

**REQUEST FOR PROPOSALS
FACILITIES MASTER PLAN
For
PIERPONT COMMUNITY & TECHNICAL COLLEGE**

**PIERPONT COMMUNITY & TECHNICAL COLLEGE
500 GALLIHER DRIVE, ROOM 201c, FAIRMONT, WV 26554**

RFP Issued: June 1, 2021

RFP Due: June 21, 2021

Submit Response To: **David Williams**
Director of Procurement
Pierpont Community & Technical College
500 Galliher Drive, Room 200L, Fairmont, WV
26554

Questions/Clarifications The College respectfully requests that respondents refrain from questions or inquiries during the RFP process. If, however, you need to do so, please direct these questions via email to:

David Williams, Director of Procurement

Dwilliams29@pierpont.edu

By way of this Request for Qualifications/Request for Proposals RFP, Pierpont Community & Technical College (PCTC) will be considering proposals to provide facility master planning services from qualified consultant teams to assist the College with the preparation of a Facilities Master Plan. The College intends that the RFP process will enable PCTC to streamline the process by which Consultants are selected to perform work for the College, expediting the acquisition of needed services to the institution.

The purpose of this RFP is to obtain information that will enable Pierpont Community & Technical College to make a selection, with respect to such services, each Consultant should be highly familiar with all applicable regulations and industry guidelines, mainly as they apply to the College facilities projects and be capable of providing work product that will enable the College to comply with said requirements strictly. Each Consultant responding to this RFP should be prepared and equipped to provide full service to the College in an expeditious and timely manner and on relatively short notice to enable the College to meet critical time deadlines and schedules.

If your Company/Organization is interested in performing master planning and such related work as outlined herein in the Scope of Services section, on behalf of the College, please submit to the College a detailed summary of your Company/Organization's qualifications in accordance with this RFP ("Response"). The deadline for receipt of all materials responsive to this RFP is **June 21, 2021, at 5:00 pm** (the "Response Deadline"). Note that Responses delivered after the Response Deadline may not be considered. Responses will be date stamped to record receipt thereof. The Responses may be mailed or delivered in person during normal business hours, which are 8:00 am to 4:00 pm, Monday through Friday. The delivery of RFPs is the sole responsibility of the business/organization. All Responses must be signed and become the property of the Pierpont Community & Technical College. The address for submission is:

David Williams
Director of Procurement
Pierpont Community & Technical College
500 Galliher Drive, Room 200L, Fairmont, WV 26554

Each Consultant is required to submit a Response they deem appropriate to the following requests. Submittals should be brief and concise but provide sufficient clarity to meet the criteria used in the evaluation process. Each Consultant shall submit **five (5)** copies of Response (one unbound marked "Master" and four formats) and one (1) CD or USB with a PDF version of the Response. The College will evaluate the Responses based on the responsiveness to Pierpont's requirements listed. The Consultant(s) being sought through this RFP will need to meet the College's minimum criteria as listed herein.

Respondents must read the entire RFP prior to submitting questions, as most questions will be answered in this RFP. Please refrain from asking questions regarding the formatting of this RFP. DO NOT contact the Purchasing or Facility Planning or other Departments at the College. All inquiries should be sent via email to the noted party herein.

By tendering a Submittal, the Respondent acknowledges that it is willing to provide complete services in any of the areas specified as described herein, including labor and other services, as reflected in the Scope of Work Section for the benefit and ownership of Pierpont Community & Technical College.

The College desires to select a consultant that can meet or exceed the requirements set forth by the College and provide comprehensive planning and consulting services at the lowest cost and highest

quality, that can demonstrate outstanding ability to coordinate and cooperate with Pierpont's administration and staff, as well as with any other consultants, contractors, and vendors that Pierpont may engage in relation to the development of the Master Plan.

Submittals shall respond to all questions, requirements, information, terms, and conditions therein. It is at the sole and absolute discretion of the College to reject any submittal as non-responsive if any responded fail to answer each question fully in this RFP.

INTRODUCTION:

Pierpont generally utilizes qualified outside consultants to provide facility master planning services and specifically assist the College with the Facilities Master Plan to provide guidance in facilities planning and improvements for the next ten years.

