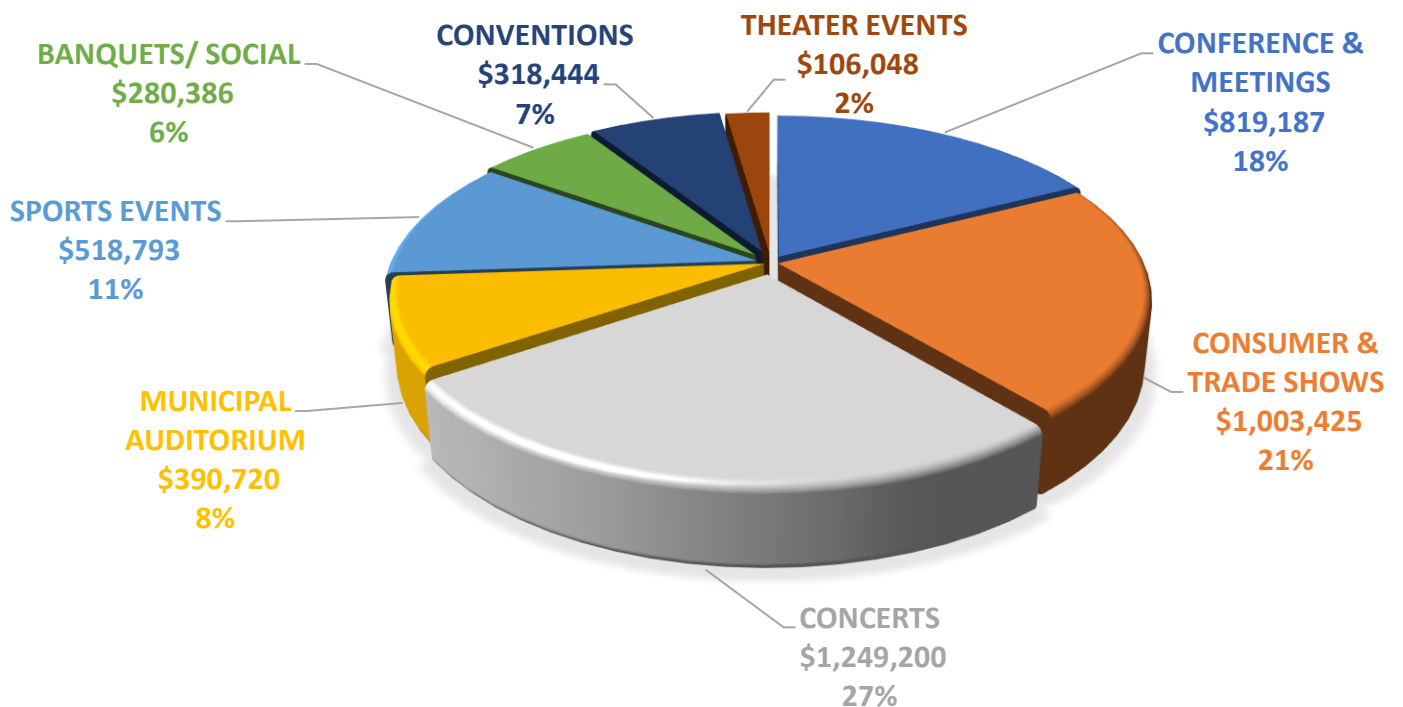
With continued increase in event activity and a focus on implementing additional maintenance and required updates to facility equipment and infrastructure components, we anticipate a 17.91% increase in operating expenses, projected at **\$5,389,414** for FY2022 - 2023. Please refer to the charts on page 5 for a comparison of historical expenses.

FY2022 - 2023 BUDGET BREAKDOWN OF ACTIVITY

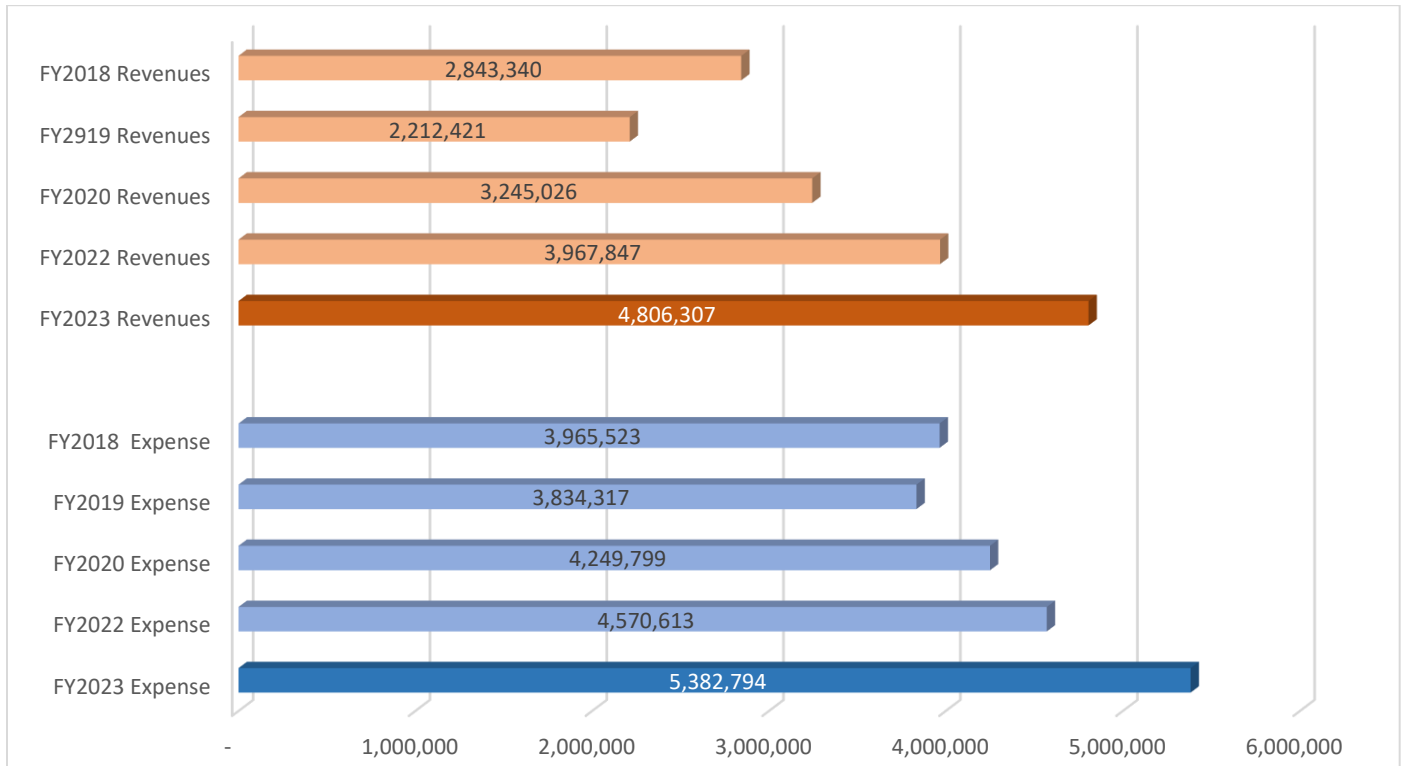
Charleston Coliseum and Convention Complex Budgeted Events
July 2022 Through June 2023 (302 events)



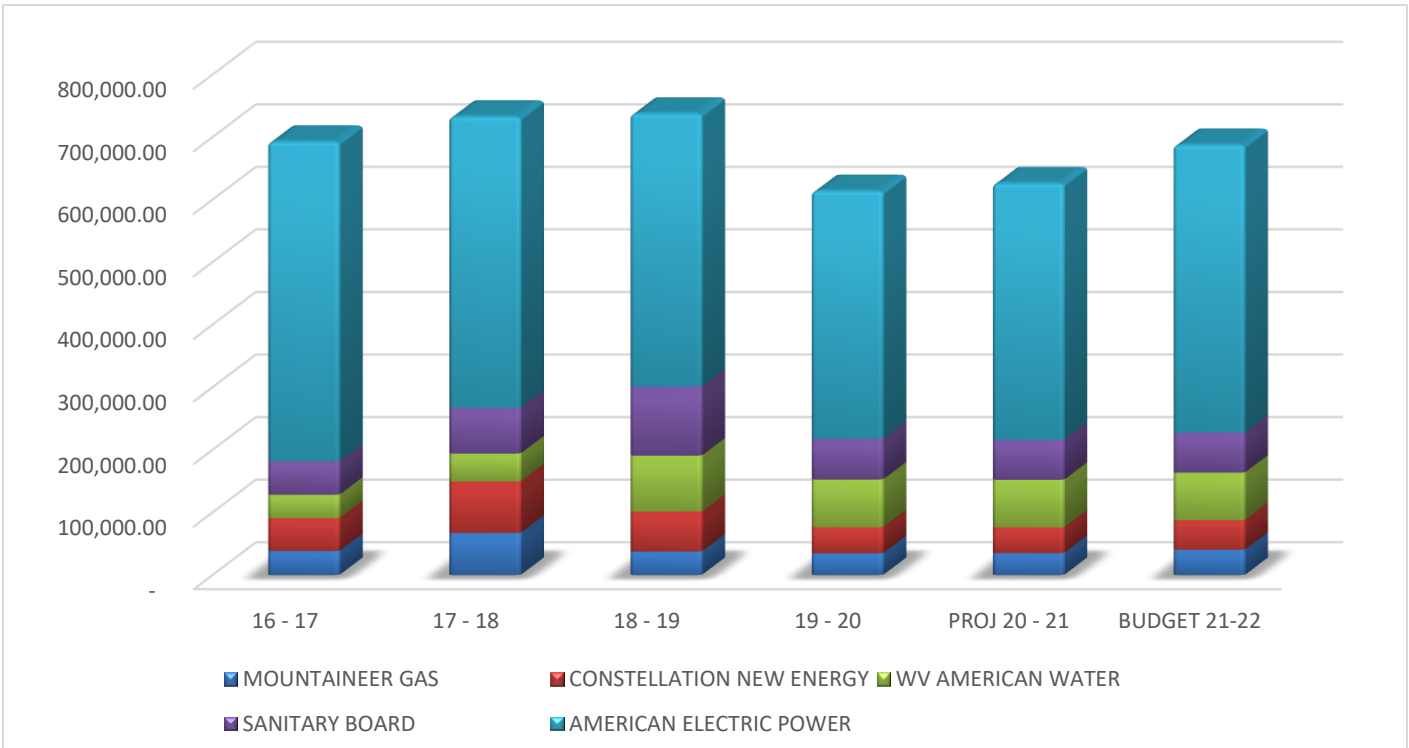
EVENT OPERATING INCOME FY 2022 - 2023 Budget \$4,485,965
Breakdown by event type



EVENT OPERATING INCOME vs EXPENSE ACTUAL FY2017/2018 – PROPOSED FY 2022/2023



UTILITIES EXPENSES HISTORICAL ACTUAL FY2016- 2017 – PROPOSED FY2022-2023



CCCC FISCAL YEAR 2023 BUDGET SUMMARY					
	OPTION ** BUDGET	BUDGET FY	BUDGET % VARIANCE	FORECAST FY	FORECAST % VARIANCE
	FY 2022/23	2021 / 2022	FY 2021/2022 to FY 2022/2023	2021/22	FY 2021/2022 to FY 2022/2023
	Assumptions				
Gross Attendance	Business as projected				
Event Income, F&B, Ancillary and Other Income	Business as projected				
Expenses	Business as projected 7% Raise -ALL				
Assumptions for combined budget	Expenses and projections based on the combined budget projections for the Municipal Auditorium and Convention Complex venues.				
NUMBER OF EVENTS	302	224	34.82%	308	-1.95%
GENERAL SEATING	385,319	366,909	5.02%	236,243	63.10%
SUITE	0	274		-	
PAID GENERAL TICKETS	303,308	273,909	10.73%	223,293	35.83%
EVENT INCOME				-	
GROSS TICKET REVENUE	9,018,719	8,800,445	2.48%	11,251,040	-19.84%
RENTAL REVENUE	1,279,181	1,090,841	17.27%	-	
MA AUDITORIUM RENTALS	-	-		-	
SERVICES BILLED REVENUE	2,031,358	1,419,927	43.06%	-	
EVENT EXPENSES	1,696,784	1,595,075	6.38%	-	
PROMOTER SHARE	7,659,584	7,672,678	-0.17%	-	
MARGIN ON RENT	2,972,890	2,043,460	45.48%	-	
SUITE TICKET REVENUE	-	13,776	-100.00%	-	
F&B INCOME				-	
NET OTHER INCOME	-	-		164,227	
NET CATERING INCOME	848,948	573,502	48.03%	680,731	
NET SUITE CATERING INCOME	-	-		-	
NET CONCESSIONS INCOME	1,047,132	1,005,563	4.13%	1,198,207	
F&B OVERHEAD COST	1,114,080	1,011,348	10.16%	1,237,921	
TOTAL NET F&B INCOME	782,000	567,718	37.74%	805,244	-2.89%
ANCILLARY INCOME				-	
AUDIO	144,130	118,539	21.59%	-	
MERCHANDISE	68,647	40,687	68.72%	-	
PARKING	117,801	172,230	-31.60%	-	
ELECTRIC	3,375	6,536	-48.36%	-	
TICKET COMMISSION	977,835	739,004	32.32%	-	
LESS COPRO / PROMOTER TM REBATE	575,371	393,468	46.23%	-	
TOTAL ANCILLARY INCOME	736,418	683,529	7.74%	-	
EVENT SPONSORSHIP	-	-		-	
TOTAL EVENT INCOME	4,491,307	3,308,482	35.75%	-	

CCCC FISCAL YEAR 2023 BUDGET SUMMARY					
	OPTION ** BUDGET	BUDGET FY	BUDGET % VARIANCE	FORECAST FY	FORECAST % VARIANCE
	FY 2022/23	2021 / 2022	FY 2021/2022 to FY 2022/2023	2021/22	FY 2021/2022 to FY 2022/2023
OTHER REVENUE				-	
ENERGY REBATE	-	-		-	
FACILITY SPONSORSHIP	15,000	-		-	
POURING RIGHTS	60,000	60,000	0.00%	-	
NAMING RIGHTS	-	-		-	
ADVERTISING	240,000	194,750	23.23%	-	
MISCELLANEOUS REVENUE(AUDITORIUM)	-	10,143	-100.00%	-	
TOTAL OTHER INCOME	315,000	264,893	18.92%	-	
TOTAL OPERATING & EVENT REVENUES	4,806,307	3,573,375	34.50%	3,967,763	21.13%
NON OPERATING REVENUES				-	
INTREST	-	-		84	
ENERGY REBATE	-	-		-	
CAPITAL IMPROVEMENT FEES	307,191	342,206	-10.23%	241,432	
LESS CAPITAL IMPROVEMENT - TRANSFER OUT	(307,191)	(342,206)	-10.23%	(241,432)	
TOTAL REVENUES	4,806,307	3,573,375	34.50%	3,967,847	21.13%
OPERATIONAL EXPENSES				-	
ACCOUNTING	121,617	157,235	-22.65%	-	
BOX OFFICE	245,652	209,882	17.04%	-	
EXECUTIVE	604,839	385,265	56.99%	-	
EVENT SERVICES	193,934	133,567	45.20%	-	
MARKETING	510,916	297,192	71.91%	-	
OPERATIONS	2,173,884	1,569,006	38.55%	-	
FOOD AND BEVERAGE	-	-		-	
OVERHEAD	1,407,112	1,398,271	0.63%	-	
AUDITORIUM OPS/OVERHEAD	131,460	120,860	8.77%	-	
TOTAL OPERATIONAL EXPENSES	5,389,414	4,271,279	26.18%	4,570,613	17.91%
TOTAL OPERATIONAL EXPENSES	5,389,414	4,271,279	26.18%	4,570,613	17.91%
MUNICIPAL AUDITORIUM SUBSIDY		-		-	
NET OPERATING INCOME/LOSS	(583,108)	(697,904)	-16.45%	(602,766)	-3.26%
OVG PERFORMANCE INCENTIVE PER CONTRACT Center Plate	316,892	83,116 (121,979)	281.26%	93,550	238.74%
NET OPERATING (SUBSIDY) / SURPLUS	(900,000)	(903,000)	-0.33%	(696,316)	29.25%
BUDGETED CASH FLOW SUPPORT	900,000	903,000	-0.33%	719,767	25.04%
NET OPERAINING (SUBSIDY) / SURPLUS	0	0		23,451	

OVG Facilities											
CCCC											
INDIRECTS											
	Internal ID	Accounting	Box Office	Executive	Events Services	Marketing	Operations	MA Ops/	F&B	Overhead	Total
SALARIES ADMINISTRATIVE	58	\$ 75,000	\$ 94,160	\$ 429,782		\$ 282,628	\$ 208,650	\$ -	\$ 337,050	\$ -	1,427,270
EIC	1163	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,000	\$ -	25,000
HOURLY WAGES		\$ -	\$ 33,384	\$ -	\$ 104,906	\$ 34,497	\$ 729,919	\$ -	\$ 80,250		982,955
PART TIME WAGES	482	\$ -	\$ 65,520	\$ -	\$ 16,470	\$ -	\$ 167,260	\$ -	\$ 62,777		312,027
PAYROLL TAXES	487	\$ 5,738	\$ 14,769	\$ 32,878	\$ 8,025	\$ 24,260	\$ 71,801	\$ -	\$ 128,400		285,871
EMPLOYEE BENEFITS	490	\$ 30,330	\$ 32,908	\$ 119,879	\$ 59,021	\$ 92,276	\$ 314,679	\$ -		\$ -	649,094
BONUS								\$ -			-
CELLPHONE	1290	\$ -	\$ 360	\$ -	\$ 540	\$ -	\$ 1,620	\$ -		\$ -	2,520
TRAVEL & ENTERTAINMENT	509	\$ 750	\$ -	\$ 16,500	\$ 1,250	\$ 16,650		\$ -			35,150
OFFICE SUPPLIES	495	\$ -	\$ -					\$ -	\$ 4,000	\$ 15,540	19,540
DUES & SUBSCRIPTIONS	524			\$ 3,300				\$ -			3,300
CUSTOMER RELATIONS	1283			\$ 1,750	\$ 1,250	\$ 1,250		\$ -			4,250
PRINTING AND REPRODUCTION	527		\$ 1,950	\$ 500	\$ 1,000	\$ 2,500	\$ 12,500	\$ -		\$ 3,000	21,450
COMPUTER/SOFTWARE	503				\$ 600	\$ 3,130		\$ -			3,730
ADVERTISING	934								\$ 46,572		46,572
EMPLOYEE RECOGNITION	1315										-
WEBSITE/EMAIL DATABASE	1270					\$ 6,225					6,225
COMPUTER EXPENSE	503									\$ 54,530	54,530
COMPUTER EXPENSE-NETSUITE	1240										-
ARMORED CAR	1227		\$ 2,600						\$ 4,440		7,040
BANK FEES		\$ 7,800							\$ 9,000		16,800
TRASH	1260						\$ 25,200				25,200
PAPER/ RESTROOM SUPPLIES	1260										-
PROMOTIONS						\$ 47,000					47,000
PROFESSIONAL SERVICES										\$ -	-
POSTAGE										\$ 2,420	2,420
CLEANING SUPPLIES	1259							\$ 20,000			20,000
PLUMBING SUPPLIES	1267										-
LINEN SUPPLIES AND CLEANING	1287						\$ 3,000		\$ 25,000		28,000
PAINTING SUPPLIES	1255	\$ 500									500
CARPENTRY SUPPLIES	1261										-
ELECTRICAL SUPPLIES	1263										-
REPAIRS & MAINTENANCE	1258						\$ 214,500	\$ 20,000	\$ 46,572		281,072
OFFICE EXPENSE : EQUIPMENT REN	502						\$ 18,100				18,100
EQUIPMENT RENTAL							\$ 2,750	\$ 960			3,710
DEPRECIATION									\$ 4,200		4,200
TELEPHONE / COMM									\$ 3,200		3,200
MANAGEMENT FEE									\$ 210,000	\$ 184,500	394,500
TRAINING							\$ 4,000			\$ 2,500	6,500
WATER USAGE	1209										-
PEST CONTROL	1268						\$ 360	\$ 360			720
LICENSES & PERMIT	1238									\$ 1,850	1,850
GENERAL SUPPLIES	1259						\$ 179,300				179,300
MISC	1288	\$ 1,500		\$ 250	\$ 872	\$ 500		\$ 140	\$ 18,000		21,262
CONTRACTED SERVICES OTHER	1384						\$ 19,000			\$ -	19,000
CONTRACTED IT SERVICES	1241									\$ 82,499	82,499
MAINTENANCE AGREEMENTS	1258						\$ 170,623				170,623
UTILITIES: ELECTRICITY	1208							\$ 90,000	\$ 12,350	\$ 442,000	544,350
UTILITIES: WATER	1209									\$ 140,000	140,000
UTILITIES: NATURALGAS/FUEL	1210									\$ 76,000	76,000
INSURANCE EXPENSE	935								\$ 54,570	\$ 322,993	377,563
SHIPPING AND POSTAGE	526										-
TAXES, LICENSES, FEES	1377								\$ 26,600		26,600
RELOCATION	486									\$ 19,000	19,000
CORPORATE SUPPORT	1355									\$ 15,000	15,000
CONTRACTED REVENUE : MANAGEM	1228										-
LANDSCAPING	1317				\$ -		\$ 30,623				30,623
WIFI/ TELECOMMUNICATON	1212									\$ 37,200	37,200
PAYROLL FEES	492									\$ 5,580	5,580
NETSUITE										\$ -	-
UNIFORM	1239								\$ 16,100	\$ 2,500	18,600
MANAGEMENT SALARY ALLOCATION	946	\$ -			\$ -	\$ -	\$ -			\$ -	-
TOTALS		\$ 121,617	\$ 245,652	\$ 604,839	193,934	510,916	2,173,884	131,460	1,114,080	1,407,112	6,503,495

FISCAL YEAR 2022 - 2023 **INDIRECT EXPENSE BUDGET SUMMARY**

SUMMARY HIGHLIGHTS

The following is a summary of the departments that comprise the Charleston Coliseum and Convention Complex budget and that OVG360 utilizes to track and manage expenses within the venue.

- \$5,382,944 to projected expenses for FY2022 - 2023
- Proposed Staffing for FY022 increase to 43 Staff from 31. City employees 17 and OVG employees 26
- Budgeted city cash flow support for FY2023 budgeted at \$900,000 to fund monthly operational needs.

EXECUTIVE BUDGET SUMMARY

Expenses noted in this category are directly related to the executive administrative functions of the facility and include costs associated with executive travel, subscriptions, customer relations and salaries associated with the executive team at the venue. The executive team includes the General Manager, Business Manager, Assistant General Manager and Administrative Assistant, Front Desk / Receptionist.

- \$16,599 allocated towards attendance at industry related booking and management events

ACCOUNTING BUDGET SUMMARY

Expenses noted in this category are directly related to the accounting & finance functions of the facility and include costs associated with travel, bank fees, office supplies, and salaries associated with the accounting & finance team at the venue. The finance team includes the Director of Finance.

- \$1,500 allocated towards training and onboarding of additional finance position

BOX OFFICE BUDGET SUMMARY

Expenses noted in this category are directly related to the box office functions of the facility and include costs associated with printing, bank fees, office supplies, and salaries associated with the accounting & finance team at the venue. The box office team includes the Box Office Manager, Assistant Box Office Manager and Box Office Assistant.

- PT box office staff line item moved from Salaries and Wages to departmental summary to better reflect expenses with departments.

SALES & MARKETING BUDGET SUMMARY

Expenses noted in this category are directly related to the sales and marketing functions of the facility and include costs associated with travel, printing, direct venue marketing and promotional activities, client and customer relations, website industry memberships and salaries associated with the marketing and sales team at the venue. The sales and marketing team includes the Director of Marketing, Director of Sales, Digital Marketing Specialists, and 2 Convention Center Sales Managers.

- \$16,650 allocated towards attendance at industry related sales and management events
- \$47,000 allocated toward supporting marketing the convention and meetings activities
- Additional staff positions allocated for Director of Sales and additional Sales manager

EVENT SERVICES BUDGET SUMMARY

Expenses noted in this category are directly related to the Event Management functions of the facility and include costs associated with client and customer relations, travel, room layout drawing software, in-house event production and salaries associated with the event management team at the venue. The event team currently includes 2 Event Coordinators

- Additional staff positions allocated for expansion of event coordinator by 2.
- Patron services staffing moved to events department for better tracking with budgeted expenses

OPERATIONS BUDGET SUMMARY

Expenses noted in this category are directly related to the Facility Operation functions of the facility and include costs associated live event production services, with repairs, maintenance, supplies, service contracts, work order processing systems and salaries associated with the operations team at the venue. The operations team includes Production Manager, Housekeeping Supervisor, Safety and Security Coordinator, Technology Service Coordinator, Engineering Supervisor, Operations coordinator, (5) Maintenance Technicians, (4) Facility Support Technicians, (8) Operations Conversion Techs I & II and payroll costs for patron services, part time hourly labor and contracted labor as needed for events.

- Anticipated Repairs and Maintenance for all venues is projected to be \$214,500.
- Anticipated supplies for events across all three venue operations include paper products, cleaning chemicals, minor repair items and equipment is projected to be \$179,300
- Preventative maintenance contracts, testing and inspections on systems in the coliseum, convention center and municipal auditorium is projected to be \$170,623
- Proposed increased of proposed support positions by 2 Facility Tech roles, operations coordinator and housekeeping supervisor.
- Note: Anticipated 5-year repair and maintenance of the Quarrier St. Garage and Civic Center North (Greyhound) Garage estimated at \$400,000 has been transferred to the City and City Engineering to administer. No capital budget or other direct expense related to this 5-year maintenance project in the FY2022-2023 budget.

OVERHEAD BUDGET SUMMARY

Expenses noted in this category are not directly related to any specific operation and are facility wide functions of the facility and include costs associated with uniforms, contracted services, postage, utilities, licenses and permits, insurance, management fees, network and computers:

- Anticipated utilities for FY2022 – 2023 of \$748,200 which includes the combined Municipal Auditorium, Coliseum and Convention Center anticipated expense.
- Anticipated General Liability and Insurance of \$322,993
- Anticipated Contracted Services are projected to be \$154,500

F&B BUDGET SUMMARY

Expenses noted in this category are related to the overhead operation of the Food Service contractor Centerplate and include costs associated with salaries and benefits of F&B office staff, insurance, payroll taxes, management fee, laundry, computer, uniform, contributions to marketing, repairs and maintenance.

FISCAL YEAR 2022 - 2023 **OTHER REVENUE BUDGET SUMMARY**

OTHER REVENUE SUMMARY

Expenses noted in this category are related to the revenue generated through event and venue sponsorships. Pouring rights, naming rights, and general advertising sold throughout the Complex.

- Advertising revenue remain flat for coming fiscal year.
- Suite Ticketing Revenue is incorporated into the gross ticket projections for budget purposes.
- Exploration in future Naming Rights with OVG Global Partnerships in progress

**City of Charleston
Municipal Budget
FY 2023
Coliseum and Convention Center Revenue Summary**

Rev. Code	Description	Actual FY 2021	Original FY 2022	FY 2022 YTD Amendments	Current FY 2022	YTD May Actual FY 2022	Estimated FY 2023
Operating Revenue							
358-00-0302	Rent	396,057	1,492,436		1,492,436	1,298,268	1,925,089
358-00-0304	Commissions	207	530,093		530,093	269,571	567,000
358-00-0307	Parking - Buildings & Lots	99,245	216,335		216,335	121,765	166,000
358-00-0311	Distinctive Gourmet	(274,569)	589,522		589,522	831,085	782,000
358-00-0312	Patron Services	92,889	187,399		187,399	181,693	238,000
358-00-0313	Security	37,978	76,375		76,375	70,092	90,000
358-00-0314	Advertising	151,500	288,652		288,652	172,085	315,000
358-00-0315	Spotlight Rental	1,390	6,350		6,350	5,679	11,350
358-00-0316	Power Usage	18,714	65,310		65,310	35,393	75,000
358-00-0317	Table Covers/Drapes	6,406	46,413		46,413	4,083	55,000
358-00-0318	Rent - PA System	6,300	20,000		20,000	3,450	15,000
358-00-0319	Staging	2,698	16,000		16,000	9,520	25,000
358-00-0320	Booth Rental	51,122	96,725		96,725	33,320	95,575
358-00-0321	Interest	385	500		500	108	250
358-00-0322	Piano Rental	350	10,000		10,000	-	1,000
358-00-0323	Table Rental	11,651	38,988		38,988	13,577	62,500
358-00-0324	Miscellaneous	2,650	27,965		27,965	10,090	28,000
358-00-0325	Building Damages	-	2,000		2,000	188	2,000
358-00-0326	Telephone Rental	1,725	8,830		8,830	2,615	20,000
358-00-0327	Audio/Visual Equipment	63,135	332,375		332,375	89,188	336,550
358-00-0329	Carpet Rental	1,145	28,075		28,075	14,942	57,000
358-00-0330	Drayage	-	-		-	500	1,000
	Total Operating Revenue	670,977	4,080,343	-	4,080,343	3,167,211	4,868,314
Non-Operating Revenue							
358-00-0331	CC Capital Improvement Fee	4,355	-		-	122,835	307,191
358-00-0341	Trf In/Gen. Fund - Debt Svc	583,312	565,000		565,000	550,090	578,000
358-01-0341	Trf In/Gen. Fund - Health Care	224,711	-		-	-	
358-02-0341	Trf In/Gen. Fund - Other	1,564,200	1,135,000		1,135,000	719,767	900,000
358-03-0341	Trf In/Gen. Fund - Equipment	-	-		-	-	
358-04-0341	Trf In/Gen. Fund - Auditorium	-	200,000		200,000	-	
358-00-0342	Transfers In/Coal Severance	89,982	100,000		100,000	150,526	100,000
358-00-0343	Transfers In/Cap. Imp. Fund	5,178	-		-	365,141	
358-00-0346	Transfers In/Grant Fund	478,631	-		-	21,369	
358-00-0379	Gain/Loss from Sale of Assets	360	-		-	-	
358-00-0380	Insurance Claims	-	-		-	46,797	
381-11-0000	Energy Rebates	8,498	-		-	-	
	Total - Non Operating Revenue	2,959,226	2,000,000	-	2,000,000	1,976,526	1,885,191
	Total Revenue	3,630,203	6,080,343	-	6,080,343	5,143,737	6,753,505

**City of Charleston
Municipal Budget
FY 2023**

Fund 402 Charleston Coliseum and Convention Center Fund
Department 910 CCCC/Municipal Auditorium
Unit 00 Municipal Auditorium Operations

Full Time Employees	0
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Expense Object	FY 2021 Actual*	FY 2022 Original	FY 2022 YTD Amend.	FY 2022 Current	FY 2022 YTD May Actual	FY 2023 Proposed
Contractual Services						
000-2-211 Telephone		2,500		2,500	524	
000-2-213 Utilities		77,500		77,500	109,752	90,000
000-2-215 Mtce & Repair - Bldg/Ground		5,500		5,500	2,420	20,000
000-2-216 Mtce & Repair - Equipment		17,000		17,000	-	-
000-2-219 Building & Equipment Rent				-	-	960
000-2-230 Contracted Services		360		360	-	500
Total Contractual Services	-	102,860	-	102,860	112,696	111,460
Commodities						
000-3-341 Materials & Supplies		18,000		18,000	9,694	20,000
Total Commodities	-	18,000	-	18,000	9,694	20,000
Total Municipal Auditorium Operations						
	-	120,860	-	120,860	122,390	131,460

* The Municipal Auditorium was included in the General Fund prior to FY 2022

**City of Charleston
Municipal Budget
FY 2023**

Fund 402 Charleston Coliseum and Convention Center Fund
Department 910 CCCC/Municipal Auditorium
Unit 00 Municipal Auditorium Operations

Authorized Full Time Positions & Salary Schedule

FY 2022 Current Approved		
Title	FLSA/Paygrade	FTE
Total		0

FY 2023 Proposed		
Title	FLSA/Paygrade	FTE
Total		0

FY 2022 Current Approved	
Pay Type	Amount
Elected Wages & Salaries	-
Regular Wages & Salaries	-
Irregular Part Time (IPT)	-
Overtime	-
Tool Allowance	-
Total	-

FY 2023 Proposed	
Pay Type	Amount
Elected Wages & Salaries	-
Regular Wages & Salaries	-
Irregular Part Time (IPT)	-
Overtime	-
Tool Allowance	-
Total	-

**City of Charleston
Municipal Budget
FY 2023**

Fund 402 Charleston Coliseum and Convention Center Fund
Department 910 CCCC/Municipal Auditorium
Unit 01 CCCC Operations

Full Time Employees	43
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Expense Object	FY 2021 Actual	FY 2022 Original	FY 2022 YTD Amend.	FY 2022 Current	FY 2022 YTD May Actual	FY 2023 Proposed
Personal Services						
000-1-103 Salaries & Wages	673,405	694,768		694,768	638,029	743,670
000-1-104 FICA	50,285	53,150		53,150	46,846	53,831
000-1-105 Medical & Life Insurance	154,208	126,208		126,208	108,290	132,634
000-1-106 PERS	59,501	69,477		69,477	63,492	63,330
000-1-111 Dental & Optical Insurance	8,228	7,939		7,939	5,036	8,891
000-1-112 Employee Insurance Cont.	(28,787)	19,006		19,006	(20,397)	(19,278)
000-1-113 OPEB - Current	20,000	20,000		20,000	-	20,000
Total Personal Services	936,841	990,548	-	990,548	841,295	1,003,078
Contractual Services						
000-2-211 Telephone	54,426	24,084		24,084	44,324	37,200
000-2-212 Printing	-	16,600		16,600	8,352	21,450
000-2-213 Utilities	573,917	918,700		918,700	596,016	658,000
000-2-214 Travel	-	12,000		12,000	6,542	35,150
000-2-215 Mtce & Repair - Bldg/Ground	2,329	160,500		160,500	50,308	145,000
000-2-216 Mtce & Repair - Equipment	34,494	30,000		30,000	70,406	100,000
000-2-218 Postage	-	1,500		1,500	1,671	2,420
000-2-219 Building & Equipment Rent	45,783	198,723		198,723	119,424	229,040
000-2-220 Advertising & Legal Pub	11,100	64,874		64,874	38,030	51,250
000-2-221 Training	-	2,500		2,500	977	6,500
000-2-222 Dues & Subscriptions	225	1,750		1,750	16,568	1,850
000-2-226 Insurance - WC & UC	22,711	15,674		15,674	14,104	17,561
000-2-227 Insurance - Liability	279,104	311,500		311,500	241,789	322,993
000-2-230 Contracted Services	320,563	1,919,466		1,919,466	425,607	2,727,392
002-2-230 OVG	410,913	-		-	1,191,113	-
Total Contractual Services	1,755,564	3,677,871	-	3,677,871	2,825,230	4,355,806
Commodities						
000-3-341 Materials & Supplies	76,886	177,250		177,250	211,186	252,870
000-3-343 Gas, Oil & Tires	56	1,000		1,000	189	2,500
000-3-345 Uniforms	60	16,000		16,000	14,972	18,600
Total Commodities	77,002	194,250	-	194,250	226,347	273,970
Contributions & Other						
000-5-566 Contributions to Other Funds	16,911	-		-	124,020	307,191
000-5-598 Contingency	-	520,256		520,256	-	-
000-6-671 Principal on Bonds	550,000	570,000		570,000	570,000	610,000
000-6-672 Interest on Bonds	139,521	124,418		124,418	87,299	67,490
000-6-674 Bond Service Charges	1,097	3,000		3,000	4,047	4,510
Total Contributions & Other	707,529	1,217,674	-	1,217,674	785,367	989,191
Total CCCC Operations	3,476,936	6,080,343	-	6,080,343	4,678,239	6,622,045

**City of Charleston
Municipal Budget
FY 2023**

Fund 402 Charleston Coliseum and Convention Center Fund
Department 910 CCCC/Municipal Auditorium
Unit 01 CCCC Operations

Authorized Full Time Positions & Salary Schedule

FY 2022 Current Approved		
Title	FLSA/Paygrade	FTE
General Manager	OVG	1
Asst GM/Director of Operations	OVG	1
Business Manager Civic Center	E/115	1
Director of Sales/Marketing	OVG	1
Convention Center Sales	OVG	2
Event Manager	OVG	2
Director of Production Services	OVG	1
Box Office Manager	E/111	1
Asst Box Office Manager	OVG	1
Housekeeping Supervisor	OVG	1
Safety & Security Coordinator	E/112	1
Technology Services Coordinator	N-COMP/113	1
Administrative Assistant I	N-OT/109	1
Office Support Specialist	OVG	1
Box Office Assistant	OVG	1
Engineering Assistant	N-COMP/111	1
Maintenance Technician	N-OT/109	2
Facility Support Technician	N-OT/106	4
Operations Conversion Tech I	N-OT/106	3
Operations Conversion Tech I	OVG	3
Operations Conversion Tech II	N-OT/109	3
Total		33

FY 2023 Proposed		
Title	FLSA/Paygrade	FTE
General Manager	OVG	1
Asst GM/Director of Operations	OVG	1
Business Manager Civic Center	E/115	1
Director of Finance	OVG	1
Director of Marketing	OVG	1
Director of Sales	OVG	1
Director of Production Services	OVG	1
Box Office Manager	E/111	1
Booking Manager	OVG	1
Marketing Manager	OVG	1
Asst Box Office Manager	OVG	1
Convention Center Sales	OVG	3
Event Mgr/Production Service	OVG	1
Event Coordinator	OVG	2
Operations Coordinator	OVG	1
Production/Event Coordinator	OVG	1
Safety & Security Coordinator	E/112	1
Technology Services Coordinator	N-COMP/113	1
Administrative Assistant I	N-OT/109	1
Box Office Assistant	OVG	1
Front Desk Supervisor	OVG	1
Housekeeping Supervisor	OVG	1
Engineering Assistant	N-COMP/111	1
Maintenance Technician	N-OT/109	5
Operations Conversion Tech II	N-OT/109	2
Operations Conversion Tech II	OVG	2
Operations Conversion Tech I	OVG	4
Facility Support Technician	N-OT/106	4
Total		43

FY 2022 Current Approved	
Pay Type	Amount
Elected Wages & Salaries	-
Regular Wages & Salaries	547,468
Irregular Part Time (IPT)	94,500
Overtime	52,800
Tool Allowance	-
Total	694,768

FY 2023 Proposed	
Pay Type	Amount
Elected Wages & Salaries	-
Regular Wages & Salaries	703,670
Irregular Part Time (IPT)	-
Overtime	40,000
Tool Allowance	-
Total	743,670

Resolution No. 683-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 683-22 – Receiving the annual report of the City Center Business Improvement District, approving the proposed budget of the City Center Business Improvement District for the 2022-2023 fiscal year, and levying the rate of annual fees for the City Center Business Improvement District on each private for-profit property owner within the District.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the annual report of the City Center Business Improvement District is received; that the proposed budget of the City Center Business Improvement District for the 2022-2023 fiscal year, as attached as Exhibit A hereto, is approved; and that, and the rate of annual fees for the City Center Business Improvement District on each private for-profit property owner within the District is levied at the equation of (total land lot size square footage x .075) + (total building square footage x .03325).

CITY CENTER BUSINESS IMPROVEMENT DISTRICT

FY 2022 ANNUAL REPORT TO CHARLESTON CITY COUNCIL



In accordance with Sec. 2-712.b.10 of the Charleston, WV Code of Ordinances, the following report is presented on behalf of the Board Members of the City Center Business Improvement District (BID).

The BID officially formed on September 7, 2022, with Board Members appointed by the Mayor of Charleston and approved by City Council on October 4, 2021.

The below illustration depicts the current members, their respective position and term expiration.

NAME	POSITION	TERM EXPIRATION
Lewis Payne, Dickinson Group	President	10/4/2026
Christy Elliott Bly, Truist Bank	Treasurer	10/4/2022
Will Carter, McKinley Properties III LLC	Secretary	10/4/2026
Leslie Deel, RealCo Limited Liability Company	Board Member	10/4/2023
Kent George, Midwinter Investment Group, LLC	Board Member	10/4/2025
Stuart McMillan, Bowles Rice	Board Member	10/4/2024
Morgan Pack, B33 Laidley Tower LLC	Board Member	10/4/2024

CITY CENTER BUSINESS IMPROVEMENT DISTRICT

FY 2022 ANNUAL REPORT TO CHARLESTON CITY COUNCIL

The BID completed several activities since its inception.

- Adopted City Center Business Improvement District Bylaws and elected officers accordingly.
- Contracted with GAI & Associates to prepare a concept plan for the BID. This process included two planning sessions with stakeholders, including City of Charleston staff. GAI expects the concept plan to be completed by the end of June 2022.
- Prepared a request for proposals from branding and imaging consultants, conducted interviews and accepted a proposal from Blackwell & Co. Services provided by Blackwell & Co will include logo development, branding guide, templates for a newsletter and website, icon development and street pole banner design. Blackwell & Co anticipates completion by end of summer 2022.
- Collaborated with the City of Charleston's City Manager and Human Resources Manager to create a job description for a City Center BID Ambassador. This position will be fully funded by the BID. The position posting has closed, and interviews are in process. It is expected the individual will begin employment after July 1, 2022. The individual will be employed by the City of Charleston, with input from the BID Board of Directors.
- Applied for an Economic Development Agency grant to conduct a downtown economic analysis and full master plan. Decision from EDA is still pending.
- Awarded a Congressionally Directed Spending grant from HUD. Charleston Urban Renewal Authority will serve as the fiscal agent for this grant and the funds will be invested in physical improvements in the BID, additional branding opportunities, BID Ambassador equipment, etc.
- Partnered with the Charleston Creative Connector Initiative of the Greater Kanawha Valley Foundation to submit an ARPA request for programming in Slack Plaza.
- Approved an MOU with Charleston Area Alliance for professional staff support.
- Initiated general outreach among stakeholders with two stakeholder newsletters and created a landing page on the Charleston Area Alliance website.

CITY CENTER BUSINESS IMPROVEMENT DISTRICT

FY 2022 ANNUAL REPORT TO CHARLESTON CITY COUNCIL

The following charts provide an explanation of income and expenses for the first nine months of the BIDs existence:

BALANCE SHEET – 6/30/22*

Assets	
Cash - Assessments	\$49,541
Cash – Mayor’s Office	\$14,879
A/R - Assessments	\$21,246
A/R - Grants	\$600,000
Other	\$ -
Total	\$685,666

CASH FLOW STATEMENT

Assessment Collections	\$49,541
Mayor’s Office	\$50,000
GAI - Planning	\$(14,800)
B + Co Branding	\$(10,000)
CAA – admin svc	\$(10,321)
Cash on hand 6/30/22*	\$64,420

* This figure is representative of expected balance sheet for 6/30/22

BUSINESS IMPROVEMENT DISTRICT

FY 2022 ANNUAL REPORT TO CHARLESTON CITY COUNCIL

The following charts provide an explanation of income and expenses for the first nine months of the BIDs existence (cont'd):

NET ASSETS

With Restrictions - Grants	\$600,000
With Restrictions – City	\$14,879
Without Restrictions	\$70,787
<i>Total Net Assets</i>	\$685,666
Total Liabilities / Net Assets	\$685,666

CITY CENTER BUSINESS IMPROVEMENT DISTRICT

FISCAL YEAR 2023 WORK PLAN AND BUDGET

In accordance with Sec. 2-712.b.10 of the Charleston, WV Code of Ordinances, the following report is presented on behalf of the Board Members of the City Center Business Improvement District (BID).

The BID will maintain its current assessment formula consisting of building sq.ft. @ .03325 + land sq. ft. @ .075. Based on the current square footage data, the assessment should generate a total of \$94,383 for FY 2023. BID officers will work with and encourage City Collector Office to follow up on outstanding receivables.

Maintaining efficient organizational structure including an effective Board of Directors is a top priority. The BID will continue to seek additional funding sources other than annual assessments and will rely upon its MOU with the Charleston Area Alliance (CAA) to provide part-time professional staff support.

With its image and branding contract, the BID will work to finalize logo and branding plan with Blackwell & Co. It will then implement the plan by introducing it in stakeholder newsletter, website, street pole banners, social media, photography, business directory, events calendar, etc.

Collaboration with the Charleston Creative Connector group and City of Charleston on events in Slack Plaza and with the Downtown Charleston Association for holiday events will continue.

The BID will seek funding for a full master planning and economic analysis initiative using the concept plan provided by GAI Consultants as a guide. A focus will be to implement pieces of the concept plan where feasible and strategize a beautification initiative with private property owners.

With funding received from grants, the BID will be able to acquire all needed equipment for the BID Ambassador to use for light landscaping, trash collection, sidewalk cleaning, Slack Plaza events, etc.

A dedicated safety and security initiative will also be established. The BID will collaborate with the City of Charleston in training and guiding the BID Ambassador. Additionally, the BID will continue to research and strategize other safety and security initiatives that can be provided.

CITY CENTER BUSINESS IMPROVEMENT DISTRICT

FISCAL YEAR 2023 BUDGET

REVENUES

Beginning cash	\$49,541
Assessments - FY 23	\$94,383
*Grant - HUD – Congressionally Directed Spending	\$600,000
**Grant - EDA Master Planning	\$130,000
Other resources	\$30,000
TOTAL	\$903,924

**CURA will serve as Fiscal Agent*

*** Charleston Area Alliance will serve as Fiscal Agent*

EXPENSES

Phase II - Branding and Imaging implementation	\$25,000
BID Ambassador - city salary/benefits	\$60,000
BID Ambassador equipment and supplies	\$75,000
EDA Master Plan	\$130,000
Concept Plan implementation	\$400,000
Professional staff management (CAA via MOU)	\$20,000
Beautification projects	\$125,000
Contingency	\$68,924
TOTAL	\$903,924

Resolution No. 684-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 684-22 – Whereas, the City Council has allocated funds to implement the significant undertaking of installing synthetic turf on 10 City-owned athletic fields; and

Whereas, to undertake this multimillion-dollar project, the City Council recognizes that it must retain the services of an experienced and capable consultant to manage the project—a project involving many complicated sequencing and engineering challenges; and

Whereas, Turf Alliance LLC is a leading consultant and construction manager for the development and execution of athletic field synthetic turf projects; and

Whereas, Turf Alliance has administered synthetic turf projects for professional athletic fields and municipal parks and recreation fields alike; and

Whereas, Turf Alliance participated in a comprehensive consultant selection process administered by Sourcewell, a purchasing consortium administered by the State of Minnesota, to provide construction management and consulting services to Sourcewell members; and

Whereas, Turf Alliance is ready, willing, and able to administer the City’s synthetic turf project, including developing all detailed specifications, seeking competitive construction bids, inspecting the quality of all work performed by contractors or subcontractors, making recommendations for payment to contractors based on project progress estimates, and strictly enforcing project budget allocations; and

Whereas, Turf Alliance is willing to enter into a type of project agreement with the City known as a “Construction Manager At Risk,” where Turf Alliance will become financially liable for any project costs exceeding an established project budget allocation; and

Whereas, the American Institute of Architects (“AIA”) recognizes “Construction Manager At Risk” agreements as an appropriate industry contracting vehicle for large and complex projects where the project owner wishes to shift budget overrun risk onto the project manager; and

Whereas, the Administration recommends the use of a “Construction Manager At Risk” for the City’s synthetic turf project as a means to ensure quality of work, reduction of financial risk to

1 the City's taxpayers, and timely project delivery.

