

## NOTICE TO BIDDERS

Notice is hereby given that sealed proposals will be received by the Town of Shepherdstown at the office of the Town Manager, 104 N. King St., Shepherdstown WV, 25443, on **December 1, 2023, at 1:30 p.m.** for ***Renovation of the Old Market House.*** The Bid Opening will at the same time in the Town Council Meeting Room, at which time all proposals submitted in accordance with the conditions of the contract documents will be publicly opened and read aloud.

A mandatory site visit will be held at the Old Market House, 100 E. German St., Shepherdstown WV on November 16, 2023, at 10:30 a.m.

Specifications and bidding documents are available at the Town Manager's Office, 104 N. King St, Shepherdstown, West Virginia 25443 and may be examined and/or obtained during regular business hours. Documents are also available online at [www.shepherdstown.us](http://www.shepherdstown.us).

All complete bid submissions shall be enclosed in a sealed envelope addressed as follows: **"Renovations of Old Market House."** Said sealed envelopes shall bear the name and address of the bidder on the outside face of the envelope.

Proposals shall not be withdrawn and shall remain in effect for a period of sixty (60) days subsequent to the opening of the bids, except that the bids of any consenting bidder may, at the request of the Town, be held for consideration for a longer period as may be agreed. The Town of Shepherdstown shall award the contract or reject all bids within sixty (60) days, unless there has been an agreed extension as set forth in the above paragraph.

The Town of Shepherdstown reserves the right to reject any or all bids and/or waive any informalities as may be deemed to be held in the best interest of the Town of Shepherdstown.

Women and minority-owned businesses are encouraged to apply.

By order of the Town Council of the Town of Shepherdstown, West Virginia.

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### 1. Background

The Corporation of Shepherdstown is the oldest town in West Virginia. Located on the Potomac River near the Maryland and West Virginia borders, the town has maintained its historic structures and the charm of a small town but boasts a vibrant downtown area. Home to Shepherd University, Shepherdstown is a small college town with a population of about 1800 residents. It is only 90 minutes away from the Washington/Baltimore metropolitan areas, but miles away from the rushed atmosphere of the city.

The Market House is located literally in the center of Shepherdstown and was originally built in 1800 as a one-story market for local farmers to share their wares. In 1850, a second story was added by the Independent Order of the Odd Fellows, and in 1922, the Shepherdstown Women’s Club took over the bottom floor for a public library that remained in this location until 2022.

The Corporation of Shepherdstown (Town) plans to engage with a Contractor to renovate the Old Market House building, which served as home of the Shepherdstown Library for several years. The renovated Market House will be the new home of the Shepherdstown Visitor’s Center, an extension of the Jefferson County Convention and Visitor’s Bureau. Plans for renovation include the addition of an ADA compliant restroom, one additional restroom, a handicap lift to access the second floor, new HVAC mechanical systems, new and/or relocated electrical service, as well as new painting, wall coverings, and flooring.

The Town is seeking contractors whose combination of experience and expertise will provide timely and cost-effective services to the Town as well as experience in rehabilitating historic structures. Information related to this solicitation, including any addenda, will be posted to the Town’s Website at [www.shepherdstown.us](http://www.shepherdstown.us). For questions related to this bid, contact:

Corporation of Shepherdstown  
Attn: Stephanie Grove, Town Administrator  
104 N. King St,  
Shepherdstown, WV 25443  
[sgrove@shepherdstown.us](mailto:sgrove@shepherdstown.us)

## 2. Overview of Project

The Town is seeking proposals to renovate and convert the Old Market House to a visitor's center. The selected contractor will provide all labor, equipment, supplies and materials required to provide the services except as specified elsewhere in this document. The Town expects all respondents to address each item in the entire bid manual. Any proposals received by the Town that are not complete will not be considered.

A detailed Scope of Work is provided in Appendix A attached hereto: **SEE APPENDIX A – SCOPE OF WORK**

## 3. Project Timeline and Proposal Submission

Provided below is the anticipated schedule of events. The Town reserves the right to adjust the schedule and to add/remove specific events to meet the unique needs of this Project.

<b>Task</b>	<b>Date</b>
Bid posted by Town	11/07/2023
Mandatory Site Visit	11/16/2023 at 10:30 a.m.
Deadline to submit questions	11/22/2023 at 10:30 a.m.
Town will respond to all questions	11/28/2023
Bid responses due to Town	12/1/2023 at 1:30 p.m.
Project awarded by the Town	12/12/2023

The Town reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Bid Schedule of Events will be provided to all Proposers.

Proposals shall be enclosed in a sealed envelope or package, addressed to the Town of Shepherdstown. The name and address of the prospective Contractor and Bid Title shall be placed on the outside of the package. All items required for a responsive Proposal shall be included. It is the sole responsibility of the proposer to ensure that the proposal package is received no later than the established due date and time at the proper location. Proposals received after the due date and time will not be considered. Proposals submitted by facsimile or other electronic means will not be accepted. Submit/Deliver to:

Town of Shepherdstown  
Stephanie Grove, Town Administrator  
104 N. King St.  
Shepherdstown, WV 25401

## 4. Evaluation Criteria

The Town shall utilize the following evaluation criteria to determine the lowest responsible bidder:

- Qualifications and experience of firm in providing similar services for similar projects;
- Qualifications and relevant experience of key team members and subcontractors;
- Availability of key team members and subcontractors for this Project;
- Available equipment resources to be used on this Project;

- Pricing;
- Experience with renovation of historic structures
- Responsiveness, relevance and understanding of the proposal package.
- Timeline for Completion of the project.