As stated above, the purpose of this RFP is to obtain information that will enable the College to select any number of Consultants that can assist the College in connection with a variety of master planning services, including facilities assessment, space planning, enrollment projections, facilities management, meeting facilitation, survey design and analysis, conceptual design, preliminary cost estimating, and cost-benefit analysis for options including remodeling, changes of use, new construction and new site acquisition. Consultants should have experience in facilities master planning for West Virginia education facilities and facilitating innovative and collaborative problem-solving.

The objective of the Request for Proposal is to develop a Facilities Master Plan (FMP), which will guide the College planning and development plans over the next ten (10) years. The Facilities Master Plan must be completed by **November 5, 2021**. There will be a College Working Group who will be the key members working and fueling the development of the master plan. A wide range of input from College staff, faculty, students, and members of a **Community** Consortium makes up the College's Group. It is anticipated to identify issues and evaluate alternatives, as described in this FMP. The proposing company/organization/firm must have demonstrated skill and experience to successfully develop, compose and produce a Facilities Master Plan in a timely matter while encompassing and defining areas of interest based upon the results/direction of the Educational Master Plan.

Pierpont Community & Technical College currently serves 13 counties in North Central West Virginia (Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Preston, Randolph, Taylor, and Upshur) with classes offered at more than 15 locations throughout the region. There are no assumptions for developing options and that a response to this RFP in no way guarantees a Consultant work at the College.

SCHEDULE OF EVENTS

| EVENT | DATE |
|---|--------------------|
| Release RFP | June 1, 2021 |
| Last Day to Submit Questions | June 7, 2021 |
| FMP Submittal Deadline | June 21, 2021 |
| Receive and Evaluate Responses | June 28, 2021 |
| Interviews with Selected Respondents as Deemed Appropriate | June 30, 2021 |
| Board Approval | July, 2021 |
| Notice to Proceed | July, 2021-TBD |
| Kick-Off Meeting | July , 2021-TBD |
| First Draft Due | September 22, 2021 |
| Final Draft Due | October 29, 2021 |
| Completion Date | November 5, 2021 |
| Note: All dates are subject to revision by the College. Nothing herein binds or shall be construed to bind PIERPONT COMMUNITY & TECHNICAL COLLEGE to enter into any agreement with any party, including any Respondent hereto. | |

PIERPONT COMMUNITY & TECHNICAL COLLEGE

REQUEST FOR PROPOSALS Facilities Master Plan

SECTION 1: GENERAL INFORMATION

1.1 College Overview:

In 1974 - The Community College was established at Fairmont State College. In 2004, SB 448 reclassified Pierpont Community & Technical College, thereby establishing a Local Consortium District for the Community College. In 2008, the Higher Learning Commission held a focus visit at Pierpont. It recommended that the accreditation achieved in 2003 be reinstated for Pierpont Community & Technical College. Thus, establishing Pierpont Community & Technical College as an independently accredited institution, August 1, 2008,

Pierpont is headquartered in Fairmont, West Virginia, in I-79 Technology Park campus in the Pierpont North Central West Virginia Advanced Technology Center (ATC), a 65,000+ square foot facility on 2.5 acres located in the park. On April 1, 2021, Pierpont Community & Technical and Fairmont State University executed a Final Separation Agreement.

Pierpont CTC serves a 13-county area in North Central West Virginia, with facilities at the Pierpont North Central West Virginia Advanced Technology Center in the I-79 Technology Park in Fairmont, WV, the Gaston Caperton Center in Clarksburg, WV, the National Aerospace Education Center at the North Central WV Airport in Bridgeport, WV, the Pierpont Center at the Braxton County High School in Flatwoods, WV, the Pierpont Center in Morgantown, WV, and the Pierpont Center at the Lewis County High School in Weston, WV.

Pierpont CTC offers General Business/Accounting, Liberal Studies, Criminal Justice, and the competitive Physical Therapist Assistant Program at the Gaston Caperton Center, a higher education regional campus facility located at 501 West Main Street downtown Clarksburg, WV. The Center is a 36,000 square-foot facility.

Additionally, Pierpont offers various programs at the Pierpont Center at the Braxton County High School in Flatwoods, WV, just off South I-79 Exit 67. Courses offered to include General Education courses and Associate Degree programs and a Licensed Practical Nurse (LPN.) program under the School of Health Careers.

Pierpont operates the Pierpont Center in Morgantown, WV, at the Monongalia County Technical Education Center (MTEC) and has delivered educational courses at MTEC for many years. The Pierpont Center at MTEC is an 8,400 square foot shared educational facility that has allowed Pierpont to expand course offerings in Morgantown to include Early Childhood, Business Technology programs, and Information Systems. A variety of daytime classes are offered for many

of its programs. MTEC is located just off Greenbag Road at 1000 Mississippi Street in south Morgantown.