2
3 Be it Resolved by the Council of the City of Charleston, West Virginia:

4
5 That the Mayor or City Manager is authorized to enter into a Construction Manager At Risk
6 contract with Turf Alliance LLC, to design and manage a synthetic turf project for up to 10 City-
7 owned athletic fields, where the company's fee may not exceed 12% of the costs of
8 construction and where the maximum project budget authorized is \$8,100,000.

DRAFT AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 22 day of June in the year 2022
(In words, indicate day, month, and year.)

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

City of Charleston
501 Virginia Street East
Charleston, West Virginia, USA, 25301
Jonathan Storage – City Manager – Jonathan.storage@cityofcharleston.org – 304-348-8014

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

Turf Alliance LLC
3698 Falling Springs Road
Bonnieville, Kentucky, USA, 42713
Mark Nicholls – Director – markn@turfalliance.com – 905-327-5501

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

City of Charleston – Sports Field Surfacing
See Exhibit F (Fields)

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

Turf Consultants (Herein referenced as the Architect)
19 Madison Court East
Welland, Ontario, Canada, L3C 7G3
Phone: 800-828-1300 – Email: info@turfconsultants.com

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT S SCOPE OF WORK AND RESPONSIBILITIES (INITIAL) – GUARANTEED MAXIMUM PRICE

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner’s program for the Project, as described in Section 4.1.1:

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

Refer to EXHIBIT S

§ 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.)

Refer to EXHIBIT S and EXHIBIT F

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

The Guaranteed Maximum Price for this Agreement is \$ 8,000,000 – Eight Million Dollars USD – Refer to EXHIBIT F, which includes the total Cost of the Work plus the 12% fee to the Construction Manager above the Cost of the Work that compensates the Construction Manager and Architect for all of their work related to the Contract. In order for the Guaranteed Maximum Price to increase, a separate document shall be signed by the parties. If the Cost of the Work plus the 12% fee above the Cost of the Work are less than the Guaranteed Maximum Price, the Owner shall receive the benefit of the reduced total cost.

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

.1 Design phase milestone dates, if any:

July 1, 2022 - Completion

.2 Construction commencement date:

July 15, 2022

.3 Substantial Completion date or dates:

June 30, 2023

.4 Other milestone dates:

The Schedule is to be mutually approved by the City of Charleston, the Individual User Groups and Turf Alliance.

The University of Charleston and Power Park are to be completed prior to the beginning of their respective 2023 seasons.

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

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

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

Refer to EXHIBIT S

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

City of Charleston
501 Virginia Street East
Charleston, West Virginia, USA, 25301
Jonathan Storage – City Manager – Jonathan.storage@cityofcharleston.org – 304-348-8014

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:

(List name, address and other contact information.)

Andy Wood, Finance Director, 501 Virginia Street East
Charleston, West Virginia, USA 25301

and

Owner’s Inspector, as defined herein, and to be identified by Owner prior to commencement of construction.

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer:

City of Charleston – Engineering Department

- .2 Civil Engineer:

City of Charleston – Engineering Department

- .3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

N/A

§ 1.1.11 The Architect’s representative:

(List name, address, and other contact information.)

Turf Consultants
19 Madison Court East
Welland, Ontario, Canada, L3C 7G3
Phone: 800-828-1300 – Email: info@turfconsultants.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

Turf Alliance LLC
3698 Falling Springs Road
Bonnieville, Kentucky, USA, 42713
Mark Nicholls – Director – markn@turfalliance.com – 905-327-5501

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

N/A

§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

Refer to EXHIBIT P

§ 1.1.15 Other Initial Information on which this Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation, as agreed upon in a subsequent written document. ~~The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and Owner's Inspector and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; ~~Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance;~~ Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case,

both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Owner's Inspector shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, as a related entity to the Architect, certifies that the Architect will ensure the Drawings and Specifications do not violate any applicable law and, with respect to the project at Appalachian Power Park certify that the Specifications meet all Minor League Baseball requirements. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect or Owner may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect, Owner's Inspector, and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

~~**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, the Owner's Inspector's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect and Owner's Inspector, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or

Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

~~**§ 3.1.10** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

N/A

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. For the avoidance of doubt, the Guaranteed Maximum Price for this Agreement is contained in § 1.1.3 and includes the Construction Manager's compensation of 12% above the Cost of the Work.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the

Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner, Owner’s Inspector, and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner, Owner’s Inspector, and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner, Owner’s Inspector, and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner, Owner’s Inspector, and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner, Owner’s Inspector, and Architect, and shall provide this information in its monthly reports to the Owner, Owner’s Inspector, and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 4.1.4.3 The Owner, when such services are requested, 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.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement. The Architect is not retained by the Owner

or the Construction Manager, but is a related entity to the Construction Manager and all fees associated with the Architect are contained within the 12% above Cost of the Work.

§ 4.4 Owner's Inspector

The Owner shall retain an independent Owner's Inspector to sign off on work performed and pay applications. The Owner shall identify the Owner's Inspector to the Construction Manager prior to the commencement of construction.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

All compensation associated Preconstruction Phase work is contained within the 12% above Cost of the Work - Per Sourcewell Contract

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

N/A

Individual or Position	Rate
N/A	N/A

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 ~~If the Preconstruction Phase services covered by this Agreement have not been completed within (Twelve) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. The Parties acknowledge that the Preconstruction Phase services largely occurred prior to the date of this Agreement with no guarantee to the Construction Manager that they would be paid for their efforts. As noted above, the compensation for the Preconstruction Phase is contained within the 12% above Cost of the Work in this Agreement and will not be paid in any hourly manner or other compensation.~~

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice following sign off by the Owner's Inspector. Amounts unpaid 15 (Fifteen) 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 Construction Manager.~~

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

0.5 % Monthly

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

All compensation for the Construction Manager shall be contained within the 12% above the Cost of the Work, per the Sourcewell contract.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Any agreed upon adjustments to the Work shall also adjust the Construction Manager's compensation such that it continues to be contained within the 12% above the Cost of the Work, per the Sourcewell contract.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Construction Manager is bidding out construction work and understands that its compensation is contained within the 12% above the Cost of the Work and that the entire contract (Cost of the Work plus Construction Manager compensation) shall not exceed the Guaranteed Maximum Price contained in § 1.1.3. Accordingly, all limitations on subcontractor's are at the discretion of the Construction Manager provided that a Subcontractor's overhead shall not exceed 12% of its contract.

§ 6.1.5 Rental rates for Construction Manager owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The following liquidated damages provisions shall apply:

- (a) With respect to the Kanawha City Softball field that is utilized by the University of Charleston softball team, the construction shall be completed no later than March 1, 2023. For each day after March 1, 2023 that the Kanawha City Softball field that is utilized by the University of Charleston softball team project is not complete, the Construction Manager shall owe the Owner \$500.00 as liquidated damages.
- (b) With respect to Appalachian Power Park, the construction shall be completed no later than April 1, 2023. For each day after April 1, 2023 that that Appalachian Power Park project is not complete, the Construction Manager shall owe the Owner \$500.00 as liquidated damages.
- (c) With respect to the entire contract, the construction shall be completed no later than June 30, 2023. For each day after June 30, 2023 that the entire contract of turfed fields is not complete, the Construction Manager shall owe the Owner \$500.00 as liquidated damages.

These liquidated damages provisions are cumulative and shall be combined and aggregated, as applicable. The Construction Manager and the City hereby agree that the liquidated damages are not a penalty, but are instead the only feasible way for the Owner to obtain an adequate remedy for late performance. The Construction Manager and the City further agree that the liquidated damages contained herein are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of proving loss, and the inconvenience of seeking some other future remedy.

Notwithstanding the foregoing liquidated damages provisions, the Construction Manager shall have the authority to set the construction schedule and if the City or one of the users of the fields denies entry causing a delay in construction due to no fault of the Construction Manager, then the parties agree that they will modify the dates set forth above by mutual written agreement. If the parties are unable to agree to specific dates, the time periods shall be extended by the number of days of delay the denial of entry caused before the Construction Manager had full access to the field or fields.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the

Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. For the avoidance of doubt, the Cost of the Work includes the materials and supplies, construction, and related services for the project as shown in Exhibit F and S and paid to the lowest qualified responsible bidder or bidders. All compensation to the Construction Manager and Architect is contained within the 12% above the Cost of the Work.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

~~**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.~~

~~**§ 7.2.2** Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.~~

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below: are excluded from the Cost of the Work and are instead included within the 12% above the Cost of the Work, per the Sourcewell Contract.

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Staff – Turf Alliance Offices / Staff – Turf Consultants Offices

~~§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

~~§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

~~§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

~~§ 7.6.1.1 Costs for self insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

~~§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.~~

~~§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

~~§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

~~§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~

~~§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.~~

~~§ 7.6.7 Costs of document reproductions and delivery charges.~~

~~§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

~~§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

§ 7.7 Other Costs and Emergencies

~~§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.~~

~~§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.~~

~~§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

For the avoidance of doubt, the compensation for the Construction Manager’s personnel and the costs for services incurred during the Preconstruction Phase shall be included within the 12% above the Cost of the Work, per the Sourcewell contract.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect and Owner's Inspector by the Construction Manager, and Certificates for Payment issued by the Architect and Owner's Inspector, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

2 weeks interval – Sunday to Saturday and submitted within 7 days of the interval

§ 11.1.3 Provided that an Application for Payment is received by the Architect and the Owner's Inspector not later than the 7 days of the 2 week interval and approved by both the Architect and the Owner's Inspector, the Owner shall make payment of the amount certified to the Construction Manager not later than the 15 days after approval. If an Application for Payment is received by the Architect and Owner's Inspector after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 15 (Fifteen) days after the Architect and the Owner's inspector approves the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Owner's Inspector, or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified and the Owner's Inspector approves as reasonable; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect or Owner's Inspector has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10% of the value of the work performed – until release by specific project/field/SOW is deemed completed.

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

12% Management Fee, General Conditions, Approved Deposits/Advance Purchase and/or Insurance.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

By Field/Project

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

By Field/Project

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Architect and Owner’s Inspector shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect or Owner’s Inspector has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager on a Field/Project basis when

- .1 the Construction Manager has fully performed the associated Contract specific Field/Project, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment associated with Field/Project; and
- .3 a final Certificate for Payment has been issued by the Architect and Owner's Inspector in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017 and may be extended upon written agreement of the Owner and Construction Manager. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below. *(Insert rate of interest agreed upon, if any.)*

0.5 % Monthly

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the

Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Owner's Inspector will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Owner's Inspector, which shall be identified by the Owner prior to the commencement of construction.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ [N/A] Arbitration pursuant to Article 15 of AIA Document A201–2017

☒ [X] Litigation in a court of competent jurisdiction – In Charleston, West Virginia

☐ [N/A] Other: *(Specify)*

N/A

If the Owner and Construction Manager 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, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that

- Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

12% - based on Costs incurred through the date of termination.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

Refer to the Certificate of Insurance provided

~~§ 14.3.1.1 Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for bodily injury and property damage.~~

~~§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « » (\$ « ») 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.~~

~~§ 14.3.1.3 The Construction Manager 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 that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, 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.~~

~~§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.~~

~~§ 14.3.1.5 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.~~

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
None	N/A

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager 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 Construction Manager'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.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 14.5 Other provisions:

N/A

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- ~~.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~
- ~~.2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed~~
- ~~.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~
- ~~.4 AIA Document A201™–2017, General Conditions of the Contract for Construction~~
- ~~.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)~~

N/A

- .6 Other Exhibits:
(Check all boxes that apply.)

☒ **[N/A]** AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234–2019 incorporated into this Agreement.)

N/A

[**N/A**] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A	N/A	N/A	N/A

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

EXHIBIT B CERTIFICATE OF INSURANCE
EXHIBIT D ADDENDUM
EXHIBIT F FIELD LOCATION AND DETAILS
EXHIBIT P CITY OF CHARLESTON – PROCUREMENT GUIDELINE
EXHIBIT S SCOPE OF WORK AND RESPONSIBILITIES (INITIAL) – GUARANTEED MAXIMUM PRICE

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

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

Exhibit D
ADDENDUM TO Agreement between Turf Alliance LLC and City of Charleston
Exhibit D to AIA Document A133 – 2019

This is an Addendum, referred to as Exhibit D, for the purpose of the AIA Document A133 – 2019 Agreement (the “Agreement”) between Turf Alliance LLC (“Vendor”) and the City of Charleston (“City”), collectively “the Parties.” The Agreement contains one or more contractual terms that the City cannot or will not accept and the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms of the Agreement in consideration for the City’s consent to the remaining terms of the Agreement. The Parties agree that the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Agreement:

1. **DISPUTE RESOLUTION, JURISDICTION AND VENUE** – Any references to arbitration contained in the Agreement are hereby deleted, as is any requirement to waive a jury trial. If any breach, default, or other dispute arises out of this Agreement, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation and/or mediation. If the parties cannot resolve the matter without litigation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation. Any language requiring or permitting disputes under the Agreement to be resolved in any other court is deleted. Vendor acknowledges and agrees that resolution agreements reached through consultation and negotiation, or any other form of dispute resolution, may be subject to approval by City’s governing body during a public meeting.
2. **NO INDEMNITY** – Any clause requiring the City to indemnify, defend or hold harmless any party is hereby deleted in its entirety. Any language requiring the City to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of the State of West Virginia is deleted.
3. **GOVERNING LAW** – The Agreement and this Addendum shall be deemed to be executed in the City of Charleston, State of West Virginia, and shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State’s governing law.
4. **TAXES** – Provisions in the Agreement requiring the City to pay taxes are deleted. As a political subdivision of the State, the City is exempt from Federal, State, and local taxes and will not pay taxes for Vendor or any other party, including individuals, nor will the City file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** – Any references to prepayment are deleted. Payments for goods or services will be in arrears only upon receipt of a proper invoice, detailing the goods or services provided or receipt of the goods or services, whichever is later. Notwithstanding the foregoing,

payments for software licenses, subscriptions, or maintenance may be paid monthly or annually in advance.

6. **RECOUPMENT** – Any language in the Agreement waiving the City’s right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
7. **FISCAL YEAR FUNDING** – Services performed or goods provided under the Agreement may be continued in succeeding fiscal years for the term of the Agreement, contingent upon funds being appropriated by City Council or otherwise being available for the goods or services. In the event funds are not appropriated or otherwise available for the goods or services, the Agreement shall terminate without penalty on the next occurring June 30. After that date, the Agreement becomes of no effect and is null and void. However, the City agrees to use its best efforts to have the amounts contemplated under the Agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
8. **STATUTE OF LIMITATION** – Any clauses limiting the time in which the City may bring suit against Vendor or any lessor, individual, or other party are deleted.
9. **SIMILAR SERVICES** – Any provisions limiting the City’s right to obtain similar services or equipment in the event of default or non-funding during the term of the Agreement are hereby deleted.
10. **ATTORNEY FEES AND OTHER COSTS** – The City shall not be responsible for payment of attorney’s fees, costs of collection, or court costs of Vendor or of any lessor, individual or other party. Any different or conflicting provisions in the Agreement are invalid, null and void, and are deleted.
11. **ASSIGNMENT** – Notwithstanding any clause to the contrary, the City reserves the right to assign the Agreement to another City agency, board or commission upon thirty (30) days written notice to the Vendor. Such assignment by the City requires the Vendor’s consent – which is not to be unreasonable withheld. Vendor agrees not to assign the Agreement to any person or entity without the City’s prior written consent, which will not be unreasonably delayed or denied.
12. **LIMITATION OF LIABILITY** – Any provision limiting the Vendor’s liability for direct damages to person or property or limiting the Vendor’s liability under a warranty to a certain dollar amount or to the amount of the Agreement is hereby deleted. In addition, any limitation of Vendor’s liability is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
13. **RIGHT TO TERMINATE** – City shall have the right to terminate the Agreement upon thirty (30) days written notice to Vendor.

14. **TERMINATION CHARGES** – Any provision requiring the City to pay a fixed amount or liquidated damages upon termination or cancellation of the Agreement is hereby deleted. The City may only agree to reimburse Vendor for actual costs incurred or losses sustained during the current fiscal year due to termination by the City prior to the end of any current agreement term.
15. **RENEWAL** – Any reference to automatic renewal, modification, or extension of the Agreement is hereby deleted. The Agreement may be renewed only upon authorized and mutual written agreement of the parties.
16. **INSURANCE** – Any provision requiring the City to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
17. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the City does recognize a right of repossession upon default and with notice.
18. **NO WAIVER** – City and Vendor does not waive and expressly preserves its right to due process and any and all immunities afforded the City and Vendor under West Virginia State law. Any provision requiring the City and Vendor to waive any rights, claims or defenses is hereby deleted.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **DELIVERY** – All deliveries under the Agreement will be FOB destination unless the City expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
21. **CONFIDENTIAL INFORMATION** – Vendor acknowledges that City is a public entity and is subject to mandatory disclosure of certain information upon request under W.Va. Code § 29B-1-1 *et seq.* (the “Freedom of Information Act”) and W.Va. Code § 6-9A-1 *et seq.* (the “Open Governmental Proceedings Act”). Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Agreement are hereby deleted. City contracts are public records under the Freedom of Information Act and public procurement laws. This Agreement and other public records may be disclosed without notice to the Vendor at the City’s sole discretion. Any provision regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with the Freedom of Information Act and incorporated into the Agreement through a separately approved and signed non-disclosure agreement.
22. **PROCUREMENT GUIDELINES AND INDEMNIFICATION** – The Vendor specifically covenants that it will follow the terms of Exhibit P to the Agreement regarding procurement of construction services in a manner consistent with West Virginia Code § 5-22-1. The Vendor further agrees that it shall indemnify, defend and hold harmless the City, its officers,

employees and agents, from any claims, demands, obligations, causes of action, lawsuits, fines, costs, judgments and damages of any character whatsoever, and all expenses associated therewith (including but not limited to, reasonable attorney's fees and costs) arising out of or related to the procurement of construction services for this project where such allegations include assertions that the Construction Manager did not comply with the terms of Exhibit P to the Agreement. The Construction Manager agrees that, if any entity makes any claim in any venue regarding the procurement of construction services for this contract and the allegations include assertions that the Construction Manager did not comply with the terms of Exhibit P to the Agreement, its duty to defend and indemnify the City does not require a judicial determination of the Construction Manager's negligence as a precondition of the duty to indemnify and defend the City.

23. **PRICING ADJUSTMENTS** – To the extent the Agreement contains any provision allowing Vendor to escalate or otherwise increase prices or costs for services as set forth in the Agreement, no such provision shall be valid or enforceable. No prices or costs may be increased by Vendor until and unless notice of proposed increase is provided to City by Vendor and agreed to in writing by City.
24. **THIRD-PARTY SOFTWARE** – If this Agreement contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the City against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
25. **AMENDMENTS** – All amendments, modifications, alterations or changes to the Agreement shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted. No amendment, modification, alteration or change may be made to this Addendum without the authorized and express written approval of the Mayor of the City of Charleston and Vendor's designated representative.
26. **LIABILITY OF INDIVIDUALS** – The Parties agree that the Agreement shall be not construed to extend any personal liability to individuals executing or administering the Agreement on behalf of City or Vendor. Notwithstanding, this provision shall not be construed to prevent Vendor or City from taking any and all legal action against any individual who commits fraud related to this Agreement.

ACCEPTED BY:
CITY OF CHARLESTON

Signed: _____

Title: _____

Date: _____

VENDOR

Signed: _____

Title: _____

Date: _____

Exhibit P

City of Charleston – Procurement Guidelines

Construction Manager agrees that it will procure all construction services pursuant to the following:

1. That all construction services will be obtained pursuant to the requirements of West Virginia Code § 5-22-1. Specifically, that the Construction Manager shall solicit competitive bids for the construction project as follows:
 - a. Definitions:
 - i. “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder’s response to the bid solicitation. The bidder shall certify that it:
 1. Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;
 2. Is in compliance with all applicable laws of the State of West Virginia; and
 3. Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.
 - ii. “Debarred vendor” means any vendor debarred by the West Virginia Purchasing Division pursuant to W. Va. Code § 5A-3-33e or debarred by the city, which results in the city's inability to solicit offers from, award contract to, or consent to subcontract with the vendor during the debarment period.
 - iii. “Final offer” means a tie-breaking bid submitted subsequent to a bid opening where the apparent lowest bidder and apparent second-lowest bidder submit tied initial bids.
 - iv. “Lowest responsible bidder” means a responsible bidder who has submitted the lowest priced bid and who did not materially deviate from the mandatory terms and conditions contained in the solicitation.
 - v. “Responsible bidder” means a bidder who has the capability to fully perform the contract requirements and the integrity and reliability which will assure good-faith performance.
 - vi. “Non-responsible bid” means a bid that fails to conform to the solicitation in all material respects.
 - vii. “City manager” means the city manager of the City of Charleston or his or her designee, such as the city's purchasing director.
 - b. The solicitation for competitive bids shall be advertised as required herein and shall designate the time and place that the bids will be received and the Construction Manager shall at that time and place publicly open the bids and read them aloud.
 - c. A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of the West Virginia Code or similar provisions of City Code, may not bid on or be awarded the contract.

- d. All bids submitted pursuant to this contract shall include a valid bid bond or certified check in the amount of 5% of the bid price. Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. When tie bids are received, the Construction Manager may break the tie by allowing the vendors to make a final offer.
 - e. The Construction Manager or the City Manager may reject all bids and solicit new bids on the project.
 - f. The Construction Manager may not award a contract to a bidder which fails to meet the minimum requirements set out herein. As to a prospective low bidder which the Construction Manager determines not to have met one or more of the requirements herein or other requirements in the written bid solicitation, the Construction Manager shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. Construction Manager shall consult with the City Manager prior to awarding the contract, and the City Manager must issue his or her final approval to award the contract. The City Manager shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. After the award of a bid, the bid file of the Construction Manager and all bids submitted in response to the bid solicitation shall be open and available for public inspection.
 - g. All bids shall be open in a public location in the City of Charleston, West Virginia, as stated in the solicitation of bids.
2. Advertising Requirements
- a. The Construction Manager shall publish a solicitation calling for bids.
 - b. The time for opening such bids shall not be less than ten days from the date of the first publication of the solicitation. The solicitation shall be advertised through city websites and may also be advertised in newspapers, newsletters, trade journals, mass emailing, or any other media the Construction Manager and City Manager consider advisable.
 - c. Notice to bidders shall state:
 - i. The nature of the work;
 - ii. The place where the plans and specifications and forms of contract may be seen;
 - iii. The amount of cash or bond to be deposited, as may be required;
 - iv. The time up to which the bids shall be received and the hour and place of bid opening;
 - v. The right of the Construction Manager to reject any and all bids;
 - vi. That debarred vendors may not submit bids or be awarded contracts; and
 - vii. A requirement that the bidder swears that it has no current financial relationship and/or corporate ownership with either the Construction Manager or the Architect.
3. Miscellaneous Provisions

- a. The Construction Manager and Architect, as well as any and all subsidiaries, agents, affiliates, partners, related entities, controlled entities, or entities owned by the same individuals that own the Construction Manager or Architect, are prohibited from bidding on the construction work. The Construction Manager and Architect will not have a financial relationship or corporate ownership with any of the entities performing the construction work during the term of the Project.
- b. To the extent possible, the construction contract will go to one contractor for all of the field turfing projects and the successful contractor can use subcontractors as approved by the Construction Manager. The Construction Manager reserves the right award the individual fields in the best interest of the overall project and pursuant to the procurement guidelines.
- c. When tie bids are received, the Construction Manager may break the tie by allowing the vendors to make a final offer.
- d. Although the overall budget for the project will be approved by Charleston City Council as part of the Construction Manager at Risk Agreement, the construction contract shall also be approved by Charleston City Council as to form once it is prepared by the Construction Manager.
- e. All contracts for the purchase of commodities and services must be in writing.
- f. The successful bidder, as well as the successful bidder's subcontractors, must be in compliance with applicable State of West Virginia contractor licensing laws.
- g. The successful bidder, as well as the successful bidder's subcontractors, must be in compliance with applicable State of West Virginia and City of Charleston business registration laws.
- h. Construction Manager must notify all bidders of the award decision in writing within 3 days of award.
- i. Equal Employment Opportunity: All bidders must acknowledge and agree that, in the performance of the contract, they will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, gender identity, disability, or national origin.
- j. All bidders in connection with the performance of this project shall certify that they are in compliance with the Immigration Reform and Control Act.
- k. Taxes: As a political subdivision of the State of West Virginia, the City of Charleston is exempt from State and local taxes.
- l. Business and Occupation Tax: The City of Charleston broadly imposes a Business & Occupation Privilege Tax ("B&O") for the act or privilege of engaging in business activities within the City of Charleston. B&O is measured by the application of rates against gross receipts or gross income of a business. All business activities are classified, and the classifications are significant in as much as the tax liability varies based on the different rates established for the specific types of business activities. B&O should be considered by all bidders when preparing bids. If a bidder is uncertain as to whether this contract will require B&O taxation, please contact the City Collector's Office by emailing botax@cityofcharleston.org or by calling 304-348-8024.
- m. Protests:
 - i) In the event that any vendor desires to protest Construction Manager's selection, such vendor (hereinafter "Protestor") shall submit its protest in

writing, which must be received by City and Construction Manager within seven (7) calendar days of after the bidder receives notice of the award decision. Provided that the City Manager and Construction Manager reserves the right to extend the time for submission of the protest if he or she determines it is reasonable under the circumstances.

- ii) The written protest must be submitted to the **City Manager's Office, Attention: Jonathan Storage, 501 Virginia Street East, Room 101; Charleston, WV 25301** and via email to the Construction Manager – markn@turfconsultants.com
- iii) Only vendors who have submitted a timely and responsive proposal may protest Construction Manager's selection. No protest may be filed and/or valid if the solicitation is withdrawn or if all proposals received in response to the solicitation are rejected.
- iv) Protests shall include the following information:
 - (1) The Protestor's name, email address, U.S. Mail address, and telephone number;
 - (2) The solicitation number (if applicable);
 - (3) A detailed statement of the legal and/ or factual grounds for the protest;
 - (4) Copies of all relevant and supporting documentation, if necessary; and
 - (5) A statement as to the form of resolution or relief sought.
 - (6) The financial requirements as detailed in section 3.m.vi.**FAILURE TO SUBMIT THIS INFORMATION SHALL BE GROUNDS FOR REJECTION OF THE PROTEST.**
- v) The City Manager may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided by the City Manager in a previous protest.
- vi) At the time of submitting the written protest, Protestor shall submit a certified check in the amount of one thousand dollars (\$1,000.00) or bond equal to five percent (5%) of the price of the selected proposal, whichever is greater. In the event the proposal being protested is for contracted services, an estimated average of the contract value will be determined in order to calculate the five percent (5%) bond value. This bonding requirement is designed to protect against frivolous claims and unnecessary expenditures of public funds and to allow City and/or Construction Manager to offset any and all costs, fees, expenses or damages of any kind whatsoever incurred by City and/or Construction Manager as the result of an unsuccessful protest.
- vii) In the event the protest is unsuccessful, the certified check or bond will be used by City and/or Construction Manager to recoup any and all costs, fees, expenses, or damages of any kind whatsoever incurred by City and/or Construction Manager related in any way to the unsuccessful protest. Costs,

fees, expenses, and damages shall include, but shall not be limited to, increased costs of labor, materials or services resulting from any delay, professional fees, including, but not limited to, attorney fees, and all costs, fees or expenses of any kind whatsoever related in any way to the unsuccessful protest. If there are any funds remaining after City and/or Construction Manager has recouped amounts as permitted herein, the remaining funds will be returned to Protestor. In the event Protestor is successful, the full amount of the certified check or bond will be returned to Protestor.

- viii) Upon receipt of a timely written protest, City and/or Construction Manager shall provide notice of the protest to vendor selected as the successful bidder (hereinafter “Selected Vendor”) and provide Selected Vendor with a copy of the written protest and any documents related thereto. **Selected Vendor will have two (2) business days to file a written response to the protest.** A hearing may be held within five (5) business days of the **date of receipt of the written response to the protest by Selected Vendor**; provided that, City may, in its sole discretion, set the date of the hearing beyond the five (5) day time period specified herein if deemed necessary or convenient to do so by City. If a hearing is held, both Protestor and Selected Vendor will have an opportunity to appear and present evidence and testimony in support of their positions. The hearing will be held before the City Manager or his designee. The Parks and Recreation Director, City Attorney, and Construction Manager shall be in attendance.
- ix) A decision will be made by City within five (5) business days of the hearing. Upon a decision having been made, both Protestor and Selected Vendor will be notified in writing of City’s decision.
- x) In the event Construction Manager’s selection is reversed, City will reevaluate all proposals which were originally and timely submitted, in accordance with state and city laws and regulations. During the reevaluation, issues addressed during the protest proceedings may be considered.
- xi) Once a written protest is filed, no work will be performed by Selected Vendor until such time as City has rendered a final decision on the protest; provided that, if City, in its sole discretion, determines time is of the essence regarding receipt of the goods or completion of the services to be performed, City may permit Selected Vendor to proceed pursuant to its proposal and any Agreement with City, until/unless the protest is successful.
- xii) By submitting a proposal, each vendor agrees that the procedure outlined herein is the exclusive remedy available to challenge/protest the award of a contract to a successful bidder. The decision of the city manager is final and is not appealable. Each vendor further agrees that, in the event any qualified vendor fails to submit a written protest and certified check or bond within the time period specified, that vendor thereby forever waives its right to any

further claim, action, or remedy, including, but not limited to, the right to bring an action before any administrative agency or any court of competent jurisdiction.

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Refer to EXHIBIT F

THE OWNER:

(Name, legal status and address)

City of Charleston
501 Virginia Street East
Charleston, West Virginia, USA, 25301
Jonathan Storage – City Manager – Jonathan.storage@cityofcharleston.org – 304-348-8014

THE ARCHITECT:

(Name, legal status and address)

Turf Consultants (Herein referenced as the Architect)
19 Madison Court East
Welland, Ontario, Canada, L3C 7G3
Phone: 800-828-1300 – Email: info@turfconsultants.com

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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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect with approval by the Owner's Inspector. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

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

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite~~

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

~~**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.~~

~~§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

~~§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Owner's Inspector, each of which may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Owner's Inspector's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner, Owner's Inspector, or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner's Inspector any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and Owner's Inspector may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect or Owner's Inspector objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect and Owner's Inspector in accordance with Section 3.12.8 or ordered by the Architect or Owner's Inspector in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Owner's Inspector will promptly investigate such conditions and, if the Architect or Owner's Inspector determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner's Inspector determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner's Inspector shall promptly notify the Owner, Architect, and Contractor, stating the reasons. If either party disputes the determination or recommendation of the Owner's Inspector, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the

Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect and Owner's Inspector for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Owner's Inspector is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work and the Owner's Inspector has given a written concurrence, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of

the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in

Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

~~**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.~~

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner and Owner's Inspector reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Owner's Inspector (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications 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. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts, which shall be delivered to the Owner's Inspector for approval.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, 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.

§ 4.2.7 The Architect and Owner's Inspector will 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. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's and Owner's Inspector's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's and Owner's Inspector's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's or Owner's Inspector's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner's Inspector who shall also review, approve, and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10, which shall also be reviewed and approved by the Owner's Inspector prior to being forwarded to the Owner.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will 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 will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 — CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

~~§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

~~§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.~~

~~§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~

~~§ 6.3 Owner's Right to Clean Up~~

~~If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.~~

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect with the approval of the Owner's Inspector.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and Owner's Inspector in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner's Inspector before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and Owner's Inspector. This schedule, unless objected to by the Architect or Owner's Inspector, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and Owner's Inspector and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or Owner's Inspector, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner's Inspector an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue with approval of the Owner's Inspector to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue with approval of the Owner's Inspector to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment that has been approved by the Owner's Inspector will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the 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 an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, with the approval of the Owner's Inspector, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of

the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Owner's Inspector will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect and Owner's Inspector's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner's Inspector. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner's Inspector to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented

to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect with concurrence of the Owner's Inspector.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner's Inspector will promptly make such inspection. When the Architect and Owner's Inspector finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect and Owner's Inspector's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or

- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity

agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect and Owner's Inspector or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's Inspector's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract 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 15.4.~~

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2** Accept assignment of subcontracts pursuant to Section 5.4; and
- .3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Owner's Inspector will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim 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 the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 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 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.

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Resolution No. 685-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 685-22 – Authorizing the Mayor or City Manager to enter into a contract with Dell Marketing LP (DBA Dell Technologies) in the amount of \$49,472.00 to replace various computer equipment as part of an annual computer replacement capital outlay, whether the purchase price was determined through a competitively sourced statewide contract.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into a contract with Dell Marketing LP (DBA Dell Technologies) in the amount of \$49,472.00 to replace various computer equipment as part of an annual computer replacement capital outlay, whether the purchase price was determined through a competitively sourced statewide contract.



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

State of West Virginia Master Agreement

Order Date: 01-12-2022

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

Order Number:	CMA 0212 0212 IP19 11	Procurement Folder:	534220
Document Name:	Statewide Contract IP19: Change Order #10	Reason for Modification:	Change Order 10 is issued: to renew contract for one (1) year; to provide replacement models for Standard PC, 24" Monitor, and 27" Monitor; and remove 'pause' on video card.
Document Description:	IP19 - Statewide Contract for Computers & Peripherals		
Procurement Type:	Statewide MA (Open End)		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2019-01-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-01-14

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000223330 DELL MARKETING LP ONE DELL WY ROUND ROCK TX 78682 US Vendor Contact Phone: 231-747-9294 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>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Andrew Lore Requestor Phone: (304) 957-8267 Requestor Email: andrew.c.lore@wv.gov 22 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

Purchasing Division's File Copy

Total Order Amount: Open End

ENTERED

MA 01/13/2022

PURCHASING DIVISION AUTHORIZATION
DATE: 1/13/2022
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: 1/14/2022
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
Beverly Toler
DATE: 1-14-2022
ELECTRONIC SIGNATURE ON FILE

Extended Description:
CHANGE ORDER No.10

Change Order No. 10 is issued for the following:

1. To replace the end-of-life machines per the attached documentation:

Commodity Line 1: Standard PC - Optiplex 5080 replaced by Optiplex 5090
Commodity Line 8: 24" Monitor - E2420H replaced by E2422H
Commodity Line 9: 27" Monitor - E2720H replaced by E2722H

2. Remove temporary "PAUSE" (prevent new orders) on Commodity Line 13: Optional Upgraded 8GB Video Card.

3. To renew the original contract according to all terms, conditions, prices and specifications contained in the original contract including all authorized change orders.

No Pricing Changes as a result of this Change Order.

Effective Dates: 01/15/2022 - 01/14/2023

Renewal Years Remaining: (0)

All provisions of the Original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

NO OTHER CHANGES

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43210000	DELL		EA	525.000000
	Service From	Service To			

Commodity Line Description: Standard PC

Extended Description:
Dell OptiPlex 3090

Mini Tower. Intel Core i5 Processor. 8GB RAM, 500GB HDD, 4-year ProSupport, 5 years Absolute Resilience, Included Adapter: DisplayPort to Dual Link DVI-D
Specification No. 3.1.2

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	43210000	DELL		EA	735.000000
	Service From	Service To			

Commodity Line Description: Power PC

Extended Description:
Dell OptiPlex 5090

Mini Tower. Intel Core i7 Processor, 16GB RAM, M.2 256GB PCIe NVMe SSD, 4-year ProSupport and 5 years Absolute Resilience, Included Adapter: DisplayPort to Dual Link DVI-D

Specification No. 3.1.3

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	43210000	DELL		EA	1999.000000
	Service From	Service To			

Commodity Line Description: Fixed Workstation

Extended Description:
Dell Precision 5820 Tower XCTO

Full Tower - Xeon w-2145/3.7GHz Turbo/8C/11M Cache/140W - Mem 32GB - 256GB SSD & 1TB HDD - DVD +/-RW - 4 yr Support w/PM - 5 yr Absolute

Specification No. 3.1.4

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	43210000	DELL		EA	809.000000
	Service From	Service To			

Commodity Line Description: Standard Laptop

Extended Description:
Dell Latitude 3520

15" Notebook. 11th-Gen Core i5 Processor. Iris XE Graphics, 8GB RAM, 500GB SATA, 1366 x 768 HD LCD, 4-year ProSupport Plus with Accidental Damage and Keep Your Hard Drive retention, 5 years of Absolute Resilience

Accidental Damage Coverage Included at No Charge for Specification Item 3.1.5.

Specification No. 3.1.5

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	43210000	DELL		EA	1059.000000
	Service From	Service To			

Commodity Line Description: Power Laptop

Extended Description:
Dell Latitude 5520

15" Notebook. 11th-Gen Core i7 Processor. Iris XE Graphics, 16GB RAM, M.2 512GB PCIe NVMe SSD, 1366 x 768 HD LCD, 4-year ProSupport Plus with Accidental Damage & Keep Your Hard Drive retention, 5 years of Absolute Resilience

Accidental Damage Coverage Included at No Charge for Specification Item 3.1.6.

Specification No. 3.1.6

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	43210000	DELL		EA	1350.000000
	Service From	Service To			

Commodity Line Description: Tablet

Extended Description:
Dell Latitude 5320 2-in-1

13.3" 2-in-1. 11th-Gen Core i7 Processor. Iris XE Graphics, 16GB RAM, M.2 256GB PCIe NVMe SSD, 1920x1080 FHD LCD, 4-year ProSupport Plus with Accidental Damage & Keep Your Hard Drive retention, 5 years of Absolute Resilience

Accidental Damage Coverage Included at No Charge for Specification Item 3.1.7.

Specification No. 3.1.7

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	43210000	DELL		EA	89.000000
	Service From	Service To			

Commodity Line Description: 20" Monitor - PAUSED (temporarily unavailable)

Extended Description:

PAUSED - (Temporarily unavailable for ordering).

E2020H
20" Monitor
20" Display, 1600 x 900 LCD

Specification No. 3.1.8.1.1

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	43210000	DELL		EA	139.000000
	Service From	Service To			

Commodity Line Description: 24" Monitor

Extended Description:

E2422H
24" Monitor

24" Display. 1920 x 1080 FHD LCD with DP & VGA 4-year Support

Specification No. 3.1.8.1.2

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	43210000	DELL		EA	199.000000
	Service From	Service To			

Commodity Line Description: 27" Monitor

Extended Description:

E2722H
27" Monitor

27" Display. 1920 x 1080 FHD LCD with DP & VGA 4-year Support

Specification No. 3.1.8.1.3

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
10	43210000	DELL		EA	143.000000
	Service From	Service To			

Commodity Line Description: Dock for Standard and Power Laptop and Tablet

Extended Description:

Dell WD19S

USB-C, 130W Power Delivery with 180W AC, Dual 4K Output, HDMI, mini Display, VGA, Ethernet, (2) USB 2.0, USB 3.0. Included Adapter: DisplayPort to DVI SL

Specification Nos. 3.1.8.2, 3.1.8.3 and 3.1.8.4

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
11	43210000	DELL		EA	39.000000
	Service From	Service To			

Commodity Line Description: DVD/RW Drive

Extended Description:

DW316
DVD/RW Drive Dell External USB Slim DVD +/-RW Optical Drive - DW316

Specification No. 3.1.8.5

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
12	43210000	DELL		EA	194.130000
	Service From	Service To			

Commodity Line Description: 512 GB SSD 2.5"

Extended Description:

512GB SSD - 512 GB Solid State Drive 2.5"

Optional Drive for Standard PC, Power PC, and Fixed Workstation

Specification No. 3.1.8.7

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
13	43210000	DELL		EA	244.990000
	Service From	Service To			

Commodity Line Description: Nvidia Quatro RTX 4000

Extended Description:

Nvidia Quatro RTX 4000

Upgraded Video Card for Fixed Workstation

Specification No. 3.1.8.8



MARK D. SCOTT
CABINET SECRETARY

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25305-0130

W. MICHAEL SHEETS
DIRECTOR

December 13, 2021

Ms. Lori Caldwell, Account Executive
Dell Marketing, L.P.
One Dell Way
Round Rock, TX 78682

Subject: WV Statewide Contract No.: CMA 0212 IP19

Dear Ms. Caldwell:

The State of West Virginia is offering to renew subject contract under the same terms, conditions and pricing. The renewal dates are January 15, 2022 through January 14, 2023. If your company agrees to this renewal, please sign below and return the original to my attention as soon as possible. You may return all renewal documents via email to Mark.A.Atkins@wv.gov.

Also attached is an **Affidavit** that is to be part of the purchase order and is required to be signed, dated, and notarized.

We agree to renew the contract for the period as stated above under the same terms and conditions in the original purchase order and any change orders thereto.

Alyssa Sayles

Printed Name

Alyssa Sayles

Signature

January 11, 2022

Date

Contract Administrator

Title

Please call if you have any questions.

Very truly yours,

Mark A. Atkins

Senior Buyer, Statewide Contracts
West Virginia Department of Administration
Purchasing Division
2019 Washington Street, East
POB 50130
Charleston, WV 25305-0130

Phone: 304.558.2307

Fax: 304.558-4115

Email: Mark.A.Atkins@wv.gov

Attachment



January 10, 2022

Dell Technologies

One Dell Way

Round Rock, Texas

www.dell.com

Sent via Email Communication Only

West Virginia Office of Technology

1900 Kanawha Boulevard East Building 5, 10th Floor

Charleston, WV 25302

Re: Change Order 10 to IP19

Regarding the Statewide Open-End Contract number IP19 ("Contract") between the State of West Virginia and Dell Technologies, we appreciate the opportunity to submit this Change Order 10.

The need for Change Order 10 arises to in accordance with section 3.1.9.1.10 of the contract. Dell is providing substitutes and modifies four part numbers. Please see the detailed explanation below, the enclosed, revised pricing document, and executed Purchase Affidavit.

Please note that all pricing will remain the same.

The following part numbers cannot be internally cross-referenced and Dell requests that they be changed on the contract to avoid ordering issues.

IP19 Item	Current Model	New Model/Change
Standard PC	OptiPlex 5080	OptiPlex 5090
24" Monitor	E2420H	E2422H
27" Monitor	E2720H	E2722H
Optional 8G Video Card	NVIDIA Quadro RTX 4000	Remove purchasing pause/hold

Additionally, in addition to this Change Order, Dell agrees to renew the contract for its pricing, terms and conditions, and specifications contained in the Original Contract and subsequent Change Orders.

Should you have any questions, please do not hesitate to contact Jordan Pace, Dell Inside Account Manager, directly at 512-513-8004 or Jordan_Pace@dell.com.

 IP19 Change Order 10 						
Contract Line	Manufacturer Name	Manufacturer Model	IP19 Item Description	Image	Extended Description	Contract Price
3.1.2	Dell	OptiPlex 3090	Standard PC		Mini Tower. Intel Core i5 Processor. 8GB RAM, 500GB HDD, 4-year ProSupport, 5 years Absolute Resilience, Included Adapter: DisplayPort to Dual Link DVI-D	\$ 525.00
3.1.3	Dell	OptiPlex 5090	Power PC		Mini Tower. Intel Core i7 Processor, 16GB RAM, M.2 256GB PCIe NVMe SSD, 4-year ProSupport and 5 years Absolute Resilience, Included Adapter: DisplayPort to Dual Link DVI-D	\$ 735.00
3.1.4	Dell	Precision 5820	Fixed Workstation		Tower. Intel Xeon w-2145 Processor, 32GB RAM, 256GB SSD and 1TB HDD, 4-year ProSupport and 5 years Absolute Resilience, Included Adapter: Mini DisplayPort to SL DVI-D	\$ 1,999.00
3.1.5	Dell	Latitude 3520	Standard Laptop		15" Notebook. 11th-Gen Core i5 Processor. Iris XE Graphics, 8GB RAM, 500GB SATA, 1366 x 768 HD LCD, 4-year ProSupport Plus with Accidental Damage and Keep Your Hard Drive retention, 5 years of Absolute Resilience	\$ 809.00
3.1.6	Dell	Latitude 5520	Power Laptop		15" Notebook. 11th-Gen Core i7 Processor. Iris XE Graphics, 16GB RAM, M.2 256GB PCIe NVMe SSD, 1366 x 768 HD LCD, 4-year ProSupport Plus with Accidental Damage & Keep Your Hard Drive retention, 5 years of Absolute Resilience	\$ 1,059.00
3.1.7	Dell	Latitude 5320	Tablet PC		13.3" 2-in-1. 11th-Gen Core i7 Processor. Iris XE Graphics, 16GB RAM, M.2 256GB PCIe NVMe SSD, 1920x1080 FHD LCD, 4-year ProSupport Plus with Accidental Damage & Keep Your Hard Drive retention, 5 years of Absolute Resilience	\$ 1,350.00
3.1.8.1.1	Dell	E2020H (On Hold)	20" Monitor (On Hold)		20" Display, 1600 x 900 LCD VGA and DisplayPort 4-year Support	\$ 89.00
3.1.8.1.2	Dell	E2422H	24" Monitor		24" Display. 1920 x 1080 FHD LCD with DP & VGA 4-year Support	\$ 139.00
3.1.8.1.3	Dell	E2722H	27" Monitor		27" Display. 1920 x 1080 FHD LCD with DP & VGA 4-year Support	\$ 199.00
3.1.8.2	Dell	WD19S	Dock for Standard Laptop; Dock for Power Laptop; Dock for Tablet PC		USB-C, 130W Power Delivery with 180W AC, Dual 4K Output, HDMI, mini Display, VGA, Ethernet, (2) USB 2.0, USB 3.0. Included Adapter: <u>DisplayPort to DVI SL</u>	\$ 143.00
3.1.8.5	Dell	DW316	External DVD +/- RW Optical Drive		Interface: USB 2.0 Width: 5.4 in Depth: 5.7 in Height: 0.6 in Weight: 7.05 oz	\$ 39.00
3.1.8.7	Dell	SSD	512GB SSD 2.5" SATA		512 GB Solid State Drive 2.5"	\$ 150.00
3.1.8.8	Dell	NVIDIA Quadro RTX 4000	Optional 8G Video Card for the Fixed Workstation		8GB, 3DP + 1x Virtual Link	\$ 244.99



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF TECHNOLOGY

Mark D. Scott
Cabinet Secretary

State Capitol
Charleston, West Virginia 25305

Joshua D. Spence
Chief Information Officer

TO: Mark Atkins
Senior Buyer, Purchasing Division

FROM: Andrew Lore *cf*
WVOT Procurement Manager/ISMII, West Virginia Office of Technology

SUBJECT: CMA IP19 Change Order 10 – Substitutions and Renewal

DATE: January 10, 2022

The WVOT is requesting Change Order 10 to the IP19 Statewide Contract to replace contract three (3) items and to remove the temporary 'pause' on one (1) item.