## 5. Questions Related to the Project

All questions related to this project should be directed to Stephanie Grove, Town Administrator , (sgrove@shepherdstown.us). Questions must be submitted by email by November 22, 2023. Responses will be provided to all known parties and posted on the Town’s website by close of business on November 28, 2023.

## 6. Proposal Process

Proposals must be submitted and received by December 1, 2023 at 1:30 p.m. Interested Contractors must complete and submit the required Forms 1 thru 7 (Appendix C) provided with this Bid Manual. No electronic submissions are permitted. Three (3) hard copies must be submitted to:

Town of Shepherdstown  
 Attn: Stephanie Grove, Town Administrator  
 104 N King St  
 Shepherdstown, WV 25401

This Bid Manual, all subsequent addendums and all attachments will only be made available online at the Town of Shepherdstown’s website at [www.shepherdstown.us](http://www.shepherdstown.us). Proposals and bids received after the deadline will not be evaluated.

## 7. Public Records

Pursuant to the West Virginia Freedom of Information Act, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. All submitted proposals are considered public records subject to disclosure.

## 8. Representations, General Conditions and Other Requirements

*8.1 Communications.* All communication of any nature with respect to this RFP/Bid shall be addressed to the contact person identified in this RFP/BID. With the exception of communications with the designated contact person, prospective Contractors and their staffs are prohibited from communicating with elected Town officials, Town staff and any selection committee member regarding this RFP/BID or submittals from the time the RFP/BID was released until the selection results are publicly announced. Violation of this provision may lead to disqualification of the Contractor’s proposal for consideration.

*8.2 Collusion.* By submitting a response to the RFP/BID, each Proposer represents and warrants that its response is genuine and is not made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham response or any other person to refrain from submitting a response; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a response.

*8.3 Duties and Obligations of Contractors in the RFP/BID Process.* Interested Contractors are expected to fully inform themselves as to all conditions, requirements and specifications of this RFP/BID before submitting a proposal. Contractors must perform its own evaluation and due diligence

verification of all information and data provided by the Town. The Town makes no representations or warranties regarding any information or data provided by the Town. Contractors are expected to promptly notify the Town in writing to report any ambiguity, inconsistency or error in this RFP/BID. Failure to notify the Town accordingly will constitute a waiver of claim of ambiguity, inconsistency or error.

*8.4 Addenda.* To clarify or modify any part of this RFP/BID, addenda may be issued and posted at the Town's official website at [www.shepherdstown.us](http://www.shepherdstown.us). Any requests for information or clarification shall be submitted in writing to the contact person listed in this RFP/BID by the deadline for questions.

*8.5 Cost of Proposal Preparation.* The Town shall not be liable for any expenses incurred by any Contractor responding to this RFP/BID. Contractors submitting a proposal in response to this RFP/BID agree that the materials and submittals are prepared at the Contractor's own expense with the express understanding that the Contractor cannot make any claims whatsoever for reimbursement from the Town for the costs and expense associated with preparing and submitting a proposal. Each Contractor shall hold the Town harmless and free from all liability, costs, claims, or expenses incurred by, or on behalf of, any person or Contractor responding to this RFP/BID.

*8.6 Financial Capacity Town; Insurance Requirements.* The selected Contractor must have the financial capacity to undertake the work and assume associated liability. The selected Contractor will be required to provide certificates of insurance evidencing coverage for automobile liability in the minimum amount of \$2,000,000; commercial general liability in the minimum amount of \$2,000,000; and workers' compensation insurance as required by West Virginia law.

*8.7 Ownership of Work Products.* The Town shall have exclusive ownership of all intellectual property rights in all documents and other work product prepared by, for, or under the direction of the selected Contractor pursuant to any contract under this RFP/BID (collectively, the "Intellectual Property"), including without limitation the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose or to assign such rights to any third party. The Intellectual Property shall be prepared in the Town's name and shall be the sole and exclusive property of the Town, whether or not the work contemplated therein is performed. The Town will grant the Contractor a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform the contract.

*8.8 Town Rights and Reservations.* The Town expects to select one or more Contractors but reserves the right to request substitutions of any key team member, including staff and subcontractors. The Town reserves the right to contact any Contractor/team for any additional information including but not limited to experience, qualifications, abilities, equipment, facilities, and financial standing. The Town reserves the right to modify any part of this RFP/BID as issued with an addendum. The Town, at its sole discretion, reserves the right to reject any or all responses to the RFP/BID, to cancel the RFP/BID, to re-advertise for new RFP/BID responses either with identical or revised specifications, or to accept any RFP/BID response, in whole or part, deemed to be in the best interest of the Town. The Town reserves the right to waive technicalities and informalities.

A response to this RFP/BID shall not be construed as a contract, nor indicate a commitment of any kind.

The Town reserves the sole right to award a contract or contracts to the most qualified Contractor(s) on the basis of best overall proposal most advantageous to the Town. The Town is therefore not bound to accept a proposal on the basis of lowest price. The Town also reserves the right to make multiple awards, based on experience and qualifications if it is deemed in the Town's best interest.

*8.9 Contract.* The contents of this RFP/BID and all provisions of the successful proposal deemed responsive by the Town may be incorporated, either in whole or in part, into a contract and become legally binding when approved and executed by both parties. Contents of the contract may contain changes from the Town perspective as a result of the RFP/BID process and proposal(s) received. The final negotiated contract may include the scope of work as outlined in this RFP/BID along with the successful Contractor's submittal and any additions or deletions made at the discretion of the Town as a result of the RFP/BID process.

*8.10 Gratuities.* No person will offer, give or agree to give any Town employee or its representatives any gratuity, discount or offer of employment in connection with the award of contract by the Town. No Town employee or its representatives will solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a Town contract.