At the Lewis County High School in Weston, WV, the Pierpont Center is the current headquarters for Pierpont's Regional Academics. A variety of courses are offered each semester. The Center is located at 205 Minuteman Drive, in the Lewis County High School, in Weston, WV.

Pierpont offers 37 Associate in Applied Science (AAS) degree programs; two (2) Associate of Arts (AA) degree programs; nine (9) Certificate of Applied Science; fifteen (15) Advanced Skill Set Certificates; and eighteen (18) Skill Sets. A number of the associate degree programs transfer to four-year baccalaureate programs at other state-supported institutions. Courses are offered online and through an interactive video, network to increase access for students across the large geographic area served by the College.

Pierpont is part of the state's growing high technology corridor, with a metro area of about 50,000 residents. With an enrollment of more than 2,100 students an academic year. Pierpont currently offers a combination of more than 40 Associate of Arts, Associate of Applied Science, Certificate of Applied Science degree programs, Advanced Skill Sets, and Skill Sets. Pierpont has multiple satellite campuses. Pierpont provides workforce training and continuing education for the service region, as well as transfer degrees.

Pierpont's Office of Workforce, Community and Technical Education offers a variety of technical training programs and customized training and workforce development programs that address the training needs of employers within the College's designated service area. During the past decade, programs and training have been provided, impacting more than 10,000 employees from more than 25 companies. Additionally, in partnership with local vocational centers, the Region 6 Workforce Investment Board, and other educational partners, Pierpont CTC designs customized certificate programs that emphasize industries and skills in which participants can obtain employment quickly and help to alleviate workforce shortages in critical industries that are targeted for growth and economic impact. These programs are designed specifically for adults with little or no postsecondary education, thus increasing adult access to higher education while providing training that is immediately relevant to the adult's employment goal.

1.2 Scope of Project:

Pierpont is required by the WV statute and the WV Council for Community and Technical College Education to complete a ten-year Facilities Master Plan (FMP). Pierpont is interested in contracting with a Planning Company/organization to develop an FMP for Pierpont's locations. No initial plan has been developed since Pierpont's independence. The horizons for this FMP will be the years 2022 through 2032. Development of the FMP will be under the purview of the Vice President for Finance and Administration and the Facilities Planning Committee, including representatives from the institution's major constituencies. Regular progress meetings are anticipated between the Consultant and Pierpont administration and/or the Facilities Planning Committee. The resulting FMP must include all of the requirements as set forth by the WVCTCE. Series 12, [CAPITAL PROJECT MANAGEMENT](#)

1.3 Contract Performance Period/Timeframes

The timeline for completion and acceptance of the FMP is critical, and the FMP must be completed no later than November 5, 2021, for approval of the Pierpont CTC Board of Governors and the WV Council for Community and Technical College Education.

SECTION 2: SUBMITTING PROPOSALS

2.1 Proposal Format and Submission

The Director of Procurement will receive proposals until **June 21, 2021, at 5:00 pm** Eastern Time. Original FMP shall be submitted to the Pierpont Community & Technical College Procurement Department. The submission must take place prior to the date and time stipulated as the opening date. Each FMP will be date and time stamped on the Procurement Department's official time clock to verify the time and date of receipt.

Potential bidders mailing expressions should allow sufficient time for mail delivery to ensure timely arrival. The Procurement Department CANNOT waive or excuse late receipt of an expression that is delayed and late for any reason. Any FMP received after the bid opening time, and date will be immediately disqualified.

The RESPONSE should be concise, well organized, and demonstrate the Respondent's qualification. The RESPONSE may be no longer than 50 pages on 8 ½" x 11" paper, exclusive of the cover letter, exhibits, and pictures.

Each copy of the RESPONSE must be placed in its own respective white 3- ring "D" binder, be single-sided, tabbed, and organized in the following order, and shall include all of the following sections and information as stated in this document. Company/Organization submitting a RESPONSE must submit five (5) copies of the RESPONSE and one (1) CD or USB drive with a PDF version of the RESPONSE.