The four (3) substitutions are as follows:

1. Standard PC: Replaced by new model Optiplex 5090
2. 24" Monitor: Replaced by new model E2422H
3. 27" Monitor: Replaced by new model E2722H

The one (1) item which will be removed from temporary pause is:

1. Optional 8GB Video Card – NVIDIA Quadro RTX 4000

All replacements have been evaluated and meet the requirements. Additionally, the hold has been removed in OASIS.

Attached are the Vendor Memo, Purchasing Affidavit, CIO Approval, and other relevant documents.

Please let us know if you need anything further to support this request.



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

State of West Virginia
Master Agreement

Order Date: 2019-01-04

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: CMA 0212 0212 IP19	Procurement Folder: 534220
Document Name: IP19 - Computers & Peripherals	Reason for Modification:
Document Description: IP19 - Statewide Contract for Computers & Peripherals	
Procurement Type: Statewide MA (Open End)	
Buyer Name: Mark A Atkins	
Telephone: (304) 558-2307	
Email: mark.a.atkins@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2019-01-15
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2020-01-14

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000223330 DELL MARKETING LP ONE DELL WY BOX RR1-33 ROUND ROCK TX 78682 US Vendor Contact Phone: (304) 333-3456 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Andrew Lore Requestor Phone: (304) 957-8267 Requestor Email: andrew.c.lore@wv.gov

INVOICE TO	SHIP TO
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

AGENCY COPY

Total Order Amount

Open End

MA 01/07/2019

PURCHASING DIVISION AUTHORIZATION
SIGNED BY:
DATE:
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
SIGNED BY:
DATE: 1-17-19
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
SIGNED BY:
DATE:
ELECTRONIC SIGNATURE ON FILE

Date Printed: Jan 04, 2019 Order Number: IP19

Page: 1

FORM ID: WV_PRC_CMA_001814

Extended Description:**STATEWIDE CONTRACT:**

The Vendor, Dell Marketing LP, agrees to enter with the State of West Virginia, into an open-end statewide contract to provide Computers & Peripherals per the Specifications, Terms and Conditions, Bid Requirements, Addendum_1 dated 09/10/2018, Addendum_2 dated 09/11/2018, Addendum_3 dated 09/18/2018, Addendum_4 dated 09/21/2018 and the Vendor's bid dated 09/28/2018, incorporated herein by reference and made apart hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43210000	DELL		EA	\$0.000000
Service From		Service To			

Commodity Line Description: Computers & Peripherals

Extended Description:

Computers & Peripherals:

See attached Pricing Page for Contract Pricing.

GENERAL TERMS AND CONDITIONS:

- 1. CONTRACTUAL AGREEMENT:** Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid 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: Initial Contract Term: This Contract becomes effective on January 15, 2019 and extends for a period of One (1) year(s).

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 Three (3) 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 maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

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

☐ **Other:** See attached.

Revised 06/08/2018

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

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 are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

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

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

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

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

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

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

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

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

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

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

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

☐

☐

☐

☐

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

Vendor must maintain:

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

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

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **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.

☐

☐

☐

☐

Revised 06/08/2018

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

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

10. [Reserved]

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

☐ _____ for _____

☒ Liquidated Damages Contained in the Specifications

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.

14. PAYMENT IN ARREARS: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

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 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.

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 with regard to all matters of time and performance in this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. PURCHASING AFFIDAVIT: 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, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. 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.

40. 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.requisitions@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. 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.

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Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. 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. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. 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
- d. 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.

43. 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

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“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.

44. 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 supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award 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.

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.

Dell Marketing L.P.

(Name, Title)

Cyndi Radel - Contract Program Manager

(Printed Name and Title)

One Dell Way, Round Rock, TX 78682

(Address)

231-747-9294

(Phone Number) / (Fax Number)

cyndi.radel@del.com

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation 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 for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

Dell Marketing L.P.

(Company)

Nicholas Stokes*

(Authorized Signature) (Representative Name, Title)

Nicholas Stokes - Proposals Consultant

(Printed Name and Title of Authorized Representative)

September 24, 2018

(Date)

512-724-3369

(Phone Number) (Fax Number)

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*Above signed inclusive of: Contracting with the State is critically important to Dell. We believe that we will provide a tremendous cost value and technology benefit toward future IT Hardware and Services technology purchases. Pursuant to answers to questions provided by the State, Dell is providing exceptions and clarifications to provisions in the General Terms and Conditions, for West Virginia's review and consideration. These clarifications are detailed in Section 2 – Response to RFQ Instruction

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ORDER OF PRECEDENT AND MODIFICATION ADDENDUM

THIS ORDER OF PRECEDENT AND MODIFICATION ADDENDUM, (hereinafter "Addendum") by and between Dell Marketing LP (hereinafter "Vendor" or "Dell") and State of West Virginia (hereinafter "State of West Virginia"), (both referred to as "Parties"), is intended to modify certain terms and conditions submitted by the Parties and to provide an order of precedent for all documents that comprise the contract resulting from the solicitation identified as identified as IP19 (the "Contract").

NOW THEREFORE, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section. In that way, any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

Contract Documents:

- a. **Order of Precedence and Modification Addendum** (this document) – First Priority
 - b. **WV-96A Agreement Addendum** (Attached as Exhibit A) – Second Priority
 - c. **Solicitation Documents** (including any addenda) – Third Priority
 - d. **Documents Provided by Dell in response to the Solicitation** – Fourth Priority
2. **Dell Exceptions:** Dell's Exceptions Response to the General Terms and Conditions and the request for additional terms are hereby expressly rejected unless included as a modification to the General Terms and Conditions in this Addendum.
 3. **Changes to the General Terms and Conditions.** The General Terms and Conditions contained in the solicitation are modified as follows:
 - a. **Term 8, Insurance** – Dell is not required to list the State as an additional insured on its professional liability/errors and omissions insurance policy.
 - b. **Term 14, Payment** – Payment is due 60 days from the date of invoice. In the event that a state agency fails to pay within 60 days, Dell will provide that state agency with written notice of failure and 30 days to cure the failure. In the event that payment is not made during the 30-day cure period, Dell may suspend future deliveries to that state agency until payment is made. The ability to suspend deliveries does not apply to payment amounts that are disputed.
 - c. **Term 16, Taxes** – Dell may request that each ordering agency provide a tax exempt certificate, and the ordering agency will provide it to confirm tax exempt status.
 - d. **Term 28, Warranty** – The warranty replacement language proposed by Dell in the Dell's Exceptions Response to General Terms and Conditions on page 10 of Section 2 of Dell's Response of RFQ Instructions Document is accepted and incorporated herein.
 - e. **Term 35, Vendor Relationship** – The vendor relationship replacement language proposed by Dell in the Dell's Exceptions Response to General Terms and Conditions on page 11-12 of Section 2 of Dell's Response of RFQ Instructions Document is accepted and incorporated herein.
 - f. **Term 36, Indemnification** – The indemnification replacement language proposed by Dell in the Dell's Exceptions Response to General Terms and Conditions on page 12-13 of Section 2 of Dell's Response of RFQ Instructions Document is accepted and incorporated herein with one modification. The phrase "gross negligence or willful misconduct" is replaced with "negligence."
 4. **Additional Contract Terms.** The following additional terms are added to the Contract.
 - a. **Trade Compliance** – Vendor and State acknowledge that products (including software) sold or licensed under this Contract are subject to export control laws and regulations of the United States of America and other countries from which they were supplied and in which they are used and agree to abide by those laws and

regulations. State acknowledges that State is responsible for obtaining any necessary licensing related to the exporting of products.

- b. **Indirect Damages** – Vendor shall not be liable for indirect, consequential, special, punitive, incidental and other types of non-direct damages arising out of or in connection with this Contract.
- c. **Third Party Software** – State is not permitted to agree to third party shrink-wrapped or click-through software provisions because State law mandates review and approval of all contract terms by the Purchasing Division and the Attorney General's Office (AG review as to form). Accordingly, only those software provisions attached to the Contract are accepted, as modified herein.
 - i. **Microsoft Terms and Conditions** – State rejects these software terms and will utilize its master agreements negotiated with Microsoft.
 - ii. **Absolute Agreement** – State accepts Absolute Software, Inc.'s terms and conditions, only if Absolute Software, Inc. has executed a WV-96A Agreement Addendum thereby modifying those terms and conditions that violate the laws of the State of West Virginia.
 - iii. **Dell End User License Agreement** – State accepts the terms and conditions contained in Dell's EULA, only if Dell Marketing LP has executed a WV-96A Agreement Addendum thereby modifying those terms and conditions that violate the laws of the State of West Virginia.

IN WITNESS WHEREOF, the Parties have entered into this Addendum as of the date of last signature below.

STATE OF WEST VIRGINIA

PURCHASING DIVISION
By: [Signature]
Name: Frank W. Hake
Its: Assistant Director
Date: 1/4/19

DELL MARKETING LP

By: Steve Koloski
Name: Steve Koloski
Its: Commercial Counsel
Date: December 11, 2018

EXHIBIT A

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** – Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** – Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available 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 that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State's original solicitation. Any contrary delivery terms are hereby deleted.

ACCEPTED BY:
STATE OF WEST VIRGINIA

Spending Unit: STATE OF WEST VIRGINIA
Signed: [Signature]
Title: ASSISTANT DIRECTOR
Date: 1/4/19

VENDOR

Company Name: Dell Marketing L.P.
Signed: Steve Koloski
Title: Commercial Counsel
Date: December 5, 2018

WV-96A

AGREEMENT ADDENDUM

Rev. 5/16

This addendum, made effective December 17, 2018, supplements and modifies the Absolute End User License and Service Agreement (the "agreement") entered into between Absolute Software, Inc. ("Vendor") and the Agency on or about June 5, 2018. In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** – Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** – Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available 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 that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Vendor's liability under the agreement shall not exceed three times the total fees paid by the Agency for the Vendor's services during the twelve month period preceding the event of liability. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State's original solicitation. Any contrary delivery terms are hereby deleted.

ACCEPTED BY:**STATE OF WEST VIRGINIA**Spending Unit: STATE OF WEST VIRGINIASigned: [Signature]Title: Assistant DirectorDate: 1/4/19**VENDOR**Company Name: Absolute Software, Inc.Signed: [Signature]

Leigh Ramsden, Treasurer & Controller

Title:

Date: December 20, 2018



END USER LICENSE AGREEMENT

This End User License Agreement and the documents incorporated by reference below ("E-EULA") applies to any Software (meaning application, microcode, firmware, and operating system software in object code format) when the E-EULA is referenced or incorporated into any other document, and in any situation in which there are no other terms and conditions governing use of Software. This Software and associated materials contains proprietary and confidential information. Use of the Software is subject to, and expressly conditioned upon compliance with this E-EULA.

This E-EULA is a legally binding agreement between the entity that has obtained the Software ("End User") and Licensor (which may be a Dell Inc. Affiliate or an authorized reseller ("Reseller"), as explained below). If End User has a written, signed agreement with a Dell Inc. Affiliate that expressly provides for the licensing of Software, then that agreement, and not this E-EULA, will govern.

HOW TO DETERMINE THE LICENSOR

Buying Directly from a Dell Inc. Affiliate. If End User procured the Software license(s) directly from a Dell Inc. Affiliate, then the "Licensor" under this E-EULA is provided at www.dell.com/swlicensortable. This E-EULA governs End User's use of the Software and the Documentation (as defined below).

Buying From a Reseller. If End User procured the Software license(s) from a Reseller, then the Reseller may do one of the following to establish the Licensor and the license terms governing the Software and Documentation (as defined below):

Refer to the Manufacturer's License Terms or Remain Silent on Licensing Terms. When the Reseller refers End User to a direct license agreement with the software manufacturer, or Reseller says nothing about terms governing the licensing and use of the Software and Documentation, then this E-EULA applies and the applicable Dell Inc. Affiliate identified at www.dell.com/swlicensortable is the "Licensor".

Sublicense the Software Rights using the Manufacturer's Terms. When the Reseller sublicenses the Software to End User by referring to the software manufacturer's license terms as the governing terms, then the terms of this E-EULA are deemed incorporated into Reseller's license agreement with the End User by reference. If this is case, Reseller is deemed the "Licensor" under this E-EULA.

1. DEFINITIONS

- A. "Affiliate" of End User means a legal entity that is controlled by, controls, or is under common control with End User. "Control" means more than 50% of the voting power or ownership interests. "Affiliate" of Dell Inc. means any of Dell Inc.'s direct or indirect subsidiaries.
- B. "Documentation" means Licensor's then current, generally available End User manuals and online help for Software.
- C. "Product Notice" means the information related to Software posted at a Dell Inc. Affiliate website, currently located at http://www.EMC.com/products/warranty_maintenance/index.jsp. The Product Notice informs End User of Software-specific use rights, restrictions, and definitions of units of measure. The Software-related terms of the Product Notice in effect as of the date of the Quote will apply to the Software and are deemed incorporated into this E-EULA.
- D. "Quote" means the written quotation or other proposal for providing licenses to Software. Reseller or a Dell Inc. Affiliate may issue a Quote to End User.

2. SOFTWARE LICENSE TERMS

- A. **General License Grant.** Subject to and conditioned on End User's compliance with the terms of the E-EULA and the Quote, Licensor grants to End User a revocable (according to Section 4 ("Termination") below), non-exclusive, non-transferable license to use the Software and Documentation during the license term stated on the Quote for End User's internal business operations. If the Quote



does not state a license term, then licenses for Software are perpetual (subject to paragraph B ("Licensing Models") and Section 4 ("Termination") below). Use of Software may require End User to complete a product registration process and input a license key. End User may copy the Software and Documentation as necessary to install and run the Software in the quantity of licensing units licensed, and otherwise only for reasonable back-up and archival purposes.

B. Licensing Models. Licensor licenses Software for use only in accordance with the commercial terms and restrictions of the Software's relevant software licensing model stated in the Product Notice, the Quote, or both. For example, the licensing model may provide that End User may only use the Software for a certain number of licensing units (e.g., storage capacity, instances, users), in connection with a certain piece of equipment, CPU, network, or other hardware environment, or both. Unless expressly agreed otherwise in writing, Licensor licenses microcode, firmware, and operating system software shipped with equipment for use solely on that equipment; the same applies to Software licensed together with the sale of equipment and designed to enable the equipment to perform enhanced functions.

C. License Restrictions. Licensor reserves all rights not expressly granted to End User and does not transfer any ownership rights in any Software. Without Licensor's prior written consent, End User must not, and must not allow any third party to, do any of the following:

- (1). use Software in an application services provider, service bureau, or similar capacity;
- (2). disclose to any third party the results of any comparative or competitive analyses of Software done by or on behalf of End User;
- (3). make available Software to anyone other than End User's employees or contractors who will use the Software on behalf of End User in a manner permitted by this E-EULA and the Quote ("Authorized Users");
- (4). except to the extent transfer may not legally be restricted under applicable law, transfer or sublicense Software or Documentation to an End User Affiliate or other third party;
- (5). use Software in conflict with the terms and restrictions specified in this E-EULA or the Quote;
- (6). except to the extent permitted by applicable mandatory law (meaning laws that parties cannot change by contract), modify, translate, enhance, or create derivative works from the Software, or reverse assemble, disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software;
- (7). remove any copyright or other proprietary notices on or in any copies of Software or Documentation;
- (8). violate or circumvent any technological use restrictions in the Software;
- (9). use the Software or Documentation to create other software, products or technologies; or
- (10). create Internet "links" to the Software or "frame" or "mirror" the Software.

D. Records and Audit. During the Software license term and for two years after its expiration or termination, End User must maintain accurate records of its use of the Software and Documentation sufficient to show compliance with this E-EULA and the Quotes. During this period, Licensor or its auditors may request that End User certify in writing that End User's use of the Software and Documentation complies with this E-EULA and the Quotes, audit End User's use of Software and Documentation to confirm compliance, or both. Licensor will provide End User with reasonable notice and conduct the audit during End User's normal business hours and will not interfere unreasonably with End User's business activities when performing the audit. End User must reasonably cooperate with the audit and must, without prejudice to Licensor's other rights, promptly buy additional licenses needed to put End User in compliance with the E-EULA and applicable Quotes. End User must also promptly reimburse Licensor for all reasonable costs of the audit if the audit reveals either that End User used Software in excess of the licenses that End User purchased when the excess usage is more than five percent in license value, or that End User did not maintain substantially accurate Software use records.

E. Third Party Software License Terms. Third party software contained in or with the Software that provides its own terms of use is governed by those provided terms.

3. WARRANTIES AND SUPPORT. Under this EULA, Dell Inc. and its Affiliates do not provide any warranties for the Software and do not provide support and maintenance services. End User's rights under any warranties and any support service entitlements for the Software are solely between End User and the entity from whom End User purchased the Software licenses, and are defined under the commercial terms agreed between End User and that selling entity. If End User purchases support and maintenance from a Reseller in the United States and Canada, then the Dell Inc. Affiliate's delivery of the maintenance and support services is subject to the applicable terms set forth in the support services terms located at the Product Notice website, unless otherwise



defined in a separate sublicense, warranty and support, or related services terms agreed between End User and the selling entity. Subject to the prior sentence, ***Dell Inc. and its Affiliates and their suppliers provide the Software "As Is" without any warranties or conditions. To the maximum extent permitted by applicable law, Dell Inc. and its Affiliates and their supplier: (i) make no express warranties or conditions; (ii) disclaim all implied warranties and conditions, including merchantability, fitness for a particular purpose, title, and non-infringement; and (iii) disclaim any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade.***

4. TERMINATION. Licensor may terminate licenses if End User: (i) breaches the license terms and fails to cure within thirty days after receipt of Licensor's written notice of breach; (ii) declares bankruptcy or is adjudicated bankrupt or a receiver or trustee is appointed for substantially all of End User's assets. Dell Inc. or its Affiliates may terminate licenses on ten days' written notice if End User fails to pay for the Software when payment is not subject to a good faith dispute. Dell Inc. or its Affiliates may terminate the licenses immediately if End User is acquired by or merged with a competitor of Dell Inc. or any of its Affiliates. If Licensor terminates Software licenses, End User must cease all use of those Software licenses and associated Documentation, and return or certify destruction of Documentation and Software pertaining to the terminated licenses. The provisions of this E-EULA relating to records and audit, confidentiality, and liability will survive termination, along with any other provisions of this E-EULA that, by their nature and context, are intended to survive.

5. LIMITATION OF LIABILITY

A. Limitations on Damages. *Licensor does not license End User to use Software in situations in which the failure of the Software could lead directly to death, personal injury, or severe physical injury or property damage. Neither party seeks to exclude or limit liability under this E-EULA for death or personal injury resulting from negligence or any other liability that cannot be excluded by law.*

(1). **Limitation on Direct Damages.** *Licensor's total liability to End User is limited to the lower of: (i) the net license fees End User paid for the applicable Software license(s) that gave rise to the liability; or (ii) USD 100,000.*

(2). **No Indirect Damages.** *Licensor has no liability for special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, income, revenue, data (including corruption or damage to data), goodwill, reputation, or use of systems, networks, programs, or media.*

B. Regular Back-ups. End User is solely responsible for its data. End User must back up its data before Licensor or a third party performs any remedial, upgrade, or other work on End User's production systems. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from End User's last available back up.

C. Applicability. Even when the Reseller is the Licensor, the limitation of liability stated above will apply in favor of Dell Inc. and its Affiliates, and it will apply to all End User claims, regardless of the course of action (including tort).

6. CONFIDENTIALITY. The Software and related materials, including the Documentation, are Dell Inc. and its Affiliates' "Confidential Information". End User must treat the Confidential Information as confidential in perpetuity unless and until the Confidential Information is or becomes part of the public domain through no breach of confidentiality. End User must not use the Confidential Information beyond the scope of the rights granted, and may only share it with Authorized Users who are subject to legal obligations consistent with this E-EULA to protect the confidentiality of the Confidential Information. End User is liable to Dell Inc. and its Affiliates for all use of the Confidential Information by Authorized Users.

7. MISCELLANEOUS

A. Notices. The parties will provide all notices under this E-EULA in writing. Unless provided otherwise in the Quote or on the invoice to End User, End User must provide notices to Dell Inc. and its Affiliates as follows: by mail to: [Licensing Dell Entity Name], Attn: Contracts Manager, One Dell Way, Round Rock, Texas 78682, or by e-mail to: Dell_Legal_Notices@dell.com. When the Licensor is a Reseller, End User must provide notice to Reseller as stated in the agreement between End User and Reseller or as stated on Reseller's Quote to End User.

B. Assignment. End User may not assign this E-EULA or a Quote or any right or obligation under this E-EULA or Quote, or



delegate any performance, without Licensor's prior written consent. Even if Licensor consents to an assignment, End User remains responsible for all obligations to Licensor under this E-EULA and each Quote that End User incurred prior to the effective date of the assignment. End User attempts to assign or delegate without Licensor's prior written consent are void. This section does not prohibit End User from transferring Software and Documentation in accordance with Section 2.C.(4) above. In case of such transfer, End User must notify Licensor of the transfer in writing and impose all obligations under this E-EULA on the transferee.

C. Governing Law and Venue. This E-EULA and any dispute, claim, or controversy (whether in contract, tort, or otherwise) related to or arising out of this E-EULA or any Quotes between End User and Dell Inc. or one of its Affiliates ("**Dispute**") is governed by the law of the applicable jurisdiction stated in www.dell.com/swlicensortable ("**Governing Jurisdiction**"). The U.N. Convention on Contracts for the International Sale of Goods does not apply. Any Disputes must be brought in the courts of the Governing Jurisdiction. The parties agree to submit to the personal jurisdiction of the courts within the Governing Jurisdiction in connection with any Disputes. The parties further waive all objections to the exercise of personal jurisdiction over the parties by those courts, and to venue in those courts, with respect to any such Disputes. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute. Neither party is entitled to join or consolidate claims by or against other users, or pursue any claim as a representative or class action, or in private attorney general capacity, in connection with a Dispute.

D. Informal Dispute Resolution. As a condition precedent to filing any lawsuit, a party must first provide written notice of any Dispute to the other party. The parties will attempt to resolve any Dispute through negotiation with persons fully authorized to resolve the Dispute, or through mediation utilizing a mutually agreeable mediator before proceeding with litigation. The parties to a Dispute must treat the existence or results of any negotiation or mediation as confidential. If the parties are unable to resolve the Dispute within thirty days of notice of the Dispute to the other party (or other mutually agreed period), the parties will be free to pursue all remedies available at law or in equity in accordance with Section 7C above. Notwithstanding the foregoing, a party may immediately file a lawsuit for injunctive relief to protect intellectual property rights, preserve the status quo, or prevent irreparable harm.

E. Waiver. Failure to enforce a provision of this E-EULA will not constitute a waiver of that or any other provision of this E-EULA.

F. Independent Contractors. The parties are independent contractors for all purposes under this E-EULA and cannot obligate any other party without prior written approval. The parties do not intend anything in this E-EULA to allow any party to act as an agent or representative of a party, or the parties to act as joint venturers or partners for any purpose. No party is responsible for the acts or omissions of any other.

G. Severability. If a court of competent jurisdiction determines any part of this E-EULA or document that incorporates this E-EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

H. Trade Compliance. Customer's purchase of licenses for Software and access to related technology ("**Materials**") are for its own use, not for resale, export, re-export, or transfer. End User is subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except with prior written authorization by Dell Inc. or its Affiliates and in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. End User represents and warrants that it is not the subject or target of, and that End User is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions. End User understands and will comply with all applicable provisions of the U.S. Arms Export Control Act (AECA) and the U.S. International Traffic in Arms Regulations (ITAR) in End User's receipt, use, transfer, modification, or disposal of Software. End User acknowledges that any use, modification, or integration of the Software in or with defense articles or in the provision of defense services is not authorized by any Licensor, and that Licensors will not provide warranty, repair, customer support, or other services in connection with such end uses. End User certifies that any software, disk images, or other data provided to Licensor in connection with the purchase of the Software will not contain technical data, software, or technology controlled by the ITAR or AECA, and that if End User later returns the Software to Licensor or grants Licensor access to the Software, End User will not include or otherwise make available to Licensor any such technical data, software, or technology. End User agrees to indemnify and hold Licensor harmless for any liability, loss, damage, cost, expense, or penalty arising from End User's non-compliance with the AECA, ITAR, or the provisions of this Section.



I. **Purchases from Reseller; Third Party Beneficiaries.** When a Reseller is the Licensor, End User acknowledges that the sublicense it receives from Reseller is conditional on the license grant from Dell Inc. or its Affiliates to Reseller, and that Reseller cannot grant to End User license rights greater than Reseller received from such entity. The applicable Dell Inc. Affiliates a third party beneficiary to the license agreement between the Reseller and End User and is entitled to exercise and enforce all of Reseller's rights and benefits under such license agreement (including the terms of this E-EULA

J. **Entire Agreement; Order of Precedence.** This E-EULA comprises the complete statement of the agreement of the parties with regard to its subject matter and may be modified only in a writing signed by both parties. Regardless of the prior sentence, Dell may in its sole discretion, update the Licensor table and Product Notice incorporated by reference into this E-EULA. Any changes that Dell Inc. makes to the Licensor table and Product Notice will apply only to transactions that occur after Licensor posts those changes online. The E-EULA excludes all terms of any End User purchase order or similar End User document, such as any preprinted terms, and any terms that supplement, are inconsistent or that conflict with this E-EULA, the Quote, or both. These excluded terms have no legal effect and do not modify or supplement the E-EULA, even if Licensor does not expressly object to those terms when accepting an End User purchase order or similar document. When a subject is discussed in this E-EULA and also in a Quote or a separate agreement that incorporates this E-EULA, then that subject will be governed by the terms in this E-EULA. Any claims by any party of fraud in the inducement of this E-EULA or any Quote or End User purchase order based on any statements, representations, understandings, or omissions, whether oral or written, that are not fully expressed in this E-EULA, the applicable Quote, or purchase order are expressly waived and released. End User represents that it did not rely on any representations or statements that do not appear in this E-EULA when accepting this E-EULA.

Absolute Computrace

Please refer to the following pages.



BY CLICKING THE BUTTON "AGREE", "I ACCEPT", OR OTHERWISE INDICATING ACCEPTANCE, BY DOWNLOADING OR INSTALLING THE ABSOLUTE TECHNOLOGY OR BY REGISTERING FOR OR USING THE SERVICE, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH GOVERNS YOUR USE OF THE SERVICE AND INCLUDES, AS INTEGRAL PARTS HEREOF, ANY MATERIALS AVAILABLE ONLINE THAT ARE INCORPORATED BY REFERENCE HEREIN. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" WILL REFER TO SUCH ENTITY. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST CLICK THE BUTTON THAT INDICATES THAT YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT AND YOU MAY NOT DOWNLOAD, INSTALL, OR USE THE ABSOLUTE TECHNOLOGY OR THE SERVICE.

In this End User License and Service Agreement, capitalized words and terms have specific meanings that are defined throughout the body of the Agreement and in the Schedules and Appendices hereto. Terms not otherwise defined herein are set forth in Schedule "I". This Service Agreement (the "Agreement") is between YOU and ABSOLUTE SOFTWARE and/or its Affiliates ("Absolute"). Immediately below is the name of the Absolute company that is contracting with you based on the country or Absolute's sales region where you are located unless otherwise agreed in writing.

Australia, Canada, Mexico, Central America, South America, and the Caribbean: Your agreement is with *Absolute Software Corporation*, a company incorporated under the laws of the Province of British Columbia, Canada.

Asia: Your agreement is with *Absolute Software (Asia) Pte. Ltd.*, a company incorporated under the laws of Singapore.

Europe, Middle East and Africa: Your agreement is with *Absolute Software EMEA Limited*, a company incorporated under the laws of the United Kingdom.

United States: Your agreement is with *Absolute Software, Inc.*, a company incorporated under the laws of the State of Washington, USA.

- 1. Service.** Absolute will provide you with Online use of the Service, including a browser-supported interface and related data encryption, transmission, access and storage via a Monitoring Center, as well as Client Software components of the Absolute Technology, on the terms and conditions set out in this Agreement.
- 2. Service Features.** The Service is based on Absolute Technology and is offered in different editions, each of which contains different features. You acknowledge that (a) you are aware of the features specific to the various editions of the Service, that these features have been generally described to you and are available Online, and (b) for the purposes of this Agreement, the features of a particular edition of the Service are as described in the documentation supplied Online. If the edition of the Service you subscribed for includes a Device Theft Investigation and Recovery feature, then you hereby agree to the terms and conditions set forth in Appendix "A" hereto. If you subscribed for an edition of the Service with a Service Guarantee, you hereby agree to the terms and conditions set forth in Appendix "B" hereto. If your Order includes Professional Services in addition to the Service, you hereby agree to the terms and conditions set forth in Appendix "C" hereto. The Appendices included by reference in this Section 2 and elsewhere in this Agreement form an integral part of this Agreement.
- 3. License.** Upon completing registration for an edition of the Service and Absolute's acceptance of an Order pursuant to Section 10, Absolute grants to you a non-exclusive, non-transferable, limited license only to internally use (or, if you are a Managed Services Provider, to use in connection with providing managed services to your customers) such edition of the Service, during the Service Term, on the Customer Device(s) for which you have purchased such Service Term in an Order, subject to all of the terms, conditions, restrictions and other provisions of this Agreement. You must purchase a separate Service Term for each individual Customer Device. All rights not expressly granted to you are reserved by Absolute and, if applicable, its licensors. If the license is being granted for the purpose of an evaluation by you of the Service and/or the Absolute Technology, then your license will be valid for a maximum of sixty (60) days, unless otherwise specifically agreed in writing, and the Service may be used only for the purpose of such evaluation.
- 4. Renewals.** You agree that Absolute or its authorized resellers may contact you regarding the renewal of your Service Term and any other Services you may have purchased during the Service Term or to offer you additional Absolute service offerings made available from time to time. You hereby agree that Absolute, its service providers and its authorized resellers may use your personal information for this purpose or as otherwise described in the Privacy Policy. Absolute will not sell or otherwise disclose your personal information to third parties without your consent.
- 5. Customer and Technical Support.** During the Service Term, Absolute or Authorized Third Parties will, using commercially reasonable efforts, provide customer and technical support to you. Customer and technical support is available to you in the languages and during the hours of operation expressly indicated by Absolute via Global Support.
- 6. Consents, Authorizations and Instructions.** Without the need for further notification, consent or express instruction (unless otherwise expressly agreed in writing), you hereby consent, authorize, permit and instruct Absolute and its Authorized Third Parties to do the following (and if you are a

© 2018 Absolute Software Corporation. All rights reserved. "Absolute" and "Persistence" are registered trademarks of Absolute Software Corporation. LoJack is a registered trademark of LoJack Corporation, used under license by Absolute Software Corporation. LoJack Corporation is not responsible for any content herein. All other trademarks are property of their respective owners. US Patents #5,896,497, #6,044,402, #6,087,937, #6,958,688, #7,818,803, #8,062,380, #8,241,369, #8,307,055, #8,332,953, #8,346,234, #8,362,901, #8,418,226, #8,419,806, #8,441,348, #8,510,825, #8,556,991, #8,566,961, #8,625,799, #8,669,870, #8,701,013, #8,712,432, #8,717,172, #8,734,529, #8,745,383, #8,800,061, #8,868,933, #8,878,672, #8,902,066, #8,904,523, #8,925,100, #8,929,916, #8,995,668, #9,117,092, #9,154,499, #9,197,651 and #9,245,156. Canadian Patents #2,211,735, #2,284,806, #2,646,602, #2,732,830, #2,732,831, #2,733,222 and #2,771,208. U.K. Patent #GB2338101. German Patent #6020110204033. Australian Patents #2009270402, #2009279430, #2009279431, #2010207832, #2010220798, #2010244945, #2010292939, #2010315412, #2010321633, #2010324789, #2011274218, #2011274219, #2014200632 and #2014202775. Japanese Patents #5,220,924, #5,363,305, #5,475,743, #5,508,502, #5,684,838 and #5,735,995. Chinese Patents #102089764 and #102132526. Hong Kong Patent #1,160,309. Korean Patents #1,372,986, #1,408,746, #1,417,141 and #101524881. Mexican Patents #297,406, #306,287 and #327,792. Russian Patents #2,460,220 and #2,506,704.

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Managed Services Provider, you will obtain the consent, authorization, permission and instruction from your customers for Absolute and its Authorized Third Parties to do the following):

- (a) to initiate communication with the Customer Devices and to collect data regarding the Customer Devices, including identifying characteristics such as the ESN, Universally Unique Identifier (UUID), memory identification serial number and other identifying characteristics, as well as information about its use and location including about its use and location in connection with third party services, hardware and software installed on the Customer Devices, as required by the Service and where applicable the persistence thereof;
- (b) to collect and use other personal information by Absolute pursuant to Absolute's Privacy Policy;
- (c) to periodically automatically Update the installed Client Software on the Customer Device in order to ensure correct, full and continuing functionality of the Service and compliance with this Agreement;
- (d) to remotely download and install additional Client Software onto the Customer Device in order to provide the Service;
- (e) to perform anonymized statistical analysis of access to and use of the Service for the purposes of measuring the effectiveness of the Services, optimizing performance, and ensuring compliance with this Agreement;
- (f) if your edition of the Service includes a Device Theft Investigation and Recovery feature, to submit Customer Device registration data, Customer Device theft status, post-theft Customer Device location history and related information to Third Party Databases for the purposes of recording your ownership of the Customer Devices, locating any Customer Device that has been reported lost or stolen, or otherwise to facilitate the prevention and tracking of criminal activity;
- (g) if your edition of the Service includes a Device Theft Investigation and Recovery feature, upon theft recovery activation, to utilize any and all of its theft recovery tools and processes in order to recover the Customer Device(s). You instruct Absolute and its Authorized Third Parties to utilize any and all of its theft recovery tools and processes to the extent Absolute views it beneficial to the recovery of the Customer Device(s). You recognize that these theft recovery tools include, without limitation, (i) the collection of internet protocol (IP) addresses and other information and data from stolen Customer Device(s) and/or third parties who may be in possession of that information and data; (ii) collection of keystroke logs of the stolen Customer Device(s); (iii) the uploading of files stored on the stolen Customer Devices and any other information on stolen Customer Device to the secure servers of Absolute and/or its Authorized Third Parties; (iii) accessing pre- and Post-Incident data regarding Customer Devices in your Apple or Google accounts; and (iv) such additional theft recovery tools and processes as Absolute may from time to time develop as applicable technology evolves; and
- (h) if your edition of the Service includes the Endpoint Data Discovery feature, to assist you with detecting and reporting on data residing on Customer Devices that may be at risk and other user-defined data, all of which will be collected and encrypted, transmitted to, and stored on, a secure server.

If your use of the Services involves the processing of personal data that is subject to Regulation 2016/679 of the European Parliament known as the General Data Protection Regulation ("GDPR"), including if you are resident or established within the European Economic Area or Switzerland, or if your use of the Services will involve processing personal data of individuals located in the European Economic Area or Switzerland, then in addition to the foregoing paragraphs, the terms of Absolute's Data Processing Addendum attached as Appendix "D" hereto will apply to such personal data and will be incorporated into this Agreement. Notwithstanding the foregoing, the Data Processing Addendum will not apply to your use of any licenses for evaluation purposes.

7. Things You Must Do. In accessing or using the Service or any part of it, you must do the following (and if you are a Managed Services Provider, you must require your customers to do the following):

- (a) use the Absolute Technology and the Service in accordance with the Product Documentation and as otherwise described Online, including providing proper authorization for the features involving destruction, retrieval and tracking of data;
- (b) completely remove the Absolute Technology from a Customer Device prior to the sale or transfer of such Customer Device to another party;
- (c) if you purchase the Service for iPads, iPad minis or Chromebooks, you must also participate in Absolute's Theft Prevention Program, including without limitation by attaching a Device Identity Tag to each Customer Device registered for the Service at the time the Customer Device is enrolled for the Service;
- (d) if the Customer Device is a Chromebook, you must (i) purchase the Google Management Console and, if the Chromebook is missing or stolen, use the Google Management Console to deploy the Absolute Kiosk Web Theft Management Application, and (ii) upgrade the Customer Device to a version of Chrome OS that is capable of supporting Google's Forced Re-Enrollment Feature for the edition of the Service purchased by you and enable Google's Forced Re-Enrollment Feature within thirty (30) days of it becoming available;
- (e) comply with all Applicable Laws, including without limitation all applicable employment, data protection and privacy laws and regulations;
- (f) obtain all consents from third parties that may be required by you under applicable data protection and privacy laws and regulations, and file any notices or registrations with applicable data protection authorities that may be required of you, in connection with your use of the Service, including without limitation obtaining all applicable consents from your employees for location tracking, and for the collection, use and disclosure of personal information (including sensitive data) collected through your use of the Service;
- (g) use the Absolute Technology and the Service for legitimate business purposes only;
- (h) ensure that no unauthorized users have access to the Service; and
- (i) promptly notify Absolute if you learn of any security breach related to the Service.

8. Things You Must Not Do. In accessing or using the Service or any part of it, you must not do any of the following (and if you are a Managed Services Provider, you must ensure that your customers do not do any of the following), directly or indirectly:

- (a) access the Service in respect of a Customer Device at any time other than during a valid Service Term for such Customer Device;

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- (b) without the express written consent of Absolute, knowingly attempt to increase the likelihood a Customer Device will be lost or stolen, including using the Service as part of any Theft Detection Program;
- (c) use or access the Service (i) if you are a direct competitor of Absolute, except with Absolute's prior written consent, or (ii) for purposes of competitive benchmarking or similar purposes;
- (d) install on your Customer Device any more Client Software than is reasonably required to use the Service Term purchased by you for that particular Customer Device (including for dual-boot configurations);
- (e) install the Client Software on or attach a Device Identity Tag to any computing device other than a Customer Device for which you have purchased a valid Service Term;
- (f) other than as expressly permitted herein, license, sublicense, sell, resell, transfer, assign, distribute, rent, lease, or otherwise commercially exploit the Service or the Absolute Technology in any way;
- (g) modify, decompile, reverse assemble, reverse engineer, translate or disassemble, or make derivative works based on, any part of the Service or the Absolute Technology for any reason or purpose;
- (h) create Internet links to the Service, or frame, mirror or embed any Content, on any server or wireless or Internet-based device, except through the Client Software and the Monitoring Center;
- (i) copy the Absolute Technology into a machine-readable or printed form other than as necessary in support of your use of the Service or for reasonable backup purposes;
- (j) use the Client Software or Service or any of its features to violate or interfere with the privacy of any person or otherwise violate any Applicable Laws, including but not limited to by use of location tracking services or the collection, use and disclosure of personal information (including sensitive data);
- (k) allow third parties to copy, access or use the Client Software or the Service (except as expressly provided in this Agreement) or take any actions that would cause the Client Software to become subject to any open source or quasi open-source license agreement; or
- (l) make available any of the Client Software by or through any public computer-based information systems, bulleting boards, online services, remote dial-in, file server, network or telecommunications links of any kind.

9. Transfer of License. You may only transfer your Service Term from your Customer Devices to your other Customer Devices, and if you have a consumer edition of the Service and wish to transfer your Service Term, you must do so by providing written notification of such transfer to Absolute through Global Support, following the instructions for Service Term transfers described by Global Support and, if applicable, accurately registering and activating the transferee Customer Device's make, model and ESN in the Absolute Console.

10. Orders. You may purchase license(s) to use the Service by sending an Order to Absolute, including the appropriate Absolute Affiliate in your region or country, or to an Absolute authorized reseller, but unless otherwise expressly agreed in writing, Absolute may accept or reject any Order in its sole discretion and is not bound to license to you any Service. Each such Order is incorporated into and becomes a part of this Agreement once accepted. Notwithstanding the foregoing, if an Order contains any additional terms and conditions, such terms and conditions will not apply to, become part of, or supersede this Agreement, regardless of any statement to the contrary contained therein. In the event you install the Client Software or use the Service on a number of Customer Devices in excess of the number of licenses set forth in an Order, the relevant additional license fees shall be chargeable on all such excessive license subscriptions for the entire preceding year, regardless of when such excessive license subscriptions were installed/activated on a Customer Device.

11. Term of Agreement. Unless earlier terminated as provided for elsewhere in this Agreement, this Agreement will be effective during the Service Term and will automatically expire immediately after the last day of the final remaining Service Term. When this Agreement terminates, each outstanding Service Term will expire automatically.

12. Termination for Convenience. Either party may terminate any outstanding Service Term at any time for convenience and with or without cause immediately upon electronic notification to the other party at the last email address provided by such party. However, if Absolute terminates a Service Term for convenience, Absolute will refund a pro-rated portion of the purchase price (if any) to you to account for the unused portion of the remaining Service Term. No such refund will be payable for evaluation licenses. Nothing in this Section gives you any right to a refund from Absolute except as stated herein; your rights to refunds for other terminations are specified elsewhere in this Agreement. If you are a Managed Services Provider, Absolute shall have no obligation to pay you for any amounts that you may be obligated to refund or otherwise pay to your customers as a result of any termination under this Agreement.

13. Events Causing Termination of Service Term. Except as expressly set out in this Agreement, each of the following events will cause the Service Term (but, pursuant to Section 11, not necessarily this Agreement) applicable to your Customer Device to terminate automatically without notice:

- (a) if your edition of the Service includes a Service Guarantee, the payment of a Service Guarantee to you or your designee (if applicable);
- (b) if you have a consumer edition of the Service with Device Theft Investigation and Recovery features, the Recovery of a number of Customer Devices covered by the Service that is equal to the number of years of the Service Term plus one (for example, a two year Service Term would be entitled to a maximum of three Recoveries); and
- (c) your material failure to comply with the terms and conditions of this Agreement in respect of such Customer Device or Service Term;

and in each such case Absolute will not be obligated to refund to you any portion of the purchase price paid by you (if any) for the Service Term, regardless of the length of the initial or remaining Service Term purchased. If all your outstanding Service Terms are terminated then this Agreement shall terminate.

14. Your Obligations on Termination. If a Service Term for your Customer Device has terminated, you will disable and remove the Agent and the iOS App from that Customer Device, and remove or obscure in a persistent manner any Device Identity Tag on that Customer Device. If a Service Term for your Customer Device has terminated, and the Customer Device is a Chromebook, you will disable the Google Management Console Chrome Sync Service in the Absolute Console. Furthermore, if this Agreement has been terminated for any reason, you will immediately:

- (a) cease using and, at Absolute's option, immediately return to Absolute or destroy all copies of the Absolute Technology and all Content in your possession or under your control;
- (b) pay all outstanding obligations to Absolute or its authorized reseller, if any;
- (c) remove or obscure in a persistent manner any Device Identity Tag on the Customer Device; and
- (d) no longer be entitled to access the Service, the Monitoring Center and, if applicable, the Absolute Console, and you hereby agree to such access being disabled upon such termination.

15. Suspension or Termination for Failure to Pay. Your failure to make any payment to Absolute or its authorized reseller for the Services will constitute a material breach of this Agreement, and Absolute may suspend or terminate your access to the Services if you have not remedied such non-payment within fifteen (15) days of notice to you thereof. Furthermore, Absolute's suspension or resumption of Services will not limit or prevent Absolute from pursuing all other remedies available to it.

16. Security Administrators. Certain features of certain editions of the Service require that you authorize one or more Security Administrator(s) to enable and launch such features and to be given administrator level login privileges to the Absolute Console. You must complete and send to Absolute the Security Authorization Form, available in the Absolute Console, to authorize, remove, modify, or rescind the rights of a Security Administrator, and in some cases must submit a support case regarding such de-activation Online through Global Support (and Absolute will verify its instructions, make such changes, and then notify you when this has been completed). The Security Authorization Form is available to you either by logging into your customer account Online or by having it mailed to you after you request it via telephone at the telephone numbers listed at <http://www.absolute.com/support/corporate/contact>. If you are a Managed Services Provider, you acknowledge and agree that: (a) only personnel of your organization, not of your customers, may be authorized as Security Administrators; (b) Absolute will only accept instructions relating to the use of security operations from your organization's authorized Security Administrators, not from personnel of your customers; (c) it is your responsibility to ensure that instructions provided by your Security Administrators to Absolute have been duly authorized by your customers, if appropriate; and (d) your service agreement with your customers must require those customers to (i) acknowledge that determining the location of Customer Devices may by implication also determine the location of individual persons who use or possess those devices, and (ii) agree to use the geolocation feature of the Services only with the unambiguous consent of all users and in accordance with all applicable employment privacy and other laws.

17. Training Services. If training credits are included on your Order, Absolute will provide you with any Training Services that you purchase from Absolute, at a mutually acceptable time. All Training Services must be exchanged for an available seat in a Training Services class within one (1) year from the date of purchase of the training credits relating to such Training Services, or such credits will expire and no refund will be available to you for such credits or Training Services. Training Services are only available for Absolute's Services. Absolute will use commercially reasonable efforts when scheduling classes of Training Services to provide sufficient opportunity for you to exchange training credits for Training Services.