*8.11 Required Review and Waiver of Objections by Proposers.* Proposers should carefully review this RFP/BID and all attachments, including but not limited to the Standard Professional Services Agreement, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP/BID objections must be made in writing and received by the Town no later than the "Deadline for Written Questions and Comments." This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made. Protests based on any objection will be considered waived and invalid if these faults have not been brought to the attention of the Town, in writing, by the Deadline for Written Questions and Comments.

*8.12 Nondiscrimination.* No person will be excluded from participation in, be denied benefit of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the Town's contracted program or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or West Virginia State Constitution or statutory law; nor will they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the Town or in the employment practices of the Town's contractors. Accordingly, all Proposers entering contracts with the Town will, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

*8.13 Proposal Withdrawal.* To withdraw a proposal, the Proposer must submit a written request, signed by an authorized representative. After withdrawing a previously submitted proposal, the Proposer may submit another proposal at any time up to the deadline for submitting proposals

*8.14 Proposal Errors.* Proposers are liable for all errors or omissions contained in their proposals. Proposers will not be allowed to alter proposal documents after the deadline for submitting a proposal.

*8.15 Incorrect Proposal Information.* If the Town determines that a Proposer has provided, for

consideration in the evaluation process or contract negotiations, incorrect information which the Proposer knew or should have known was materially incorrect, that proposal will be determined non-responsive, and the proposal will be rejected.

*8.16 Prohibition of Proposer Terms and Conditions.* A Proposer may not submit the Proposer's own contract terms and conditions in response to this RFP/BID. If a proposal contains such terms and conditions, the Town, at its sole discretion, may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected.

*8.17 Assignment and Subcontracting.* The Proposer may not subcontract, transfer, or assign any portion of the contract without prior, written approval from the Town. Each subcontractor must be approved in writing by the Town. The substitution of one subcontractor for another may be made only at the discretion of the Town and with prior, written approval from the Town. Notwithstanding the use of approved subcontractors, the Proposer, if awarded a contract under this RFP/BID, will be the prime contractor and will be responsible for all work performed and will be responsible for all costs to subcontractors for services provided by the Proposer. The Proposer is prohibited from performing any work associated with this RFP/BID or using contractors for any services associated with this RFP/BID offshore (outside the United States).

*8.18 Proposal of Additional Services.* If a Proposer indicates an offer of services in addition to those required by and described in this RFP/BID, these additional services may be added to the contract before contract signing at the sole discretion of the Town.

*8.19 Licensure.* Before a contract pursuant to this RFP/BID is signed, the Proposer must hold all necessary, applicable business and professional licenses, including, but not limited to, a Town of Shepherdstown Business License. The Town requires any or all Proposers to submit evidence of proper licensure.

*8.20 Drug-Free Workplace.* The Proposer must have a written plan for a drug-free workplace policy that is compliant with Article 1D, Chapter 21 of the West Virginia Code. The Proposer must make said affirmation with its bid submission. (See Appendix C, Form 6)

*8.21 Conflict of Interest and Proposal Restrictions.* By submitting a response to the RFP/BID, the Proposer certifies that no amount will be paid directly or indirectly to an employee or official of the Town as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or contractor to the Proposer in connection with the procurement under this RFP/BID. Notwithstanding this restriction, nothing in this RFP/BID will be construed to prohibit another governmental entity from making a proposal, being considered for award, or being awarded a contract under this RFP/BID. Any individual, company, or other entity involved in assisting the Town in the development, formulation, or drafting of this RFP/BID or its scope of services will be considered to have been given information that would afford an unfair advantage over other Proposers, and said individual, company, or other entity may not submit a proposal in response to this RFP/BID.

*8.22 Contract Negotiations.* After a review of the proposals and completion of the reference checks, interviews, and demonstration, the Town intends to enter contract negotiations with the selected Proposer. These negotiations could include all aspects of services and fees. If a contract is not finalized in a reasonable period, the Town will open negotiations with the next ranked Proposer.

*8.23 Execution of Contract.* If the selected Proposer does not execute a contract with the Town within fifteen (15) business days after notification of selection, the Town may give notice to that service provider of the Town's intent to select from the remaining Proposers or to call for new proposals, whichever the Town deems appropriate.

*8.24 Right of Rejection.* The Town reserves the right, at its sole discretion, to reject all proposals or to cancel this RFP/BID in its entirety. Any proposal received which does not meet the requirements of this RFP/BID may be nonresponsive, and the proposal may be rejected. Proposers must comply with all the terms of this RFP/BID and all applicable state laws and regulations. The Town may reject any proposal that does not comply with all the terms, conditions, and performance requirements of this RFP/BID. Proposers may not restrict the rights of the Town or otherwise qualify their proposals. If a Proposer does so, the Town may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected. The Town reserves the right, at its sole discretion, to waive variances in technical proposals provided such action is in the best interest of the Town. Where the Town waives minor variances in proposals, such waiver does not modify the RFP/BID requirements or excuse the Proposer from full compliance with the RFP/BID. Notwithstanding any minor variance, the Town may hold any Proposer to strict compliance with the RFP/BID.