NOTE for PDF Version of the RESPONSE: The filename of the PDF version of the RFP must be named in the following manner substituting the Company/Organization/Firm name in the appropriate location: "[INSERT COMPANY/ORGANIZATION/FIRM NAME] MASTER PLANNING RFP.PDF," for example: BUZZBUILDER_PLANNING_RFP.PDF The PDF version of the RFP must be comprised of one single document, NOT MULTIPLE DOCUMENTS where the company/organization/firm introduction letter, Exhibits, etc., are saved as separate PDF documents. Only one complete copy of the PDF version will be accepted per CD or USB.

NOTE for Exhibits: All Exhibits should be tabbed, labeled, and included as part of the appendix. At the Company/Organization/Firm discretion, it is at the responder's discretion to determine how to reference the location of the Exhibits in the appendix in the body of the RFP. All Exhibits may be recreated in another program as long as the formatting and information requested mirrors the PDF forms attached to this RFP. The PDF forms intend to keep all the requested information in a uniform format.

Five (5) copies in a sealed opaque envelope shall be delivered no later than **June 21, 2021, at 5:00 pm (EST)** to:

Pierpont Community & Technical College
Attention: David Williams
Office of the Director of Procurement
500 Galliher Drive
Fairmont, WV 26554

The outside of the envelope or package(s) should clearly be marked:

Director of Procurement: David Williams
Request #: _____
Opening Date: _____
Opening Time: _____

Faxed or electronically transmitted proposals will not be accepted. All documents and information submitted in response to this request for proposal will be considered public information, pursuant to the West Virginia Freedom of Information Act.

2.2 Inquiries:

Questions and requests for clarifications must be submitted in writing and delivered by US Postal Service, courier service, fax, or email. Questions and request for clarification will be received until June 7, 2021, and must be directed to:

David Williams, Director of Procurement
Pierpont Community & Technical College
Office of the Director of Procurement
500 Galliher Drive
Fairmont, WV 26554
Telephone: (304) 333-3717
Email: dwilliams29@pierpont.edu

Potential bidders, or anyone on the potential bidders' behalf, are not permitted to contact any members of the evaluation committee. Violation may result in the rejection of the FMP. The Director of Procurement listed above is the sole contact for any and all inquiries after this FMP has been released.

This RFP answers questions, requests for clarification, and any additional information regarding the RFP will be posted on the following URL: <https://www.pierpont.edu/node/2108#overlay-context=>. It is the vendor's responsibility to check the webpage for addenda and additional information regarding this RFP. Please acknowledge receipt of the addenda in the proposal.

SECTION 3: SERVICES REQUIRED

3.1 The Consultant must be able to provide a Ten-Year Facilities Master Plan that has the following specified areas: analysis, assessment, cost estimations, and recommendations-based data elements listed.

A. The governing board's development strategy

- B. An assessment of the general condition and suitability of buildings and facilities using the following data elements:
- i. Physical Plant needs segregated by the following asset groups:
 - i. Educational and general
 - ii. Auxiliary
 - iii. Transitional
 - ii. Physical plant package needs segregated by the following by project categories:
 - i. Repair/maintenance
 - ii. Modernization
 - iii. Alteration
 - iv. New construction
 - iii. Physical plant package investment needs segregated by the following categories
 - i. Reliability
 - ii. Asset preservation
 - iii. Program improvement
 - iv. Economic operations
 - v. Life safety/Code
 - vi. New construction
 - iv. Physical plant package needs segregated by the following categories:
 - i. Building envelope
 - ii. Building systems
 - iii. Life/Safety/Code
 - iv. Space renewal
 - v. Utility infrastructure
 - vi. Grounds infrastructure
 - v. An assessment of the impact of projected enrollment and demographic changes on building and facility needs
 - vi. A comprehensive list of deferred maintenance projects that need to be addressed for each campus by building and facility including estimated cost of each
 - vii. A list of existing buildings and facilities in need of renovations, additions, demolition, and or any combination thereof
 - viii. A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking, and landscaping
 - ix. A list of telecommunications, utilities, and other infrastructure improvements that are needed
 - x. A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion
 - xi. A list of proposed new facilities and building sites
 - xii. A list of capital projects in priority order
 - xiii. Estimates of the timing, phasing, and projected costs associated with individual projects
 - xiv. A delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible

- xv. A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its implementation
- xvi. An estimate of the plan's impact on the institution's capacity utilization, operating costs, including depreciation and projected financial status