18. Ownership and Intellectual Property Rights. Absolute, its Authorized Third Parties and their respective licensors have Intellectual Property Rights covering the Service and the Absolute Technology. You acknowledge (and if you are a Managed Services Provider, you must ensure that your customers acknowledge) that all right, title and interest (including all Intellectual Property Rights, enhancements, modifications and derivative works) in and to the Service and the Absolute Technology are the property of Absolute, its Authorized Third Parties or their respective licensors, and that the only rights you have with respect to the Service and the Absolute Technology is the right to use them in accordance with the terms of this Agreement. Except for such right as set out herein, no right, title or interest (including any Intellectual Property Rights) in or to (a) the Service or the Absolute Technology, or (b) any other property or Intellectual Property Rights of Absolute, its Authorized Third Parties or their respective licensors, is transferred to you. Additionally, you confirm that any copies of the Absolute Technology you make will contain the same proprietary notices, which appear on and in the Absolute Technology, and you agree that you will not copy any printed or other tangible materials forming part of the Absolute Technology that is software except as permitted herein. For greater clarity, notwithstanding any provision of the Agreement to the contrary, Absolute, its Authorized Third Parties, and their respective licensors own and retain all title to, ownership of, and all Intellectual Property Rights in, the Service and the Absolute Technology.

19. Third Party Software and Third Party Databases. In the course of providing the Service, Absolute may include Third Party Software or provide information to, register your Customer Devices in, and compare your Customer Device information to that contained in Third Party Databases. The access to and use of Third Party Software and Databases is provided to you subject to this Agreement and any separate license agreements that accompany such programs or apply to such databases. Notwithstanding Section 21 or any other provision of this Agreement, access to and use of the Third Party Software and Databases is furnished to you by Absolute on an "as-is" and "as-available" basis and without any representations or warranties of any kind, express or implied. Absolute specifically disclaims any liability arising out of your installation or use of any Third Party Software or Databases.

20. Confidential Information. Each party agrees to protect the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind but in no case with less than reasonable care. Each receiving party will limit access to the other party's Confidential Information to those employees and consultants of the receiving party who have a need to know such information. Except as set out in this Agreement, no party grants to the other any right, title or interest (including any Intellectual Property Rights) in or to its Confidential Information. The obligations of confidentiality set out in this Section 20 will not apply in respect of uses or disclosures of Confidential Information where (a) the owner consents in writing, (b) disclosure is required to comply with any Applicable Laws or judicial order, or (c) a party can establish with documentary evidence that, other than as a result of a breach of this Agreement, the Confidential Information (i) is available in the public domain, (ii) was disclosed to it by a third party without violating confidentiality obligations, or (iii) was already known by it or was subsequently developed by it without any use of Confidential Information. Notwithstanding any of the foregoing, if the parties have executed a separate confidentiality agreement prior to the date of this Agreement, the provisions of such separate confidentiality agreement will govern to the extent of any necessary inconsistency or conflict with this Section.

21. Absolute Limited Warranty. Except with respect to the use by you of the Service or the Absolute Technology on an evaluation basis (in which case Absolute disclaims all representations and warranties whatsoever, whether express or implied), Absolute represents and warrants to you only that (a) Absolute owns or otherwise has the right (including all Intellectual Property Rights) to license the Service and the Absolute Technology to you under this Agreement; and (b) during the Service Term, the Absolute Technology will function substantially in accordance with the applicable Product Documentation.

22. Exclusions of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 21, AND FURTHER EXCEPT TO THE EXTENT EXPRESSLY PROVIDED BY AN APPLICABLE SERVICE GUARANTEE IN THIS AGREEMENT, YOU ACKNOWLEDGE THAT THE SERVICE AND THE ABSOLUTE TECHNOLOGY IS PROVIDED ON AN “AS-IS” AND “AS-AVAILABLE” BASIS, AND ABSOLUTE, ON BEHALF OF ITSELF, ITS AFFILIATES AND ITS AUTHORIZED THIRD PARTIES, DISCLAIM ALL WARRANTIES WITH RESPECT TO THE SERVICE AND THE ABSOLUTE TECHNOLOGY, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ABSOLUTE DOES NOT PROVIDE, AND EXPRESSLY DISCLAIMS, ANY WARRANTIES (A) WITH RESPECT TO ITS ABILITY TO RECOVER, TRACK, LOCK OR REMOTELY DELETE DATA FROM ANY CUSTOMER DEVICE, OR ITS ABILITY TO CORRECTLY DETECT, IDENTIFY, LOCATE OR REPORT ON ALL DESIRED DATA IN CONNECTION WITH ANY CUSTOMER DEVICE, (B) THAT DATA ACCESSED, OR THE ALGORITHMS USED IN THE SERVICE, WILL BE ACCURATE, COMPLETE OR PROPERLY CATEGORIZED, OR (C) THAT THE ABSOLUTE TECHNOLOGY OR THE SERVICE WILL SATISFY YOUR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. WHILE ABSOLUTE HAS MADE REASONABLE EFFORTS TO ENSURE THAT THE SERVICE AND THE ABSOLUTE TECHNOLOGY ALL WORK WITH CERTAIN OPERATING SYSTEMS AND APPLICATION SOFTWARE, ABSOLUTE CANNOT AND DOES NOT CHECK EVERY POSSIBLE COMBINATION OF EQUIPMENT OR SOFTWARE AVAILABLE OR THAT IS SUBSEQUENTLY INSTALLED OR USED BY YOU. YOU BEAR THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE ABSOLUTE TECHNOLOGY AND THE RELATED SERVICE, OTHER THAN AS SPECIFICALLY SET FORTH IN THE SERVICE GUARANTEE AND IN THE WARRANTIES SET OUT IN SECTION 21. TO THE EXTENT THAT THE JURISDICTION IN WHICH YOU RESIDE OR TO WHICH ABSOLUTE DELIVERS THE SERVICE DOES NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, THE LIMITATIONS OR EXCLUSIONS SET OUT IN THIS SECTION 22 MAY NOT APPLY TO YOU IN SUCH A JURISDICTION AND ANY IMPLIED WARRANTIES RELATING TO THE SOFTWARE OR SERVICE ARE LIMITED TO THIRTY (30) DAYS FROM THE COMMENCEMENT OF THE APPLICABLE SERVICE TERM. THESE IMPLIED WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. IF YOU ARE A MANAGED SERVICES PROVIDER, THE REPRESENTATIONS AND WARRANTIES SET OUT IN SECTION 21 ARE PROVIDED ONLY TO YOU; ABSOLUTE PROVIDES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER TO YOUR CUSTOMERS.

23. Exclusive Remedies. If Absolute is in material breach of any of the representations and warranties in Section 21, subject to any applicable Service Guarantee, your exclusive remedies, and Absolute's sole obligations to you, will be as follows:

- (a) if there is a material breach of the warranty set forth in item (a) of Section 21, Absolute may, at its option and expense, (i) obtain a license permitting you to continue to use the Service or the Absolute Technology (as the case may be), (ii) replace or modify the Service or the Absolute Technology so that there is no breach, or (iii) if Absolute does not consider (i) or (ii) to be commercially feasible, terminate this Agreement with no further liability to you except for a pro-rated refund of the fees paid by you under this Agreement representing the remainder of the unused Service Term; and

if there is a material breach of the warranty set forth in item (b) of Section 21, and provided you notify Absolute of the specific non-conformance within the applicable Service Term, Absolute will, at its option and expense, (i) modify the Service or the Absolute Technology to conform to the Product Documentation, (ii) provide a reasonable workaround solution that will reasonably meet your requirements, or (iii) if Absolute does not consider either (i) or (ii) to be commercially feasible, Absolute may terminate this Agreement with no further liability to you except for a pro-rated refund of the fees paid by you under this Agreement representing the remainder of the unused Service Term.

24. Your Technical Environment. You acknowledge that in order to use certain features of the Service, you must independently provide the Technical Environment at your own cost and expense, including without limitation Absolute Technology-compatible operating systems for all editions of the Service and the minimum Technical Environment requirements pursuant to the applicable Product Documentation. Absolute does not have any obligation to support any elements of the Technical Environment. You acknowledge that use of the Absolute Technology may require certain licenses for Technical Environment software in order for the Absolute Technology to be functional.

25. Your Indemnifications of Absolute. You hereby agree to indemnify and save harmless the Absolute Entities from and against all Claims and Losses in any way incurred by any Absolute Entities:

- (a) in respect of any Proceedings to which the Absolute Entity is made a party in connection with or arising out of (i) your use of the Service or any action authorized by you or your designated Security Administrator that is carried out by you or the applicable Absolute Entity or (ii) as a result of your actions, misuse of the Absolute Technology, non-compliance with the terms herein or failure to operate the Absolute Technology in accordance with the Product Documentation or Security Authorization Form;
- (b) in respect of any Proceedings to which the Absolute Entity is made a party in connection with or arising out of your failure to remove the Absolute Technology from a Customer Device;
- (c) in connection with or arising out of your use of the Service in violation of any Applicable Laws, including without limitation any applicable employment, data protection or privacy laws or regulations;
- (d) arising from or in connection with any unauthorized use of the Technical Environment or failure of your Technical Environment; and
- (e) in respect of any Proceedings to which the Absolute Entity is made a party in connection with or arising out of false or misleading information submitted by or on behalf of you in connection with the theft or loss of your Customer Device(s).

26. Absolute's Indemnification of You. Subject to Sections 27 and 28, and provided that you are using the then-current release or the immediately prior release of the Service and the Absolute Technology available from Absolute in accordance with the terms of this Agreement and the Product

Documentation, Absolute hereby agrees to indemnify and save the Customer Indemnified Parties harmless from and against all Claims and Losses in any way incurred by a Customer Indemnified Party in respect of any Proceedings to which the Customer Indemnified Party is made a party by reason of or in connection with or arising out of any allegation that your use of the Absolute Technology as permitted by this Agreement infringes any Intellectual Property Rights that are enforceable in Canada, the United States, or the jurisdiction to which Absolute directs your Service, provided that if such Intellectual Property Rights relate to a business methods patent, this indemnity shall only apply in respect of infringements of which Absolute is actually aware at the time of the infringement.

27. Absolute's Rights on Indemnity. If legal action arises or if Absolute believes that the use of Absolute Technology is likely to be subject to legal action for which Absolute has an indemnity obligation under Section 26, Absolute may, at its option and expense, (i) obtain a license permitting you to continue to use the Service and the Absolute Technology, (ii) replace or modify the Absolute Technology so that it is no longer infringing, or (iii) if Absolute does not consider (i) or (ii) to be commercially feasible, terminate this Agreement with no further liability to you except for a pro-rated refund of the fees paid by you under this Agreement representing the remainder of the unused Service Term.

28. Limitations of Indemnity. Notwithstanding Section 26, Absolute will not be required to defend or indemnify any Customer Indemnified Party to the extent that, the Claims and Losses or legal action, as the case may be arose from (a) your combination of the Service or Absolute Technology with software, services or products not supplied by Absolute, (b) your use of the Absolute Technology contrary to the Product Documentation, (c) any repair or modification to the Absolute Technology carried out by you or any third party other than an Authorized Third Party, (d) any breach by you of any provision of this Agreement, or (e) any refusal by you to install and use a non-infringing version of the Service and the Absolute Technology offered by Absolute under Sections 23 or 27.

29. Notice of Legal Action. A party indemnified under the specific provisions of this Agreement (a) will give prompt written notice of any legal action to the indemnifying party, not more than thirty (30) days after its first knowledge of that legal action, whether actually initiated or threatened, (b) will give to the indemnifying party the sole control of the defence of any legal action, (c) will, at the indemnified party's cost, give the indemnifying party any assistance that the indemnifying party may reasonably request to defend or settle any legal action, and (d) will not settle or compromise any legal action without the express prior written consent of the indemnifying party. Any indemnified party's material failure to comply with this Section 29 will relieve the indemnifying party of its obligation to defend and indemnify the indemnified party.

30. Disclaimers and Limitations of Liability. NONE OF ABSOLUTE, ITS AFFILIATES OR THE AUTHORIZED THIRD PARTIES WILL BE LIABLE UNDER THIS AGREEMENT TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL CLAIMS AND LOSSES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA OR COMPUTER TIME, LOSS OF BUSINESS PROFITS OR BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR ANY OTHER PECUNIARY LOSS) OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY WHATSOEVER (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF ABSOLUTE HAS BEEN INFORMED OF THE POSSIBILITY THEREOF AND EVEN IF ABSOLUTE COULD HAVE REASONABLY FORESEEN THEM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF SUCH DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH A CASE, ABSOLUTE'S LIABILITY TO YOU IS LIMITED TO THE AMOUNT OF SERVICE FEES ACTUALLY PAID BY YOU ATTRIBUTABLE, ON A PRO-RATED BASIS, TO THE PRECEDING TWELVE (12) MONTHS OF THE APPLICABLE SERVICE TERM(S). THE AGGREGATE LIABILITY OF ABSOLUTE, ITS AFFILIATES AND ITS AUTHORIZED THIRD PARTIES FOR ANY AND ALL DIRECT CLAIMS AND LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT (EXCLUDING ABSOLUTE'S LIABILITY TO YOU UNDER SECTION 20) WILL NOT EXCEED THE AMOUNT OF THE SERVICE FEES ACTUALLY PAID BY YOU ATTRIBUTABLE, ON A PRO-RATED BASIS, TO THE PRECEDING TWELVE (12) MONTHS OF THE APPLICABLE SERVICE TERM(S). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ABSOLUTE EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY DAMAGE, WHETHER DIRECT OR INDIRECT, CAUSED BY YOUR LAUNCH OR USE OF A SERVICE FEATURE. BY AUTHORIZING A FEATURE OR OPERATION OF THE SERVICE, YOU ARE HEREBY RELEASING ABSOLUTE AND THE ABSOLUTE ENTITIES FROM ANY CLAIMS AND LOSSES ASSOCIATED WITH THE USE OR LAUNCH OF SUCH FEATURE (INCLUDING ANY UNSUCCESSFUL CANCELLATION OF THE LAUNCH OF A FEATURE, OPERATION OR PROCESS). THE PARTIES CONFIRM THAT NO AMOUNT OF FEES PAID, IF ANY, ARE ATTRIBUTABLE TO ANY EVALUATION PERIOD. REAL TIME LOCATION DATA AND OTHER DATA ACCESSED VIA THIS APPLICATION MAY BE INACCURATE OR INCOMPLETE. LICENSEE'S USE OF THIS APPLICATION IS AT ITS SOLE RISK. IF YOU ARE A MANAGED SERVICES PROVIDER, ABSOLUTE SHALL HAVE NO LIABILITY WHATSOEVER TO YOUR CUSTOMERS, AND ABSOLUTE SHALL HAVE NO LIABILITY WHATSOEVER TO YOU FOR CLAIMS OR LOSSES BROUGHT OR SUFFERED BY YOUR CUSTOMERS, IN RELATION TO THE PROVISION OF THE SERVICE OR THE ABSOLUTE TECHNOLOGY.

31. Severability. If any term or provision of this Agreement will be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions will be deemed modified to the extent necessary in the court's opinion to render such terms or provisions enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

32. Injunctive Relief. Each party acknowledges and agrees that a breach by it of the provisions of this Agreement relating to Confidential Information, Intellectual Property Rights, or restrictive obligations may result in immediate and irreparable harm to the other party for which compensation would be an inadequate remedy. Accordingly, each party acknowledges and agrees that the other party may seek, as a matter of right and without the necessity of establishing the inadequacy of monetary damages, injunctive or other equitable relief to prevent or remedy such conduct from any court of appropriate jurisdiction.

33. Waiver. Either party's failure to exercise a right available to it by reason of the other party's breach will be taken as an isolated instance and will not be deemed to be a permanent waiver of such right.

34. Force Majeure. Absolute will not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, riots, insurrections, fires, floods, storms, explosions, earthquakes, other natural disasters, outage or malfunction of telecommunications services, war, governmental action, or any similar cause that is beyond its reasonable control.

35. Notice. Any notice, request, authorization, direction, form or other communication to you from Absolute or to Absolute from you under this Agreement will be given in writing and be delivered to the intended recipient by e-mail as follows: (a) in your case, to the e-mail address you specified when you installed and/or registered for the Service and (b) in Absolute's case, to the contact coordinates expressly set out in the relevant Section of

this Agreement or Online via Global Support or the Absolute Console, and, if not so set out, to the attention of Absolute's Legal Department at the following address: c/o Absolute Software Corporation, Suite 1400, Four Bentall Centre, 1055 Dunsmuir Street, Vancouver, BC, Canada V7X 1K8 (e-mail: LegalNotices@absolute.com, fax: 604-730-2621). Notices by email will be deemed given and received on the transmission date of the e-mail.

36. Interpretation. In this Agreement, unless expressly stated otherwise or the context otherwise requires, (a) headings and captions are for convenience only and will not be deemed to explain, limit or amplify the provisions hereof, (b) a reference to a "Section" is to a numbered or lettered section of this Agreement, (c) the word "including", when following a general statement or term, is not to be construed as limiting the general statement or term (whether or not used in connection with phrases such as "without limitation" or "but not limited to") and the word "or", when connecting two or more matters, will not imply an exclusive relationship between the matters, (d) a reference to a "person" or "entity" means an individual, corporation, body corporate, firm, limited liability company, partnership, syndicate, joint venture, society, association, trust or unincorporated organization or governmental authority or trustee, executor, administrator or other legal representative, including any successor to that person, (e) a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa, (f) words, phrases and acronyms not otherwise defined herein that have a meaning commonly understood and accepted by persons familiar with the Internet and computing services professionals will be interpreted and understood to have that meaning herein, (g) all references to currency mean currency of the United States of America except where otherwise indicated, (h) in the event of any necessary conflict or inconsistency between the terms of this Agreement and the terms of any Schedule hereto or Order, the terms of this Agreement will prevail to the extent necessary to resolve such conflict or inconsistency and (i) the words "purchase" and "purchased" include licenses granted to you by Absolute at no financial cost to you, provided that your use of the Absolute Technology is in accordance with the terms on which Absolute granted you a no cost license.

37. Governing Law. This Agreement will be governed by and construed in accordance with the laws of British Columbia without reference to its principles of conflict of laws and the courts of such applicable countries or regions will have exclusive jurisdiction over disputes as described therein. In any such proceedings, each of the parties hereby knowingly and willingly waives and surrenders such party's right to trial by jury and agrees that such litigation shall be tried by a judge sitting alone as the trier of both fact and law, in a bench trial, without a jury. The parties agree that this Agreement shall not be governed by any codification of Article 2, 2A or 2B of the Uniform Commercial Code or any reference to the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA).

38. Export Control. You will not knowingly export or re-export, directly or indirectly, any product, including software, received from Absolute or any Authorized Third Party under this Agreement or any direct product of such product to any destination to which such export or re-export is restricted or prohibited by Applicable Laws, without obtaining prior written authorization from the competent government authorities as required by those laws. Absolute, on behalf of itself and the Absolute Entities, makes no representation that the Service is appropriate or available for use in any specific country or region. You are not using and will not use any of the Absolute Technology, nor any information acquired through the use of the Service, for military or quasi-military projects, unless specifically authorized by the United States, Canadian or Australian government or the appropriate European body for such purposes. Note that Software containing encryption may be subject to additional restrictions.

39. Entire Agreement. This Agreement, together with the applicable Schedules hereto, constitutes the entire agreement between us pertaining to the matters herein set forth and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. Neither you nor Absolute will be bound or charged with, and neither you nor Absolute has relied upon, any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or explicitly referred to herein. This Agreement may not be modified or amended except pursuant to Section 41 or by written amendment signed by both parties.

40. Translations. Where Absolute has provided you with a translation of the English language version of this Agreement, then you agree that the translation is provided for your convenience only and that the English language version of this Agreement will govern your relationship with Absolute. If there is any conflict, contradiction or inconsistency between the English language version of this Agreement and any translation, the English language version shall take precedence to the extent necessary to resolve it.

41. Amendments. You agree that Absolute may change this Agreement at any time without notice, but if Absolute makes a material change to this Agreement, it will notify you Online at least thirty (30) days before the change takes place. You are responsible for regularly checking Online for changes to this Agreement. If you do not agree to any change, you must cancel and stop using the Service before the change takes place. If you do not stop using the Service, your continued use will be deemed to be acceptance of the change.

42. Assignment; Change in Control. This Agreement may not be assigned by you without the prior written approval of Absolute, but may be assigned without your consent by Absolute to (i) an Affiliate of Absolute, (ii) an acquirer of all or substantially all of Absolute's assets, or (iii) Absolute's successor by merger, amalgamation, wind-up or other similar corporate reorganization. Any purported assignment in violation of this Section will be void. If there occurs any actual or proposed change in control of you that results or would result in a direct competitor of Absolute directly or indirectly owning or controlling 50% or more of you, Absolute may terminate this Agreement for cause immediately upon written notice and will have no obligation for any refund of fees in connection therewith.

43. Survival. Without limiting the applicability of other terms and conditions of this Agreement, the terms of this Agreement that, by their nature, are intended to survive any purported or actual termination or expiry of this Agreement shall so survive, including Sections 2, 7(b), 8, 11, 12, 14, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, and 31 through 43 (inclusive), and all additional terms and conditions necessary for the correct interpretation of the foregoing.

SCHEDULE I

DEFINITIONS

"Absolute Console" means the website available to customers Online where customers can create an account and manage their devices.

"Absolute Kiosk Web Theft Management Application" means a type of Client Software installed in a Chromebook post-theft that communicates with Absolute's Monitoring Center to transmit data required for Absolute to perform post-theft investigative services via the Chromebook's connection to the Internet.

"Absolute Entities" means, collectively, Absolute, all its Affiliates, Absolute's Authorized Third Parties, and their respective directors, officers, employees, consultants, agents, suppliers and distributors.

"Absolute Technology" means all of Absolute's proprietary technology and processes made available to you by Absolute in the course of providing the Service, including the Absolute Resilience, Absolute Control and Absolute Visibility technologies (formerly known as Absolute DDS, Absolute Data & Device Security or Computrace), Mobile Theft Management® technology, LoJack for Laptops® technology, Absolute Data Protect technology, Endpoint Data Discovery technology, Application Persistence technology, Absolute Reach technology, Client Software, the Agent, the Content and other online, offline or client software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information.

"Affiliate" of a party means any present or future entity that, directly or indirectly including through one or more intermediaries, controls, is controlled by or is under common control of or with such party, and for the purposes of this Agreement, such control exists where (a) securities of one entity to which are attached more than fifty per cent (50%) of the votes that may be cast to elect directors of the entity are held, other than by way of a security interest only, by or for the benefit of the other entity and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the other entity, or (b) one entity has the ability through contract or otherwise to direct the affairs of the other entity.

"Agent" is a type of Client Software installed in the Customer Device that communicates with Absolute's Monitoring Center to transmit data required for Absolute to perform the Service via the Customer Device's Internet connection or direct dial modem, and includes the Absolute Agent, LoJack for Laptops® Agent and Absolute Data Protect Agent.

"Android" means the Android™ mobile technology platform provided by Google Inc.

"Applicable Laws" includes all federal, provincial, local, state, national and foreign laws, treaties and regulations applicable to you, the place to where Absolute directs the Service, or Absolute, including those related to data privacy, international communications and the transmission or interception of technical or personal data.

"Authorized Third Parties" are those third parties explicitly authorized by Absolute.

"Chromebook" means the product of the same name provided by Google Inc. or its manufacturing partners.

"Chrome OS" means the operating system applicable to Chromebooks.

"Chrome OS App" is a type of Client Software installed in a Chromebook that communicates with Absolute's Monitoring Center.

"Chrome Sync Service" refers to the application in the Google Management Console that syncs devices that utilize Chrome OS.

"Claims and Losses" means any and all liabilities, actions, proceedings, claims, causes of action, demands, debts, losses, damages, charges and costs, including reasonable legal costs, any amount paid to settle any action or to satisfy a judgment and expenses of any kind and character whatsoever.

"Client Software" means any offline or client software components of the Absolute Technology, including without limitation the Agent, the iOS App, the Chrome OS App and all Updates and Upgrades (if agreed to be provided to you in your Orders) thereto.

"Confidential Information", for which there is a **"disclosing party"** (from or on behalf of whom Confidential Information is disclosed) and a **"receiving party"** (to whom Confidential Information is disclosed) means any information that the receiving party knows or has reason to know is the confidential or proprietary information of the disclosing party including, without limitation, the following information: technical and business information relating to inventions or products, research and development information, production manufacturing and engineering processes, costs, profit or margin information, employee skills and salaries, finances, customers, marketing, and production and future business plans.

"Content" means the audio and visual information, documents (including the Product Documentation), software, products, services and other materials contained or made available to you by Absolute in the course of using the Service.

"Customer Device" means the unique and specific customer computing device for which you have (a) installed the Client Software on the computing device, and (b) ensured the registration of the computing device and the ESN, and for greater certainty a Customer Device may only be a computing or Internet-enabled device expressly supported by Absolute.

"Customer Indemnified Parties" means you and your Affiliates, directors, officers, employees, consultants and agents.

"Data Delete Operation" means an operation launched by you by which you remotely permanently delete all or some of the data, software, and possibly the operating system, from a Customer Device.

"Data Processing Addendum" means Absolute's form of Data Processing Addendum applicable to the processing of personal data that is subject to Regulation 2016/679 of the European Parliament, known as GDPR, which is attached to this Agreement as Appendix "D".

"Deliverables" means the deliverables to be delivered in accordance with a Professional Services Statement of Work or in accordance with a fixed, standard package of Professional Services.

"Device Identity Tag" means an attachable tag provided by Absolute that provides visible information that the Customer Device it is attached to is protected by Absolute and which provides a method for contacting Absolute to facilitate the return of a Customer Device.

"Device Theft Investigation and Recovery" means Absolute's standard device recovery services feature, as may be revised from time to time by Absolute.

"Endpoint Data Discovery" means Absolute's endpoint data discovery and reporting service feature, as may be revised or updated from time to time by Absolute.

"ESN" means the serial number electronically assigned to a Customer Device, which may include some or all of the unique physical serial number of the Customer Device.

"Forced Re-Enrollment Feature" refers to the device setting in Chromebooks that allows administrators to force devices to be re-enrolled to their original Google administrator's console, even after a device is wiped.

"Global Support" means the customer support options from time to time available Online by clicking on the "Support" link.

"Google Management Console" means the web-based management console available from Google Inc. for managing Chromebooks.

"Incident Date" means the first date on which you became aware of the loss or theft, or could reasonably be expected to discover the loss or theft, of a Customer Device.

"Incident Report Date" means the date of actual receipt by Absolute of a fully-completed Investigation Report (including details of the Official Report and for iPads, iPad minis and Chromebooks, the serial number of the device).

"Intel AT" means Intel® Anti-Theft Technology, which includes a locking solution that enables locking of a device at the chip level upon activation by the end user.

"Intellectual Property Rights" means any and all (i) proprietary rights provided under patent law, copyright law, trade-mark law, design patent or industrial design law, semi-conductor chip or mask work law, or any other applicable statutory provision or otherwise arising at law or in equity anywhere in the world, including, without limitation, trade secret law, that may provide a right in works, software, source code, object code, marks, ideas, formulae, algorithms, concepts, methodologies, techniques, inventions, or know-how, or the expression or use thereof, (ii) applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in any of the foregoing, and (iii) past, present, and future causes of action, rights of recovery, claims for damage, accounting for profits, royalties, or other relief relating, referring, or pertaining to any of the foregoing.

"Investigation Report" means the form provided by Absolute and available to you either by (a) logging into your applicable customer account Online, or (b) requesting the form to be mailed to you by using the contact information available through Global Support. If you are a Managed Services Provider, the Investigation Report must be completed and submitted to Absolute by you, not by your customer.

"iOS App" is a type of Client Software installed in an iPad or iPad mini that communicates with Absolute's Monitoring Center.

"iPad" and **"iPad mini"** mean the products of the same name provided by Apple Inc.

"Locking Operation" means an operation launched by you, or automatically by the Absolute Technology or your Customer Device, by which your Customer Device is locked or "bricked", or by which your Customer Device is frozen or access to your Customer Device is limited, encrypted or restricted, without further authentication, whether such feature works in conjunction with technology built into the Customer Device and the Absolute Technology or in conjunction with the Absolute Technology alone.

"Managed Services Provider" means an entity who manages IT services and/or computing devices on behalf of its customers, and who intends to provide the Absolute Technology and the Service to its customers as part of its managed services business.

"Monitoring Center" means the monitoring center, websites and portals available Online and maintained and operated by Absolute to communicate with the Client Software or to facilitate the submission of Investigation Reports and other information in connection with Absolute's provision of the Service.

"Official Report" means an official police report or any other form required by the law enforcement authority required to report the theft or loss of your device.

"Online" means online, as updated from time to time by Absolute, through Absolute's website located at <http://www.absolute.com> and <http://www.lockforlaptops.com>, as the case may be, or such other location as may be notified by Absolute to you from time to time.

"OPoP" means your original or deemed proof of purchase price (before taxes and excluding accessories and software) as it relates to the Service Guarantee.

“Order” means the initial or any subsequent subscription for the Service submitted Online or in written form to Absolute, the applicable Absolute Affiliate, original equipment manufacturer or authorized Absolute reseller for your country or region specifying, among other things, the number of Customer Devices and their Service Term, the specific edition of the Service subscribed for, the applicable fees, pricing and payment details, subject to Section 10.

“Post-Incident Data” means data generated by the Customer Device or obtained from third parties after the loss of a Customer Device and during a theft recovery, including data created and stored by users having possession of or access to the Customer Device after its loss, data that is accessed or modified by such users and data collected and stored by Apple Inc. or Google Inc. Post-Incident Data includes, without limitation, information obtained by Absolute and its Authorized Third Parties by utilizing any and all of its theft recovery tools in order to recover the Customer Device(s) to the extent permitted by Applicable Laws.

“Privacy Policy” means Absolute's privacy policy available Online at www.absolute.com.

“Proceedings” means any actual or threatened civil, criminal or administrative action or proceedings.

“Product Documentation” means the end user manual and other documentation (including print and Online), if any, applicable to the Service you have purchased.

“Professional Services” means the services we agree to provide to you, more particularly described in a signed Statement of Work between you and Absolute or an Absolute authorized reseller, and may also include Training Services.

“Rapid Response” means a time-sensitive component of the theft management program for iPads, iPad minis and Chromebooks which allows Absolute to access certain additional forensic data about a Customer Device which may be available to Absolute for only a brief period following a theft.

“Recover”, “Recovered” or “Recovery” means the Customer Device has been located and returned to you, or is in the process of being delivered to you, or is either in possession of, or in the process of being collected by or actively tracked by, law enforcement.

“Restricted Loss” means the theft or loss of a Customer Device where any of the following is true:

- (a) the theft or loss was materially facilitated by your criminal acts, gross negligence or wilful misconduct when securing the Customer Device in question, or the repeated theft or loss of Customer Devices demonstrates a pattern of any such criminal, negligent or wilful activity,
- (b) the law enforcement authority in the jurisdiction in which the Customer Device went missing does not consider the theft or loss to be a criminal act,
- (c) the theft or loss of your Customer Device was intentional, or was part of a Theft Detection Program, or you fail to fully complete the Investigation Report form,
- (d) if the Customer Device is an iPad, iPad mini or Chromebook, the theft or loss of a Customer Device which did not have a Device Identity Tag attached,
- (e) if the Customer Device is a Chromebook, you have not purchased the Google Management Console and used it on the Customer Device to deploy the Absolute Kiosk Web Theft Management Application,
- (f) if the Customer Device is a Chromebook, you have not upgraded the Customer Device to a version that is capable of supporting Google's Forced Re-Enrollment Feature for the edition of the Service purchased by you and enabled Google's Forced Re-Enrollment Feature within thirty (30) days of it becoming available, or
- (g) the Client Software included in your edition of the Service was not installed or not activated on the Customer Device prior to the Incident Date.

“smartphone” means a handheld mobile computing device having a screen size measuring under six inches on the diagonal.

“Security Administrator” means a person whom you have authorized to launch a feature or operation on a Customer Device and who (i) has been previously identified as such in a Security Authorization Form, (ii) where applicable, possesses the RSA SecurID® key-chain token required to launch a feature, and (iii) you have given administrator level login privileges to the Absolute Console.

“Service” means any of the specific editions of Absolute's online computer security and tracking, mobile theft management service for iOS or Chrome OS, endpoint data discovery and reporting service, or other services identified during the ordering process, developed, operated, and maintained by Absolute, accessible Online, or ancillary online or offline products and services provided to you by Absolute (excluding Professional Services), to which you are being granted access under this Agreement.

“Service Guarantee” means a limited warranty for Absolute's Device Theft Investigation and Recovery services.

“Service Term” means the period of time beginning on the date you purchased the Service and ending upon completion of such period as is indicated in the applicable Order. A Service Term cannot exceed five (5) years. If you renew the Service, the renewal Service Term will be the period of time beginning on the date you renewed the Service and ending upon completion of such period, as is indicated in the applicable Order.

“Statement of Work” means any written document dated and signed by you and Absolute that specifies the Professional Services (including the Deliverables) to be delivered by Absolute to you.

“System Problems” means problems associated with third-party products or causes or your Technical Environment or data.

“tablet” means a handheld mobile computing device having a screen size measuring six inches or more on the diagonal.

“Technical Environment” means certain third party hardware, operating system and software components.

“Theft Detection Program” means any intentional loss or investigative program or operation, instigated, orchestrated, contributed to or carried out by you with or without the assistance of law enforcement, where the purpose of such operation in whole or in part is to attract theft or loss for the purpose of identifying or apprehending thieves or other wrongdoers.

“Theft Prevention Program” means the target hardening, deterrence and theft and loss prevention and mitigation program established by Absolute, as amended from time to time, and includes the attachment of a Device Identity Tag provided by Absolute to each Customer Device by You, an internal awareness campaign for the education of end users, and other theft and loss prevention activities established by Absolute from time to time.

“Theft Recovery Territory” means any region or country, except where:

(a) Online, Absolute has indicated such region or country as being excluded, or

(b) in Absolute’s sole discretion, such region or country is not a region or country in which (i) the culture, customs and actual governance include an adherence to the rule of law, (ii) there are presently governmental resources that are reasonably required to enforce the laws therein, (iii) the infrastructure supports unimpeded transmission of the data required for tracking and recovery purposes, (iv) tracking and investigative activities are not prohibited by Applicable Laws, and (v) in the case of the Customer Device moving between multiple jurisdictions, the policing bodies of both jurisdictions collaborate in the enforcement of their respective property laws.

“Third Party Databases” means asset identification and theft prevention databases owned and operated by third parties that may be delivered or made available to you as part of the Services, including law enforcement databases, pawn shop databases, and other registration and status confirmation databases intended to facilitate the identification of the owner of physical assets and the legal status of such physical assets.

“Third Party Software” means programs owned by third parties that may be delivered or made available to you as part of the Services, including those listed as third party software Online.

“Training Services” mean training services offered by Absolute from time to time through per-seat, pre-paid sums known as “training credits”, which may be purchased from Absolute and which expire after a period of time.

“Update” means a release of the Absolute Technology that includes a feature change, minor increased functionality or minor improvements (including bug fixes) to the Absolute Technology.

“Upgrade” means a release of the Absolute Technology that includes an additional service feature or significant improvements being added to the Absolute Technology, and, typically, Upgrades will be those designated by Absolute as a change in the version number, being the number to the left of the decimal point in the Absolute Technology version number.

APPENDIX "A" DEVICE THEFT INVESTIGATION AND RECOVERY SERVICES

If your purchased Service edition includes a Device Theft Investigation and Recovery feature, you acknowledge that Absolute relies upon law enforcement cooperation to carry out Recoveries, and that applicable law enforcement agencies may require your attendance in any criminal proceeding arising from the Investigation Report. In addition, you hereby agree to the following terms and conditions which shall form part of this Agreement:

1. **Consent.** You hereby consent, instruct, permit and authorize Absolute and its Authorized Third Parties coordinating with local law enforcement officials to recover your Customer Device, and, by filing an Investigation Report in respect of the loss or theft of a Customer Device, you authorize and permit Absolute and its Authorized Third Parties to (i) access and collect any information about the Customer Device held by third parties, including by accessing your Apple Inc. or Google Inc. account to obtain information relating to the Customer Device and you agree to facilitate access to such information by Absolute; (ii) in Absolute's discretion, initiate, activate, de-activate or cancel Locking Operations, if available, in order to assist with the theft recovery process, (iii) access Post-Incident Data on the Customer Device or in the control of third parties solely for the purpose of performing the theft recovery, where any such Post-Incident Data will be stored on a secure server and will only be divulged to police investigators or official prosecutors involved in the investigation or prosecution of the criminal offence related to the loss of the Customer Device, and (iv) transfer any data gathered in the course of a theft recovery (including Post-Incident Data) to the applicable criminal justice system, including law enforcement personnel, prosecutors and courts, and acknowledge that such data in connection with a theft recovery will be made available to you only at the discretion of these criminal justice system entities. If you are a Managed Services Provider, you must obtain the consent, instruction, permission and authorization from your customers for Absolute and its Authorized Third Parties to do the foregoing.
2. **No Theft Recovery Outside of Territory.** The Device Theft Investigation and Recovery feature is available only in the Theft Recovery Territory. If the contact from the Customer Device after the Incident Report Date (as set out below) originates from outside of the Theft Recovery Territory, the Device Theft Investigation and Recovery feature is no longer available and is replaced by the Data Delete Operation or Locking Operation, and a successful launch of a Data Delete Operation or Locking Operation (of any type) or your decision not to launch a Data Delete Operation or Locking Operation fulfills any applicable theft recovery obligation and Service Guarantee.
3. **Use of Recovered Information.** You acknowledge and agree that information or data recovered from the Customer Device and relevant to the Recovery of the Customer Device may be disclosed to Absolute theft recovery personnel, Authorized Third Parties or the applicable law enforcement officials without further notification or consent. If you are a Managed Services Provider, you must obtain the acknowledgement and agreement from your customers to the foregoing.
4. **Obligations for Theft Recovery.** Upon your activation of the Device Theft Investigation and Recovery feature in accordance with this Agreement, Absolute or its Authorized Third Parties will use commercially reasonable efforts to locate and Recover the missing Customer Device and you agree to fully cooperate with such efforts. If you have purchased a Service with a limited Device Theft Investigation and Recovery feature, the pursuit of any theft recovery to the limits of that particular limited Device Theft Investigation and Recovery feature will fulfill any applicable obligation of Absolute, including any Service Guarantee. From time to time you will be informed of the status of the effort to Recover your Customer Device through e-mail or online through the Absolute Console. You agree that Absolute's obligation to locate and Recover the missing Customer Device is limited to the number of hours of investigative services included with the Device Theft Investigation and Recovery service you purchased. You further agree that Absolute will only have an obligation to actively pursue a theft recovery for a period of one year from the Incident Report Date (as set out below) or the date upon which you execute a Data Delete Operation or Locking Operation, whichever is earlier.
5. **Rapid Response for iOS or Chrome OS.** If your missing or stolen Customer Device is an iPad, iPad mini or Chromebook, you must participate in Absolute's Rapid Response theft management program. You agree to provide as much information as possible as soon as possible to Absolute, including the serial number of the Customer Device, a partially completed Investigation Report and any other information that Absolute may reasonably require to facilitate a Rapid Response. You acknowledge that the Rapid Response program may be effective for only a brief period after the Incident Date and you agree to attempt to provide the Rapid Response information immediately upon discovery of the theft or loss. You agree to follow up with a fully completed Investigation Report within the time required by section 6 below.
6. **Theft Recovery Activation.** You acknowledge that Absolute's chances of Recovery increase as the Incident Report Date gets closer to the Incident Date. Accordingly, in order to activate the Device Theft Investigation and Recovery feature, you must as quickly as possible but in any event no later than fourteen (14) days after the Incident Date, you must
 - (a) report the Customer Device as missing or stolen to the law enforcement authority in the jurisdiction in which the Customer Device was missing or stolen by completing and submitting an Official Report to such authority;
 - (b) obtain a record or identifying number (such as the police or other file number) of the Official Report, and at the request of Absolute a copy of the Official Report; and
 - (c) duly complete and submit an Investigation Report to Absolute, ensuring that such Investigation Report contains such details of the Official Report as are required by Absolute.
7. **Absolute Must Receive All Materials.** For the purposes of this Agreement, the date of actual receipt by Absolute of a fully-completed Investigation Report (including details of the Official Report) will be considered the Incident Report Date.
8. **Limitations.** Despite any Device Theft Investigation and Recovery feature or Service Guarantee available to you through the Service, you acknowledge and agree that Absolute's or any Authorized Third Party's obligation and ability to successfully Recover any Customer Device will be substantially and materially reduced if, and Absolute provides no Service Guarantee if:
 - (a) the theft or loss of your Customer Device is a Restricted Loss;
 - (b) the Customer Device is a device that is not capable of supporting persistence for the edition of the Service purchased by you or on which persistence was not enabled at the time of the loss or theft, and is not an iPad, iPad mini or a Chromebook. Persistence is not required for iPads or iPad minis. Persistence is also not currently required for Chromebooks; however, if your Customer Device is a Chromebook, and if a version of Chrome OS becomes available that is capable of supporting Google's Forced Re-Enrollment Feature for the edition of the Service purchased by you, within thirty (30) days of such version becoming available you must have upgraded the Customer Device to that

version and enabled Google's Forced Re-Enrollment Feature; if you fail to do so, the theft or loss of your Customer Device will be a Restricted Loss. A list of devices that are capable of supporting persistence is available from Absolute or Online; or

(c) if the Customer Device is an Android device, you obtained root access to the operating system or "rooted" the Customer Device prior to the time of the loss or theft.

9. Theft Recovery Preventions and Other Features. You acknowledge and agree that:

(a) Device Theft Investigation and Recovery features may be limited or unavailable when a Locking Operation has been activated, and if you have activated a Device Theft Investigation and Recovery feature at any time when the timer for a Locking Operation has been started, the theft recovery may be hindered by the expiry of such timer if the applicable Customer Device does not contact the Monitoring Center or is not Recovered before it expires,

(b) by activating the Device Theft Investigation and Recovery feature, you thereby authorize Absolute to reset or remove the timer from such Locking Operation, and in the event you hinder the ability of Absolute to reset or remove the timer, then all applicable obligations and Service Guarantees of Absolute will be deemed satisfied,

(c) Device Theft Investigation and Recovery features may be limited or unavailable when a Data Delete Operation has been launched or activated,

(d) Device Theft Investigation and Recovery features may be ceased by Absolute, and all applicable obligations and Service Guarantees of Absolute will be deemed satisfied, upon the launch of the "Full Data Delete Including the Operating System" feature as described Online and in the Product Documentation,

(e) you may not transfer the Service Term in respect of a Customer Device between the period commencing on the earlier of (i) the Incident Date and (ii) 30 days before the date of theft or loss reported on an Investigation Report, and ending when such Customer Device is returned to your possession or Recovered, and

(f) Recovery of every Customer Device cannot be guaranteed. Without limiting the generality of the foregoing, as Absolute and its Authorized Third Parties will only coordinate Recoveries in a Theft Recovery Territory, no guarantee or warranty is provided with respect to the operation of the Absolute Technology, or the ability to recover a computer using the Absolute Technology, if the computer is located or moved outside of the Theft Recovery Territory.