*8.25 Disclosure of Proposal Contents.* All proposals and other materials submitted in response to this RFP/BID procurement process become the property of the Town. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process. Upon the completion of the evaluation of proposals, the proposals and associated materials will be open for review by the public to the extent allowed by the West Virginia Freedom of Information Act. By submitting a proposal, the Proposer acknowledges and accepts that the contents of the proposal and associated documents will become open to public inspection. Each Proposer should be aware that although the West Virginia Freedom of Information Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town might not be in a position to establish that the information, which a Proposer submits, is a trade secret. If a request is made for information marked "confidential," the Town will provide the Proposer who submitted such information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

*8.26 Proprietary Information.* The master copy of each proposal will be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Proposer may clearly label part of the proposal as "CONFIDENTIAL" if the Proposer thereby agrees to indemnify and defend the Town for honoring such a designation. The failure to so label any information that is released by the Town will constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by the Town, the Town will notify the Proposer of the request and delay access to the material until seven (7) working days after notification of the Proposer. Within that time delay, it will be the duty of the Proposer to act in protection of its labeled information. Failure to so act will constitute a complete waiver.

*8.27 Severability* If any provision of this RFP/BID is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the Town and Proposers will be construed and enforced as if the



RFP/BID did not contain the particular provision held to be invalid.

*8.28 Proposal Amendment.* The Town will not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless such is formally requested, in writing, by the Town.

*8.29 Rights of the Town.* The Town reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals, if necessary, for any reason;
- Remedy errors in the Request for Proposal process;
- Approve or disapprove the use of particular subcontractors;
- Negotiate with any, all, or none of the Proposers;
- Accept other than the lowest offer;
- Waive informalities and irregularities in the proposals;
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the Town.

An agreement will not be binding or valid with the Town unless and until it is approved by the Town Council and executed by authorized representatives of the Town and of the Proposer.

## Appendix A – Scope of Work and Drawings

### **A. Furnish all labor and material required to complete the following on the Interior of the Market House:**

1. Carefully remove all existing interior shelving and casework for potential reuse in the final interior renovations.
2. Removal of the existing lower level ceiling to expose the existing second floor joists/structure.
3. Removal of the existing rear interior wall, salvaging any shelving or casework for reuse in the final interior renovations.
4. Removal of the existing oil-fired boiler and associated piping. Contractor shall salvage as much of the piping as possible and prepare salvaged material for recycling (piping) and resale or reuse (boiler).
5. Removal and salvage of the existing electrical panel and associated wiring
6. Repair of the existing stair landing.
7. Installation of new 2 x 10 framing on each side of existing floor joists supporting the second floor as shown on Sheet G040 of the construction documents.
8. Installation of new ceiling on the first floor after installation of new 2 x 10 framing.
9. Relocation of the electrical entrance and panel to location shown on Sheet A100 of the construction documents. Final placement will be determined by the electrical contractor and shall conform to the most current edition of the National Electrical Code (NEC).
10. Installation of new wiring and lighting as shown on A110 and E100 of the construction documents to accommodate lighting and outlets indicated on plan. Final placement will be determined by the electrical contractor and coordinated with the owner, and shall conform to the most current edition of the National Electrical Code (NEC).
11. Installation of new limited use/limited application (LULA) lift as shown on Sheet A100 of the construction documents.
12. Installation of new walls and doors as shown on Sheet A100 and A101 of the construction documents.
13. Installation of new mini-split HVAC systems as shown in locations throughout the construction drawings. Mechanical contractor to determine best and final placement as close to the locations shown and coordinate with owner prior to final installation. Outdoor units associated with the indoor systems shall be placed in the rear (south) of the existing structure, with final placement being coordinated with the owner.
14. Installation of casework as shown on Sheet A100 of the construction documents.
15. Installation of the rest rooms and associated fixtures including supply and waste piping in Rooms 103 and 104, and as shown on Sheet A100 of the construction documents.
16. Installation of salvaged shelving in locations shown on Sheet A100 of the construction documents. All shelving that is reinstalled shall be prepared, painted and/or stained as directed by owner/tenant. Any shelving and/or salvaged material not used as part of the interior renovation work shall be returned to the owner prior to discarding.
17. Painting throughout, as directed by tenant and approved by owner.

18. Any appliances and/or non-permanent fixtures/casework or items particular to the occupation by the tenant shall be installed only at the discretion of the owner.
19. All work shall be contained to the interior. Unless certain items (electrical, HVAC) require new exterior access (holes, sleeves, etc.), there shall be no work performed on the exterior of the structure. For any new access points created during the course of construction, the contractor shall carefully patch and/or repair to match existing/adjacent.
20. Set-up safety parameters as required by OSHA and leave in place throughout the project.
21. Upon completion and final walk-through of the project, the contractor shall be responsible for all cleanup and removal of any construction debris. The contractor shall also be responsible for final cleaning prior to occupancy.

## **Appendix B - Standard Service Agreement Terms and Conditions**

It is recognized that the formal basis of any agreement between the Town and the Proposer is a contract rather than a proposal. In submitting proposals, Proposers must indicate that they are prepared to complete the Town's Agreement for Professional Services as presented on the following pages. The RFP/BID, Proposer's proposal, and interview/demonstration results will become part of the agreement between the Town and the successful Proposer. The winning Proposer will be expected to accept these terms and conditions unless they otherwise take exception in their proposal.

## **Appendix C - Bid Forms**

Appendix B: Sample Form of Contract

**TOWN OF SHEPHERDSTOWN CONTRACTOR SERVICES AGREEMENT**

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between THE TOWN OF SHEPHERDSTOWN, WEST VIRGINIA, Party of the First Part, hereinafter called the "Owner" and \_\_\_\_\_ Party of the Second Part, hereinafter called the "Contractor".