SECTION 4: EVALUATION AND SELECTION PROCESS

- 4.1** All acceptable proposals will be evaluated by a Pierpont Community & Technical College Facility Master Plan Working Group committee based on the criteria listed in this FMP and in accordance with the WV Higher Education Purchasing Regulations.
- 4.2** The evaluation committee may elect to interview one or more consultants. Interviews may be conducted in person or by telephone/video conference call. If interviews are held, final adjustments in the evaluation scoring will be made following the interview. The proposal receiving the highest overall score will be declared the most advantageous.
- 4.3** Evaluations will be based on overall services, qualifications, and recent experience and costs presented in the proposal. An award will be made based on the evaluation committee's determination of the best-qualified Consultant to provide the services. A contract will not necessarily be awarded to the vendor submitting the lowest cost proposal. Pierpont Community & Technical College shall select the best value solution.
- 4.4** Pierpont Community & Technical College reserves the right to accept or reject any or all expressions if it is in the best interest of the College to do so and to waive any irregularities in the Response received when such irregularities are not in conflict with the West Virginia Code or the Higher Education Purchasing Regulations. The College also reserves the right to withdraw this FMP at any time and for any reason.

SECTION 5: PROPOSAL PREPARATION AND EVALUATION CRITERIA

- 5.1** Affirm that the Consultant who will be providing the services in this contract is free from obligation and interests that might conflict with Pierpont Community & Technical College or the State of West Virginia. Disclose any information about the Consultant that presently or in the future could impair your ability to provide the required level of services. (Yes/No)
- 5.2** Expertise, experience, and qualifications of the Consultant's personnel in each discipline that may provide services relevant to the FMP; Expertise, experience, and qualifications of any special consultants proposed. (20 points)
- 5.3** Experience with higher education clients to include preparation of required Facilities Master Plan and realistic understanding of current needs and trends in higher education facilities, emphasizing Community Colleges. (20 points)
- 5.4** Expertise and experience of the Consultant in providing services on other term contracts or on other projects of similar size, scope, and features as those required for the Scope of Project and Services Required sections on this FMP (20 points)

- 5.7 Overall suitability to provide the services outlined in the RFP within the time, budget, and operational constraints that may be present and the comments and/or recommendations of the Consultant's previous clients and references. (20 points)
- 5.8 Provide a fee and expense proposal for the cost of the service. Actual fees and expenses may be negotiated but may not exceed the amount specified in your proposal. (20 points)

SECTION 6: OTHER PROVISIONS

- 6.1 Pierpont Community & Technical College reserves the right to add additional related services based on the original offer. Upon mutual consent of the College and the successful Consultant on pricing, performance, etc., the aforementioned additional services may be added to the contract.
- 6.2 All expenses incurred in the preparation and submission of proposals or for any oral interviews are the exclusive responsibility of the vendor. Proposals will become a matter of public record and open for inspection following the announcement of the award.
- 6.3 The successful Consultant must be a registered vendor with the Purchasing Division, West Virginia Department of Administration, and have a valid vendor number.
- 6.4 The successful Consultant must have a current W-9 Request for Taxpayer Identification Number Form on File with the Finance Division, Financial Accounting, and Reporting Section, WV Department of Administration, and have a valid vendor number.
- 6.5 Payment for services, not to exceed the maximum proposed, will be made monthly in arrears upon satisfactory completion of the required services, submission of an uncontested invoice, and the acceptance of required reports. Advance payments are not allowed.
- 6.6 Pierpont Community & Technical College and the State of West Virginia are exempt from federal and state taxes and will not pay or reimburse such taxes. The Consultant may request a tax exemption certificate.
- 6.7 The proposal shall provide complete and total compensation for the scope of work identified herein. Pierpont Community & Technical College must approve additional services and additional compensation if deemed appropriate, and an approved change order is required before payment can be made.
- 6.8 Discussions and interviews may be held with individuals or under final consideration prior to making a selection for the award; however, a proposal may be accepted without such discussions or interviews. In the event that mutually acceptable terms cannot be reached within a reasonable period of time, Pierpont Community & Technical College reserves the right to undertake negotiations with the next most advantageous Company/Organization without undertaking a new procurement process.
- 6.9 The State's WV-96 is attached to demonstrate the State law and guidelines, which must be adhered to in any contracts presented to the College for execution. The successful vendor must be registered with the WV Department of Administration prior to any award, pay the registration fee, and have a valid vendor number.

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

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

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

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

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

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that 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 State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

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

State: _____

Vendor: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____