APPENDIX "B" SERVICE GUARANTEE

If you have purchased an edition of the Service that includes a Service Guarantee, you hereby agree to the following terms and definitions which shall form part of this Agreement:

1. **Service Guarantee Availability.** Service Guarantees are only available in respect of specific editions of the Service; please refer to your Order to determine whether your edition of the Service includes a Service Guarantee. **THIS SERVICE GUARANTEE IS VOID WHERE PROHIBITED BY LAW.**
2. **Service Guarantee Period.** The Service Guarantee Period means the period after the Incident Report Date within which Absolute guarantees that it will either Recover a Customer Device or successfully facilitate the launch of a Locking Operation or a Data Delete Operation (of any type including through a third party technology or service). Your Service Guarantee Period will commence on the Incident Report Date and will end sixty (60) days after the Incident Report Date.
3. **Service Guarantee Territory.** Service Guarantee Territory means the following regions or countries: United States of America, Canada, Australia, the United Kingdom and any other country specifically identified by Absolute Online as a Service Guarantee Territory.
4. **Limitations of Service Guarantees.** YOU ACKNOWLEDGE AND AGREE THAT (I) ANY SERVICE GUARANTEE IS INTENDED AS A PRE-DETERMINED, PRE-AGREED ESTIMATE OF AND LIMIT ON DAMAGES PAYABLE BY ABSOLUTE IN THE CASE OF BREACH BY ABSOLUTE OF THE SPECIFIC LIMITED WARRANTIES ON THE PERFORMANCE OF CERTAIN FEATURES OF THE SERVICE AS DESCRIBED HEREIN, (II) ABSOLUTE HAS HEREBY ADVISED YOU THAT THE LIMITATION OF LIABILITY SET BY ANY SUCH SERVICE GUARANTEE WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN THE PARTIES AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE FOR THE SERVICE, AND (III) ANY SUCH SERVICE GUARANTEE IS NOT AN INSURANCE PRODUCT, AND ABSOLUTE IS IN NO WAY INSURING YOUR CUSTOMER DEVICE AGAINST LOSS OR THEFT. OTHER THAN THROUGH APPLICABLE SERVICE GUARANTEES, AND AS OTHERWISE SET FORTH IN THIS AGREEMENT, ABSOLUTE DOES NOT GUARANTEE, AND MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING, ITS PERFORMANCE OF THE SERVICE WITH RESPECT TO ANY CUSTOMER DEVICE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE AGGREGATE LIABILITY OF ABSOLUTE FOR ANY AND ALL SERVICE GUARANTEE PAYMENTS ARISING OUT OF OR RELATED TO THIS AGREEMENT ON THE DATE ON WHICH ANY SERVICE GUARANTEE PAYMENT BECOMES PAYABLE WILL NOT EXCEED THE PRO RATA PORTION OF THE PURCHASE PRICE ATTRIBUTABLE TO THE THEN REMAINING PORTION OF THE SERVICE TERM (NET OF RETURNS, REBATES, TAXES (SALES, USE AND VALUE ADD), COMMISSIONS AND DISTRIBUTOR OR RESELLER FEES) LESS (A) AN ADMINISTRATION FEE EQUAL TO 15% OF THE PURCHASE PRICE, AND (B) THE CUMULATIVE AMOUNT PREVIOUSLY PAID TO YOU IN RESPECT OF ALL SERVICE GUARANTEE PAYMENTS UNDER THIS AGREEMENT.
5. **Successful Theft Recovery, Locking Operation or Data Delete Operation.** If, within a Service Guarantee Period, a successful theft recovery, or the successful launch of a Locking Operation or Data Delete Operation (of any type) has taken place on the Customer Device in question, the applicable Service Guarantee will be deemed to have been fulfilled and you will not be eligible for a Service Guarantee Payment.
6. **Continued Attempts.** Even if the Service Guarantee Period has expired or a Service Guarantee Payment has been paid, for a maximum of one (1) year from such expiry, Absolute may (in its sole discretion) use commercially reasonable efforts to continue to monitor and attempt Recovery of, or facilitate a successful Data Delete Operation or Locking Operation on, the stolen Customer Device.
7. **Claims for Service Guarantees.** In order to qualify to receive any Service Guarantee Payment, in addition to meeting the conditions set forth in this Agreement that relate specifically to the type of Service Guarantee in question, you must also fully meet the following conditions:
 - (a) the relevant Customer Device must have an active, paid-for Service Term (at the time of its loss or theft) in respect of an edition of the Service that you have purchased which includes a Service Guarantee;
 - (b) the loss of the Customer Device must not have been a Restricted Loss;
 - (c) you must be in full compliance with your obligations under this Agreement including, without limitation, your obligation to submit a fully-completed Investigation Report no later than fourteen (14) days after the Incident Date;
 - (d) the Customer Device must have contacted the Monitoring Center within 90 days before the Incident Date;
 - (e) if the Customer Device is an Android device, the Customer Device must be a device that is capable of supporting persistence for the edition of the Service purchased by you and persistence must have been enabled on the Customer Device at the time of the loss or theft. A list of devices that are capable of supporting persistence is available from Absolute or Online;
 - (f) if the Customer Device is an Android device, you must not have obtained root access to the operating system or "rooted" the Customer Device prior to the time of the loss or theft;
 - (g) if the Customer Device is a Chromebook, and if a version of Chrome OS becomes available that is capable of supporting Google's Forced Re-Enrollment Feature for the edition of the Service purchased by you, within thirty (30) days of such version becoming available you must have upgraded the Customer Device to that version and enabled Google's Forced Re-Enrollment Feature. If you fail to do so, the theft or loss of your Customer Device will be a Restricted Loss;
 - (h) you must not have transferred the Service Term containing the Device Theft Investigation and Recovery feature to the Customer Device in question during the restricted periods set out in Section 9(e) above of Appendix "A";
 - (i) the Customer Device must have been stolen or lost (as determined reasonably by Absolute) from inside of the Service Guarantee Territory;
 - (j) you must not have launched or executed a service or feature on your Customer Device (for example, a Data Delete Operation or a Locking Operation whether launched manually or automatically upon the expiration of a timer) that restricts or disables the ability of your Customer Device to contact the Monitoring Center;

(k) if Intel AT is activated on the Customer Device, you must log into the Absolute Console and elect to de-enroll or de-activate Intel AT for that Customer Device on or before submitting an Investigation Report and the Customer Device must successfully de-enroll or de-activate Intel AT so that Intel AT cannot launch a Locking Operation automatically;

(l) if you have a consumer edition of the Service, you must, no later than thirty (30) days after the applicable Service Guarantee Period has ended, duly complete and submit to Absolute via fax or email a Service Guarantee Submission form, together with (A) OPoP of the stolen Customer Device (which confirms date of purchase, price, make, model and serial number); and (B) any additional information or documentation as may be reasonably requested by Absolute; and

(m) the Customer Device must not have been flagged by Absolute as Recovered at the end of the Service Guarantee Period.

8. Excluded Losses. The Service Guarantee is not an insurance product. Absolute may, in its sole discretion, review your eligibility to receive Service Guarantee Payments if Absolute determines that your losses of Customer Devices, or Absolute's payment of Service Guarantee Payments, are excessive or demonstrate a pattern of gross negligence or wilful misconduct in ensuring the security of your Customer Devices or otherwise render the provision of the Service unprofitable. Upon making such determination, Absolute will notify you and all outstanding losses will be Restricted Losses, and any subsequent losses will be deemed to be Restricted Losses until Absolute is satisfied, in its sole discretion, that you have implemented policies, procedures and other measures to address such gross negligence or wilful misconduct.

9. Service Guarantee Payment. Always subject to the other provisions in this Agreement, then Absolute or an Authorized Third Party will pay to you the applicable "Service Guarantee Payment" to which you are entitled, if any, within thirty (30) days from the date you become entitled to a Service Guarantee Payment or if you have a consumer edition of the Service, within thirty (30) days from receipt of the duly completed Service Guarantee Submission form, submitted in accordance with the above terms.

10. Service Guarantee Amount. The amount payable by Absolute or an Authorized Third Party as a Service Guarantee Payment will be based on the Incident Report Date in relation to the Service Term and subject to the other terms of this Agreement, will equal a percentage of the OPoP of the Customer Device up to a maximum amount, as follows:

For Customer Devices that are personal computers with either a corporate or consumer edition of the Service, the maximum amount will be:

Incident Report Date (based on year of Service Term)	Maximum Amount				
	Percentage of OPoP	\$CAD	\$USD	\$AUD	£GBP
Within the First Year	90%	1,000.00	1,000.00	1,000.00	800.00
During the Second Year	80%	800.00	800.00	800.00	640.00
During the Third Year	60%	600.00	600.00	600.00	480.00
During the Fourth Year	40%	400.00	400.00	400.00	320.00
During the Fifth Year	20%	200.00	200.00	200.00	160.00

For Customer Devices that are Android or Windows tablets/netbooks/smartphones with either a corporate or consumer edition of the Service, the maximum amount will be:

Incident Report Date (based on year of Service Term)	Maximum Amount				
	Percentage of OPoP	\$CAD	\$USD	\$AUD	£GBP
Within the First Year	90%	600.00	600.00	600.00	480.00
During the Second Year	60%	360.00	360.00	360.00	288.00
During the Third Year	40%	240.00	240.00	240.00	192.00
During the Fourth Year	30%	180.00	180.00	180.00	144.00
During the Fifth Year	15%	90.00	90.00	90.00	72.00

For Customer Devices that are iPads or iPad minis with either a corporate or consumer edition of the Service, the maximum amount will be:

Incident Report Date (based on year of Service Term)	Maximum Amount				
	Percentage of OPoP	\$CAD	\$USD	\$AUD	£GBP
Within the First Year	90%	450.00	450.00	450.00	360.00

Incident Report Date (based on year of Service Term)	Maximum Amount				
	Percentage of OPoP	\$CAD	\$USD	\$AUD	£GBP
During the Second Year	80%	360.00	360.00	360.00	288.00
During the Third Year	60%	270.00	270.00	270.00	216.00
During the Fourth Year	40%	180.00	180.00	180.00	140.00
During the Fifth Year	20%	90.00	90.00	90.00	70.00

For Customer Devices that are Chromebooks with a corporate or consumer edition of the Service, the maximum amount will be:

Incident Report Date (based on year of Service Term)	Maximum Amount				
	Percentage of OPoP	\$CAD	\$USD	\$AUD	£GBP
Within the First Year	90%	250.00	250.00	250.00	200.00
During the Second Year	60%	150.00	150.00	150.00	120.00
During the Third Year	40%	100.00	100.00	100.00	80.00
During the Fourth Year	30%	75.00	75.00	75.00	60.00
During the Fifth Year	15%	37.50	37.50	37.50	30.00

11. OPoP Determination.

(a) If you have a consumer edition of the Service and your Customer Device, the actual OPoP (as set out in your original proof of purchase receipt) will be used to calculate your Service Guarantee Payment. However, if you purchased a smartphone or tablet under a fixed term pricing or financing plan and the actual OPoP is not set out on your receipt or is less than US\$220 or CAD\$220 or AUD\$220 or GBPE176 and, then your OPoP will be deemed to be US\$220 or CAD\$220 or AUD\$220 or GBPE176.

(b) If you have a corporate edition of the Service and your Customer Device is not an iPad, iPad mini or Chromebook, the following OPoP values will be deemed: for non-Android desktop computers, Macintosh computers and laptops, US\$1,000 or CAD\$1,000 or AUD\$1,000 or GBPE800; for tablets and netbooks, US\$450 or CAD\$450 or AUD\$450 or GBPE360; and for smartphones and mini-tablet devices, US\$220 or CAD\$220 or AUD\$220 or GBPE176, unless in each case you provide us with an OPoP receipt within 30 days of the end of the applicable Service Guarantee Period, in which case the actual OPoP will be used for purposes of the calculation of the Service Guarantee Payment in accordance with Section 10 above. If you have a corporate edition of the Service and your Customer Device is an iPad or iPad mini, your OPoP will be deemed to be US\$220 or CAD\$220 or AUD\$220 or GBPE176 for iPad mini devices; and, US\$450 or CAD\$450 or AUD\$450 or GBPE360 for iPad® devices other than iPad mini® devices, unless in each case you provide us with an OPoP receipt within 30 days of the end of the applicable Service Guarantee Period, in which case the actual OPoP will be used for purposes of the calculation of the Service Guarantee Payment in accordance with Section 10 above. If you have a corporate edition of the Service and your Customer Device is a Chromebook, your OPoP will be deemed to be US\$250 or CAD\$250 or AUD\$250 or GBPE200, unless you provide us with an OPoP receipt within 30 days of the end of the applicable Service Guarantee Period, in which case the actual OPoP will be used for purposes of the calculation of the Service Guarantee Payment in accordance with Section 10 above.

12. **Currency.** The dollar amounts listed in the table above are paid out in United States Dollars if your region or country of residence is the United States, in Canadian Dollars if your region or country of residence is Canada, in Australian Dollars if your region or country of residence is Australia, and in British Sterling Pounds if your residence is in Britain. Absolute may in its sole discretion pay an equivalent amount in the currency of its choosing with respect to countries not listed in this paragraph.

13. **Prepaid Service Guarantee Balance.** If Absolute has paid a Service Guarantee Payment in respect of a Customer Device that is later recovered, or has a successful launch of a Locking Operation or Data Delete Operation (of any type) on the Customer Device in question, within 120 days for iPads, iPad minis or Chromebooks or within 60 days after the Service Guarantee Period for all other Customer Devices, Absolute may treat the amount of such Service Guarantee Payment as a prepaid Service Guarantee and deduct 100% of the amount of any prepaid Service Guarantee balance from any future Service Guarantee Payment payable by Absolute to you (whether or not, for greater certainty, for that particular Customer Device). You may find out your current prepaid Service Guarantee balance in the Absolute Console or Global Support.

APPENDIX "C"

PROFESSIONAL SERVICES

In addition to the Service, Absolute may agree to provide you Professional Services, as fixed packages of Professional Services available for purchase via an authorized Absolute reseller. The following terms and conditions will apply to any Professional Services pursuant to a fully executed Statement of Work, except as otherwise agreed by the parties in writing:

1. **Fees.** You will pay to Absolute any related Professional Services fees within 30 days after the date of Absolute's invoice, unless otherwise specified in the Statement of Work. Any other payment terms in the Statement of Work will also apply.
2. **Expenses.** You will reimburse Absolute for reasonable expenses incurred in performing the Professional Services, including travel and accommodation costs, long distance telecommunications costs, courier fees, reproduction costs, and other reasonable out-of-pocket costs. At your request, Absolute will give you copies of receipts or other customary expense documentation for expenses incurred.
3. **Overdue Payments.** Any overdue payment relating to Professional Services will bear interest at a rate of one and one-half percent (1-1/2%) per month, or nineteen and fifty-six one hundredths (19.56%) per annum, on the portion thereof that is overdue. If such interest rate is prohibited by Applicable Laws, the overdue payment shall bear interest at the highest interest rate permitted by Applicable Laws.
4. **Taxes.** Professional Services fees do not include any taxes, and you agree to pay any sales, use, value added or other taxes or import duties (other than Absolute's corporate income taxes) based on or due as a result of any amounts paid to us under this Agreement. All fees will be paid in the currency of the country or region in which the Professional Services are being performed unless otherwise specified in a Statement of Work.
5. **Start-Up Costs and Ramp-Down Costs.** Unless otherwise set forth in a Statement of Work, if you stop or postpone the projects set forth in a Statement of Work you will pay for all Professional Services rendered up to the stop or postponement date and will pay for any start up costs associated with re-activating resources to complete the subject Statement of Work and any ramp-down costs associated with removing resources from the subject Statement of Work.
6. **Tools and Place of Work.** You will provide all supplies, facilities, materials and other things which are required to perform the Professional Services, except for those things which Absolute is required to supply as set out in the Statement of Work. You will also provide us with any access to your premises, facilities and systems which we require to perform the Professional Services.
7. **Changes.** No changes will be made to the Professional Services, the Deliverables or the Statement of Work except by a written amendment signed by you and Absolute. Any changes to the Professional Services, the Deliverables or the Statement of Work may delay completion of the Professional Services and/or increase the related fees.
8. **Acceptance.** Unless otherwise specified in a Statement of Work,
 - (a) following receipt of each Deliverable, you will have ten (10) days (the "Acceptance Period") to perform acceptance testing of that Deliverable in accordance with the standards and procedures set out in the Statement of Work,
 - (b) if the Deliverable does not pass the acceptance test, you must give Absolute written notice rejecting the Deliverable within the Acceptance Period,
 - (c) if you do not give Absolute written notice rejecting any Deliverable by the end of the Acceptance Period, or if you deliver written notice accepting the Deliverable, such Deliverable will be deemed accepted on that date,
 - (d) if you give Absolute written notice rejecting any Deliverable within the Acceptance Period, then within 30 days after receipt of your notice, Absolute will make any reasonable corrections or changes and resubmit the Deliverable to you for further acceptance testing and you will cooperate with Absolute to isolate, identify and resolve any problems in the Deliverables,
 - (e) upon your receipt of the corrected Deliverable, the procedure outlined in this Section until the Deliverable is accepted, subject to the remaining provisions of this Section,
 - (f) if Absolute reasonably determines that the inability of any Deliverable to pass acceptance testing is due to System Problems and not to any material defect in that Deliverable, Absolute and you will jointly attempt to identify the source of the System Problems and possible workarounds or solutions and, in addition to the fees and expenses for the Professional Services, you will pay Absolute for any extra work related to the System Problems at its then-current hourly rates plus disbursements, taxes and all related costs and expenses, and
 - (g) notwithstanding the foregoing, Deliverables in the nature of training services are deemed accepted upon delivery.
9. **Intellectual Property.** Unless otherwise set out in a Statement of Work,
 - (a) Professional Services provided by Absolute to you under this Agreement are not performed on a "work for hire" basis and therefore any resulting work product (including Deliverables) will be considered Absolute Technology in which your only interest is a license to use the Deliverables in conjunction with the Service during an applicable Service Term,
 - (b) for greater certainty, Absolute owns and retains all title to, ownership of, and all right, title and interest (including Intellectual Property Rights) in or to any Deliverable on the same basis as it does with respect to the Service and the Absolute Technology as described in Section 18.
 - (c) If it is at any time determined that you own any right, title or interest (including any Intellectual Property Rights) in or to any Deliverable (other than the right to use it under the license granted by this Agreement), you will hold that right, title or interest in trust for Absolute and will, at our cost, transfer it to us at our request, and you will also waive any non-transferable Intellectual Property Rights such as moral rights.
10. **Relationship.** In providing any Professional Services and Deliverables, Absolute is acting as an independent contractor and not as your agent, partner, or joint venturer for any purpose; neither you nor we will have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

11. Non-Hire. You acknowledge that, in performing Professional Services, Absolute would be providing you with access to its Professional Services staff for a period of time, and that every member of such staff is a valuable resource to Absolute. Accordingly, you agree not to employ or solicit employment of any person who is Absolute's employee or an employee of any of its Authorized Third Parties without our prior written consent, unless the person in question has ceased to be employed by Absolute or its Authorized Third Party for a period of 90 days.

12. Professional Services Disclaimer. ALTHOUGH ABSOLUTE'S PROFESSIONAL SERVICES MAY INCLUDE INSTALLATION AND CONFIGURATION OF ITS CLIENT SOFTWARE ON YOUR CUSTOMER DEVICES, YOU AGREE THAT YOU ARE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR THE MAINTENANCE, CONTROL, OPERATION AND SECURITY OF YOUR NETWORK SYSTEMS, INCLUDING THE RESPONSIBILITY OF MONITORING AND MAINTAINING THE CLIENT SOFTWARE ON YOUR CUSTOMER DEVICES TO ENSURE THAT IT AND THEY CONTINUE TO FUNCTION PROPERLY. YOU ALSO ACKNOWLEDGE THAT THE INTERNET IS NOT IN ITSELF A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF YOUR SECURITY.

APPENDIX "D"
DATA PROCESSING ADDENDUM

THIS DATA PROCESSING ADDENDUM ("DPA") FORMS PART OF AND IS SUPPLEMENTAL TO THE SERVICE AGREEMENT ENTERED INTO BETWEEN CUSTOMER AND ABSOLUTE. BY AGREEING TO THE SERVICE AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS DPA.

THE TERMS OF THIS DPA WILL APPLY ONLY IF EU DATA PROTECTION LAW APPLIES TO THE PROCESSING OF PERSONAL DATA BY ABSOLUTE ON BEHALF OF CUSTOMER, INCLUDING IF CUSTOMER IS RESIDENT OR ESTABLISHED IN THE EUROPEAN ECONOMIC AREA OR SWITZERLAND, OR IF ABSOLUTE PROCESSES PERSONAL DATA OF INDIVIDUALS LOCATED IN THE EUROPEAN ECONOMIC AREA OR SWITZERLAND ON BEHALF OF CUSTOMER OR A CUSTOMER AFFILIATE. EVEN IF THIS DPA DOES NOT CURRENTLY APPLY TO YOU OR YOUR ORGANIZATION, YOU MUST STILL CLICK "I AGREE".

The purpose of this DPA is to ensure that the processing of Personal Data is conducted in accordance with EU Data Protection Law. By agreeing to this DPA, Customer enters into this DPA on behalf of itself and its Affiliates, as applicable. All capitalized terms not defined in this DPA will have the meanings set forth in the Service Agreement.

1. Definitions.

- 1.1. **"Absolute"** means the Absolute Software Affiliate identified in the Service Agreement as being a party to the Service Agreement.
- 1.2. **"Affiliate"** has the same meaning ascribed to it in the Service Agreement or, if not defined in the Service Agreement, means any present or future entity that, directly or indirectly controls, is controlled by or is under common control of or with a party, and for the purposes of this DPA, such control exists where (a) securities of one entity to which are attached more than fifty per cent (50%) of the votes that may be cast to elect directors of the entity are held, other than by way of a security interest only, by or for the benefit of the other entity and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the other entity, or (b) one entity has the ability through contract or otherwise to direct the affairs of the other entity.
- 1.3. **"Controller"** means an entity that determines the purposes and means of the processing of Personal Data, as contemplated by EU Data Protection Law.
- 1.4. **"Customer"** means the non-Absolute entity identified in the Service Agreement as being a party to the Service Agreement.
- 1.5. **"Data Subject"** means an individual to whom Personal Data relates.
- 1.6. **"Data Subject Request"** means a request from a Data Subject to exercise the Data Subject's rights under EU Data Protection Law, including the right of access, right to rectification, restriction of processing, erasure, data portability, object to the processing, or the right not to be subject to an automated individual decision making.
- 1.7. **"DPA"** means this Data Processing Addendum.
- 1.8. **"DPIAs"** means data protection impact assessments, as contemplated by EU Data Protection Law.
- 1.9. **"EEA"** means the European Economic Area, which constitutes the member states of the European Union and Norway, Iceland and Liechtenstein, as well as, for the purposes of this DPA, the United Kingdom.
- 1.10. **"EU Data Protection Law"** means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (known as "GDPR"), and any subordinate local legislation implementing GDPR, all as amended, replaced or superseded from time to time.
- 1.11. **"Personal Data"** means any information relating to an identified or identifiable natural person, as contemplated by EU Data Protection Law, which is derived through Customer's use of the Services.
- 1.12. **"Personal Data Breach"** means the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.
- 1.13. **"Processor"** means an entity that processes Personal Data on behalf of a Controller, as contemplated by EU Data Protection Law.
- 1.14. **"Service Agreement"** means the written or electronic (click-through) agreement between Customer and Absolute for the provision of Services to Customer.
- 1.15. **"Services"** means the technology or services provided by Absolute to Customer pursuant to the Service Agreement.
- 1.16. **"Sub-processor"** means any Processor engaged by Absolute or any of its Affiliates that processes Personal Data pursuant to the Service Agreement. Sub-processors may include third parties or any of Absolute's Affiliates.

2. Processing.

- 2.1. **Roles of the Parties.** The parties acknowledge and agree that with respect to the processing of Personal Data, Customer is the Controller, and Absolute is the Processor and may process Personal Data on Customer's behalf. In some cases, Customer may be a Processor, in which case Customer appoints Absolute as Customer's sub-processor, which will not change the obligations of either Customer or Absolute under this DPA, as Absolute will remain a Processor with respect to Customer in such event.
- 2.2. **Absolute's Processing of Personal Data.** Absolute will comply with its obligations as Processor under EU Data Protection Law, and will only process Personal Data on behalf of Customer for the following purposes: (a) processing in accordance with provisions of the Service

Agreement; and (b) processing to comply with other documented reasonable instructions provided by Customer, where such instructions are consistent with the terms of the Service Agreement.

- 2.3. **Customer's Processing of Personal Data.** In using the Services, Customer will comply with its obligations under EU Data Protection Law in respect of Personal Data and any processing instructions issued by it to Absolute. Customer will establish and maintain a procedure for responding to Data Subject Requests, and Customer will have sole responsibility for the accuracy, quality and legality of Personal Data and the means by which Customer acquired Personal Data, including any required consents and/or notices.

2.4. **Details of the Processing.**

2.4.1. The subject-matter of the processing of Personal Data by Absolute is the performance of the Services pursuant to the Service Agreement, which includes the collection, use and disclosure of Personal Data as set out in Absolute's Privacy Policy.

2.4.2. The duration of the processing is as set forth in the Service Agreement, unless otherwise agreed in writing.

2.4.3. The nature and purpose of the processing is that Absolute is providing Services or fulfilling contractual obligations to Customer as described in the Service Agreement, or as further instructed by Customer in its use of the Services. These Services may include the processing of Personal Data by Absolute on systems which may contain Personal Data.

2.4.4. The categories of Data Subjects may include the Customer (if Customer is an individual), Customer's end users, employees, contractors, suppliers, and other third parties.

2.4.5. The type of data includes Personal Data that is collected through the use of the Services by Customer, including as specified in the Service Agreement and Absolute's Privacy Policy.

3. **Security.**

3.1. **Absolute's Obligations.** Absolute will implement and maintain appropriate technical and organizational security measures to protect the security, confidentiality and integrity of Personal Data processed by Absolute (including protection against Personal Data Breaches). Such security measures are subject to technical development, but Absolute will not materially decrease the overall security of the Services during the term of the Services.

3.2. **Customer's Obligations.** As the Services are customer-controlled and operated, Customer is responsible for using and configuring the Services in a manner which enables Customer to comply with the EU Data Protection Law, including implementing appropriate technical and organizational measures, and controlling access provided to end users.

3.3. **Audits and Certifications.** Absolute audits its compliance against data protection and information security standards on a regular basis, and obtains certain certifications relating to information security standards. Such audits are conducted by Absolute personnel or by third party auditors engaged by Absolute. Upon Customer's written request (not to exceed once per calendar year), and subject to obligations of confidentiality, Absolute will make available to Customer a summary of its most recent relevant audit report, certifications or other documentation generally made available to Absolute's customers, as reasonably required by Customer to verify Absolute's compliance with this DPA.

3.4. **Personnel.** Absolute will ensure that its personnel engaged in the processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities, and are subject to an obligation of confidentiality that survives the termination of their engagement with Absolute. Absolute will ensure that access to Personal Data is limited to those personnel performing services in accordance with the Service Agreement.

3.5. **Personal Data Breaches.** Upon becoming aware of a Personal Data Breach, Absolute will use its commercially reasonable best efforts to notify Customer without undue delay, and will provide such timely information as Customer may reasonably require to enable Customer to fulfil any data reporting obligations under the EU Data Protection Law. Absolute will take all commercially reasonable steps to promptly identify and remediate the cause of such Personal Data Breach.

4. **Assistance.**

4.1. **Data Subject Requests.** Absolute will provide commercially reasonable assistance, at Customer's cost, to enable Customer to respond to any Data Subject Request. In the event a Data Subject Request is made directly to Absolute, Absolute will promptly redirect the request to Customer. For greater certainty, Customer is responsible for responding to Data Subject Requests. Absolute will not respond to such communication directly without Customer's prior authorization, unless legally required to do so. If Absolute is required to respond to such a request, Absolute will, to the extent legally permitted, promptly notify Customer.

4.2. **Requests from Authorities.** Absolute will provide commercially reasonable assistance, at Customer's cost, to permit Customer to respond to any requests from or audits by applicable data protection authorities relating to the processing of Personal Data under the Service Agreement, to the extent Customer does not otherwise have access to the relevant information and to the extent such information is available to Absolute.

4.3. **DPIAs and Prior Consultations.** Absolute will, upon reasonable notice and at Customer's cost, provide reasonably requested information regarding the Services to enable Customer to carry out DPIAs and/or prior consultations with data protection authorities, to the extent Customer does not otherwise have access to the relevant information and to the extent such information is available to Absolute.

5. **Data Transfers.** Absolute may transfer and process Personal Data from the EEA or Switzerland to Canada and, if applicable, other countries where Absolute maintains data processing operations, as necessary to provide the Services as set forth in the Service Agreement, subject to compliance with EU Data Protection Law. The parties acknowledge that Canada has been recognized by the European Commission as providing an adequate level of protection for Personal Data. If Absolute intends to transfer Personal Data from the EEA or Switzerland to a country not recognized by the European Commission as providing an adequate level of protection for Personal Data, such transfers will be subject to any Binding Corporate Rules that may be adopted by Absolute, or if no such Binding Corporate Rules have been adopted, then such transfers will not

be permitted until such time as the parties enter into standard contractual clauses approved by the European Commission, or unless otherwise required or permitted under applicable laws including the EU Data Protection Law.

6. **Sub-processors.** Customer acknowledges and agrees that Absolute's Affiliates may act as Sub-processors, and Absolute may engage third-party Sub-processors in connection with the provision of the Services. In the event that Absolute engages third-party Sub-processors, Absolute will enter into a written agreement with each Sub-processor containing data protection obligations no less protective than those set out in this DPA with respect to the protection of Personal Data, to the extent applicable to the nature of the Services provided by each Sub-processor. Absolute will be responsible for the acts and omissions of its Sub-processors that cause Absolute to breach any of Absolute's obligations under this DPA.
7. **Deletion of Personal Data.** Following termination of the Service Agreement, Absolute will use its commercially reasonable best efforts to delete, obfuscate, de-anonymize or remove (or, if applicable, return) all Personal Data in Absolute's possession or control except to the extent Absolute is required by applicable laws to retain some or all of the Personal Data, or pursuant to Absolute's internal records retention policies. In such event, Absolute will extend the protections of this DPA to such Personal Data and limit any further processing of such Personal Data to only those limited purposes that require the retention, for so long as Absolute retains the Personal Data.
8. **Relationship with Service Agreement.** Any claims brought under this DPA will be subject to the terms and conditions set forth in the Service Agreement, including but not limited to the exclusions and limitations of liability set out in the Service Agreement. In the event of a conflict between this DPA and the Service Agreement, the terms of this DPA will govern.

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REQUEST FOR QUOTATION
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/21/2018)

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end statewide contract for the purchase of computers and peripherals.

The purpose of this RFQ is to seek bids from interested original equipment manufacturers (OEM) capable of providing desktops, laptops, netbooks, tablet PCs (without integrated cellular service), monitors, and other peripheral equipment for those products.

The successful bidder must provide full support capability, as requested, including, but not limited to, configuration, support and maintenance.

The State's intent is to contract with a single vendor enabling the State to standardize its desktop and mobile equipment base for the life of the contract.

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.

2.1 "Agency" is any entity seeking good/services under this Contract.

2.2 "ARO" means after receipt of order.

2.3 "Business class machines" means computers that offer more features for professional work, such as fingerprint readers, remote desktop control software, and encryption tools. The professional operating system version that comes on business PCs is also more suited for workers than the home version.

2.4 "Contract" is the binding agreement that is entered into between the State and the Vendor to provide the items requested in the solicitation

2.5 "Contract Item" or "Contract Items" means the list of items identified in Section 3.1 below and on the Pricing Pages.

2.6 "FOB" stands for Free on Board which indicates that the Vendor is responsible for delivery and shipping costs.

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- 2.7 “Mandatory Requirements”** The terms “must”, “will”, “shall”, “minimum”, “maximum”, or “is/are required” identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the State. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the bid.
- 2.8 “Manufacturer”** is the company who produces the equipment.
- 2.9 “PCs”** are desktops, laptops, netbooks, and tablets.
- 2.10 “Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the solicitation responses.
- 2.11 “Refurbished reused or recycled”** means old or used computer equipment that has been restored to like-new working condition and/or appearance or computer devices that have been sent back to the factory to fix a flaw.
- 2.12 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.13 “TPM”** means Trusted Platform Module
- 2.14 “Absolute DDS”** means Absolute Data and Device Security with Bios Enabled data and asset protection tool integrated deep within a computer, helps detect and enforce compliance and accountability for at-risk data on devices, and assists in recovery efforts.
- 2.15 “HDD”** means Hard Disk Drive
- 2.16 “SSD”** means Solid State Drive
- 2.17 “OEM”** means Original Equipment Manufacturer
- 2.18 “Vendor”** means any entity submitting a bid in response to this solicitation, the entity that has been selected as the lowest responsible vendor, or the entity that has been awarded the Contract as context requires.
- 2.19 “OS”** means Operating System
- 2.20 “MB”** means Megabyte

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2.21 “GB” means Gigabyte

2.22 “DVD/RW” means a disc drive that can read and record DVDs

2.23 “USB” means Universal Serial Bus

2.24 “PCI-E” means Peripheral Component Interconnect Express

2.25 “HD” means High Definition

2.26 “HDMI” means High Definition Multimedia Interface

2.27 “DVI” means Digital Visual Interface

2.28 “VGA” means Video Graphics Array

2.29 “LAN” means Local Area Network

2.30 “TB” means Terabyte

2.31 “SATA” means Serial AT Attachment

2.32 “FIPS-201” means Federal Information Processing Standard Publication 201

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.1.1 All platforms in this solicitation must be offered with the same operating system.

3.1.2 Standard PC:

3.1.2.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

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- 3.1.2.2 Processor:** Latest generation process technology, minimum Intel Core i5 or equal with minimum 4 cores and 6MB cache
- 3.1.2.3 RAM:** Minimum 8GB Single DIMM, expandable up to 16GB
- 3.1.2.4 Hard Drive:** Minimum 500GB HDD
- 3.1.2.5 Keyboard:** USB or Wireless
- 3.1.2.6 Mouse:** USB or Wireless, 2-button with scroll
- 3.1.2.7 Optical Drive:** Internal DVD/RW
- 3.1.2.8 USB Ports:** Minimum 4 USB ports; at least 2 USB v3.0 or C
- 3.1.2.9 Expansion Slots:** Minimum 2 slots available PCI-E
- 3.1.2.10 Display/Graphics:** Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.
- 3.1.2.11 Network Interface:** Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan
- 3.1.2.12 TPM Version 2.0**
- 3.1.2.13 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional charge.
- 3.1.2.14 Absolute DDS or equal - Complete 5 years.** Five years begins at activation of license and lasts for five (5) calendar years from activation date.

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3.1.2.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.3 POWER PC:

3.1.3.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.3.2 Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal, 4 cores and minimum 8MB cache.

3.1.3.3 RAM: Minimum 16GB, with free slots, expandable up to 32GB

3.1.3.4 Hard Drive: Minimum 256GB HDD

3.1.3.5 Keyboard: USB or Wireless

3.1.3.6 Mouse: USB or Wireless, 2-button with scroll

3.1.3.7 Optical Drive: Internal DVD/RW

3.1.3.8 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

3.1.3.9 Expansion Slots: Minimum 2 slots available PCI-E

3.1.3.10 Display/Graphics: Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.

3.1.3.11 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.3.12 TPM Version 2.0

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3.1.3.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.3.14 Absolute DDS or equal - Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.3.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.4 **FIXED WORKSTATION:**

3.1.4.1 Chassis: Full size tower

3.1.4.2 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.4.3 Processor: Latest generation processor technology, minimum Intel Xeon or equal with minimum 8 cores and 13MB cache.

3.1.4.4 RAM: Minimum 32GB, with free slots, expandable up to 128GB

3.1.4.5 Hard Drive: Minimum 256GB SSD Primary Drive minimum and 1TB SATA HDD Secondary

3.1.4.6 Keyboard: USB or Wireless

3.1.4.7 Mouse: USB or Wireless, 2-button with scroll

3.1.4.8 Power Supply: Minimum of 600w or greater

3.1.4.9 Optical Drive: Internal DVD/RW

3.1.4.10 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

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3.1.4.11 Expansion Slots: 4 slots available PCI-E

3.1.4.12 Video: Installed 2GB (non-shared memory), discreet, DVI-D and/or Display Port Dual Link Monitor capable, support for DirectX 11, with minimum color depth 24bit.

3.1.4.13 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.4.14 TPM Version 2.0

3.1.4.15 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.4.16 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.4.17 Energy Consumption: Unit must be ENERGY Star Certified

3.1.5 STANDARD LAPTOP:

3.1.5.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.5.2 Processor: Latest generation processor technology, minimum Intel Core i5 Processor or equal with a minimum of 4 cores and 6MB cache.

3.1.5.3 RAM: Minimum 8GB Single DIMM, expandable up to 16GB

3.1.5.4 Hard Drive: Minimum 500GB HDD, upgrade option to SSD

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- 3.1.5.5 Camera: Integrated Webcam**
- 3.1.5.6 USB Ports: Minimum 3 USB ports; with a minimum of 1 USB v3.0 and 1 USBC (charging)**
- 3.1.5.7 Display/Graphics: Integrated HD Graphics, 15” display or greater**
- 3.1.5.8 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan**
- 3.1.5.9 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2**
- 3.1.5.10 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader**
- 3.1.5.11 Power: A/C Adapter**
- 3.1.5.12 TPM Version 2.0**
- 3.1.5.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.**
- 3.1.5.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.**
- 3.1.5.15 Energy Consumption: Unit must be ENERGY Star Certified**
- 3.1.5.16 Optional Optical Drive: Internal DVD/RW**

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3.1.6 POWER LAPTOP:

- 3.1.6.1** Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.
- 3.1.6.2** Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal with a minimum of 4 cores and 8MB cache.
- 3.1.6.3** RAM: Minimum 16GB Single DIMM, expandable up to 32GB
- 3.1.6.4** Hard Drive: Minimum 256GB SSD
- 3.1.6.5** Camera: Integrated Webcam
- 3.1.6.6** USB Ports: Minimum 3 USB ports; minimum of 1 USB v3.0 and 1 USBC (charging)
- 3.1.6.7** Display/Graphics: Integrated HD Graphics, 17" display or greater
- 3.1.6.8** Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan
- 3.1.6.9** Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2
- 3.1.6.10** Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader
- 3.1.6.11** Power: A/C Adapter
- 3.1.6.12** TPM Version 2.0
- 3.1.6.13** Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

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3.1.6.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.6.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.6.16 Optional Optical Drive: Internal DVD/RW

3.1.7 TABLET PC:

3.1.7.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.7.2 Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal with minimum 2 cores and minimum 4MB cache.

3.1.7.3 RAM: Minimum 8GB

3.1.7.4 Hard Drive: Minimum 256GB SSD, upgrade option to 512B SSD

3.1.7.5 Keyboard: Backlit

3.1.7.6 Mouse: Glide or Trackpad

3.1.7.7 Camera: Integrated Webcam

3.1.7.8 USB Ports: Minimum 1 USB v3.0 and 1 USBC (charging)

3.1.7.9 Display/Graphics: Integrated HD Graphics, 13” display or greater

3.1.7.10 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2

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3.1.7.11 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader

3.1.7.12 Power: A/C Adapter

3.1.7.13 TPM Version 2.0

3.1.7.14 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included.

3.1.7.15 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.7.16 Energy Consumption: Unit must be ENERGY Star Certified

3.1.8 OPTIONAL COMPONENTS AND SERVICES

3.1.8.1 MONITORS:

3.1.8.1.1 Flat Panel Monitor 20" or greater, Aspect Ratio of 16:9 or greater, Minimum Resolution 1600x900

3.1.8.1.2 Flat Panel Monitor 24", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.1.3 Flat Panel Monitor 27", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.2 Docking Station for Standard Laptop: Optional OEM USB-C Powered Docking Station compatible with Standard Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

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3.1.8.3 Docking Station for Power Laptop: Optional OEM USB-C Powered Docking Station compatible with Power Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.4 Docking Station for Tablet: Optional OEM USB-C Powered Docking Station compatible with Tablet. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.5 Optional DVD/RW Drive: If DVD/RW drive is not an internal component to the Standard Laptop and Power Laptop, the Vendor should provide pricing for an optional external DVD/RW drive.

3.1.8.6 Optional Accidental Damage Coverage for all mobile equipment to cover everything the standard four-year warranty does not cover.

3.1.8.7 Optional 512GB SSD 2.5"

3.1.9 MISCELLANEOUS MANDATORY REQUIREMENTS

3.1.9.1 Technical Requirements:

3.1.9.1.1 All computers provided under this contract must be business-class machines, as specified in Section 2 of these specifications

3.1.9.1.2 All computing equipment offered in the Vendor's response must be OEM products. Vendors must provide detailed specification sheets for all proposed products upon request. It is preferred that specification sheets be submitted with the bid. Vendors who fail to provide the required specification sheets within the allotted timeframe will be disqualified.

3.1.9.1.3 All new equipment must be delivered to the State with new components only, not refurbished, used or recycled components. If providing replacement parts, the WVOT, while preferring new parts, will accept "like new" refurbished parts with the same warranty offered for new parts. Shipping cost for returns must be paid by vendor.

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- 3.1.9.1.4** All hardware provided under this contract must be a minimum of Energy Star 5.0 compliant.
- 3.1.9.1.5** All Desktops and Monitors must meet minimum Electronic Product Environmental Assessment Tool (EPEAT) Silver certification. The vendor must provide documentation proving level of certification with specification sheets upon request. The Vendor must ensure equipment meets the latest EPEAT registration requirements before it is delivered. It is preferred certification documentation be provided with the bid.
- 3.1.9.1.6** Vendor must stock spare parts for ALL proposed equipment, for the duration of the warranty period.
- 3.1.9.1.7** Each model provided under this contract must have consistent hardware configurations, meaning that all machines of the same make or model must have the same components.
- 3.1.9.1.8** Vendor must inform the State in writing, sixty (60) days prior to replacement, of any platform revisions it intends to make. Written notification may be made by e-mail and sent to OTPCContract@wv.gov.
- 3.1.9.1.9** Vendor must provide at no additional charge the State with two (2) free of charge units of all initial and subsequent replacement PC, laptop, and tablet contract models. The State will use this time to test the equipment and images. It is the State's right to accept or reject any proposed model replacements.
- 3.1.9.1.10** Vendor must guarantee that any replacement units meet, or exceed, the current model's specifications. Vendor must guarantee any proposed replacement units are of equivalent pricing (equal to, or less than) to initially bid units.
- 3.1.9.1.11** Current models must be available for purchase by the State, until the proposed replacement units have been approved by the State and a Change Order has been fully executed.

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3.1.9.1.12 If the computing equipment experiences “repeated failure” in the first year of ownership, the Vendor must replace the computing unit with a new unit of the same make and model or a model equal to or better than what is currently provided under the contract.

3.1.9.1.12.1 The State defines “repeated failure” to be, at a minimum, the following: three instances of parts failure with no more than two instances on the same part within one year after the machine is installed.

3.1.9.1.13 The State must have the ability to remove the hard drive before returning any equipment to the Vendor.

3.1.9.2 Shipping, Ordering, Billing:

3.1.9.2.1 Vendor must provide Next Business Day (NBD) delivery of replacement parts for all equipment.

3.1.9.2.2 Vendor must provide immediate replacement equipment for any new machines which do not function properly out of the box, at no cost to the Agency, within five (5) business days

3.1.9.3 Support and Contacts:

3.1.9.3.1 Vendor must identify by name and location the proposed primary account representative and immediate supervisor who shall be responsible for the performance of the contract. Such notification may be included in the bid response but must be provided within no less than five (5) business days from the date of contract award. Vendor must immediately notify the Office of Technology and the WV Purchasing Division if/when these contacts change.

3.1.9.3.2 The successful vendor must provide a customer support telephone number Monday-Friday 8:00 AM to 5:00 PM EST to resolve billing and shipping issues. Billing issues shall be resolved within five (5) business days.

3.1.9.3.3 Vendor must provide direct, via telephone, second level technical access to support all equipment offered.

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3.1.9.3.4 Vendor must provide a parts and support website for access by State technical staff.

3.1.9.3.5 Vendor must provide the State of West Virginia Office of Technology and the Purchasing Division with a detailed, quarterly report in excel format indicating the State Agency, model, serial number(s), cost, and delivery location for all purchases made under the contract. The report shall also include a listing of all service calls associated with this agreement, including the location and nature of service required. These reports must be sent to OTPurchasingRequest@wv.gov

3.1.9.3.6 The Vendor must agree to establish Quarterly Reviews and/or mutually agreed upon calls to discuss contract issues, questions, concerns, and performance.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown in the Pricing Pages and wvOASIS.

Renewal options for years 2, 3, and 4 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

4.2 Pricing Pages: Vendor should complete the Pricing Pages by filling in the price per requested unit. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

4.2.1 The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate annual volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

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- 4.2.2** Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes if unable to access the one provided in wvOasis by sending an email request to the following address: Mark.A.Atkins@wv.gov
- 4.2.3** Vendor should provide with their bid a copy of any Software Terms and Conditions or licenses that the State of West Virginia or the Agency may have to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.
- 4.2.4** Vendor should include with their bid a copy of any and all Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency may be required to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.

5 ORDERING AND PAYMENT:

5.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

5.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6 DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within sixteen (16) working days after orders are received. Vendor shall deliver emergency orders within five (5) working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

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6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

6.2.1 Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

6.3 Delivery Payment/Risk of Loss: Standard order delivery shall be FOB destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be FOB the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion. **Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within thirty (30) days of receipt, FOB Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7 VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.

7.1.2 Failure to comply with other specifications and requirements contained herein.

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7.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

7.1.4 Failure to remedy deficient performance upon request.

7.2 The following remedies shall be available to Agency upon default.

7.2.1 Immediate cancellation of the Contract.

7.2.2 Immediate cancellation of one or more release orders issued under this Contract.

7.2.3 Any other remedies available in law or equity.

8 MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

8.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

8.4 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: Cyndi Radel
Telephone Number: 231-747-9294
Fax Number: _____
Email Address: cyndi.radel@dell.com



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

State of West Virginia
Request for Quotation
21 - Info Technology

Proc Folder: 481611

Doc Description: ADDENDUM_1: (IP19) Statewide Contract: Computer Equip. & Acc

Proc Type: Statewide MA (Open End)

Date Issued	Solicitation Closes	Solicitation No	Version
2018-09-10	2018-09-26 13:30:00	CRFQ 0212 SWC1900000001	2

BID RECEIVING LOCATION

BID CLERK

DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION

2019 WASHINGTON ST E

CHARLESTON

WV 25305

US

VENDOR

Vendor Name, Address and Telephone Number:

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
(304) 558-2307
mark.a.atkins@wv.gov

Signature X

FEIN #

DATE

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION:

ADDENDUM 1: Is issued for the following:

1. To move the bid opening date from 09/18/2018 to 09/26/2018 at 1:30pm EDT.
2. To publish the Agency responses to the questions submitted by Vendors during the Technical Questioning period.
3. To publish revised specifications (Specifications Revised 9-10-2018).
4. To Publish revised Exhibit_A Pricing Page (Revised 9-10-2018).

No other changes made.

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end Statewide Contract for the purchase of Computers and Peripherals per the attached documents.

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Standard PC	4000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.2 Standard PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Power PC	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.3 Power PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Fixed Workstation	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.4 Fixed Workstation

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Standard Laptop	2000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.5 Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Power Laptop	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.6 Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Tablet PC	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.7 Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	20" Monitor	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.1 20" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
B	24" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.2 24" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	27" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.3 27" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Docking Station for Standard Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.2 Docking Station for Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
11	Docking Station for Power Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.3 Docking Station for Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
12	Docking Station for Tablet PC	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.4 Docking Station for Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
13	Optional: External DVD/RW Drive	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.5 Optional External DVD/RW Drive

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
14	Accidental Damage Coverage	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.6 Accidental Damage Coverage

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
15	512GB SSD 2.5"	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.7 512GB SSD 2.5"

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
18	Upgraded Video Card	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.8 Upgraded Video Card

SCHEDULE OF EVENTS		
Line	Event	Event Date
1	Technical Questions due by 2:00pm:	2018-09-06

SOLICITATION NUMBER: CRFQ 0212 SWC1900000001
Addendum Number: 1

The purpose of this addendum is to modify the solicitation identified as CRFQ 0212 SWC1900000001 ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☒ **Modify bid opening date and time**
- ☒ **Modify specifications of product or service being sought**
- ☒ **Attachment of vendor questions and responses**
- ☐ **Attachment of pre-bid sign-in sheet**
- ☐ **Correction of error**
- ☒ **Attach Revised Specifications and Pricing Page**

Description of Modification to Solicitation:

- 1. To move the bid opening date from 09/18/2018 to 09/26/2018 at 1:30pm EDT.**
- 2. To publish the Agency responses to the questions submitted by Vendors during the Technical Questioning period.**
- 3. To publish revised specifications (Specifications Revised 9-10-2018).**
- 4. To Publish revised Exhibit_A Pricing Page (Revised 9-10-2018).**

No other changes made.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

- 1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.**
- 2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.**

CRFQ 0212 SWC1900000001
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/10/2018)

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end Statewide Contract for the purchase of Computers and Peripherals.

The purpose of this RFQ is to seek bids from interested original equipment manufacturers (OEM) capable of providing desktops, laptops, netbooks, tablet PCs (without integrated cellular service), monitors, and other peripheral equipment for those products.