**WITNESSETH**

In consideration of the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

1. Statement of Work: You are invited to bid on the \_\_\_\_\_. The project includes the \_\_\_\_\_.
2. Completion of Work: The Contractor shall commence work on the date to be specified in a written "Notice of Proceed" by the Owner and shall complete the project within the conditions as set forth in the bid schedule, unless the period for completion is extended as hereinafter provided.
3. Contract Sum:

a. **[If Fixed Price]** In consideration of the Performance of the Contract, the Owner agrees to pay the Contractor as compensation for his services the firm, fixed price of: Dollars and Cents (\$ \_\_\_\_\_).

b. **[If Unit Price]** In consideration of the Performance of the Contract, the Owner agrees to pay the Contractor as compensation for his services in accordance with the Bid Form and Contract Documents, which are included as Exhibits to this Agreement, an amount equal to the sum of the itemized prices as shown for each item of work multiplied by the actual quantity of each item completed:

All specific cash allowances are included in the above price and have been computed to include the Contractors profit, overhead, all furnishing and installation charges. This is a unit price contract and the estimated quantities are not guaranteed and are given only as a basis of calculation for comparing and awarding the project. The Total Computed Price used for Comparison and Award will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately defined item times the estimated quantity for each item as indicated on the bid form. Notwithstanding the language of this paragraph, the contract price shall not exceed \$ \_\_\_\_\_ without further authorization.

4. Contract Documents: The Contract Documents which comprise the entire Agreement between the OWNER and CONTRACTOR concerning the Work are defined as follows:
  - a. This Agreement;
  - b. Performance Bond;

- c. Insurance Certificate;
- d. Project Bid Manual, including the General and Specific Conditions;
- e. Drawings, if applicable, consisting of cover sheet and sheets numbered \_\_\_\_ thru \_\_\_\_, inclusive, with each sheet bearing the following general title:  
\_\_\_\_\_.
- f. Addenda;
- g. Exhibits to this Agreement:
  - i. Notice to Proceed
  - ii. Contractor's Bid
  - iii. Documentation submitted by the Owner by Contractor prior to Notice of Award
- h. Deliverables issued on or after the effective date of this Agreement and are not attached hereto:
  - i. Written Amendments
  - ii. Work Change Directives
  - iii. Change Orders

5. Payment: The Owner shall make progress payments monthly as the Work proceeds on Applications for Payment approved by the Owner's Project Manager. Prior to the date for each progress payment, the Contractor shall submit to the Owner's Project Administrator an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner's Project Administrator may require, including but not limited to the Contractor's certification that all work for which payment is requested has been completed in full accordance with the Contract Documents, copies of requisitions from Subcontractors and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall certify that he has paid all due and payable amounts for which previous Certificates for Payment were issued and payments received from the Owner.

The Owner will retain five percent of the amount of all progress payments until the Work is substantially completed and accepted, whether or not the Owner has occupied any or all of the Project before such time.

6. Contract Time: All time limits for Interim Completion, Milestones, Substantial Completion, and Final Completion as stated in the Contract Documents are of the essence of the Contract.
- a. The Work to be performed under this Contract shall be commenced after issuance of the Notice to Proceed and Substantial Completion shall be achieved within \_\_\_\_\_ calendar days.
  - b. Final Completion shall be achieved within \_\_\_\_\_ calendar days.

7. Liquidated Damages:
- a. Owner and Contractor recognize that time is of the essence of this Agreement and the Owner will suffer financial loss if the Work is not completed within the time specified in paragraph 6 above, plus any extensions thereof allowed. Contractor recognizes the delays, expense, and difficulties involved in proving in a legal or other dispute resolution proceeding the actual loss suffered by Owner if the Work is not completed

on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay, but not as a penalty, Contractor shall pay the Owner as follows:

- i. For each day that expires after the time established to achieve Substantial Completion as specified above, Contractor shall pay Owner liquidated damages in the amount of \$250 per day.
    - ii. For each day that expires after the time established to achieve Final Completion as specified above, Contractor shall pay the Owner liquidated damages in the amount of \$500 per day.
  - b. Contractor hereby waives any defense as to the validity of any liquidated damages stated in this Agreement as they may appear on the ground that such liquidated damages are void as penalties or are not reasonably related to actual damages.
  - c. Owner may recover liquidated damages by deducting the amount owed from progress payments, final payment or retainage.
8. **Intent of Plans and Specifications:** The Contractor will keep on the project a copy of the plans and specifications and shall at all times give the Owner access thereto. Anything mentioned in the specifications and not shown on the plans or shown on the plans and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between the plans and specifications, the specifications shall govern. The Contractor shall not take advantage of any errors, discrepancies or omissions which may exist in the plans and specifications but shall immediately call them to the attention of the Owner whose interpretation or correction thereof shall be conclusive.

**Extra Work and Charges:** Extra work shall be work for which no unit bid was received in the proposal and which was not included in the bid schedule and will be construed to mean work for which unit bids were received but which is in excess of the quantity mentioned in the proposal. This also applies to any unforeseen conditions that may be discovered throughout the course of the project. The Owner, without invalidating the contract, may order extra work or make changes in the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. All such changes shall be agreed to and recorded on "Contract Change Order" form. The changes in scope shall be documented on the "Contract Change Order" form as soon as possible after discovery, and approved by the owner prior to proceeding. In giving instructions, the Owner shall have authority to make minor changes in the work not involving extra cost and not inconsistent with the purpose of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless covered by Contract Change Order, and no claim for an addition to the contract sum shall be valid unless so covered. Before becoming effective, all Change Orders must be signed by all parties indicated.

The value of such extra work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the contract or subsequently agreed upon.
- (c) By cost plus a percentage, the latter agreed upon prior to starting the extra or changed work.

In method (c) "cost" shall include all labor, materials, power, fuel, and rental on major items of equipment. The Contractor shall keep and present in such form as the Owner may direct, a correct account of the several items of cost, together with vouchers. This definition and requirement applies equally to work done by subcontractors.