The successful bidder must provide full support capability, as requested, including, but not limited to, configuration, support and maintenance.

The State's intent is to contract with a single vendor enabling the State to standardize its desktop and mobile equipment base for the life of the contract.

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.

2.1 "Agency" is any entity seeking good/services under this Contract.

2.2 "ARO" means after receipt of order.

2.3 "Business class machines" means computers that offer more features for professional work, such as fingerprint readers, remote desktop control software, and encryption tools. The professional operating system version that comes on business PCs is also more suited for workers than the home version.

2.4 "Contract" is the binding agreement that is entered into between the State and the Vendor to provide the items requested in the solicitation

2.5 "Contract Item" or "Contract Items" means the list of items identified in Section 3.1 below and on the Pricing Pages.

2.6 "FOB" stands for Free on Board which indicates that the Vendor is responsible for delivery and shipping costs.

2.7 "Mandatory Requirements" The terms "must", "will", "shall", "minimum", "maximum", or "is/are required" identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the State. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the bid.

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- 2.8 “Manufacturer”** is the company who produces the equipment.
- 2.9 “PCs”** are desktops, laptops, netbooks, and tablets.
- 2.10 “Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the solicitation responses.
- 2.11 “Refurbished reused or recycled”** means old or used computer equipment that has been restored to like-new working condition and/or appearance or computer devices that have been sent back to the factory to fix a flaw.
- 2.12 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.13 “TPM”** means Trusted Platform Module
- 2.14 “Absolute DDS”** means Absolute Data and Device Security with Bios Enabled data and asset protection tool integrated deep within a computer, helps detect and enforce compliance and accountability for at-risk data on devices, and assists in recovery efforts.
- 2.15 “HDD”** means Hard Disk Drive
- 2.16 “SSD”** means Solid State Drive
- 2.17 “OEM”** means Original Equipment Manufacturer
- 2.18 “Vendor”** means any entity submitting a bid in response to this solicitation, the entity that has been selected as the lowest responsible vendor, or the entity that has been awarded the Contract as context requires.
- 2.19 “OS”** means Operating System
- 2.20 “MB”** means Megabyte
- 2.21 “GB”** means Gigabyte
- 2.22 “DVD/RW”** means a disc drive that can read and record DVDs
- 2.23 “USB”** means Universal Serial Bus

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2.24 “PCI-E” means Peripheral Component Interconnect Express

2.25 “HD” means High Definition

2.26 “HDMI” means High Definition Multimedia Interface

2.27 “DVI” means Digital Visual Interface

2.28 “VGA” means Video Graphics Array

2.29 “LAN” means Local Area Network

2.30 “TB” means Terabyte

2.31 “SATA” means Serial AT Attachment

2.32 “FIPS-201” means Federal Information Processing Standard Publication 201

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.1.1 All platforms in this solicitation must be offered with the same operating system.

3.1.2 Standard PC:

3.1.2.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.2.2 Processor: Latest generation process technology, minimum Intel Core i5 or equal with minimum 4 cores and 6MB cache

3.1.2.3 RAM: Minimum 8GB Single DIMM, expandable up to 16GB

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3.1.2.4 Hard Drive: Minimum 500GB HDD

3.1.2.5 Keyboard: USB or Wireless

3.1.2.6 Mouse: USB or Wireless, 2-button with scroll

3.1.2.7 Optical Drive: Internal DVD/RW

3.1.2.8 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

3.1.2.9 Expansion Slots: Minimum 2 slots available PCI-E

3.1.2.10 Display/Graphics: Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.

3.1.2.11 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.2.12 TPM Version 2.0

3.1.2.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional charge.

3.1.2.14 Absolute DDS or equal - Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.2.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.3 POWER PC:

3.1.3.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

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- 3.1.3.2 Processor:** Latest generation processor technology, minimum Intel Core i7 Processor or equal, 4 cores and minimum 8MB cache.
- 3.1.3.3 RAM:** Minimum 16GB, with free slots, expandable up to 32GB
- 3.1.3.4 Hard Drive:** Minimum 256GB HDD
- 3.1.3.5 Keyboard:** USB or Wireless
- 3.1.3.6 Mouse:** USB or Wireless, 2-button with scroll
- 3.1.3.7 Optical Drive:** Internal DVD/RW
- 3.1.3.8 USB Ports:** Minimum 4 USB ports; at least 2 USB v3.0 or C
- 3.1.3.9 Expansion Slots:** Minimum 2 slots available PCI-E
- 3.1.3.10 Display/Graphics:** Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.
- 3.1.3.11 Network Interface:** Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan
- 3.1.3.12 TPM Version 2.0**
- 3.1.3.13 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.
- 3.1.3.14 Absolute DDS or equal - Complete 5 years.** Five years begins at activation of license and lasts for five (5) calendar years from activation date.
- 3.1.3.15 Energy Consumption:** Unit must be ENERGY Star Certified

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3.1.4 FIXED WORKSTATION:

3.1.4.1 Chassis: Full size tower

3.1.4.2 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.4.3 Processor: Latest generation processor technology, minimum Intel Xeon or equal with minimum 8 cores and 11MB cache.

3.1.4.4 RAM: Minimum 32GB, with free slots, expandable up to 64GB

3.1.4.5 Hard Drive: Minimum 256GB SSD Primary Drive minimum and 1TB SATA HDD Secondary

3.1.4.6 Keyboard: USB or Wireless

3.1.4.7 Mouse: USB or Wireless, 2-button with scroll

3.1.4.8 Power Supply: Minimum of 600w or greater

3.1.4.9 Optical Drive: Internal DVD/RW

3.1.4.10 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

3.1.4.11 Expansion Slots: 4 slots available PCI-E

3.1.4.12 Video: Installed 2GB (non-shared memory), discreet, DVI-D and/or Display Port Dual Link Monitor capable, support for DirectX 11, with minimum color depth 24bit.

3.1.4.13 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.4.14 TPM Version 2.0

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3.1.4.15 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.4.16 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.4.17 Energy Consumption: Unit must be ENERGY Star Certified

3.1.5 STANDARD LAPTOP:

3.1.5.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.5.2 Processor: Latest generation processor technology, minimum Intel Core i5 Processor or equal with a minimum of 4 cores and 6MB cache.

3.1.5.3 RAM: Minimum 8GB Single DIMM, expandable up to 16GB

3.1.5.4 Hard Drive: Minimum 500GB HDD, upgrade option to SSD

3.1.5.5 Camera: Integrated Webcam

3.1.5.6 USB Ports: Minimum 3 USB ports; with a minimum of 1 USB v3.0 and 1 USBC (charging)

3.1.5.7 Display/Graphics: Integrated HD Graphics, 15" display or greater

3.1.5.8 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

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3.1.5.9 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2

3.1.5.10 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader

3.1.5.11 Power: A/C Adapter

3.1.5.12 TPM Version 2.0

3.1.5.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.5.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.5.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.5.16 Optional Optical Drive: Internal DVD/RW

3.1.6 POWER LAPTOP:

3.1.6.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.6.2 Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal with a minimum of 4 cores and 8MB cache.

3.1.6.3 RAM: Minimum 16GB Single DIMM, expandable up to 32GB

3.1.6.4 Hard Drive: Minimum 256GB SSD

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3.1.6.5 Camera: Integrated Webcam

3.1.6.6 USB Ports: Minimum 3 USB ports; minimum of 1 USB v3.0 and 1 USBC (charging)

3.1.6.7 Display/Graphics: Integrated HD Graphics, 15" display or greater

3.1.6.8 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.6.9 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2

3.1.6.10 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader

3.1.6.11 Power: A/C Adapter

3.1.6.12 TPM Version 2.0

3.1.6.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.6.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.6.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.6.16 Optional Optical Drive: Internal DVD/RW

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(Revised 9/10/2018)

3.1.7 TABLET PC:

- 3.1.7.1 Operating System:** Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.
- 3.1.7.2 Processor:** Latest generation processor technology, minimum Intel Core i7 Processor or equal with 4 cores and 8MB cache.
- 3.1.7.3 RAM:** Minimum 8GB
- 3.1.7.4 Hard Drive:** Minimum 256GB SSD, upgrade option to 512B SSD
- 3.1.7.5 Keyboard:** Backlit
- 3.1.7.6 Mouse:** Glide or Trackpad
- 3.1.7.7 Camera:** Integrated Webcam, front and rear facing
- 3.1.7.8 USB Ports:** Minimum 1 USB v3.0 and 1 USBC (charging)
- 3.1.7.9 Display/Graphics:** Integrated HD Graphics, 13" display or greater
- 3.1.7.10 Wireless Adapter:** Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2
- 3.1.7.11 Smart Card Reader:** Integrated FIPS-201 compliant Smart Card Reader
- 3.1.7.12 Power:** A/C Adapter
- 3.1.7.13 TPM Version 2.0**
- 3.1.7.14 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included.

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(Revised 9/10/2018)

3.1.7.15 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.7.16 Energy Consumption: Unit must be ENERGY Star Certified

3.1.8 OPTIONAL COMPONENTS AND SERVICES

3.1.8.1 MONITORS:

3.1.8.1.1 Flat Panel Monitor 20" or greater, Aspect Ratio of 16:9 or greater, Minimum Resolution 1600x900

3.1.8.1.2 Flat Panel Monitor 24", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.1.3 Flat Panel Monitor 27", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.2 Docking Station for Standard Laptop: Optional OEM USB-C Powered Docking Station compatible with Standard Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.3 Docking Station for Power Laptop: Optional OEM USB-C Powered Docking Station compatible with Power Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.4 Docking Station for Tablet: Optional OEM USB-C Powered Docking Station compatible with Tablet. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.5 Optional DVD/RW Drive: If DVD/RW drive is not an internal component to the Standard Laptop and Power Laptop, the Vendor should provide pricing for an optional external DVD/RW drive.

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(Revised 9/10/2018)

3.1.8.6 Optional Accidental Damage Coverage for all mobile equipment to cover everything the standard four-year warranty does not cover.

3.1.8.7 Optional 512GB SSD 2.5"

3.1.8.8 Optional Video Card Upgrade for Fixed Workstation: Vendor must provide an optional upgraded video card that can be used in the Fixed Workstation. The video card must be a minimum 8GB internal memory graphics card NVIDIA Quadro or GTX, or equal, with capabilities to run professional computer-aided design, computer-generated imagery, and digital content creation applications.

3.1.9 MISCELLANEOUS MANDATORY REQUIREMENTS

3.1.9.1 Technical Requirements:

3.1.9.1.1 All computers provided under this contract must be business-class machines, as specified in Section 2 of these specifications

3.1.9.1.2 All computing equipment offered in the Vendor's response must be OEM products. Vendors must provide detailed specification sheets for all proposed products upon request. It is preferred that specification sheets be submitted with the bid. Vendors who fail to provide the required specification sheets within the allotted timeframe will be disqualified.

3.1.9.1.3 All new equipment must be delivered to the State with new components only, not refurbished, used or recycled components. If providing replacement parts, the WVOT, while preferring new parts, will accept "like new" refurbished parts with the same warranty offered for new parts. Shipping cost for returns must be paid by vendor.

3.1.9.1.4 All hardware provided under this contract must be a minimum of Energy Star 5.0 compliant.

3.1.9.1.5 All Desktops and Monitors must meet minimum Electronic Product Environmental Assessment Tool (EPEAT) Silver certification. The vendor must provide documentation proving level of certification with specification sheets upon request. The Vendor must ensure equipment meets the latest EPEAT registration requirements before it is delivered. It is preferred certification documentation be provided with the bid.

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- 3.1.9.1.6** Vendor must stock spare parts for ALL proposed equipment, for the duration of the warranty period.
- 3.1.9.1.7** Each model provided under this contract must have consistent hardware configurations, meaning that all machines of the same make or model must have the same components.
- 3.1.9.1.8** Vendor must inform the State in writing, sixty (60) days prior to replacement, of any platform revisions it intends to make. Written notification may be made by e-mail and sent to OTPCContract@wv.gov.
- 3.1.9.1.9** Vendor must provide at no additional charge the State with two (2) free of charge units of all initial and subsequent replacement PC, laptop, and tablet contract models. The State will use this time to test the equipment and images. It is the State's right to accept or reject any proposed model replacements.
- 3.1.9.1.10** Vendor must guarantee that any replacement units meet, or exceed, the current model's specifications. Vendor must guarantee any proposed replacement units are of equivalent pricing (equal to, or less than) to initially bid units.
- 3.1.9.1.11** Current models must be available for purchase by the State, until the proposed replacement units have been approved by the State and a Change Order has been fully executed.
- 3.1.9.1.12** If the computing equipment experiences "repeated failure" in the first year of ownership, the Vendor must replace the computing unit with a new unit of the same make and model or a model equal to or better than what is currently provided under the contract.
 - 3.1.9.1.12.1** The State defines "repeated failure" to be, at a minimum, the following: three instances of parts failure with no more than two instances on the same part within one year after the machine is installed.
- 3.1.9.1.13** The State must have the ability to remove the hard drive before returning any equipment to the Vendor.

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3.1.9.2 Shipping, Ordering, Billing:

3.1.9.2.1 Vendor must provide Next Business Day (NBD) delivery of replacement parts for all equipment.

3.1.9.2.2 Vendor must provide immediate replacement equipment for any new machines which do not function properly out of the box, at no cost to the Agency, within five (5) business days

3.1.9.3 Support and Contacts:

3.1.9.3.1 Vendor must identify by name and location the proposed primary account representative and immediate supervisor who shall be responsible for the performance of the contract. Such notification may be included in the bid response but must be provided within no less than five (5) business days from the date of contract award. Vendor must immediately notify the Office of Technology and the WV Purchasing Division if/when these contacts change.

3.1.9.3.2 The successful vendor must provide a customer support telephone number Monday-Friday 8:00 AM to 5:00 PM EST to resolve billing and shipping issues. Billing issues shall be resolved within five (5) business days.

3.1.9.3.3 Vendor must provide direct, via telephone, second level technical access to support all equipment offered.

3.1.9.3.4 Vendor must provide a parts and support website for access by State technical staff.

3.1.9.3.5 Vendor must provide the State of West Virginia Office of Technology and the Purchasing Division with a detailed, quarterly report in excel format indicating the State Agency, model, serial number(s), cost, and delivery location for all purchases made under the contract. The report shall also include a listing of all service calls associated with this agreement, including the location and nature of service required. These reports must be sent to OTPurchasingRequest@wv.gov

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3.1.9.3.6 The Vendor must agree to establish Quarterly Reviews and/or mutually agreed upon calls to discuss contract issues, questions, concerns, and performance.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown in the Pricing Pages and wvOASIS.

Renewal options for years 2, 3, and 4 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

4.2 Pricing Pages: Vendor should complete the Pricing Pages by filling in the price per requested unit. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

4.2.1 The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate annual volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

4.2.2 Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes if unable to access the one provided in wvOasis by sending an email request to the following address: Mark.A.Atkins@wv.gov

4.2.3 Vendor should provide with their bid a copy of any Software Terms and Conditions or licenses that the State of West Virginia or the Agency may have to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.

4.2.4 Vendor should include with their bid a copy of any and all Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency may be required to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.

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5 ORDERING AND PAYMENT:

5.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

5.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6 DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within sixteen (16) working days after orders are received. Vendor shall deliver emergency orders within five (5) working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

6.2.1 Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

6.3 Delivery Payment/Risk of Loss: Standard order delivery shall be FOB destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

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6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be FOB the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion. **Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within thirty (30) days of receipt, FOB Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7 VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

7.2 The following remedies shall be available to Agency upon default.

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.

8 MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

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8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

8.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

8.4 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

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Est. Quantity	Specification	Manufacturer Name	Manufacturer Part Number	Item Description	Extended Description	Unit of Measure	List Price	Extended Price
4000	3.1.2			Standard PC		EA	\$ -	\$ -
1000	3.1.3			Power PC		EA	\$ -	\$ -
500	3.1.4			Fixed Workstation		EA	\$ -	\$ -
2000	3.1.5			Standard Laptop		EA	\$ -	\$ -
1000	3.1.6			Power Laptop		EA	\$ -	\$ -
500	3.1.7			Tablet		EA	\$ -	\$ -
1000	3.1.8.1.1			20" Monitor		EA	\$ -	\$ -
500	3.1.8.1.2			24" Monitor		EA	\$ -	\$ -
500	3.1.8.1.3			27" Monitor		EA	\$ -	\$ -
100	3.1.8.2			Dock for Standard Laptop		EA	\$ -	\$ -
100	3.1.8.3			Dock for Power Laptop		EA	\$ -	\$ -
100	3.1.8.4			Dock for Tablet		EA	\$ -	\$ -
100	3.1.8.5			DVD/RW Drive		EA	\$ -	\$ -
100	3.1.8.6			Accidental Damage Coverage		EA	\$ -	\$ -
100	3.1.8.7			512 GB SSD 2.5"		EA	\$ -	\$ -
100	3.1.8.8			Upgraded Video Card		EA	\$ -	\$ -
TOTAL PRICE								\$0.00

Vendor Name: _____

Contact Name: _____

Email: _____

Phone: _____

Addendum_1

CRFQ SWC1900000001 IP19 – Open-End for Desktops, Laptops, Tablets, and Accessories
Vendor Questions and State Responses
9/6/18

Question 01

Would the State please consider a 2-week extension for RFQ responses and allow a closing date of 10/02/2018 at 1:30PM ET?

State Response 01

The State will grant an extension of one week. The new opening date will be 09/26/2018 at 1:30pm EDT.

Question 02

Liquidated damages are noted as included in the Specifications, though there is no reference to liquidated damages in the Specifications. Does that mean it is not an RFQ requirement?

State Response 02

Correct – Liquidated Damages are not included as a part of this solicitation in the specifications. Per section 11 of the General Terms and Conditions this does not limit the State or Agency's right to pursue any other available remedy.

Question 03

If required, will liquidated damages only apply to subsection 6.1, Delivery Time (Specifications page 16)?

State Response 03

See State Response 02.

Question 04

In light of anticipated increased tariffs impacting the U.S. that may increase Manufacturer's costs during the contract term, will the State permit Vendors to include language to address price increases based on publicly available documentation, should this event occur?

State Response 04.

No, the State will not include the requested language. Vendors are expected to weigh all factors that may affect pricing when submitting bids and provide pricing accordingly. Please see section 13 PRICING in the General Terms and Conditions for further clarification.

Question 05

We understand the State's position that acceptance or use of Vendor's forms does not, in fact, constitute acceptance of its terms and conditions. Would you please clarify, as we are unclear how the State can accept/use a Vendor form without agreeing to its terms/conditions?

State Response 05

The State may accept a Vendor's form (i.e., a quote, sales order form, etc.), but the State's acceptance of a form does not constitute acceptance of the Vendor's terms and conditions contained on that form. For example, an order form or invoice submitted after contract award will not be permitted to override contract terms.

Question 06

The required reports specified in Sections 40 (General Terms) and 8.3 (Specifications) do not include the "listing of all service calls associated with this agreement," as included in Section 3.1.9.3.5 (Specifications). Would you please clarify the required reports?

State Response 06

The State requires reports as outlined in Section 40 of the General Terms and Conditions and Specification 8.3, as well as the reporting detailed in Specification 3.1.9.3.5.

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Question 07

This paragraph references W. Va. Code § 5A-3-56, which applies to construction/public works projects. As a result, it appears that paragraph 42 does not apply to this RFQ. Would you please confirm?

State Response 07

Correct. It only applies to construction/public works projects.

Question 08

This paragraph references W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq. Since both citations apply to construction/public works projects, it appears paragraph 43 does not apply to this RFQ. Would you please confirm?

State Response 08

Correct. It only applies to construction/public works projects.

Question 09

The Standard PC requires a minimum of 2 PCI-E slots. Should the system support half-height or full height PCI-E cards?

State Response 09

Full height.

Question 10

What is the reason for 4 years of warranty and 5 years of Absolute DDS?

State Response 10

The State would like to have Absolute DDS for non-warranted machines.

Question 11

Would the State accept 4- and 5-year extended warranties with Absolute DDS bundled in?

State Response 11

No, the State will keep the specifications as written.

Question 12

The Power PC requires a minimum of 2 PCI-E slots. Should the system support half-height or full height PCI-E cards?

State Response 12

Full height.

Question 13

A 256 HDD was requested for the Power Desktop. Does the State require a 256 7200 RPM drive or a 256 SSD option?

State Response 13

256 SSD is mandatory.

Question 14

The newer Intel Xeon 8 core processor available today (Intel® Xeon® W2145 (3.7 GHz base frequency, up to 4.5 GHz with Intel® Turbo Boost Technology, 11 MB cache, 8 cores)) has 11MB cache. This request is for 8 Cores and 13MB cache minimum. Can this be changed from 13MB to 11MB cache minimum to be able to use the current newer Intel Xeon 8 Core processor available today?

State Response 14

If referring to Specification 3.1.4.3, the specification has been modified.

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Question 15

The move towards thinner and lighter laptops is diminishing the demand for 17" displays. Would it be possible to move to a 15.6" screen instead – a lighter option for your users? Are there any applications that need to be run that require ISV certification?

State Response 15

The specifications for the Power Laptop have been modified. Please refer to the revised specifications.

Question 16

Is a pen/stylus required as an option for the Tablet PC?

State Response 16

No.

Question 17

In most Tablet devices the RAM sticks are soldered on to the unit. Does the Tablet need to be RAM upgradable post sale, or can we offer factory RAM upgrade options?

State Response 17

The specifications for the Tablet PC have been modified. Please refer to the revised specifications.

Question 18

A 32GB RAM upgrade in a Tablet form factor takes us into the Workstation category. As a cost savings, would the State consider a Tablet that goes up to 16GB of RAM?

State Response 18

Please see State Response 17.

Question 19

Are there any height adjustability requirements for the monitors?

State Response 19

No.

Question 20

Most OEMs do not manufacture external SSD drives. Would the State accept third-party products?

State Response 20

Yes.

Question 21

EPEAT is making changes to the criteria for certification classifications that affect new product transitions in November 2018, and existing products proposed that may not transition until after May 2019. Based on this information; if any product proposed changes to a certification below the Silver minimum during the contract term, for specific products required or transitioned, will the State allow for EPEAT-level specification changes through the State's change order process?

State Response 21

If a product were to fall-out of the mandatory Silver certification requirements, the Vendor must replace the product with another equal to or greater than the originally bid unit, which would include being Silver-certified.

Question 22

Does the State need Second Level Support for every support call, or just have it available when it is necessary?

State Response 22

Second level support on all calls.

Attachment_A

Addendum_1

CRFQ SWC1900000001 IP19 – Open-End for Desktops, Laptops, Tablets, and Accessories

Vendor Questions and State Responses

9/6/18

Question 23

Does the State require pricing to be returned in the original Exhibit A Pricing Page Excel file (*CRFQ SWC1900000001 Exhibit_A Pricing Page.xlsx*) or, can Vendors provide only a pdf version of the Exhibit A Pricing Page? Or does the State require both?

State Response 23

Please refer to Specification 4.2 Pricing Pages for pricing submission.

Question 24

Please define what the State considers an "unacceptable" Contract Item?

State Response 24

Unacceptable is defined by the State as new, out-of-the-box non-functioning equipment or equipment other than what the Agency has ordered.

Question 25

Will the State agree that it will notify Vendor (in writing) within ten (10) business days after receipt of Contract Items, of any Contract Items that meet the definition of "unacceptable?"

State Response 25

Due to the nature of this agreement, the State cannot commit to a timeframe for notifications.

Question 26

Disk retention/defective media retention is not listed in any of the specification requirements. Can you confirm whether or not the State requires this?

State Response 26

Please refer to Specification 3.1.9.1.13.

Question 27

On the wvOASIS portal, under the Respond To Lines tab, is the "Additional Specs" section only used when Alternative Specs are being proposed?

State Response 27

The Additional specifications tab may be utilized to provide additional product information to verify compliance with mandatory requirements.

Question 28

Is it necessary to complete this information if Vendors are including datasheets?

State Response 28

No. Vendors are permitted to submit additional data sheets to other product literature to verify compliance with mandatory requirements.

Question 29

On the wvOASIS portal, under the Respond To Lines tab, the "Alternate Specs Submitted" checkbox is unable to be selected/checked. Is it necessary for Vendors to select this box when including Alternate Specs?

State Response 29

No, vendors will need to confirm that alternate products supplied meet the mandatory requirements listed in the specifications. This can be accomplished with data sheets or other product literature and does not require the checking of the alternate specs submitted box.

Question 30

If so, would you please correct the wvOASIS portal? (Refer to Question 22 Screen Shot on the following pages)

State Response 30

See response 29 above. For problems in wvOasis, please contact the Oasis help desk for assistance.

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Question 31

Can Vendors upload more than one attachment or does the State prefer one complete pdf attachment?

State Response 31

While one complete pdf attachment is most convenient, the Vendor can upload all necessary documentation in multiple attachments.

Question 32

In order to provide the best possible pricing please verify the size flexibility in present day Laptops (12" 13" 14", & Tablet, tower (Full side vs Mini). Some options are opened up under different sizing configurations if the state is open to them.

State Response 32

The specifications, as written, are minimum mandatories. These represent the minimum specifications the State will accept.

Question 33

Under the section 3.1.6.7 Power Laptop. Would the State accept a lesser screen size than 17" for this type of device since the standard Power Laptop today is more frequently 15".

State Response 33

Please see State Response 15.

Question 34

3.1.1.6 – Is the state flexible on the optional optical drive since current industry standards have gone to an external optical drive?

State Response 34

Specification 3.1.1.6 does not exist in this solicitation, so the State is unsure to which specification this is referring; however, please refer to Specification 3.1.8.5 for the State's position on external optical drives.

Question 35

Is it the desire of the State to keep their hard drives when sending the devices out for service/repair given the sensitive material they may contain?

State Response 35

Please see Specification 3.1.9.1.13.

Question 36

Is it the desire of the State to asset tag each device prior to delivery?

State Response 36

No, the State will be responsible for asset management.

Question 37

Is it the desire of the State to have the device(s) imaged prior to delivery or manually by the state after the device is received?

State Response 37

The State will be responsible for imaging the units after they are received.

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Question 38

Would the State be open to considering additional configuration standards related to higher-end engineering (CAD) workstation-like devices?

State Response 38

The State has added an optional video card to the solicitation as Specification 3.1.8.8 for use in the Fixed Workstation. All other requirements of the Fixed Workstation are minimum mandatory requirements. Please refer to the revised specifications published with this addendum.

Question 39

Would the State extend the response due date to by two (2) weeks after the receipt of answers in order to allow vendors to respond to the answers and respond to all requirements appropriately?

State Response 39

Please see State Response 01.

Question 40

Regarding the "Instructions to Bidders" section 11 (Exceptions and Clarifications) and "General Terms and Conditions" section 12 (Acceptance): We interpret these provisions to mean that exceptions to the T&Cs are allowed but could negatively impact the response. We also interpret this to mean that if we submit exceptions the State will not take the position that it can reject the exceptions and deem the Vendor to have accepted the original terms, and that the State will, at its option, either (i) accept the Vendor's exceptions as part of the contract (ii) negotiate a written amendment to the contract that will include mutually acceptable terms on any exceptions to which the State objects; (iii) allow the Vendor to withdraw any of its exceptions, in writing, to which the State objects; or (iv) reject the submission. Would the State please confirm or provide more detail on what will happen in the event Vendor submits exceptions to which the State does not agree to accept?

State Response 40

The statement above is accurate.

Question 41

There are several provisions that are typically found in an Agreement for the sale of the product in scope of this RFP and which are not covered by the RFP documents. Should the Vendor provide such additional terms and conditions for the State's review as part of its proposal bid? Alternatively, should the Vendor just note in its proposal that it will require additional terms and conditions which it will provide for the State's review and negotiation on mutually acceptable terms and conditions if the Vendor is the State's preferred awardee?

State Response 41

Any additional or alternate Terms and Conditions should be submitted with the Vendor's bid.

Question 42

Regarding the "General Terms and Conditions" section 11(Liquidated Damages): The liquidated damages section has a checkmark for liquidated damages contained in the Specifications, which we couldn't find in the Specifications document. Would the State please verify that it is not pursuing liquidated damages under this RFP award, or otherwise clarify?

State Response 42

Please see State Response 02.

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Question 43

Regarding the "General Terms and Conditions" section 26: Will the State agree that the software (including that which is provided by vendor with the hardware) will be subject to the software license terms that accompany the software (for example, a Windows O/S will be subject to Microsoft's software license agreement, and the hardware manufacturer's software tools on the system will be subject to that manufacturer's software license agreement)? If not, under what terms and conditions does the State believe the software will be licensed for use by the purchasing end-users, and what is the process for the end-user purchasers to execute the license agreements?

State Response 43

The State understands some software products contain additional terms and conditions. The Vendor should supply, with its bid, any and all terms and conditions it seeks to incorporate as part of this agreement.

Question 44

Regarding the "General Terms and Conditions" sections 42 (Preference for use of domestic steel) and 43 (Preference for use of domestic aluminum, glass and steel): We believe these are not applicable, would the State please confirm?

State Response 44

Please see State Response 08.

Question 45

Regarding the "Specifications" section 4.1 Does any renewal (years 2, 3 and 4) require the agreement of the Vendor at that time, or are you stating that Vendor commits now that it has agreed to the renewal in advance?

State Response 45

The Vendor and the State must mutually agree to renew the agreement on a year-to-year basis. If agreed upon, the optional annual renewals will be governed under the same pricing, specifications, and terms and conditions of the original agreement.

Question 46

Regarding the "Specifications" section, number 4.2.3 and 4.2.4. Does the State agree that the terms and conditions provided by Vendor will apply to the purchase if the Vendor is awarded the contract, unless the State requests to negotiate these terms? If not, how will the process work for a sale under the RFP issued contract when a software license and/or a maintenance agreement are required for the sale? Will a link to these items be sufficient for the RFP response?

State Response 46

The Vendor, with its bid, should provide the State a copy of any and all Terms and Conditions it is seeking to incorporate into the agreement, including, but not limited to, maintenance, software, and hardware. The Vendor must provide these documents prior to award.

Question 47

Regarding the "Specifications" section 6.4: Please define "deemed unacceptable." Please indicate a time period under which the Agency can deem such item "acceptable" and therefore subject to the warranty terms and not returned under section 6.4.

State Response 47

Please see State Response 24 and 25.

Question 48

Will the State agree to negotiate a reasonable monetary cap for direct damages?

State Response 48

The State is Constitutionally prohibited from taking on the debt of a third party and any liability limit that is deemed to violate this restriction will be rejected.

Question 49

Will the State agree that the Vendor will not be liable for any special, indirect, incidental, exemplary, reliance, consequential or punitive damages, loss of profits or revenue, or loss of data, whether based on breach of Contract, tort (including negligence), product liability or otherwise?

State Response 49

The State has historically allowed liability limits on special, incidental or consequential damages and will do so in this solicitation.

Question 50

Section 3.1.2.14, (Absolute DDS) Is BIOS enablement required? Do we need to do a theft recovery services?

State Response 50

Yes, BIOS enablement is required. The State is unsure what is meant by the second part of the question. Theft recovery services are a part of the license – the Vendor would supply the State with an Absolute DDS license for the State's use.

Question 51

Section 3.1.3.12, Will PTT work in place of TPM Version 2.0?

State Response 51

No.



Purchasing Division
2019 Washington Street East
Post Office Box 60130
Charleston, WV 25305-0130

State of West Virginia
Request for Quotation
21 — Info Technology

Proc Folder: 481611

Doc Description: ADDENDUM_2: (IP19) Statewide Contract: Computer Equip. & Acc

Proc Type: Statewide MA (Open End)

Date Issued	Solicitation Closes	Solicitation No	Version
2018-09-11	2018-09-26 13:30:00	CRFQ 0212 SWC1900000001	3

BID RECEIVING LOCATION

BID CLERK

DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION

2019 WASHINGTON ST E

CHARLESTON

WV 25305

US

VENDOR

Vendor Name, Address and Telephone Number:

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
(304) 558-2307
mark.a.atkins@wv.gov

Signature X

FEIN #

DATE

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION:

ADDENDUM 2: Is issued for the following:

1. To publish the Agency's response to the questions submitted by Vendors during the Technical Questioning period that were inadvertently omitted in addendum_1.

No other changes made.

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end Statewide Contract for the purchase of Computers and Peripherals per the attached documents.

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Standard PC	4000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.2 Standard PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Power PC	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.3 Power PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Fixed Workstation	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.4 Fixed Workstation

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Standard Laptop	2000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.5 Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Power Laptop	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.6 Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Tablet PC	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.7 Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	20" Monitor	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.1 20" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	24" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.2 24" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	27" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.3 27" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Docking Station for Standard Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.2 Docking Station for Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
11	Docking Station for Power Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.3 Docking Station for Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
12	Docking Station for Tablet PC	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.4 Docking Station for Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
13	Optional: External DVD/RW Drive	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.5 Optional External DVD/RW Drive

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
14	Accidental Damage Coverage	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.6 Accidental Damage Coverage

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
15	512GB SSD 2.5"	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.7 512GB SSD 2.5"

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
16	Upgraded Video Card	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.8 Upgraded Video Card

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Questions due by 2:00pm:	2018-09-06

SOLICITATION NUMBER: CRFQ 0212 SWC1900000001

Addendum Number: 2

The purpose of this addendum is to modify the solicitation identified as CRFQ 0212 SWC1900000001 ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☐ Modify bid opening date and time
- ☐ Modify specifications of product or service being sought
- ☐ Attachment of vendor questions and responses
- ☐ Attachment of pre-bid sign-in sheet
- ☒ Correction of error
- ☐ Other

Description of Modification to Solicitation:

1. To publish the Agency's response to the questions submitted by Vendors during the Technical Questioning period that were inadvertently omitted in addendum_1.

No other changes made.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

Attachment_A

Addendum_2

CRFQ SWC19*01 IP19 – Open-End for Desktops, Laptops, Tablets, and Accessories

Vendor Questions and State Responses inadvertently omitted in addendum_1

9/11/18

Question 01

Are there any applications that need to be run that require ISV certification?

State Response 01

ISV certification is not a requirement.

Question 02

Does the Tablet PC need to have a detachable keyboard or is a convertible laptop to tablet form factor required?

State Response 02

Laptop-to-Tablet convertible is required with an attached, integrated keyboard.



Purchasing Division
2019 Washington Street East
Post Office Box 60130
Charleston, WV 25305-0130

State of West Virginia
Request for Quotation
21 - Info Technology

Proc Folder: 481611

Doc Description: ADDENDUM_3: (IP19) Statewide Contract: Computer Equip. & Acc

Proc Type: Statewide MA (Open End)

Date Issued	Solicitation Closes	Solicitation No	Version
2018-09-18	2018-09-26 13:30:00	CRFQ 0212 SWC1900000001	4

BID RECEIVING LOCATION

BID CLERK
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON ST E
CHARLESTON WV 25305
US

VENDOR

Vendor Name, Address and Telephone Number:

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
(304) 558-2307
mark.a.atkins@wv.gov

Signature X

FEIN #

DATE

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION:

ADDENDUM 3: Is issued for the following:

1. To revise Specification 3.1.4.4 to read "expandable to 64GB" to now read "expandable to 128GB"
2. To publish the Specifications revised 9/18/2018 to include the new language for 3.1.4.4.

No other changes made.

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end Statewide Contract for the purchase of Computers and Peripherals per the attached documents.

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Standard PC	4000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.2 Standard PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Power PC	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.3 Power PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Fixed Workstation	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.4 Fixed Workstation

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Standard Laptop	2000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.5 Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Power Laptop	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.6 Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Tablet PC	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.7 Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	20" Monitor	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.1 20" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV88899	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	24" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.2 24" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	27" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.3 27" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Docking Station for Standard Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.2 Docking Station for Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
11	Docking Station for Power Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.3 Docking Station for Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
12	Docking Station for Tablet PC	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.4 Docking Station for Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
13	Optional: External DVD/RW Drive	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.5 Optional External DVD/RW Drive

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
14	Accidental Damage Coverage	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.6 Accidental Damage Coverage

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
15	512GB SSD 2.5"	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.7 512GB SSD 2.5"

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
16	Upgraded Video Card	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.8 Upgraded Video Card

SCHEDULE OF EVENTS		
Line	Event	Event Date
1	Technical Questions due by 2:00pm.	2018-09-06

SOLICITATION NUMBER: CRFQ 0212 SWC1900000001

Addendum Number: 3

The purpose of this addendum is to modify the solicitation identified as CRFQ 0212 SWC1900000001 ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☐ Modify bid opening date and time
- ☒ Modify specifications of product or service being sought
- ☐ Attachment of vendor questions and responses
- ☐ Attachment of pre-bid sign-in sheet
- ☐ Correction of error
- ☐ Other

Description of Modification to Solicitation:

1. To revise Specification 3.1.4.4 to read "expandable to 64GB" to now read "expandable to 128GB"
2. To publish the Specifications revised 9/18/2018 to include the new language for 3.1.4.4.

No other changes made.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

CRFQ 0212 SWC1900000001
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/18/2018)

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end Statewide Contract for the purchase of Computers and Peripherals.

The purpose of this RFQ is to seek bids from interested original equipment manufacturers (OEM) capable of providing desktops, laptops, netbooks, tablet PCs (without integrated cellular service), monitors, and other peripheral equipment for those products.

The successful bidder must provide full support capability, as requested, including, but not limited to, configuration, support and maintenance.

The State's intent is to contract with a single vendor enabling the State to standardize its desktop and mobile equipment base for the life of the contract.

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.

2.1 "Agency" is any entity seeking good/services under this Contract.

2.2 "ARO" means after receipt of order.

2.3 "Business class machines" means computers that offer more features for professional work, such as fingerprint readers, remote desktop control software, and encryption tools. The professional operating system version that comes on business PCs is also more suited for workers than the home version.

2.4 "Contract" is the binding agreement that is entered into between the State and the Vendor to provide the items requested in the solicitation

2.5 "Contract Item" or "Contract Items" means the list of items identified in Section 3.1 below and on the Pricing Pages.

2.6 "FOB" stands for Free on Board which indicates that the Vendor is responsible for delivery and shipping costs.

2.7 "Mandatory Requirements" The terms "must", "will", "shall", "minimum", "maximum", or "is/are required" identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the State. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the bid.

Revised 10/27/2014

CRFQ 0212 SWC1900000001
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/18/2018)

- 2.8 “Manufacturer”** is the company who produces the equipment.
- 2.9 “PCs”** are desktops, laptops, netbooks, and tablets.
- 2.10 “Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the solicitation responses.
- 2.11 “Refurbished reused or recycled”** means old or used computer equipment that has been restored to like-new working condition and/or appearance or computer devices that have been sent back to the factory to fix a flaw.
- 2.12 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.13 “TPM”** means Trusted Platform Module
- 2.14 “Absolute DDS”** means Absolute Data and Device Security with Bios Enabled data and asset protection tool integrated deep within a computer, helps detect and enforce compliance and accountability for at-risk data on devices, and assists in recovery efforts.
- 2.15 “HDD”** means Hard Disk Drive
- 2.16 “SSD”** means Solid State Drive
- 2.17 “OEM”** means Original Equipment Manufacturer
- 2.18 “Vendor”** means any entity submitting a bid in response to this solicitation, the entity that has been selected as the lowest responsible vendor, or the entity that has been awarded the Contract as context requires.
- 2.19 “OS”** means Operating System
- 2.20 “MB”** means Megabyte
- 2.21 “GB”** means Gigabyte
- 2.22 “DVD/RW”** means a disc drive that can read and record DVDs
- 2.23 “USB”** means Universal Serial Bus

Revised 10/27/2014

CRFQ 0212 SWC1900000001
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/18/2018)

2.24 “PCI-E” means Peripheral Component Interconnect Express

2.25 “HD” means High Definition

2.26 “HDMI” means High Definition Multimedia Interface

2.27 “DVI” means Digital Visual Interface

2.28 “VGA” means Video Graphics Array

2.29 “LAN” means Local Area Network

2.30 “TB” means Terabyte

2.31 “SATA” means Serial AT Attachment

2.32 “FIPS-201” means Federal Information Processing Standard Publication 201

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.1.1 All platforms in this solicitation must be offered with the same operating system.

3.1.2 Standard PC:

3.1.2.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.2.2 Processor: Latest generation process technology, minimum Intel Core i5 or equal with minimum 4 cores and 6MB cache

3.1.2.3 RAM: Minimum 8GB Single DIMM, expandable up to 16GB

Revised 10/27/2014

CRFQ 0212 SWC1900000001
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/18/2018)

3.1.2.4 Hard Drive: Minimum 500GB HDD

3.1.2.5 Keyboard: USB or Wireless

3.1.2.6 Mouse: USB or Wireless, 2-button with scroll

3.1.2.7 Optical Drive: Internal DVD/RW

3.1.2.8 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

3.1.2.9 Expansion Slots: Minimum 2 slots available PCI-E

3.1.2.10 Display/Graphics: Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.

3.1.2.11 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.2.12 TPM Version 2.0

3.1.2.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional charge.

3.1.2.14 Absolute DDS or equal - Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.2.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.3 POWER PC:

3.1.3.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

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- 3.1.3.2 Processor:** Latest generation processor technology, minimum Intel Core i7 Processor or equal, 4 cores and minimum 8MB cache.
- 3.1.3.3 RAM:** Minimum 16GB, with free slots, expandable up to 32GB
- 3.1.3.4 Hard Drive:** Minimum 256GB HDD
- 3.1.3.5 Keyboard:** USB or Wireless
- 3.1.3.6 Mouse:** USB or Wireless, 2-button with scroll
- 3.1.3.7 Optical Drive:** Internal DVD/RW
- 3.1.3.8 USB Ports:** Minimum 4 USB ports; at least 2 USB v3.0 or C
- 3.1.3.9 Expansion Slots:** Minimum 2 slots available PCI-E
- 3.1.3.10 Display/Graphics:** Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.
- 3.1.3.11 Network Interface:** Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan
- 3.1.3.12 TPM Version 2.0**
- 3.1.3.13 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.
- 3.1.3.14 Absolute DDS or equal - Complete 5 years.** Five years begins at activation of license and lasts for five (5) calendar years from activation date.
- 3.1.3.15 Energy Consumption:** Unit must be ENERGY Star Certified

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3.1.4 FIXED WORKSTATION:

3.1.4.1 Chassis: Full size tower

3.1.4.2 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.4.3 Processor: Latest generation processor technology, minimum Intel Xeon or equal with minimum 8 cores and 11MB cache.

3.1.4.4 RAM: Minimum 32GB, with free slots, expandable up to 128GB

3.1.4.5 Hard Drive: Minimum 256GB SSD Primary Drive minimum and 1TB SATA HDD Secondary

3.1.4.6 Keyboard: USB or Wireless

3.1.4.7 Mouse: USB or Wireless, 2-button with scroll

3.1.4.8 Power Supply: Minimum of 600w or greater

3.1.4.9 Optical Drive: Internal DVD/RW

3.1.4.10 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

3.1.4.11 Expansion Slots: 4 slots available PCI-E

3.1.4.12 Video: Installed 2GB (non-shared memory), discreet, DVI-D and/or Display Port Dual Link Monitor capable, support for DirectX 11, with minimum color depth 24bit.

3.1.4.13 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.4.14 TPM Version 2.0

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3.1.4.15 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.4.16 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.4.17 Energy Consumption: Unit must be ENERGY Star Certified

3.1.5 STANDARD LAPTOP:

3.1.5.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.5.2 Processor: Latest generation processor technology, minimum Intel Core i5 Processor or equal with a minimum of 4 cores and 6MB cache.

3.1.5.3 RAM: Minimum 8GB Single DIMM, expandable up to 16GB

3.1.5.4 Hard Drive: Minimum 500GB HDD, upgrade option to SSD

3.1.5.5 Camera: Integrated Webcam

3.1.5.6 USB Ports: Minimum 3 USB ports; with a minimum of 1 USB v3.0 and 1 USBC (charging)

3.1.5.7 Display/Graphics: Integrated HD Graphics, 15" display or greater

3.1.5.8 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

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3.1.5.9 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2

3.1.5.10 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader

3.1.5.11 Power: A/C Adapter

3.1.5.12 TPM Version 2.0

3.1.5.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.5.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.5.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.5.16 Optional Optical Drive: Internal DVD/RW

3.1.6 POWER LAPTOP:

3.1.6.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.6.2 Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal with a minimum of 4 cores and 8MB cache.

3.1.6.3 RAM: Minimum 16GB Single DIMM, expandable up to 32GB

3.1.6.4 Hard Drive: Minimum 256GB SSD

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- 3.1.6.5 Camera: Integrated Webcam**
- 3.1.6.6 USB Ports: Minimum 3 USB ports; minimum of 1 USB v3.0 and 1 USBC (charging)**
- 3.1.6.7 Display/Graphics: Integrated HD Graphics, 15" display or greater**
- 3.1.6.8 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan**
- 3.1.6.9 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2**
- 3.1.6.10 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader**
- 3.1.6.11 Power: A/C Adapter**
- 3.1.6.12 TPM Version 2.0**
- 3.1.6.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.**
- 3.1.6.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.**
- 3.1.6.15 Energy Consumption: Unit must be ENERGY Star Certified**
- 3.1.6.16 Optional Optical Drive: Internal DVD/RW**

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3.1.7 TABLET PC:

- 3.1.7.1 Operating System:** Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.
- 3.1.7.2 Processor:** Latest generation processor technology, minimum Intel Core i7 Processor or equal with 4 cores and 8MB cache.
- 3.1.7.3 RAM:** Minimum 8GB
- 3.1.7.4 Hard Drive:** Minimum 256GB SSD, upgrade option to 512B SSD
- 3.1.7.5 Keyboard:** Backlit
- 3.1.7.6 Mouse:** Glide or Trackpad
- 3.1.7.7 Camera:** Integrated Webcam, front and rear facing
- 3.1.7.8 USB Ports:** Minimum 1 USB v3.0 and 1 USBC (charging)
- 3.1.7.9 Display/Graphics:** Integrated HD Graphics, 13" display or greater
- 3.1.7.10 Wireless Adapter:** Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2
- 3.1.7.11 Smart Card Reader:** Integrated FIPS-201 compliant Smart Card Reader
- 3.1.7.12 Power:** A/C Adapter
- 3.1.7.13 TPM Version 2.0**
- 3.1.7.14 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included.

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3.1.7.15 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.7.16 Energy Consumption: Unit must be ENERGY Star Certified

3.1.8 OPTIONAL COMPONENTS AND SERVICES

3.1.8.1 MONITORS:

3.1.8.1.1 Flat Panel Monitor 20" or greater, Aspect Ratio of 16:9 or greater, Minimum Resolution 1600x900

3.1.8.1.2 Flat Panel Monitor 24", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.1.3 Flat Panel Monitor 27", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.2 Docking Station for Standard Laptop: Optional OEM USB-C Powered Docking Station compatible with Standard Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.3 Docking Station for Power Laptop: Optional OEM USB-C Powered Docking Station compatible with Power Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.4 Docking Station for Tablet: Optional OEM USB-C Powered Docking Station compatible with Tablet. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.5 Optional DVD/RW Drive: If DVD/RW drive is not an internal component to the Standard Laptop and Power Laptop, the Vendor should provide pricing for an optional external DVD/RW drive.

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3.1.8.6 Optional Accidental Damage Coverage for all mobile equipment to cover everything the standard four-year warranty does not cover.

3.1.8.7 Optional 512GB SSD 2.5"

3.1.8.8 Optional Video Card Upgrade for Fixed Workstation: Vendor must provide an optional upgraded video card that can be used in the Fixed Workstation. The video card must be a minimum 8GB internal memory graphics card NVIDIA Quadro or GTX, or equal, with capabilities to run professional computer-aided design, computer-generated imagery, and digital content creation applications.

3.1.9 MISCELLANEOUS MANDATORY REQUIREMENTS

3.1.9.1 Technical Requirements:

3.1.9.1.1 All computers provided under this contract must be business-class machines, as specified in Section 2 of these specifications

3.1.9.1.2 All computing equipment offered in the Vendor's response must be OEM products. Vendors must provide detailed specification sheets for all proposed products upon request. It is preferred that specification sheets be submitted with the bid. Vendors who fail to provide the required specification sheets within the allotted timeframe will be disqualified.

3.1.9.1.3 All new equipment must be delivered to the State with new components only, not refurbished, used or recycled components. If providing replacement parts, the WVOT, while preferring new parts, will accept "like new" refurbished parts with the same warranty offered for new parts. Shipping cost for returns must be paid by vendor.

3.1.9.1.4 All hardware provided under this contract must be a minimum of Energy Star 5.0 compliant.

3.1.9.1.5 All Desktops and Monitors must meet minimum Electronic Product Environmental Assessment Tool (EPEAT) Silver certification. The vendor must provide documentation proving level of certification with specification sheets upon request. The Vendor must ensure equipment meets the latest EPEAT registration requirements before it is delivered. It is preferred certification documentation be provided with the bid.

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- 3.1.9.1.6** Vendor must stock spare parts for ALL proposed equipment, for the duration of the warranty period.
- 3.1.9.1.7** Each model provided under this contract must have consistent hardware configurations, meaning that all machines of the same make or model must have the same components.
- 3.1.9.1.8** Vendor must inform the State in writing, sixty (60) days prior to replacement, of any platform revisions it intends to make. Written notification may be made by e-mail and sent to OTPCContract@wv.gov.
- 3.1.9.1.9** Vendor must provide at no additional charge the State with two (2) free of charge units of all initial and subsequent replacement PC, laptop, and tablet contract models. The State will use this time to test the equipment and images. It is the State's right to accept or reject any proposed model replacements.
- 3.1.9.1.10** Vendor must guarantee that any replacement units meet, or exceed, the current model's specifications. Vendor must guarantee any proposed replacement units are of equivalent pricing (equal to, or less than) to initially bid units.
- 3.1.9.1.11** Current models must be available for purchase by the State, until the proposed replacement units have been approved by the State and a Change Order has been fully executed.
- 3.1.9.1.12** If the computing equipment experiences "repeated failure" in the first year of ownership, the Vendor must replace the computing unit with a new unit of the same make and model or a model equal to or better than what is currently provided under the contract.
 - 3.1.9.1.12.1** The State defines "repeated failure" to be, at a minimum, the following: three instances of parts failure with no more than two instances on the same part within one year after the machine is installed.
- 3.1.9.1.13** The State must have the ability to remove the hard drive before returning any equipment to the Vendor.

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3.1.9.2 Shipping, Ordering, Billing:

3.1.9.2.1 Vendor must provide Next Business Day (NBD) delivery of replacement parts for all equipment.

3.1.9.2.2 Vendor must provide immediate replacement equipment for any new machines which do not function properly out of the box, at no cost to the Agency, within five (5) business days

3.1.9.3 Support and Contacts:

3.1.9.3.1 Vendor must identify by name and location the proposed primary account representative and immediate supervisor who shall be responsible for the performance of the contract. Such notification may be included in the bid response but must be provided within no less than five (5) business days from the date of contract award. Vendor must immediately notify the Office of Technology and the WV Purchasing Division if/when these contacts change.

3.1.9.3.2 The successful vendor must provide a customer support telephone number Monday-Friday 8:00 AM to 5:00 PM EST to resolve billing and shipping issues. Billing issues shall be resolved within five (5) business days.

3.1.9.3.3 Vendor must provide direct, via telephone, second level technical access to support all equipment offered.

3.1.9.3.4 Vendor must provide a parts and support website for access by State technical staff.

3.1.9.3.5 Vendor must provide the State of West Virginia Office of Technology and the Purchasing Division with a detailed, quarterly report in excel format indicating the State Agency, model, serial number(s), cost, and delivery location for all purchases made under the contract. The report shall also include a listing of all service calls associated with this agreement, including the location and nature of service required. These reports must be sent to OTPurchasingRequest@wv.gov

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- 3.1.9.3.6** The Vendor must agree to establish Quarterly Reviews and/or mutually agreed upon calls to discuss contract issues, questions, concerns, and performance.

4. CONTRACT AWARD:

- 4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown in the Pricing Pages and wvOASIS.

Renewal options for years 2, 3, and 4 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

- 4.2 Pricing Pages:** Vendor should complete the Pricing Pages by filling in the price per requested unit. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

- 4.2.1** The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate annual volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

- 4.2.2** Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes if unable to access the one provided in wvOasis by sending an email request to the following address: Mark.A.Atkins@wv.gov

- 4.2.3** Vendor should provide with their bid a copy of any Software Terms and Conditions or licenses that the State of West Virginia or the Agency may have to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.

- 4.2.4** Vendor should include with their bid a copy of any and all Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency may be required to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.

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5 ORDERING AND PAYMENT:

5.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

5.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6 DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within sixteen (16) working days after orders are received. Vendor shall deliver emergency orders within five (5) working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

6.2.1 Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

6.3 Delivery Payment/Risk of Loss: Standard order delivery shall be FOB destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

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6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be FOB the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion. **Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within thirty (30) days of receipt, FOB Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7 VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

7.2 The following remedies shall be available to Agency upon default.

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.

8 MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

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8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

8.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

8.4 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____



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

State of West Virginia
Request for Quotation
21 -- Info Technology

Proc Folder: 481611

Doc Description: ADDENDUM_4: (IP19) Statewide Contract: Computer Equip. & Acc

Proc Type: Statewide MA (Open End)

Date Issued	Solicitation Closes	Solicitation No	Version
2018-09-21	2018-09-28 13:30:00	CRFQ 0212 SWC1900000001	5

BID RECEIVING LOCATION

BID CLERK

DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION

2019 WASHINGTON ST E

CHARLESTON

WV 25305

US

VENDOR

Vendor Name, Address and Telephone Number:

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins

(304) 558-2307

mark.a.atkins@wv.gov

Signature X

FEIN #

DATE

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION:

ADDENDUM 4: Is issued for the following:

1. To move the bid opening date from 09/26/2018 to 09/28/2018 at 1:30pm EDT.
2. To publish revised specifications (Specifications Revised 9-21-2018).

No other changes made.

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end Statewide Contract for the purchase of Computers and Peripherals per the attached documents.

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Standard PC	4000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.2 Standard PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Power PC	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.3 Power PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Fixed Workstation	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.4 Fixed Workstation

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Standard Laptop	2000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.5 Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Power Laptop	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.6 Power Laptop

INVOICE TO	SHIP TO
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER
No City US	No City US
WV99999	WV 99999

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Tablet PC	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.7 Tablet PC

INVOICE TO	SHIP TO
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER
No City US	No City US
WV99999	WV 99999

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	20" Monitor	1000.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.1.1 20" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	24" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.2 24" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	27" Monitor	500.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.1.3 27" Monitor

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Docking Station for Standard Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.2 Docking Station for Standard Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
11	Docking Station for Power Laptop	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.3 Docking Station for Power Laptop

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
12	Docking Station for Tablet PC	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :

3.1.8.4 Docking Station for Tablet PC

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
13	Optional: External DVD/RW Drive	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1 8.5 Optional External DVD/RW Drive

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
14	Accidental Damage Coverage	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.6 Accidental Damage Coverage

INVOICE TO		SHIP TO	
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER		STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER	
No City	WV99999	No City	WV 99999
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
15	512GB SSD 2.5"	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.7 512GB SSD 2.5"

INVOICE TO	SHIP TO
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER
No City WV99999	No City WV 99999
US	US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
16	Upgraded Video Card	100.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43210000			

Extended Description :
3.1.8.8 Upgraded Video Card

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Questions due by 2:00pm:	2018-09-06

SOLICITATION NUMBER: CRFQ 0212 SWC1900000001

Addendum Number: 4

The purpose of this addendum is to modify the solicitation identified as CRFQ 0212 SWC1900000001 ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☒ **Modify bid opening date and time**
- ☒ **Modify specifications of product or service being sought Specifications 3.1.7.2 and 3.1.7.7 have been modified.**
- ☐ **Attachment of vendor questions and responses**
- ☐ **Attachment of pre-bid sign-in sheet**
- ☐ **Correction of error**
- ☒ **Attach Revised Specifications**

Description of Modification to Solicitation:

- 1. To move the bid opening date from 09/26/2018 to 09/28/2018 at 1:30pm EDT.**
- 2. To publish revised specifications (Specifications Revised 9-21-2018).**

No other changes made.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

- 1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.**
- 2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.**

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SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end statewide contract for the purchase of computers and peripherals.

The purpose of this RFQ is to seek bids from interested original equipment manufacturers (OEM) capable of providing desktops, laptops, netbooks, tablet PCs (without integrated cellular service), monitors, and other peripheral equipment for those products.

The successful bidder must provide full support capability, as requested, including, but not limited to, configuration, support and maintenance.

The State's intent is to contract with a single vendor enabling the State to standardize its desktop and mobile equipment base for the life of the contract.

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.

- 2.1 "Agency"** is any entity seeking good/services under this Contract.
- 2.2 "ARO"** means after receipt of order.
- 2.3 "Business class machines"** means computers that offer more features for professional work, such as fingerprint readers, remote desktop control software, and encryption tools. The professional operating system version that comes on business PCs is also more suited for workers than the home version.
- 2.4 "Contract"** is the binding agreement that is entered into between the State and the Vendor to provide the items requested in the solicitation
- 2.5 "Contract Item" or "Contract Items"** means the list of items identified in Section 3.1 below and on the Pricing Pages.
- 2.6 "FOB"** stands for Free on Board which indicates that the Vendor is responsible for delivery and shipping costs.

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- 2.7 “Mandatory Requirements”** The terms “must”, “will”, “shall”, “minimum”, “maximum”, or “is/are required” identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the State. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the bid.
- 2.8 “Manufacturer”** is the company who produces the equipment.
- 2.9 “PCs”** are desktops, laptops, netbooks, and tablets.
- 2.10 “Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the solicitation responses.
- 2.11 “Refurbished reused or recycled”** means old or used computer equipment that has been restored to like-new working condition and/or appearance or computer devices that have been sent back to the factory to fix a flaw.
- 2.12 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.13 “TPM”** means Trusted Platform Module
- 2.14 “Absolute DDS”** means Absolute Data and Device Security with Bios Enabled data and asset protection tool integrated deep within a computer, helps detect and enforce compliance and accountability for at-risk data on devices, and assists in recovery efforts.
- 2.15 “HDD”** means Hard Disk Drive
- 2.16 “SSD”** means Solid State Drive
- 2.17 “OEM”** means Original Equipment Manufacturer
- 2.18 “Vendor”** means any entity submitting a bid in response to this solicitation, the entity that has been selected as the lowest responsible vendor, or the entity that has been awarded the Contract as context requires.
- 2.19 “OS”** means Operating System
- 2.20 “MB”** means Megabyte

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2.21 “GB” means Gigabyte

2.22 “DVD/RW” means a disc drive that can read and record DVDs

2.23 “USB” means Universal Serial Bus

2.24 “PCI-E” means Peripheral Component Interconnect Express

2.25 “HD” means High Definition

2.26 “HDMI” means High Definition Multimedia Interface

2.27 “DVI” means Digital Visual Interface

2.28 “VGA” means Video Graphics Array

2.29 “LAN” means Local Area Network

2.30 “TB” means Terabyte

2.31 “SATA” means Serial AT Attachment

2.32 “FIPS-201” means Federal Information Processing Standard Publication 201

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.1.1 All platforms in this solicitation must be offered with the same operating system.

3.1.2 Standard PC:

3.1.2.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

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- 3.1.2.2 Processor:** Latest generation process technology, minimum Intel Core i5 or equal with minimum 4 cores and 6MB cache
- 3.1.2.3 RAM:** Minimum 8GB Single DIMM, expandable up to 16GB
- 3.1.2.4 Hard Drive:** Minimum 500GB HDD
- 3.1.2.5 Keyboard:** USB or Wireless
- 3.1.2.6 Mouse:** USB or Wireless, 2-button with scroll
- 3.1.2.7 Optical Drive:** Internal DVD/RW
- 3.1.2.8 USB Ports:** Minimum 4 USB ports; at least 2 USB v3.0 or C
- 3.1.2.9 Expansion Slots:** Minimum 2 slots available PCI-E
- 3.1.2.10 Display/Graphics:** Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.
- 3.1.2.11 Network Interface:** Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan
- 3.1.2.12 TPM Version 2.0**
- 3.1.2.13 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional charge.
- 3.1.2.14 Absolute DDS or equal - Complete 5 years.** Five years begins at activation of license and lasts for five (5) calendar years from activation date.

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3.1.2.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.3 POWER PC:

3.1.3.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.3.2 Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal, 4 cores and minimum 8MB cache.

3.1.3.3 RAM: Minimum 16GB, with free slots, expandable up to 32GB

3.1.3.4 Hard Drive: Minimum 256GB HDD

3.1.3.5 Keyboard: USB or Wireless

3.1.3.6 Mouse: USB or Wireless, 2-button with scroll

3.1.3.7 Optical Drive: Internal DVD/RW

3.1.3.8 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

3.1.3.9 Expansion Slots: Minimum 2 slots available PCI-E

3.1.3.10 Display/Graphics: Integrated HD Graphics with Dual Monitor Support. HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA.

3.1.3.11 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.3.12 TPM Version 2.0

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3.1.3.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.3.14 Absolute DDS or equal - Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.3.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.4 FIXED WORKSTATION:

3.1.4.1 Chassis: Full size tower

3.1.4.2 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.4.3 Processor: Latest generation processor technology, minimum Intel Xeon or equal with minimum 8 cores and 13MB cache.

3.1.4.4 RAM: Minimum 32GB, with free slots, expandable up to 128GB

3.1.4.5 Hard Drive: Minimum 256GB SSD Primary Drive minimum and 1TB SATA HDD Secondary

3.1.4.6 Keyboard: USB or Wireless

3.1.4.7 Mouse: USB or Wireless, 2-button with scroll

3.1.4.8 Power Supply: Minimum of 600w or greater

3.1.4.9 Optical Drive: Internal DVD/RW

3.1.4.10 USB Ports: Minimum 4 USB ports; at least 2 USB v3.0 or C

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3.1.4.11 Expansion Slots: 4 slots available PCI-E

3.1.4.12 Video: Installed 2GB (non-shared memory), discreet, DVI-D and/or Display Port Dual Link Monitor capable, support for DirectX 11, with minimum color depth 24bit.

3.1.4.13 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan

3.1.4.14 TPM Version 2.0

3.1.4.15 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

3.1.4.16 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.4.17 Energy Consumption: Unit must be ENERGY Star Certified

3.1.5 STANDARD LAPTOP:

3.1.5.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.5.2 Processor: Latest generation processor technology, minimum Intel Core i5 Processor or equal with a minimum of 4 cores and 6MB cache.

3.1.5.3 RAM: Minimum 8GB Single DIMM, expandable up to 16GB

3.1.5.4 Hard Drive: Minimum 500GB HDD, upgrade option to SSD

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- 3.1.5.5 Camera: Integrated Webcam**
- 3.1.5.6 USB Ports: Minimum 3 USB ports; with a minimum of 1 USB v3.0 and 1 USBC (charging)**
- 3.1.5.7 Display/Graphics: Integrated HD Graphics, 15" display or greater**
- 3.1.5.8 Network Interface: Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan**
- 3.1.5.9 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2**
- 3.1.5.10 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader**
- 3.1.5.11 Power: A/C Adapter**
- 3.1.5.12 TPM Version 2.0**
- 3.1.5.13 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.**
- 3.1.5.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.**
- 3.1.5.15 Energy Consumption: Unit must be ENERGY Star Certified**
- 3.1.5.16 Optional Optical Drive: Internal DVD/RW**

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3.1.6 POWER LAPTOP:

- 3.1.6.1 Operating System:** Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.
- 3.1.6.2 Processor:** Latest generation processor technology, minimum Intel Core i7 Processor or equal with a minimum of 4 cores and 8MB cache.
- 3.1.6.3 RAM:** Minimum 16GB Single DIMM, expandable up to 32GB
- 3.1.6.4 Hard Drive:** Minimum 256GB SSD
- 3.1.6.5 Camera:** Integrated Webcam
- 3.1.6.6 USB Ports:** Minimum 3 USB ports; minimum of 1 USB v3.0 and 1 USBC (charging)
- 3.1.6.7 Display/Graphics:** Integrated HD Graphics, 17" display or greater
- 3.1.6.8 Network Interface:** Integrated Gigabit Ethernet (10/100/1000) Card, Wake on Lan
- 3.1.6.9 Wireless Adapter:** Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2
- 3.1.6.10 Smart Card Reader:** Integrated FIPS-201 compliant Smart Card Reader
- 3.1.6.11 Power:** A/C Adapter
- 3.1.6.12 TPM Version 2.0**
- 3.1.6.13 Warranty:** Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included at no additional cost.

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3.1.6.14 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.6.15 Energy Consumption: Unit must be ENERGY Star Certified

3.1.6.16 Optional Optical Drive: Internal DVD/RW

3.1.7 TABLET PC:

3.1.7.1 Operating System: Windows 10 Professional or equal business class operating system with graphical user interface capable of running applications in both 64 and 32-bit architecture.

3.1.7.2 Processor: Latest generation processor technology, minimum Intel Core i7 Processor or equal with minimum 2 cores and minimum 4MB cache.

3.1.7.3 RAM: Minimum 8GB

3.1.7.4 Hard Drive: Minimum 256GB SSD, upgrade option to 512B SSD

3.1.7.5 Keyboard: Backlit

3.1.7.6 Mouse: Glide or Trackpad

3.1.7.7 Camera: Integrated Webcam

3.1.7.8 USB Ports: Minimum 1 USB v3.0 and 1 USBC (charging)

3.1.7.9 Display/Graphics: Integrated HD Graphics, 13" display or greater

3.1.7.10 Wireless Adapter: Supports 802.11ac (2x2) Wi-Fi and Bluetooth 4.2

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3.1.7.11 Smart Card Reader: Integrated FIPS-201 compliant Smart Card Reader

3.1.7.12 Power: A/C Adapter

3.1.7.13 TPM Version 2.0

3.1.7.14 Warranty: Four year onsite: minimum onsite/next day, to cover a minimum of hardware, keyboards, monitors or other issues related to internal components. Parts and labor for repairs included.

3.1.7.15 Data and Device Security: Absolute DDS or equal – Complete 5 years. Five years begins at activation of license and lasts for five (5) calendar years from activation date.

3.1.7.16 Energy Consumption: Unit must be ENERGY Star Certified

3.1.8 OPTIONAL COMPONENTS AND SERVICES

3.1.8.1 MONITORS:

3.1.8.1.1 Flat Panel Monitor 20" or greater, Aspect Ratio of 16:9 or greater, Minimum Resolution 1600x900

3.1.8.1.2 Flat Panel Monitor 24", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.1.3 Flat Panel Monitor 27", Aspect Ratio of 16:9 or greater, Minimum Resolution 1920x1080

3.1.8.2 Docking Station for Standard Laptop: Optional OEM USB-C Powered Docking Station compatible with Standard Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

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3.1.8.3 Docking Station for Power Laptop: Optional OEM USB-C Powered Docking Station compatible with Power Laptop. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.4 Docking Station for Tablet: Optional OEM USB-C Powered Docking Station compatible with Tablet. Must support dual monitors, HDMI or Display port may be substituted as long as adapters are included to support DVI and VGA. Docking stations from 3rd party manufacturers are not acceptable.

3.1.8.5 Optional DVD/RW Drive: If DVD/RW drive is not an internal component to the Standard Laptop and Power Laptop, the Vendor should provide pricing for an optional external DVD/RW drive.

3.1.8.6 Optional Accidental Damage Coverage for all mobile equipment to cover everything the standard four-year warranty does not cover.

3.1.8.7 Optional 512GB SSD 2.5"

3.1.9 MISCELLANEOUS MANDATORY REQUIREMENTS

3.1.9.1 Technical Requirements:

3.1.9.1.1 All computers provided under this contract must be business-class machines, as specified in Section 2 of these specifications

3.1.9.1.2 All computing equipment offered in the Vendor's response must be OEM products. Vendors must provide detailed specification sheets for all proposed products upon request. It is preferred that specification sheets be submitted with the bid. Vendors who fail to provide the required specification sheets within the allotted timeframe will be disqualified.

3.1.9.1.3 All new equipment must be delivered to the State with new components only, not refurbished, used or recycled components. If providing replacement parts, the WVOT, while preferring new parts, will accept "like new" refurbished parts with the same warranty offered for new parts. Shipping cost for returns must be paid by vendor.

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- 3.1.9.1.4** All hardware provided under this contract must be a minimum of Energy Star 5.0 compliant.
- 3.1.9.1.5** All Desktops and Monitors must meet minimum Electronic Product Environmental Assessment Tool (EPEAT) Silver certification. The vendor must provide documentation proving level of certification with specification sheets upon request. The Vendor must ensure equipment meets the latest EPEAT registration requirements before it is delivered. It is preferred certification documentation be provided with the bid.
- 3.1.9.1.6** Vendor must stock spare parts for ALL proposed equipment, for the duration of the warranty period.
- 3.1.9.1.7** Each model provided under this contract must have consistent hardware configurations, meaning that all machines of the same make or model must have the same components.
- 3.1.9.1.8** Vendor must inform the State in writing, sixty (60) days prior to replacement, of any platform revisions it intends to make. Written notification may be made by e-mail and sent to OTPCContract@wv.gov.
- 3.1.9.1.9** Vendor must provide at no additional charge the State with two (2) free of charge units of all initial and subsequent replacement PC, laptop, and tablet contract models. The State will use this time to test the equipment and images. It is the State's right to accept or reject any proposed model replacements.
- 3.1.9.1.10** Vendor must guarantee that any replacement units meet, or exceed, the current model's specifications. Vendor must guarantee any proposed replacement units are of equivalent pricing (equal to, or less than) to initially bid units.
- 3.1.9.1.11** Current models must be available for purchase by the State, until the proposed replacement units have been approved by the State and a Change Order has been fully executed.

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3.1.9.1.12 If the computing equipment experiences “repeated failure” in the first year of ownership, the Vendor must replace the computing unit with a new unit of the same make and model or a model equal to or better than what is currently provided under the contract.

3.1.9.1.12.1 The State defines “repeated failure” to be, at a minimum, the following: three instances of parts failure with no more than two instances on the same part within one year after the machine is installed.

3.1.9.1.13 The State must have the ability to remove the hard drive before returning any equipment to the Vendor.

3.1.9.2 Shipping, Ordering, Billing:

3.1.9.2.1 Vendor must provide Next Business Day (NBD) delivery of replacement parts for all equipment.

3.1.9.2.2 Vendor must provide immediate replacement equipment for any new machines which do not function properly out of the box, at no cost to the Agency, within five (5) business days

3.1.9.3 Support and Contacts:

3.1.9.3.1 Vendor must identify by name and location the proposed primary account representative and immediate supervisor who shall be responsible for the performance of the contract. Such notification may be included in the bid response but must be provided within no less than five (5) business days from the date of contract award. Vendor must immediately notify the Office of Technology and the WV Purchasing Division if/when these contacts change.

3.1.9.3.2 The successful vendor must provide a customer support telephone number Monday-Friday 8:00 AM to 5:00 PM EST to resolve billing and shipping issues. Billing issues shall be resolved within five (5) business days.

3.1.9.3.3 Vendor must provide direct, via telephone, second level technical access to support all equipment offered.

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3.1.9.3.4 Vendor must provide a parts and support website for access by State technical staff.

3.1.9.3.5 Vendor must provide the State of West Virginia Office of Technology and the Purchasing Division with a detailed, quarterly report in excel format indicating the State Agency, model, serial number(s), cost, and delivery location for all purchases made under the contract. The report shall also include a listing of all service calls associated with this agreement, including the location and nature of service required. These reports must be sent to OTPurchasingRequest@wv.gov

3.1.9.3.6 The Vendor must agree to establish Quarterly Reviews and/or mutually agreed upon calls to discuss contract issues, questions, concerns, and performance.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown in the Pricing Pages and wvOASIS.

Renewal options for years 2, 3, and 4 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

4.2 Pricing Pages: Vendor should complete the Pricing Pages by filling in the price per requested unit. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

4.2.1 The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate annual volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

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- 4.2.2** Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes if unable to access the one provided in wvOasis by sending an email request to the following address: Mark.A.Atkins@wv.gov
- 4.2.3** Vendor should provide with their bid a copy of any Software Terms and Conditions or licenses that the State of West Virginia or the Agency may have to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.
- 4.2.4** Vendor should include with their bid a copy of any and all Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency may be required to agree or accept as a part of this solicitation. Vendor will be required to provide before a Purchase Order is issued.

5 ORDERING AND PAYMENT:

5.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

5.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6 DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within sixteen (16) working days after orders are received. Vendor shall deliver emergency orders within five (5) working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

**CRFQ 0212 SWC1900000001
REQUEST FOR QUOTATION
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/21/2018)**

6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

6.2.1 Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

6.3 Delivery Payment/Risk of Loss: Standard order delivery shall be FOB destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be FOB the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion. **Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within thirty (30) days of receipt, FOB Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7 VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.

7.1.2 Failure to comply with other specifications and requirements contained herein.

Revised 10/27/2014

CRFQ 0212 SWC1900000001
REQUEST FOR QUOTATION
STATEWIDE CONTRACT – IP19
COMPUTERS AND PERIPHERALS
(Revised 9/21/2018)

- 7.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4 Failure to remedy deficient performance upon request.

7.2 The following remedies shall be available to Agency upon default.

- 7.2.1 Immediate cancellation of the Contract.
- 7.2.2 Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3 Any other remedies available in law or equity.

8 MISCELLANEOUS:

- 8.1 **No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 **Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.
- 8.3 **Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.4 **Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0212 SWC1900000001

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|--|--|
| ☒ Addendum No. 1 | ☐ Addendum No. 6 |
| ☒ Addendum No. 2 | ☐ Addendum No. 7 |
| ☒ Addendum No. 3 | ☐ Addendum No. 8 |
| ☒ Addendum No. 4 | ☐ Addendum No. 9 |
| ☐ Addendum No. 5 | ☐ Addendum No. 10 |

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

Dell Marketing L.P.

Company

Nicholas Stokes

Authorized Signature

September 24, 2018

Date

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

PRICING PAGE

CMA 0212 IP19

(IP19) COMPUTERS AND PERIPHERALS

Quantity	Specification	Manufacturer Name	Manufacturer Part Number	Item Description	Extended Description	Unit of Measure	List Price	Extended Price
	3.1.2	Dell	Dell OptiPlex 5060 MTXCTO	Standard PC	Mini Tower - i5/6C/8GB/8T up to 4.1GHz/65W - Mem 8GB - 500GB HDD - 4 yr Support w/PM - 5 yr Absolute	EA	\$ 525.00	\$ -
	3.1.3	Dell	Dell OptiPlex 5060 MTXCTO	Power PC	Mini Tower - i7/8C/12GB/12T up to 4.8GHz/65W - Mem 16GB - 256GB SSD - 4 yr Support w/PM - 6 yr Absolute	EA	\$ 735.00	\$ -
	3.1.4	Dell	Dell Precision 5820 Tower XCTO	Fixed Workstation	Full Tower - Xeon w-2145/3.7GHz Turbo/8C/11M Cache/140W - Mem 32GB - 256GB SSD & 1TB HDD - DVD +/-RW - 4 yr Support w/PM - 6 yr Absolute	EA	\$ 1,999.00	\$ -
	3.1.5	Dell	Dell Latitude 5590 BTX	Standard Laptop	15" Pro Notebook, i5/4C/3.6GHz, 8M Cache/1.7GHz/15W, vPro UHD 620 Gfx - 1366 x 768 HD LCD, 500GB HDD - 4 yr Support w/PM - 5 yr Absolute	EA	\$ 809.00	\$ -
	3.1.6	Dell	Dell Latitude 5590 CTO	Power Laptop	15" Pro Notebook, i7/4C/8M Cache/1.9GHz/15W, vPro UHD 620 Gfx - Mem 16GB 1366 x 768 LCD, 256GB SSD - 4 yr Support w/PM - 5 yr Absolute	EA	\$ 1,059.00	\$ -
	3.1.7	Dell	Dell Latitude 7390 2-In-1 XCTO	Tablet	13.3" Pro 2in1 - i7/4C/8M Cache/1.8GHz/15W, vPro - Mem 16GB - 1920 x 1080 LCD, Touch Display - 4 yr Support w/PM - 5 yr Absolute	EA	\$ 1,350.00	\$ -
	3.1.8.1.1	Dell	E2016H	20" Monitor	20" Display, 1600 x 900 LCD	EA	\$ 89.00	\$ -
	3.1.8.1.2	Dell	P2417H	24" Monitor	24" Display, 1920 x 1080 LCD, Audio Output	EA	\$ 139.00	\$ -
	3.1.8.1.3	Dell	P2719H	27" Monitor	27" Display, 1920 x 1080 LCD, Audio Output	EA	\$ 199.00	\$ -
	3.1.8.2 3.1.8.3 3.1.8.4	Dell	WD15	Dock for Standard Laptop Dock for Power Laptop Dock for Tablet	USB-C, 180W, Dual 4K Output, HDMI, mini Display, VGA, Ethernet, Two USB 2.0, USB 3.0, & 3.5mm Audio Jack	EA	\$ 143.00	\$ -
	3.1.8.5	Dell	DW316	DVD/RW Drive	Dell External USB Slim DVD +/-RW Optical Drive - DW316	EA	\$ 39.00	\$ -
	3.1.8.6	Dell	N/A	Accidental Damage Coverage (Absolute)	Included at No Charge for Specification Item 3.1.2; 3.1.3; 3.1.4; 3.1.5; 3.1.6; and 3.1.7	EA	\$ -	\$ -
	3.1.8.7	Dell	2280 SATA	512 GB SSD 2.5"	412 GB Solid State Drive M.2 Serial ATA 12Gbps 2.5 inch Drive - 2280	EA	\$ 194.13	\$ -
	3.1.8.8	Dell	Radeon Pro Graphics Card - WX 4100	4GB Upgraded Graphics Card	Optional 4 GB, 4 Display ports, 4H	EA	\$ 244.89	\$ -
TOTAL PRICE							\$0.00	

Vendor Name: Dell Marketing L.P.
Contact Name: Ian Ciemanla
Email: ian.ciemanla@dell.com
Phone: 304-333-3456



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/03/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MARSH RISK & INSURANCE SERVICES
345 CALIFORNIA STREET, SUITE 1300
CALIFORNIA LICENSE NO. 0437153
SAN FRANCISCO, CA 94104
Attn: Shannon Walker - shannon.walker@marsh.com

CONTACT NAME:		FAX (A/C, No):
PHONE (A/C, No, Ext):		
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Commerce & Industry Insurance Company		19410
INSURER B : N/A		N/A
INSURER C : N/A		N/A
INSURER D : National Union Fire Ins Co Pittsburgh PA		19445
INSURER E :		
INSURER F :		

INSURED
Dell Technologies Inc.
and all Subsidiaries
One Dell Way - RR1-50
Round Rock, TX 78682

SEA-003593183-01

REVISION NUMBER: 3

COVERAGES

CERTIFICATE NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			GL4611514	03/01/2018	03/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			CA7093468 (AOS) CA7093467 (MA)	03/01/2018 03/01/2018	03/01/2019 03/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Account# 000000223330
State of West Virginia is included as additional insured where required by written contract with respect to General Liability and Auto Liability.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services
Stephanie Guaiumi

Stephanie Guaiumi

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ACORD 25 (2016/03)

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Resolution No. 686-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 686-22 – Whereas, on December 6, 2021, the City Council adopted Resolution No. 569-21, which authorized the Mayor or City Manager to enter into a cooperative agreement with Kanawha County Schools regarding the administration of a project to update and enhance Celebration Station, a community playground; and

Whereas, the City of Charleston is a part of a purchasing cooperative known as Sourcewell that permits the City to leverage exceptional buying power through a nationally recognized competitive procurement process, which includes the ability to direct-purchase playground equipment from participating manufacturers at established contract rates; and

Whereas, the City of Charleston and Kanawha County Schools have worked cooperatively to identify the best design and equipment to be installed within Celebration Station; and

Whereas, since the adoption of Resolution No. 569-21, Kanawha County Schools has determined that additional equipment is necessary to complete the project; and

Whereas, Miracle Equipment Company, the City's Sourcewell playground equipment vendor, has supplied the City with a quote for the additional equipment, as enumerated in Exhibit A attached hereto; and

Whereas, The Greater Kanawha Valley Foundation will fully reimburse the City for the expense of the additional equipment purchased.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into a contract with Miracle Recreation Equipment Company in the amount of \$30,113.50 for the purchase of various equipment to be installed a Celebration Station, a community playground, where the purchase price was determined through a competitively sourced purchasing contract administered by Sourcewell and where the City will be fully reimbursed by The Greater Kanawha Valley Foundation using private funds raised by the Rotary Club of Charleston.



Miracle Recreation Equip. Co.
878 E. US Hwy 60
Monett, MO 65708
1-888-458-2752

QUOTE: 102220023

Prepared For:

Rashaun Sayles

Charleston Parks Department
200 Baker Lane
Charleston, WV 25302
(304) 348-6860 (phone)
(304) 348-0705 (fax)

Project Name & Location:

Prepared by:

Miracle Recreation c/o Metro
Recreation

4907 Camden Place North
Jefferson, MD 21755
866-470-0366 (phone)
metrorecreation.com

Ship To Address:

Rashaun Sayles
Charleston Parks Department
200 Baker Lane
Charleston, WV 25302
(304) 348-6860 (phone)

End User:

Rashaun Sayles
Charleston Parks Department
200 Baker Lane
Charleston, WV 25302
(304) 348-6860 (phone)

Quote Number: 102220023
Quote Date: 5/4/2022
Valid For: 30 Days From Quote Date

PlayArea_Q1

Product line: Play Shade
Age group: 2-12

Global defaults

Leg - Paint
Paint - Single Color
PlayShade Fire Retardant
PlayShade Paint (Post, etc)
Vinyl - Paint
Vinyl - Single Color

Components

Part Number	Description	Qty	Weight	Unit Price	Total
MRPQL05N	TRASH CAN POST SM	5	12.00	78.00	390.00
MRPQL10N	TRASH CAN LINER	5	7.00	39.00	195.00
MRPQL32	RECEPTACLE POST W/FLAT LID SM	5	125.00	597.00	2,985.00
MRPSP021F R	PLAY SHADE SGL POST PYR CANT 12X12X8 RBP FR	4	900.00	4,628.00	18,512.00
MRSG303D	BENCH W/BACK 6' DIAMOND ING	6	113.00	488.00	2,928.00

Additional Items

Part Number	Description	Qty	Weight	Unit Price	Total
925961	THUMB DRIVE 2GB - MREC	1	0.00	0.00	0.00
926021	MREC CARD F/THUMB DRIVE	1	0.00	0.00	0.00
INSTALL BOOK	INSTALL BOOK FOR PP ORDERS	1	0.00	0.00	0.00

Parts By Other

Part Number	Description	Qty	Weight	Unit Price	Total
542022	DOGIPOT PET WASTE STATION	1	0.00	639.00	639.00

Totals:

Equipment Weight:	4,998.00 lbs
Equipment List:	\$25,010.00
Discount Amount:	-\$5,002.00
Equipment Price:	\$20,008.00
Freight:	\$1,966.50
Installation:	\$7,500.00
Products by Other:	\$639.00
SubTotal:	\$30,113.50
Estimated Sales Tax*:	\$0.00
Grand Total:	\$30,113.50

Notes:

Rayshaun. I am estimating that installation would be around \$7,500.00. Our installer is iworking in the southern part of the State with limited srvice, so we could not get a firm quote.

This Quote shall not become a binding contract until signed and delivered by both Customer and Miracle Recreation Equipment Company ("Miracle"). Sales Representative is not authorized to sign this Quote on behalf of Miracle or Customer, and signed Quotes cannot be accepted from Sales Representative. To submit this offer, please sign below and forward a complete signed copy of this Quote directly to "Miracle Sales Administration" via fax (417) 235-3551 or email: orders@miraclerec.com. Upon acceptance, Miracle will return a fully-signed copy of the Quote to Customer (with copy to Sales Representative) via fax or email.

THIS QUOTE IS LIMITED TO AND GOVERNED BY THE TERMS CONTAINED HEREIN. Miracle objects to any other terms proposed by Customer, in writing or otherwise, as material alterations, and all such proposed terms shall be void. Customer authorizes Miracle to ship the Equipment and agrees to pay Miracle the total amount specified. Shipping terms are FOB the place of shipment via common carrier designated by Miracle. Payment terms are Net-30 days from invoice date with approved credit and all charges are due and payable in full at PO Box 734154, Dallas, TX 75373-4154, unless notified otherwise by Miracle in writing. Customer agrees to pay all additional service charges for past due invoices. Customer must provide proper tax exemption certificates to Miracle, and shall promptly pay and discharge all otherwise applicable taxes, license fees, levies and other impositions on the Equipment at its own expense. Purchase orders and payments should be made to the order of Miracle Recreation Equipment Company.

Quote Number: 102220023 **Quote Date:** 5/4/2022 **Equipment:** \$0.00 **Grand Total:** \$30,113.50

CUSTOMER HEREBY SUBMITS ITS OFFER TO PURCHASE THE EQUIPMENT ACCORDING TO THE TERMS STATED IN THIS QUOTE

6/13/2022

QUOTE: 102220023

Page 2 of 4

AND SUBJECT TO FINAL APPROVAL BY MIRACLE.

Submitted By	Printed Name and Title	Date
THE FOREGOING QUOTE AND OFFER ARE HEREBY APPROVED AND ACCEPTED BY MIRACLE RECREATION EQUIPMENT		
By:		Date:

ADDITIONAL TERMS & CONDITIONS OF SALE

1. **Use & Maintenance.** Customer agrees to regularly inspect and maintain the Equipment, and to provide, inspect and maintain appropriate safety surfacing under and around the Equipment, in accordance with Miracle's product literature and the most current Consumer Product Safety Commission Handbook for Public Playground Safety.
2. **Default, Remedies & Delinquency Charges.** Customer's failure to pay any invoice when due, or its failure to otherwise comply with the terms of this Quote, shall constitute a default under all unsatisfied invoices ("Event of Default"). Upon an Event of Default, Miracle shall have all remedies available to it at law or equity, including, without limitation, all remedies afforded a secured creditor under the Uniform Commercial Code. Customer agrees to assist and cooperate with Miracle to accomplish its filing and enforcement of mechanic's or other liens with respect to the Equipment or its location or its repossession of the Equipment, and Customer expressly waives all rights to possess the Equipment after an Event of Default. All remedies are cumulative and not alternative, and no exercise by Miracle of a remedy will prohibit or waive the exercise of any other remedy. Customer shall pay all reasonable attorneys fees plus any costs of collection incurred by Miracle in enforcing its rights hereunder. Subject to any limitations under law, Customer shall pay to Miracle as liquidated damages, and not as a penalty, an amount equal to 1.5% per month of any payment that is delinquent in such month and is not received by Miracle within ten (10) days after the date on which due.
3. **Limitation of Warranty/ Indemnity.** MIRACLE MAKES NO EQUIPMENT WARRANTIES EXCEPT FOR THOSE STANDARD WARRANTIES ISSUED WITH THE EQUIPMENT, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. MIRACLE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND SAVE MIRACLE HARMLESS FROM ALL CLAIMS OF ANY KIND FOR DAMAGES OF ANY KIND ARISING OUT OF CUSTOMERS ALTERATION OF THE EQUIPMENT, ITS FAILURE TO MAINTAIN THE EQUIPMENT, ITS FAILURE TO PROPERLY SUPERVISE EQUIPMENT USE, OR ITS FAILURE TO PROVIDE AND MAINTAIN APPROPRIATE TYPES AND DEPTHS OF SAFETY SURFACING BENEATH AND AROUND THE EQUIPMENT IN ACCORDANCE WITH MIRACLES INSTALLATION AND OWNERS MANUALS AND THE MOST CURRENT CONSUMER PRODUCT SAFETY COMMISSION HANDBOOK FOR PUBLIC PLAYGROUND SAFETY.
4. **Restrictions.** Until all amounts due hereunder are paid in full, Customer shall not: (i) permit the Equipment to be levied upon or attached under any legal process; (ii) transfer title to the Equipment or any of Customer's rights therein; or (iii) remove or permit the removal of the Equipment to any location not specified in this Quote.
5. **Purchase Money Security Interest.** Customer hereby grants, pledges and assigns to Miracle, and Miracle hereby reserves a purchase money security interest in, the Equipment in order to secure the payment and performance in full of all of Customer's obligations hereunder. Customer agrees that Miracle may file one or more financing statements, in order to allow it to perfect, acquire and maintain a superior security interest in the Equipment.
6. **Choice of Law and Jurisdiction.** All agreements between Customer and Miracle shall be interpreted, and the parties' obligations shall be governed, by the laws of the State of Missouri without reference to its choice of law provisions. Customer hereby consents to the personal jurisdiction of the state and federal courts located in the city and county of St. Louis, Missouri.
7. **Title; Risk of Loss; Insurance.** Miracle Retains full title to all Equipment until full payment is received by Miracle. Customer assumes all risk of loss or destruction of or damage to the Equipment by reason of theft, fire, water, or any other cause, and the occurrence of any such casualty shall not relieve the Customer from its obligations hereunder and under any invoices. Until all amounts due hereunder are paid in full, Customer shall insure the Equipment against all such losses and casualties.
8. **Waiver; Invalidity.** Miracle may waive a default hereunder, or under any invoice or other agreement between Customer and Miracle, or cure such a default at Customer's expense, but shall have no obligation to do either. No waiver shall be deemed to have taken place unless it is in writing, signed by Miracle. Any one waiver shall not constitute a waiver of other defaults or the same kind of default at another time, or a forfeiture of any rights provided to Miracle hereunder or under any invoice. The invalidity of any portion of this Quote shall not affect the force and effect of the remaining valid portions hereof.
9. **Entire Agreement; Amendment; Binding Nature.** This fully-executed Quote, as supplemented by Change Orders and invoices containing exact amounts of estimates provided herein, constitutes the complete and exclusive agreement between the parties. A Change Order is a written instrument signed by the Customer and Miracle stating their agreement as to any amendment in the terms of this Quote. Customer acknowledges that Change Orders may result in delays and additional costs. The parties agree that all Change Orders shall include appropriate adjustments in price and time frames relating to any requested amendments. Upon full execution, this Quote shall be binding upon and inure to the benefit of the parties and their successors and assigns.
10. **Counterparts; Electronic Transmission.** This Quote, any invoice, and any other agreement between the parties, may be executed in counterparts, each of which shall constitute an original. The facsimile or other electronic transmission of any signed original document and retransmission of any signed facsimile or other electronic transmission shall be the same as the transmission of an original. At the request of either party, the parties will confirm facsimile or other electronically transmitted signatures by signing an original document.

6/13/2022

QUOTE: 102220023

Page 3 of 4

Resolution No. 687-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 687-22 – Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding (MOU) with other participating agencies comprising the Metro Drug Enforcement Network Team (MDENT), consistent with Attachment A hereto, that assists the Charleston area offices of the Drug Enforcement Administration, the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives to achieve maximum cooperation in combined law enforcement efforts to address drug and related violent crime offenses in Charleston and surrounding communities. The MOU is in effect for a one-year period starting July 1, 2021, and ending June 30, 2022.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into a Memorandum of Understanding (MOU) with other participating agencies comprising the Metro Drug Enforcement Network Team (MDENT), consistent with Attachment A hereto, that assists the Charleston area offices of the Drug Enforcement Administration, the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives to achieve maximum cooperation in combined law enforcement efforts to address drug and related violent crime offenses in Charleston and surrounding communities. The MOU is in effect for a one-year period starting July 1, 2022, and ending June 30, 2023.

MEMORANDUM OF UNDERSTANDING

The following agencies hereby enter into this Memorandum of Understanding (MOU) as of the date this MOU is signed by the agency's representative. The effective date of this MOU is July 1, 2022.

City of Charleston
City of St. Albans
City of Dunbar
City of Nitro
City of South Charleston
City of Hurricane
Putnam County Sheriff's Department
Kanawha County Sheriff's Department
West Virginia State Police
Federal Bureau of Alcohol, Tobacco, and Firearms
Federal Bureau of Investigations
U. S. Attorney's Office for the Southern District of WV

PURPOSE: the purpose of this MOU is to memorialize the operating terms under which this task force, named the Metropolitan Drug Enforcement Network Team (MDENT), develop and enhance cooperation and information exchange between the parties to this MOU and to achieve maximum effective and efficient law enforcement efforts to address drug and violent crime related offenses in the Kanawha County, Putnam County, and Charleston, West Virginia, area.