The above accounts shall be understood to include all other costs and compensation such as insurance, small tools, superintendence, office and overhead costs and profits. Rental on equipment shall be charged against the extra or changed work only for the actual time the equipment is used specifically therefor.

Changed work shall be adjusted, considering separately the work added and the parts omitted. Amount of adjustment for parts omitted shall be estimated at the time omission of work is authorized and the agreed adjustment will be deducted from the subsequent monthly estimates.

The Owner reserves the right to contract with any person or firm other than the Contractor for any or all extra work. The contractor's attention is especially called to the fact that he shall be entitled to no claim for damages for anticipated profits on any portion of work that may be omitted.

9. Claims for Extra Cost: If the Contractor claims that any changes in the work or any instructions by means of drawings or otherwise involve extra cost, he shall give the Owner written notice thereof within a reasonable time after receipt of such instructions or of notice of such changes and, in any event, before proceeding to carry out such instructions or to put such changes into effect, except in case of an emergency endangering life or property. In all such cases the Contractor shall keep a correct account of the extra cost in such form as the Owner may direct and shall present such account supported by receipts supplied by the Contractor. The Owner shall be entitled to reject any claim for extra cost concerning which the foregoing procedure is not followed.
10. Performance Bond: The Contractor shall within seven (7) days after the receipt of the Notice of Award and before the commencement of any operations hereunder execute the contract and furnish the Owner with a performance bond in a sum equal to the amount of the contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreements of this contract, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the work provided by this contract. Such bond shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of West Virginia and acceptable to the Owner. The expense of this bond shall be borne by the Contractor. All bonding companies must be listed in the Federal Register Dept. of the Treasury Fiscal Service, companies holding Certificates of Authority as acceptable sureties on Federal Bonds and as acceptable reinsuring companies; notice. If at any time a surety on such bond becomes irresponsible or loses its right to do business in the State of West Virginia, the Owner may require another surety which the Contractor shall furnish within ten (10) calendar days after receipt of written notice to do so.

Evidence of authority of any attorney in fact acting for the corporate surety must be provided in the form of a certificate terminated and remains in full force and effect on the date of the bond. The form of the bond shall be subject to approval by the Owner.



11. License and Permits: The Owner will secure and pay for permits required for permanent structures. The Contractor shall obtain and pay for all other necessary licenses and permits and shall faithfully comply with all laws, ordinances, and regulations Federal, State, or local which may be applicable to the operations to be conducted hereunder. The contractor shall also be licensed in the State of West Virginia and submit a copy of said current license with the bid.
12. Other Work: Wherever work being done by the Owner or by other contractors is contiguous to work covered by this contract, the interest involved of the parties shall be secured to protect the rights of the owner and to complete each work portion in general harmony.
13. Responsibility of the Architect and/or Engineer: The term "Architect" and/or "Engineer," wherever used in this Contract, shall be the person, firm, corporation, or representative of the Owner as its architectural/engineering representative during the course of construction. The Owner shall advise the Contractor in writing of the name and address of the Architect and/or Engineer. Notices of any change in the Architect and/or Engineer shall be given in writing by the Owner to the Contractor. The Owner and/or its representative shall have full authority to interpret the plans and specifications and shall determine the amount, quality and acceptance of the work and supplies to be paid for under this Contract and every question relative to the fulfillment of the terms and provisions therein. Unless otherwise specifically provided in the specifications, all workmanship, equipment, and materials incorporated in the work are to be the best grade of their respective kinds for the purpose.

It shall be the duty of the Owner and/or its representative to enforce the specifications in a fair and unbiased manner, although he has the right to waive any term of the specifications if that term is found to be unreasonable and inconsistent with the general spirit of the specifications. If a variation from any requirement is allowed, the Town and/or its representative shall grant the same in writing with the reasons for his action outlined, and such action will not violate or change the contract in any other manner.

14. Waiver: It is expressly understood and agreed that any waiver granted by Owner of any term, provision, or covenant of this contract shall not constitute a precedent nor breach of the same or any other terms, provisions, or covenants of this Contract. Any such waiver granted by the Owner shall be made in writing and signed by all parties under this contract. Neither the acceptance of the work by the Owner nor the payment of all or any part of the sum due the Contractor hereunder shall constitute a waiver by the Owner of any claim which the Owner may have against the Contractor or surety under this contract or otherwise.
15. Superintendent: The Prime Contractor shall assign and provide a superintendent, who will be identified by name to the Owner. He will provide constant on-site supervision during any and all construction under the contract whether by the prime or a subcontractor. The superintendent shall have full authority to act for the Contractor and to carry all instructions given by the Owner or the Owner's designated representative.
16. Labor Provisions: The Contractor and his subcontractors shall discharge, whenever ordered to do so by the Owner, any employee who is disorderly or whose conduct in the opinion of the Owner is detrimental to the prosecution of the work.

No person whose age or physical condition is such as to make its employment dangerous to

his health and safety or to the health and safety of others shall be employed on the work, and in no event shall any person under the age of sixteen years be employed. The work shall at all times be prosecuted under safe working conditions, and the conditions of work shall subject to inspection and correction by the Owner or safety inspectors of the Owner.

17. Liability Insurance: The Contractor shall provide to the Owner, a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract. The Contractor agrees to maintain such insurance until the completion of this Contract. All required insurance coverages must be acquired from insurers authorized to do business in West Virginia and acceptable to the Owner. The minimum insurance coverage shall be:

- a. Workers Compensation Insurance – minimum requirements as required by the State of West Virginia for the protection of all Contractors’ employees working on or in connection with the project.
- b. Comprehensive General Liability Bodily Injury and Property Damage: \$2,000,000 combined single limit/each occurrence in the primary policy or through the use of Umbrella or Excess Limits.