DEFINITIONS: When used in this MOU, the following words shall be defined as:

1. AHIDTA—Appalachian High Intensity Drug Trafficking Act Program
2. Control Board – The oversight board for MDENT.
3. DCJS – Justice and Community Services with the Division of Administrative Services of the West Virginia Department of Homeland Security
4. Employing agency – The law enforcement agency that hired, employs, and pays the applicable salary and benefits of the law enforcement officer assigned to MDENT.
5. Federal Agencies – The Federal Bureau of Investigations, the Drug Enforcement Agency and the Bureau of Alcohol, Tobacco and Firearms.
6. Grantee – The agency that prepares, submits, and oversees administration of funding applications on behalf of MDENT. For the purposes of this MOU the grantee is the City of Charleston.
7. Local Agencies – The City of Charleston, the City of Dunbar, the City of Nitro, the City of South Charleston, the City of St. Albans, the City of Hurricane, the Kanawha County Sheriff's Department, and the Putnam County Sheriff's Department.
8. MDENT – Metropolitan Drug Enforcement Network Team
9. MOU – Memorandum of Understanding

10. Operating Account – Monies maintained in an interest-bearing account by the grantee to be used to pay expenses incurred by MDENT in pursuit of its stated purpose. These monies come from funds lawfully secured as a result of forfeiture of money and property from drug related seizures and monies contributed to MDENT by other entities.
11. Participating agencies – All of the federal and local agencies that are parties to this MOU.
12. PCNEU – Putnam County Narcotics Enforcement Unit.
13. PCSD – Putnam County Sheriff's Department.
14. Policy Board – West Virginia Drug Policy and Violent Crime Control Policy Board.

The participating agencies agree to the following terms:

1. **FEDERAL JURISDICTION:** The authority and participation in any investigation under the terms of this MOU by the Federal Agencies shall be pursuant to, and limited by, the jurisdictional laws of each respective federal agency. Because of statutory and policy considerations, the assigned federal personnel will not investigate crimes outside of the jurisdiction of their respective agency. The Federal Agencies shall follow the appropriate policies and guidelines of their respective agencies. Federally initiated cases will follow appropriate guidelines of the lead federal agency concerning case management.
2. **LOCAL AGENCY REPRESENTATION:** The representative authorized to sign this MOU for each of the participating agencies will appoint one individual to serve as a member on the Control Board, which will be the agencies' chief law enforcement officer or his/her designee. That individual will act on behalf of and represent the designating agency's interests concerning the operation of MDENT. The Mayor of the grantee, or his or her designee, shall serve as the Chairperson of the Control Board. The Chairperson shall appoint the MDENT Commander.
3. **CONTROL BOARD:** The Control Board shall meet on a regular basis as set by the grantee in accordance with DCJS requirements. Five members present shall constitute a quorum of the Control Board. Each member of the Control Board, or his or her alternate, shall have one vote and, subject to the terms herein, general issues shall require a majority vote of members present. However, actions by MDENT on the following matters shall be decided by unanimous vote of voting members of the Control Board:
 - a. Approval/disapproval of cases to be investigated by MDENT officers;
 - b. Amount of and use of funds to be authorized for specific case investigations and operation of the unit;
 - c. Key decisions critical to the management of case investigations;
 - d. Acquisition of real or personal property, including equipment;

- e. Addition of law enforcement agencies as members of MDENT; and
- f. Approval of officers to be assigned to MDENT from participating agencies.

Federal agencies, in compliance with all applicable ethical and regulatory DOJ/Treasury guidelines, will abstain from voting on funding issues that conflict with their department's guidelines.

4. **ADMINISTRATION OF GRANT FUNDS; AGENCY RESOURCES:** Each of the participating agencies shall cooperate with the grantee concerning the administration of grant funds awarded from DCJS or other entities and in the overall operation of MDENT. Additionally, each participating agency will provide whatever resources are available to that agency, in the reasonable opinion of its Chief Law Enforcement Officer or designee, to specific cases as appropriate and as approved by the Control Board to facilitate efficient and effective investigations.

5. **AGENCY WITHDRAWAL FROM OR APPLICATION TO MOU:** Participation in the multi-agency investigative efforts of MDENT is voluntary. If a participating agency desires to withdraw from this MOU, written notification of such withdrawal will be provided to each participating agency thirty days prior to withdrawal. Such withdrawal does not absolve the participating agency of any financial responsibilities incurred prior to the withdrawal. Additional agencies wishing to become members of MDENT may do so upon written application to and approval by the Control Board. Such new agencies must execute an addendum agreeing to the terms of the MOU in effect at the time of approval by the Control Board.

6. **COMPLIANCE WITH FEDERAL GUIDELINES:** Participating agencies agree to follow procedures relating to case management, reporting requirements, fiscal guidelines, and other appropriate policies as adopted by the Control Board and that are consistent with the Anti-Drug Abuse Act of 1986, subtitle K – State and Local Law Enforcement Assistance Act of 1986 and/or the Policy Board and DCJS.

7. **OWNERSHIP AND USE OF MDENT EQUIPMENT:** Equipment and other personal property purchased with Operating Account funds and utilized for fulfilling the purpose of MDENT will be retained by grantee after the requirements of all applicable DCJS grants have been satisfied or have expired. Grantee's retention of any such equipment or property will be made in accord with established policies and practices set by the Policy Board and the DCJS. It is further agreed that participating agencies may request use of this equipment and property, consistent with each agency's guidelines, at any future time so long as such request or use does not inconvenience or otherwise negatively impact grantee.

8. REAL PROPERTY PURCHASED, OWNED, OR LEASED FOR THE USE AND BENEFIT OF MDENT:

- a. If any real property is purchased by one of the participating agencies on behalf of MDENT to be used as office space or any other MDENT purpose, such purchase will be paid for with Operating Account funds.
- b. Any real property so purchased, donated, or leased for the use and benefit of MDENT as office space or other MDENT use, will be maintained with Operating Account funds. The Control Board shall have the oversight and responsibility of making the timely loan, lease, or other payments on the property, paying for all repairs and improvements, utilities, taxes, fees, insurance, and all other costs associated with the real property including any improvements thereto and/or appurtenances thereof. If at any time there are insufficient funds in the Operating Account for these expenses when due, such expenses will be shared by the participating local agencies in MDENT at the time such expenses are incurred. Each local agency will be responsible and liable for an amount equal to the amount of the shortfall divided by the number of local agency officers assigned to MDENT multiplied by the number of officers each local agency has assigned at the time of the shortfall.
- c. If any real property owned for the use and benefit of MDENT is sold, the proceeds shall either be used to secure other office space for MDENT or placed in the Operating Account.
- d. If at any time MDENT is dissolved, any real property owned for the use and benefit of MDENT shall be sold. The proceeds will be placed in the Operating Account and the funds will be handled as set forth in paragraph number nine (9) of this MOU.

9. MDENT DISSOLUTION: In the event that MDENT is dissolved, the Control Board will ensure that all applicable financial responsibilities of MDENT are paid from the Operating Account. Any remaining balance in the Operating Account after all financial responsibilities are met, excluding any federal funds, shall be distributed to the local agencies participating in MDENT at the time of its dissolution. If there are insufficient funds in the Operating Account to satisfy all financial responsibilities or liabilities, any remaining financial responsibilities and liabilities will be divided among these same local agencies. The formula for the distribution of assets or liabilities shall be the total applicable amount divided by the number of local agency officers assigned to MDENT multiplied by the number of officers each local agency has assigned at the time of dissolution.

10. SALARY, BENEFIT, AND OVERTIME REIMBURSEMENT:

- a. Reimbursement to local agencies for officers assigned to MDENT will be made for base salary and benefits as set by the Policy Board, but such

reimbursement shall not exceed \$28,000. Unless specifically authorized by grant award, reimbursement will not be made for overtime earned by officers assigned to MDENT.

- b. Federal Agencies will not receive reimbursements, including any reimbursement for salary, benefits, or overtime.
- c. For overtime reimbursement for officers authorized by a grant award, each local agency will be limited to the overtime hours or amounts authorized by the award.
- d. Monies awarded for overtime reimbursement will be distributed upon submission of applicable documentation to the grantee in an amount not to exceed the limit set by the Policy Board.
- e. Any AHIDTA overtime funds awarded for compensation shall be reimbursed in accordance with the policies and guidelines of that program.

11. FORFEITURES: Forfeitures will be administratively processed pursuant to the following terms:

- a. Forfeitures may be utilized as approved by the Control Board to meet MDENT's stated purpose.
- b. The participating Federal Agencies do not receive any share of assets secured by direct forfeiture or by an "open bid" sale in most state and local cases. In any case where a Federal Agency elects to receive a share of the forfeiture, the Federal Agency will process the forfeiture pursuant to federal guidelines. It shall be the responsibility of each participating local agency that desires to seek a portion of the federally forfeited property to complete a United States Department of Justice DAG-71 Application for Transfer of Federally Forfeited Property. If a Federal Agency processes the forfeiture, then the provisions of subparagraph (f.) of this paragraph eleven (11) do not apply.
- c. Forfeitures conveyed to local agencies through equitable sharing or pursuant to a completed DAG-71 are to be utilized for law enforcement purposes only, consistent with federal and Policy Board forfeiture guidelines.
- d. Real or personal property forfeited to MDENT that cannot be directly used to meet the stated purpose of MDENT will either be sold by an "open bid" process or disposed of in a manner approved by the Control Board in accordance with established federal and Policy Board guidelines for such forfeitures. Any monies secured by the sale of such property that are not processed federally will be deposited in the Operating Account, as required by subparagraph (e.) of this paragraph eleven (11).

- e. Cash, either directly forfeited or secured by the sale of real or personal property, that are not processed federally will be maintained in the Operating Account until spent for MDENT purposes or distributed to the local agencies consistent with this paragraph. The Policy Board sets a required minimum percentage of forfeited funds, less administrative costs, that must be used to cover the day-to-day operations of a drug task force during each grant award period. For the term of this MOU the Policy Board has MDENT's minimum percentage at forty (40) percent. The Policy Board also permits each drug task force to establish a percentage greater than the set minimum. As of January 1, 2003, the Control Board established a minimum of fifty (50) percent of all monies secured as a result of forfeitures, after administrative costs have been removed, be held in the Operating Account to be used for day-to-day operations, with the remaining fifty (50) percent to be distributed among the local agencies as consistent with subparagraph (f.) of this paragraph eleven (11).
- f. Forfeited funds that are not processed by a Federal Agency shall be distributed as follows:
 - 1. 50% of all such non-federal forfeited funds, after payment of any administrative costs, shall be deposited in the Operating Fund. The remaining amount will be distributed to each local agency participating at the time of the seizure by dividing the total applicable amount by the number of local agency officers assigned to MDENT at the time of the seizure multiplied by the number of officers each local agency has assigned at the time of the seizure, not including any officers assigned to the Interdiction Team.
 - 2. For seizures made by the Interdiction Team, 50% of all such non-federal forfeited funds, after payment of any administrative costs, shall be deposited in the MDENT Operating Fund. The remaining amount will be distributed to each local agency which have officers assigned to the Interdiction Team at the time of the seizure by dividing the total applicable amount by the number of officers assigned to the Interdiction Team at the time of the seizure multiplied by the number of officers each local agency has assigned to the Interdiction Team at the time of the seizure.

12. PROTOCOL FOR INTERACTION WITH THE NEWS MEDIA:

- a. The Control Board shall set policy and procedures for media releases and/or press conferences.
- b. All media releases shall be made in the name of MDENT. Each release shall name all of the participating agencies.

- c. Unless special circumstances exist, individual MDENT officers will not be identified or photographed.
- d. No information about MDENT operations or individual investigations will be released to the media until approved by the official with applicable prosecutorial authority.
 - 1. If jurisdiction involves a federal prosecution, the United States Attorney of the Southern District of West Virginia must approve any release of information to the media.
 - 2. If jurisdiction involves a state prosecution, the Prosecuting Attorney in the county where the case will be prosecuted must approve any release of information to the media.

13. REPLACEMENT/REMOVAL OF OFFICERS ASSIGNED TO MDENT:

- a. All employing agencies will allow officers assigned to MDENT to complete all material assignments prior to the officer's removal from, or replacement on, MDENT, unless conditions involving willful misconduct or other extenuating circumstances exist which would adversely affect MDENT operations and/or reputation if such removal is delayed.
- b. If any MDENT officer engages in misconduct, conduct unbecoming an officer, or any activity which requires an administrative investigation to determine the propriety of disciplinary action, the employing agency shall be solely responsible for any and all disciplinary action. The Task Force Commander shall immediately notify the Control Board members and the employing agency of any such behavior of which he or she becomes aware. Notwithstanding, the Control Board may remove any officer from MDENT upon reasonable belief that the officer engaged in misconduct, conduct unbecoming, or any other improper behavior or of activities. The employing agency shall be notified of any decision by the Control Board to remove an assigned officer and the employing agency may submit the name of a replacement officer for the Control Board's consideration and approval.

14. LIABILITY AND INSURANCE OBLIGATIONS:

- a. Each employing agency shall be solely responsible for the negligent acts, omissions, and/or wrongdoing of its officers, whether alleged or established, and for any and all claims of liability related thereto. As between the parties to this MOU, unless otherwise agreed in writing, each employing agency shall be solely responsible for defending against any claim against its officer, and for payment of any and all resulting fees, costs, or damages related thereto.
- b. Unless otherwise agreed in writing, no employing agency shall be responsible for defending against or paying for any civil liability arising out of negligent acts, omissions, and/or wrongdoing of officers or other personnel assigned to

MDENT from another employing agency. For the purpose of this MOU, civil liability includes, but is not limited to, damages of any kind, attorney fees, and any and all costs and/or expenses incident to any civil lawsuit or administrative claim filed by any person, business, corporation, partnership organization, or government entity, or otherwise related to any administrative or judicial proceeding, finding, judgment, or settlement in compromise of any claim.

- c. The employing agencies to this MOU agree that each officer assigned to MDENT is solely an employee of his or her employing agency. The parties to this MOU further agree that each employing agency shall be solely responsible for providing workers compensation coverage and unemployment coverage to each and every officer assigned to MDENT by that employing agency.
- d. Each employing agency shall maintain liability insurance coverage in an amount of at least \$1,000,000 to satisfy the liability obligations herein related to claims arising from the alleged negligent, acts, omissions, and/or wrongdoing of its officers/employees assigned to MDENT, and such insurance policy shall include coverage for damage to the assigned officer/employee's vehicle and claims resulting from the assigned officer/employee's operation thereof, regardless of which agency actually owns the vehicle. In other words, and by example only, each agency shall be responsible for insuring, defending against and paying every claim or civil liability arising out of the conduct of its officer/employee, regardless of where the incident giving rise to the claim or civil liability arose and regardless of who owned any vehicle or equipment involved. Provided: That the parties recognize that the Federal Tort Claims Act shall be applicable to all liability issues relating to the actions of the officers assigned to MDENT from federal agencies.
- e. As between the parties to this Agreement, the agency employing any officer/employee assigned to MDENT will be solely responsible for any damage to property caused by the intentional or other conduct by the employing agency's officer/employee which results in any denial of insurance coverage.

15. PARTICIPATING AGENCIES: Effective July 1, 2022, the Task Force is composed of 23 officers as follows:

7 from Charleston Police Department

2 from St. Albans Police Department

1 from Nitro Police Department

1 from Dunbar Police Department

- 2 from South Charleston Police Department
- 1 from Hurricane Police Department
- 3 from Kanawha County Sheriff's Department
- 3 from Putnam County Sheriff's Department
- 1 from West Virginia State Police
- 1 from the US Drug Enforcement Agency
- 1 from Homeland Security

These officers will work directly with the agents from the Charleston area offices of the participating Federal Agencies.

16. FUNDING TERM. For the purpose of funding obtained through the DCJS, the term of this agreement shall be for the fiscal year covering the period of July 1, 2022, through June 30, 2023. Subsequent contract renewal with the DCJS for similar continued funding will serve to extend this agreement.

17. SUPERSEDING AGREEMENT. This MOU supersedes any and all prior MOU's implemented and agreed to by the participating agencies.

This MOU is hereby entered into by the participating agencies on pages 9 and 10 of this MOU, which may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

BY: _____ DATE: _____
Amy Goodwin
Mayor (City of Charleston)

BY: _____ DATE: _____
Scott James
Mayor (City of St. Albans)

BY: _____ DATE: _____
Dave Casebolt
Mayor (City of Nitro)

BY: _____ DATE: _____
Scott Elliot
Mayor (City of Dunbar)

BY: _____ DATE: _____
Frank Mullens
Mayor (City of South Charleston)

BY: _____ DATE: _____
Scott Edwards
Mayor (City of Hurricane)

BY: _____ DATE: _____
Michael Y. Rutherford
Sheriff of Kanawha County

BY: _____ DATE: _____
Bobby Eggelton
Sheriff of Putnam County

BY: _____ DATE: _____
Colonel J.L. Cahill
Superintendent WV State Police

BY: _____ DATE: _____
William Thompson
U.S. Attorney, Southern District of WV

BY: _____ DATE: _____
Alcohol, Tobacco, and Firearms

BY: _____

DATE: _____

Federal Bureau of Investigation

Resolution No. 688-22

Introduced in Council:

Adopted by Council:

June 21, 2022

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 688-22 – Authorizing the Mayor or City Manager to enter into a contract with Martin Marietta Materials, Inc., to purchase various classes and sizes of aggregate stone at the prices listed in Exhibit A, attached hereto, pursuant to a competitive bidding process, where the prices will remain fixed for one year with the option of two, one-year renewals.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into a contract with Martin Marietta Materials, Inc., to purchase various classes and sizes of aggregate stone at the prices listed in Exhibit A, attached hereto, pursuant to a competitive bidding process, where the prices will remain fixed for one year with the option of two, one-year renewals.

**2022-13 Various Sizes and Classes of Aggregate
Bid Opening Date 6/7/22**

			Shamblin Stone Inc. 70 Dunbar Ave Dunbar WV 25064 304-766-7318 tmattox@wvpaving.com	Martin Marietta 300 Star Ave Suite 312 Parkersburg WV 26101 304-769-9078 joseph.mccallister@martinmarietta.com		
Item	Unit	Qty	Unit Cost	Unit Cost		
River Gravel # 57	Per ton		\$34.65	NB		
Masonry Sand	Per ton		\$32.50	\$26.75		
Dry Bed	Per ton		\$30.15	\$18.60		
Limestone #2	Per ton		NB	NB		
Limestone #3	Per ton		\$32.00	\$29.50		
Limestone #57	Per ton		\$32.00	\$29.50		
Limestone #67	Per ton		\$32.70	NB		
Limestone 1 1/2" Crusher Run	Per ton		\$31.50	\$29.75		
Limestone #467	Per ton		\$32.00	\$29.75		
Limestone 4" x 6"	Per ton		\$33.85	\$37.00		

Base Bid Total					
Local Vendor Preference (4%)					

Resolution No. 689-22

Introduced in Council:

June 21, 2022

Adopted by Council:

Introduced by:

Joseph Jenkins

Referred to:

Finance

Resolution No. 689-22 – Authorizing the Mayor or City Manager to enter into an as-needed contract with Hanson Ready Mix for the purchase of portland cement pursuant to a competitive bidding process, where the prices to be charged are included in Exhibit A, attached hereto, and the prices will be fixed for one year with renewal options for two, one-year terms.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into an as-needed contract with Hanson Ready Mix for the purchase of portland cement pursuant to a competitive bidding process, where the prices to be charged are included in Exhibit A, attached hereto, and the prices will be fixed for one year with renewal options for two, one-year terms.

**2022-12 Portland Cement
Bid Opening Date 6/7/22**

		Smith Concrete Rt 1 box 74 Poca WV 25159 304-755-5000 smithpoca@aol.com	Hanson Ready Mix 1109 9th St Vienna WV 26105 304-485-2191 bradley.rucker@leighhanson.com		
Item	Unit	Unit Cost	Unit Cost		
(A) FULL LOAD (unload in 30 minutes or less) per CY delivered to job site					
Class A 3500# Concrete	CY	\$159.95	\$154.00		
Class B 3000# Concrete	CY	\$157.95	\$154.00		
Class C 2500# Concrete	CY	\$155.95	\$149.00		
Class D 2000# Concrete	CY	\$153.95	\$143.00		
Controllable Low Strength Material	CY	\$129.95	\$125.00		
(b) Partial Load Charge (if applicable)	LOAD	\$135.00 (under 5 CY)	\$250/Load (under 6 CY)		
(c) Unloading Charge past 30 mins	HOURL	\$1.00/ Min Over (10 min/YD Total)	\$100/ HOUR		
(d) Cost of Adding Fiber to Concrete	CY	\$9.75 (YD)	\$8.25 CY		
Fuel Surcharge	LOAD	\$0.00	\$75.00/LOAD		

Local Vendor Preference (4%)		✓	✓	

Resolution No. 690-22

Introduced in Council:

June 21, 2022

Adopted by Council:

Introduced by:

Joseph Jenkins

Referred to:

Finance

1 Resolution No. 690-22 – Authorizing approval of Amendment No. 9 of the FY 2021-2022
2 General Fund Budget as indicated on the attached list of accounts.

3

4 Be it Resolved by the Council of the City of Charleston, West Virginia:

5

6 That Amendment No. 9 of the FY 2021-2022 General Fund Budget as indicated on the attached
7 list of accounts is approved.

General Fund FY 2021-2022 Budget Amendment No. 9 - June 21, 2022

Account No.	Department	Account Description	Amount
001 699 00 000 5 598	Contingency	Contingency	(47,140)
001 438 00 000 2 230	Election	Contracted Services	47,140

To pay for the cost of the 2022 Primary Election that exceed the budget.

Reportable: To Maintain compliance with the budgetary guidelines of the State of West Virginia

CITY OF CHARLESTON
Payroll Variance Analysis
May 2022

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Mayor	409	Regular	23,247	21,691	1,556	6.70%	278,963	273,851	5,112	1.83%	302,210	28,359
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	23,247	21,691	1,556	6.70%	278,963	273,851	5,112	1.83%	302,210	28,359
Mayor - CARE Office	409-02	Regular	20,439	19,769	670	3.28%	245,265	171,917	73,348	29.91%	265,704	93,787
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	20,439	19,769	670	3.28%	245,265	171,917	73,348	29.91%	265,704	93,787
City Council	410	Regular	13,000	11,000	2,000	15.38%	156,000	139,000	17,000	10.90%	169,000	30,000
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	13,000	11,000	2,000	15.38%	156,000	139,000	17,000	10.90%	169,000	30,000
City Manager - Admin.	412-00	Regular	41,842	38,923	2,919	6.98%	499,297	466,031	33,266	6.66%	543,948	77,917
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	41,842	38,923	2,919	6.98%	499,297	466,031	33,266	6.66%	543,948	77,917
City Treasurer	413	Regular	10,136	9,443	693	6.84%	121,636	115,510	6,126	5.04%	131,772	16,262
		IPT	1,462	786	676	46.25%	17,538	10,507	7,031	40.09%	19,000	8,493
		OT	-	-	-		-	-	-		-	-
		Total	11,598	10,229	1,369	11.81%	139,174	126,017	13,157	9.45%	150,772	24,755
City Collector	414	Regular	52,379	46,599	5,780	11.04%	628,554	534,938	93,616	14.89%	680,933	145,995
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	25	(25)		-	(25)
		Total	52,379	46,599	5,780	11.04%	628,554	534,962	93,591	14.89%	680,933	145,971
City Clerk	415	Regular	10,062	9,847	215	2.13%	120,742	118,167	2,575	2.13%	130,804	12,637
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	10,062	9,847	215	2.13%	120,742	118,167	2,575	2.13%	130,804	12,637
Municipal Court	416	Regular	22,674	22,570	104	0.46%	272,087	268,173	3,914	1.44%	294,761	26,588
		IPT	1,385	-	1,385	100.00%	16,615	5,409	11,207	67.45%	18,000	12,591
		OT	1,809	694	1,115	61.63%	21,711	16,756	4,955	22.82%	23,520	6,764
		Total	25,868	23,264	2,603	10.06%	310,413	290,338	20,075	6.47%	336,281	45,943

CITY OF CHARLESTON
Payroll Variance Analysis
May 2022

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
City Attorney	417	Regular	29,851	29,154	697	2.33%	358,208	349,846	8,362	2.33%	388,059	38,213
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	29,851	29,154	697	2.33%	358,208	349,846	8,362	2.33%	388,059	38,213
Accounting	418	Regular	22,030	15,980	6,050	27.46%	264,358	211,071	53,287	20.16%	286,388	75,317
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	22,030	15,980	6,050	27.46%	264,358	211,071	53,287	20.16%	286,388	75,317
Engineering - General	420-00	Regular	38,055	32,331	5,724	15.04%	456,657	422,138	34,519	7.56%	494,712	72,574
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	38,055	32,331	5,724	15.04%	456,657	422,138	34,519	7.56%	494,712	72,574
Engineering - Stormwater	420-01	Regular	10,558	10,250	308	2.91%	126,694	123,003	3,691	2.91%	137,252	14,249
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	10,558	10,250	308	2.91%	126,694	123,003	3,691	2.91%	137,252	14,249
MOECD	421	Regular	29,451	24,309	5,141	17.46%	353,407	322,096	31,312	8.86%	382,858	60,762
		IPT	-	1,401	(1,401)		-	11,019	(11,019)		-	11,019
		OT	-	-	-		-	-	-		-	-
		Total	29,451	25,710	3,740	12.70%	353,407	333,115	20,292	5.74%	382,858	71,782
Human Resources	422	Regular	30,944	29,297	1,647	5.32%	371,328	345,338	25,990	7.00%	402,272	56,934
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	30,944	29,297	1,647	5.32%	371,328	345,338	25,990	7.00%	402,272	56,934
Mail Room	431	Regular	2,704	2,000	704	26.05%	32,453	16,311	16,142	49.74%	35,157	18,846
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	55	(55)		-	-
		Total	2,704	2,000	704	26.05%	32,453	16,366	16,087	49.57%	35,157	18,846
Building Commission	436	Regular	52,410	51,091	1,319	2.52%	628,917	613,007	15,911	2.53%	681,327	68,320
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	52,410	51,091	1,319	2.52%	628,917	613,007	15,911	2.53%	681,327	68,320
Planning	437	Regular	35,978	34,733	1,245	3.46%	431,732	402,632	29,100	6.74%	467,710	65,078
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	35,978	34,733	1,245	3.46%	431,732	402,632	29,100	6.74%	467,710	65,078

CITY OF CHARLESTON
Payroll Variance Analysis
May 2022

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Information Systems	439	Regular	46,702	28,566	18,136	38.83%	560,424	450,369	110,055	19.64%	607,126	156,757
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	46,702	28,566	18,136	38.83%	560,424	450,369	110,055	19.64%	607,126	156,757
General Services	440	Regular	34,895	31,039	3,856	11.05%	416,838	364,406	52,432	12.58%	453,634	89,228
		IPT	3,462	-	3,462	100.00%	41,538	2,058	39,481	95.05%	45,000	42,943
		OT	5,040	4,113	927	18.39%	60,480	50,976	9,504	15.71%	65,520	14,544
		Total	43,396	35,152	8,244	19.00%	518,856	417,440	101,416	19.55%	564,154	146,714
Constituent Services	442-01	Regular	13,857	9,554	4,302	31.05%	161,629	131,415	30,214	18.69%	180,139	48,724
		IPT	1,800	-	1,800	100.00%	19,800	-	19,800	100.00%	23,400	23,400
		OT	-	-	-		-	707	(707)		-	-
		Total	15,657	9,554	6,102	38.98%	181,429	132,122	49,307	27.18%	203,539	72,124
Morris Square Property	500	Regular	1,986	2,080	(94)	-4.75%	23,828	25,204	(1,376)	-5.77%	25,814	610
		IPT	-	-	-		-	-	-		-	-
		OT	775	15	761	98.11%	9,305	288	9,017	96.91%	10,080	9,792
		Total	2,761	2,095	666	24.14%	33,133	25,492	7,641	23.06%	35,894	10,402
Public Works	566	Regular	14,769	14,174	595	4.03%	177,231	167,131	10,100	5.70%	192,000	24,869
		IPT	-	-	-		-	-	-		-	-
		OT	231	287	(56)	-24.29%	2,769	4,747	(1,978)	-71.42%	3,000	(1,747)
		Total	15,000	14,461	539	3.60%	180,000	171,878	8,122	4.51%	195,000	23,122
Public Grounds - Adm.	567-00	Regular	65,644	59,786	5,858	8.92%	787,725	746,257	41,468	5.26%	853,369	107,112
		IPT	-	-	-		-	-	-		-	-
		OT	1,938	4,831	(2,893)	-149.23%	23,262	17,053	6,209	26.69%	25,200	8,147
		Total	67,582	64,617	2,965	4.39%	810,987	763,310	47,677	5.88%	878,569	115,259
Public Grounds - C/T	567-01	Regular	5,035	5,035	0	0.00%	60,423	60,707	(284)	-0.47%	65,458	4,751
		IPT	-	-	-		-	-	-		-	-
		OT	323	473	(150)	-46.53%	3,877	2,073	1,804	46.52%	4,200	2,127
		Total	5,358	5,509	(150)	-2.81%	64,300	62,780	1,520	2.36%	69,658	6,878
Police - Uniform	700-00	Regular	676,344	656,336	20,008	2.96%	7,965,645	7,578,996	386,649	4.85%	8,436,790	857,794
		OT	152,500	180,539	(28,039)	-18.39%	1,795,574	2,196,611	(401,037)	-22.33%	1,901,129	(295,482)
		Reimb.	(1,923)	(6,800)	4,877	253.60%	(23,077)	(42,781)	19,704	85.38%	(25,000)	17,781
		Total	826,921	830,075	(3,154)	-0.38%	9,738,142	9,732,826	5,316	0.05%	10,312,919	580,093

CITY OF CHARLESTON
Payroll Variance Analysis
May 2022

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Police - Civilian	700-01	Regular	66,161	64,792	1,369	2.07%	793,935	767,970	25,965	3.27%	860,096	92,126
		IPT	3,846	2,990	856	22.26%	46,154	26,700	19,454	42.15%	50,000	23,300
		OT	7,237	4,552	2,684	37.09%	86,843	68,511	18,332	21.11%	94,080	25,569
		Total	77,244	72,335	4,909	6.36%	926,932	863,181	63,751	6.88%	1,004,176	140,995
Fire - Uniform	706-00	Regular	698,215	675,138	23,077	3.31%	8,378,581	7,969,461	409,120	4.88%	9,076,795	1,107,334
		OT	112,989	111,424	1,565	1.38%	1,355,869	1,234,256	121,613	8.97%	1,468,858	234,602
		Reimb.	(923)	(7,059)	6,136	664.75%	(11,077)	(40,059)	28,982	261.65%	(12,000)	28,059
		Total	810,281	779,503	30,778	3.80%	9,723,373	9,163,658	559,715	5.76%	10,533,653	1,369,995
Fire - Civilian	706-01	Regular	7,450	7,233	217	2.91%	89,399	86,795	2,604	2.91%	96,849	10,054
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	7,450	7,233	217	2.91%	89,399	86,795	2,604	2.91%	96,849	10,054
Traffic	712	Regular	31,040	29,590	1,450	4.67%	372,486	377,378	(4,892)	-1.31%	403,526	26,148
		IPT	-	-	-		-	-	-		-	-
		OT	905	1,366	(462)	-51.03%	10,855	6,697	4,158	38.31%	11,760	5,063
		Total	31,945	30,956	989	3.10%	383,341	384,075	(734)	-0.19%	415,286	31,211
Emergency Services	716	Regular	6,438	-	6,438	100.00%	77,251	-	77,251	100.00%	83,689	83,689
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	6,438	-	6,438	100.00%	77,251	-	77,251	100.00%	83,689	83,689
Street	750	Regular	179,235	162,520	16,715	9.33%	2,140,819	1,858,635	282,184	13.18%	2,330,058	471,423
		IPT	-	-	-		-	-	-		-	-
		OT	13,846	9,114	4,732	34.17%	238,154	220,717	17,437	7.32%	252,000	31,283
		Total	193,081	171,635	21,447	11.11%	2,378,973	2,079,352	299,621	12.59%	2,582,058	502,706
Equipment Maintenance	754	Regular	53,160	54,001	(841)	-1.58%	637,923	650,604	(12,682)	-1.99%	691,083	40,479
		IPT	-	-	-		-	-	-		-	-
		OT	4,200	1,969	2,231	53.12%	50,400	49,229	1,171	2.32%	54,600	5,371
		Total	57,360	55,970	1,390	2.42%	688,323	699,833	(11,510)	-1.67%	745,683	45,850
Refuse & Recycling	800	Regular	154,142	151,355	2,787	1.81%	1,849,705	1,800,722	48,983	2.65%	2,003,847	203,125
		IPT	-	-	-		-	-	-		-	-
		OT	23,862	9,833	14,028	58.79%	286,338	97,906	188,433	65.81%	310,200	212,294
		Total	178,004	161,188	16,816	9.45%	2,136,043	1,898,628	237,416	11.11%	2,314,047	415,419

CITY OF CHARLESTON
Payroll Variance Analysis
May 2022

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Parks & Recreation	900	Regular	90,344	71,707	18,637	20.63%	1,084,124	950,520	133,604	12.32%	1,174,468	223,948
		IPT	16,800	10,347	6,453	38.41%	212,800	127,398	85,402	40.13%	280,000	152,602
		OT	4,135	3,792	343	8.30%	49,625	45,201	4,424	8.91%	53,760	8,559
		Total	111,279	85,846	25,433	22.86%	1,346,549	1,123,119	223,430	16.59%	1,508,228	385,109
Public Arts	906	Regular	4,000	4,120	(120)	-3.00%	48,000	49,194	(1,194)	-2.49%	52,000	2,806
		IPT	-	-	-		-	-	-		-	-
		OT	-	-	-		-	-	-		-	-
		Total	4,000	4,120	(120)	-3.00%	48,000	49,194	(1,194)	-2.49%	52,000	2,806
Spring Hill Cemetery	952	Regular	23,724	20,002	3,722	15.69%	284,683	269,881	14,802	5.20%	308,407	38,526
		IPT	8,775	-	8,775	100.00%	38,025	9,524	28,501	74.95%	46,800	37,276
		OT	775	1,353	(578)	-74.51%	9,305	3,781	5,523	59.36%	10,080	6,299
		Total	33,274	21,355	11,919	35.82%	332,013	283,186	48,827	14.71%	365,287	82,101
General Fund		Regular	2,618,900	2,456,016	162,883	6.22%	31,256,949	29,198,674	2,058,275	6.59%	33,690,015	4,491,341
		IPT	37,529	15,524	22,005	58.63%	392,471	192,616	199,856	50.92%	482,200	311,623
		OT	330,566	334,357	(3,791)	-1.15%	4,004,366	4,015,590	(11,224)	-0.28%	4,287,987	273,160
		Reimb.	(2,846)	(13,859)	11,013	386.95%	(34,154)	(82,840)	48,686	142.55%	(37,000)	45,840
		Total	2,984,148	2,792,039	192,110	6.44%	35,619,632	33,324,039	2,295,593	6.44%	38,423,202	5,121,965

CITY OF CHARLESTON
Payroll Variance Analysis
May 2022

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Coliseum & Conv. Center	402	Regular	42,113	52,007	(9,894)	-23.49%	505,355	621,048	(115,693)	-22.89%	547,468	(73,580)
		IPT	7,269	-	7,269	100.00%	87,231	3,234	83,997	96.29%	94,500	91,266
		OT	4,062	2,018	2,043	50.31%	48,738	34,558	14,181	29.10%	52,800	18,242
		Total	53,444	54,025	(581)	-1.09%	641,324	658,840	(17,516)	-2.73%	694,768	35,928
Parking System	406	Regular	54,906	48,324	6,582	11.99%	658,878	598,421	60,457	9.18%	713,784	115,363
		IPT	3,923	1,784	2,139	54.52%	47,077	23,582	23,495	49.91%	51,000	27,418
		OT	1,292	2,842	(1,550)	-119.90%	15,508	14,545	963	6.21%	16,800	2,255
		Total	60,122	52,950	7,172	11.93%	721,462	636,547	84,915	11.77%	781,584	145,037
Total		Regular	2,715,919	2,556,347	159,572	5.88%	32,421,181	30,418,143	2,003,039	6.18%	34,951,267	4,533,124
		IPT	48,721	17,308	31,413	64.47%	526,779	219,431	307,348	58.34%	627,700	408,269
		OT	335,920	339,217	(3,298)	-0.98%	4,068,612	4,064,692	3,920	0.10%	4,357,587	292,895
		Reimb.	(2,846)	(13,859)	11,013	-386.95%	(34,154)	(82,840)	48,686	-142.55%	(37,000)	45,840
		Total	3,097,714	2,899,013	198,700	6.41%	36,982,418	34,619,426	2,362,992	6.39%	39,899,554	5,280,128

Vacancy Report:

City Manager	1
City Collector	1
Accounting	1
Engineering	1
MOECD	1
Information Systems	5
General Services	1
Constituent Services	2
Public Works (all)	10
Police - Uniform	12
Traffic	1
Homeland Security	1
Parks & Rec	5
Spring Hill Cemetery	1
Total General Fund	43
CCCC	1
Parking System	2
Total All	46

**MUNICIPAL COURT
CITY OF CHARLESTON**

**Post Office Box 2749
Charleston, West Virginia 25330
(304) 348-8079**

Anne B. Charnock, Judge

Conrad Lucas, Clerk

TO: Mayor Amy Shuler Goodwin
FROM: Conrad Lucas, Clerk
DATE: **Friday, June 3, 2022**
RE: **May 2022 Financial Information, Charleston Municipal Court**

TOTAL CITATIONS FILED: 1,416

Criminal Violations: 348

Traffic Violations: 1,068

Parking: 0

Building Search Warrants: 17

RESTITUTION COLLECTED (paid to victims): \$1,716.00

Primarily related to shoplifting cases, restitution monies are collected and refunded to the store/victim.

FINANCIAL REPORT ATTACHED

cc: Judge Anne B. Charnock
Miles Cary, City Clerk
Victor Grigoraci, Treasurer
Scott Dempsey, Deputy Chief of Police
Tony Harmon, Building Department
David Potters, Office of the City Attorney
Captain Mike Pridemore, CPD
Nikki Smith, City Clerk's Office

CHARLESTON MUNICIPAL COURT Page: 1
 Report For May 1, 2022 Thru May 31, 2022 FILEDST

Violations by Filed Date...

CRIMINAL	348	
TRAFFIC	1,068	
Total Filed Violations		1,416

Completed Cases...

Paid Fine...

CRIMINAL	1	
TRAFFIC	291	
Total Paid Fines		292

Before Judge...

CRIMINAL	1	
TRAFFIC	2	
Total Before Judge		3

Total Completed		295
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Other Completed...

DISMISS- OFFICER NOT WITH CITY

CRIMINAL	10	
TRAFFIC	3	
Total		13

DEFENDANT DECEASED

CRIMINAL	1	
TRAFFIC	2	
Total		3

DISMISSED OFFICER FAIL TO PROS

CRIMINAL	2	
TRAFFIC	10	
Total		12

DISMISSED(PRESENTED INSURANCE)

CRIMINAL	0	
TRAFFIC	66	
Total		66

DISMISSED (BY JUDGE'S ORDER)_

CRIMINAL	0	
TRAFFIC	1	
Total		1

DISMISSED E-PROOF

CRIMINAL	0	
TRAFFIC	20	

CHARLESTON MUNICIPAL COURT

Page: 2

Report For May

1, 2022 Thru May

31, 2022

FILEDST

Total		20
DISMISSED (PRESENTED DL)		
CRIMINAL	0	
TRAFFIC	16	
Total		16
DISMISSED STORE CLOSED		
CRIMINAL	1	
TRAFFIC	0	
Total		1
DISMISSED OFF FAIL TO PROV VIN		
CRIMINAL	0	
TRAFFIC	4	
Total		4
DISMISSED (PROSECUTOR'S ORDER)		
CRIMINAL	22	
TRAFFIC	65	
Total		87
Dismissed at Officers Request		
CRIMINAL	5	
TRAFFIC	84	
Total		89
DISMISSED PRESENTED RECORDS		
CRIMINAL	3	
TRAFFIC	380	
Total		383
DISMISSED AFTER PT DIVERSION		
CRIMINAL	20	
TRAFFIC	10	
Total		30
Dismissed Pursuant to Plea		
CRIMINAL	60	
TRAFFIC	27	
Total		87
DISMISSED VICTIM/WITNESS FTA		
CRIMINAL	1	
TRAFFIC	0	
Total		1
DISMISSED WITHOUT PREJUDICE		
CRIMINAL	28	
TRAFFIC	23	
Total		51
VOIDED DOCKET		
CRIMINAL	1	

CHARLESTON MUNICIPAL COURT
 Report For May 1, 2022 Thru May 31, 2022
 Page: 3
 FILEDST

TRAFFIC	9	
Total		10
Total Other Completed		874
Grand Total Completed		1,169
Net Difference Filed/Complete		247

Warrants...

Issued...

CRIMINAL	547	
TRAFFIC	667	
Total Violations		1,214
Total Warrants Issued		1,214

Cleared...

CRIMINAL	449	
TRAFFIC	367	
Total Violations		816
Total Warrants Cleared		816
Change in Total Warrants		398

Other Paid Cases...

Paid Fine...

Total Other Paid Fines		89
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CVC CRIME VICTIM'S FUND	\$2,265.00
LAWFND LAW ENFORCE. TRAIN STATE	\$3,308.00
LAWLOC LAW ENFORCE. TRAIN (LOCAL)	\$1,390.00
FINE FINE	\$21,354.40
ADMIN ADMINISTRATIVE COST	\$564.00
JAILF REGIONAL JAIL CORR.	\$11,258.00
REST RESTITUTION	\$1,716.00
PCADM PC ADMIN FEE	\$150.00
OP OVER PAYMENT	\$6.08
CCF COMMUNITY CORRECTIONS FUND	\$66.00
NSF NSF	\$25.00

Total Fees/Fines Paid	\$42,102.48
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Search Warrant Report- May 2022

Docket No	Name	Address	Status	Date
SW22000001	STERN, BEN	1000 GRANT STREET	SW	5/31/2022
SW22000002	PRATER, SUE	1214 HOMER STREET	SW	5/31/2022
SW22000003	WTH PROPERTIES LLC,	219 RUSSELL STREET	SW	5/31/2022
SW22000004	LAUDERMILK, TERESA	401 RUSSELL STREET	SW	5/31/2022
SW22000005	LLOYD, HOWARD E	405 GLENWOOD AVENUE	SW	5/31/2022
SW22000006	LLOYD, PHYLLIS J	405 GLENWOOD AVENUE	SW	5/31/2022
SW22000007	AMERICAN PRIDE, PROPERTIES,LLC	208 ELM STREET	SW	5/31/2022
SW22000008	CHAPMAN, MIMA L	1510 WOODLAND DRIVE	SW	5/31/2022
SW22000009	WEBB, CLARENCE	1429 3RD AVENUE	SW	5/31/2022
SW22000010	WEBB, GRACE S	1429 3RD AVENUE	SW	5/31/2022
SW22000011	DANDY, S.W.	1507 6TH AVENUE	SW	5/31/2022
SW22000012	DANDY, ARDITH	1507 6TH AVENUE	SW	5/31/2022
SW22000013	LEWIS, MELISSA	105 LOVELL DRIVE	SW	5/31/2022
SW22000014	CHARLESTON ECONOMIC, AND COMMUNITY DEV.		SW	5/31/2022
SW22000015	HADDOX, JASON LEE	1904 IRIS DRIVE	SW	5/31/2022
SW22000016	YATTI LLC,	1906 IRIS DRIVE	SW	5/31/2022
SW22000017	WTH PROPERTIES, LLC,	1907 IRIS DRIVE	SW	5/31/2022

Monthly Report – Definition Key

Violations by Filed Date:

Violations keyed into the Court software during the month

Completed Cases:

Cases where the fine and court costs were paid in full and the case was closed during the month.

Before Judge:

Number of violations where a case set for trial before the judge; the defendant was found guilty or entered a guilty plea at trial and the defendant paid off all costs/fines in full thereby closing the case.

Other Completed -Dismissed (By Complainant):

The City Attorney moved to dismiss cases because the person who filed the complaint no longer wishes to pursue the charges.

Defendant Deceased:

Cases dismissed because the defendant died.

Dismissed Officer Fail to Pros:

Cases dismissed because the officer failed to appear in Court.

Dismissed (presented insurance):

Cases dismissed because the defendant presented valid proof of insurance for the offense date.

Dismissed (presented DL):

Cases dismissed because the defendant presented a valid driver's license.

Dismissed Mistaken Identity:

Cases dismissed cases on the City Attorney's motion due to mistaken identity.

Dismissed (Prosecutor's Order):

Cases dismissed on the City Attorney's motion or as a result of a plea agreement.

Dismissed Presented Records:

Cases dismissed because the defendant presented records to satisfy a code or Court requirement.

Dismissed After PT Diversion:

Cases dismissed because the defendant entered into a Pre-Trial Diversion agreement with the City and satisfied the requirements of the Pre-Trial Diversion.

Dismissed Victim/Witness FTA:

Cases dismissed because the witness or victim did not appear in Court for trial.

Dismissed without prejudice:

Cases dismissed but the City having the option to re-file the case within one (1) year of the date of the offense.

Dismissed No Drug Results:

Drug results were not received for trial.

Dismissed – Officer Not With City

Officer/Witness is no long employed by the City.

Warrants

The Court issues warrants for Failure to Appear in Court for court sessions. These warrants are printed and copied to the CPD Warrants Division.

Cleared:

The Court clears warrants once the warrant is served by an officer or when a defendant self reports to the Court. The Court also clears warrants if a person is deceased, posts bond and or, in some cases, enters a plea.

Other Paid Cases:

The Court received a partial payment for a case; however, the defendant still has a balance due.

Search Warrant Issued:

A search warrant document was prepared and presented to the court by the City Attorney's office with regard to safety and public health concerns of a structure/property.

This report is not indicative of the case volume in Municipal Court. Rather, this information reflects payment status/coding for cases.

Bill No. 7965

Passed by Council:

Introduced in Council

June 21, 2022

Introduced by:

Mary Beth Hoover

Referred to:

Planning, Streets and Traffic

Bill No. 7965 - A Bill to establish a no parking zone on the west side of Dunbar Street, Wednesdays 6:00 am through 10:00am located from a point 189 feet north of Quarrier Street to a point 245 feet north of Quarrier Street and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia:

Section 1. A Bill to establish a no parking zone on the west side of Dunbar Street, Wednesdays 6:00 am through 10:00am located from a point 189 feet north of Quarrier Street to a point 245 feet north of Quarrier Street.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.