The General Liability Insurance shall include the following coverages; comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual liability insurance, broad form property damage including completed operations, contractors protective liability, personal injury (all insuring agreements) deleting the employee exclusion, and owners protective liability.

- c. Contractor’s Automobile Liability (Bodily Injury and Property Damage): \$2,000,000 combined single limit per occurrence in the primary policy or through the use of Umbrella or Excess Limit. The Automobile Liability Insurance shall include the following coverages; comprehensive form, owned, hired, and non-owned.

18. Additional Insured: The Owner, its officers, elected and appointed officials, and employees shall be named as an additional insured in the Contractor’s Commercial General Liability policy; evidence of the Additional Insured endorsement shall be typed on the certificate and a copy of the additional insured endorsement shall be forwarded to the Owner along with the copy of the insurance certificate. The insurance certificate shall state this Contract’s number and title.

19. Insurance Provisions: The Contractor shall secure and maintain until all work required under the Contract is accepted, such insurance as will protect the Contractor and the Owner from claims directly or indirectly arising or alleged to arise out of the performance of, or failure to perform the Work, or the condition of the Work or the jobsite, from claims by workers, suppliers, Subcontractors, and the general public; from claims made under safe place laws, or any law with respect to protection of adjacent landowners; and from any other claims for damages to property from operations by the Contractor or any Subcontractor, or anyone directly or indirectly employed by either of them. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or

property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted Work. No acceptance or approval of any insurance by the Owner shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

Neither the Owner nor the Owner's Project Administrator shall have any obligation to review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract. The Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or Certificate of Insurance provided by the Contractor not comply with the Contract's insurance requirements.

20. Payments Withheld: The Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any estimate to such extent as may be necessary to protect the Owner from loss on account of:
  - a) Defective work not remedied.
  - b) Claims filed or reasonable evidence indicating probable filing or claims.
  - c) Failure of the Contractor to make payments properly to subcontractors or for materials or labor.
  - d) A reasonable doubt that the contract can be completed for the balance then unpaid.
  - e) Damage to another Contractor.
  - f) Failure of the Contractor to keep his work progressing in accordance with his time schedule. When the above grounds are removed, payment shall be made for amounts withheld because of them.
21. Assignment and Transfer of Contract: The Contractor shall not assign or transfer this contract or any part thereof or any interest therein without the consent in writing of the Owner and the Contractor's surety and any such assignment or transfer without such written consent shall be null and void.
22. Indemnity: The Contractor shall indemnify and hold harmless the Owner, the Owner's agent and employees from and against all losses and all claims, demands, payments, suits, or action recoveries and judgments of every nature and description brought or recovered against them by reason of any act or omission of the said Contractor, his agents or employees in the execution of the work or in guarding the same.
23. Subcontractors: The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to the work to insure the fulfillment of all the provisions of this contract affecting subcontractors.

24. Protection of work and property: The Contractor shall continuously maintain adequate protection of all his work and materials from damage or theft and shall protect the Owner's property and all adjacent property from injury or loss arising in connection with activities under this contract. The Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or such as may be caused by agents or employees of the Owner.

The Contractor shall take, use provide, and maintain all necessary precautions, safeguards, and protection to prevent accidents on the site of the work. The Contractor shall post danger signs warning against any hazards created by the work being done under this contract. He shall designate a responsible member of his organization on the work, whose duty shall be the prevention of accidents, and the name of the person so designated shall be reported to Owner in writing. In an emergency affecting the safety of life, or of the work or adjoining property, the Contractor without special instruction or authorization from the Owner is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he must take such action if so instructed or authorized by the Owner.

Additionally, in order to further protect the lives and health of his employees under the contract, the Contractor shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc. and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work under the contract. The Contractor shall also protect property as required by law.

25. Land of Owner, Use of, by Contractor: The Owner shall provide the land upon which the work under this Contract is to be done, and will so far as is convenient, permit the Contractor to use as much of this land as is required for the erection of temporary construction facilities and storage of materials, together with the right of access to same, but beyond this, the Contractor shall provide, at his cost and expense, any additional land required.
26. Liens: If at any time there shall be evidence of lien or claim for which the Owner might become liable and which is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient to complete indemnification against such lien or claim. In the event the Owner has already paid to the Contractor all sums due under this contract or the balance remaining unpaid is insufficient to protect the Owner, the Contractor and his surety shall be liable to the Owner for any loss so sustained.
27. Stakes: The Contractor will provide the necessary construction staking for the fulfillment of this contract. If re-staking of reference stakes provided by the Owner/Engineer is required due to negligence of the Contractor or his subcontractors, the cost of re-staking will be borne by the Contractor. The Contractor and his subcontractors shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, he will absorb the charge of the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
28. Inspection: The Contractor shall do all work to the approval of the inspector. The inspector's log and project progress video / photographs will constitute the construction record for the

project. The Owner shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining that the stock and materials used and employed, and the workmanship are in accordance with the requirements and intentions of the specifications. All work done and all materials furnished shall be subject to their inspection and approval.

The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his contract as prescribed, and defective work shall be made good and unsuitable materials shall be rejected, notwithstanding that such defective work and materials have been previously overlooked and accepted on estimates for payment. Materials of construction shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended. All work and material shall be tested to the satisfaction of the Owner before acceptance. The Owner shall be provided copies of all testing performed for the project.

No work shall be done at night without the previous approval of the Owner.

29. Defective Work or Material: The Contractor shall promptly remove from the premises all work and materials condemned by the Owner as failing to conform to the contract, whether incorporated or not, and the contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
30. Other Contracts: The Owner may award other contracts. The Contractor shall fully cooperate with such other Contractors and carefully fit his work to that provided under other contracts as may be directed by the Owner. The Contractor shall be liable for any act which will damage or interfere with the performance of work by any other Contractor.
31. Owner's Right To Take Over the Work: If the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed to take over his affairs, or if he should fail to prosecute his work with due diligence and carry the work forward in accordance with his work schedule and the time limits set forth in the Contract Documents, or if he should fail to substantially perform one or more of the provisions of the Contract Documents to be performed by him, the Owner may serve written notice on the Contractor and the surety on his performance bond, stating its intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Owner bases its right to exercise such remedy. In any event, unless the matter complained of is satisfactorily cleared within ten days after service of such notice, the Owner may, without prejudice to any other right or remedy, exercise one of such remedies, at once, having first obtained a certificate that sufficient cause exists to justify such action.
  - (a) The Owner may terminate the services of the Contractor, which termination shall take effect immediately upon service of notice thereof on the Contractor and his surety, where upon the surety shall have the right to take over and perform the contract. If the surety does not commence performance of the contract within ten days after service of the notice of termination, the Owner may itself take over the work, take possession of and use all materials, tools, equipment, and appliances on the premises and prosecute the work to completion by such means as it shall deem best. In the event of such termination of his service, the Contractor shall not be entitled to any further payment under this

contract until the work is completed and accepted. If the Owner takes over the work and if the unpaid balance of the contract price when the owner takes over the work, exceeds the cost of completing the work, including compensation for any damages or expenses incurred by the Owner through the default of the Contractor, such excess shall be paid to the Contractor. In such event, if such cost, expenses, and damages shall exceed such unpaid balance of the contract price, the Contractor and his surety shall pay the difference to the Owner. Such cost, expenses, and damages shall exceed such unpaid balance of the contract price, the Contractor and his surety shall pay the difference to the Owner. Such cost, expenses and damages shall be certified by the Owner.

(b) The Owner may take control of the work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the Owner deems advisable. In such event the Owner shall be entitled to collect from the Contractor and his surety, or to deduct from any payment then or thereafter due the Contractor, provided the Owner approved the amount thus charged to the Contractor.

(c) The Owner may require the surety on the Contractor's bond to take control of the work at once and see to that all deficiencies of the Contractor are made good with due diligence. As between the Owner and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the work, either upon termination of the services of the Contractor or upon instructions from the Owner to do so, the provisions of the Contract Documents shall govern in respect to the work done by the surety, the surety being substituted for the Contractor as to such provisions, including provisions as to payment for the work and provisions of this section as to the right of the Owner to do the work itself or to take control of the work.

32. Contractor's Right To Stop Work or Terminate Contract: If the work shall be stopped under an order of any court or other public authority for a period of three months through no act or fault of the Contractor or any one employed by him, then the Contractor may on seven days written notice to the Owner stop work or terminate this contract and recover from the Owner payment for all work executed, and losses sustained on any plant or material, and a reasonable profit. If the Owner shall fail to issue any certificate for payment within ten days after it is due, or if the Owner shall fail to pay the Contractor within fifteen days after its maturity and presentation any sum certified by the Owner, then the Contractor may on seven days written notice to the Owner stop work and give written notice of intention to terminate this contract. If the Owner shall thereafter fail to pay the Contractor within seven days after receipt of such notice, then the Contractor may terminate the contract and recover from the Owner payment for all work executed, and losses sustained upon any plant or materials, and a reasonable profit.

33. Delays and Extension of Time: If the Contractor be delayed at any time in the progress of the work by an act or neglect of the Owner, or if any employee of the Owner, or by any separate Contractor employed by the Owner, or by changes ordered in the work, or by strike, lockouts, fire, unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner, or by any cause which the Owner shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may decide. No such extension shall be made for delay occurring more than seven days before claim therefore is made in writing to the Owner. In the case of a continued cause of delay, only one claim is necessary.

This section does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

34. Right of Occupancy: The Owner shall have the right, if necessary, to take possession of and to use any completed or partially completed portion of the work, if such use be approved by the Owner even if the time for completing the entire work or such portions of the work has not expired and even if the work has not been finally accepted. Such possession and use shall not constitute an acceptance of such portions of the work. The Owner shall not have the right of such possession and use if it materially interferes with the Contractor's operations. The Owner shall also have the right to enter the premises for the purpose of doing work not covered by its contract with the Contractor.
35. Underground Obstructions: The Contractor shall anticipate all underground obstructions such as water lines, gas lines, sewer lines, utility lines, concrete and debris. No extra payment will be allowed for the removal, replacement, repair or possible increased cost caused by underground obstructions. Any such lines or obstructions indicated on the map show only the approximate location and must be verified in the field by the Contractor. The Owner will endeavor to familiarize the Contractor with all known underground utilities and obstructions, but this will not relieve the Contractor from full responsibility in anticipating all underground obstructions.
36. Acceptance: Final inspection and acceptance of the work shall be made by the Owner. Such inspection shall be made as soon as practical after the Contractor has notified the Owner in writing that the work is ready for such inspection.
37. Final Estimates: Upon completion and acceptance of the work the Owner shall issue a certificate that the whole work provided for in this contract has been completed and accepted by him under the conditions and terms thereof, and shall make the final estimate of the work. The final estimate of work must be checked and approved by the Owner; whereupon, the entire balance found to be due the Contractor, excepting such sums as may be retained lawfully by said Owner that all payrolls, material bills and outstanding to the Owner indebtedness in connection with this contract have been paid.
38. Cleaning Up: Upon completion or termination of the work, the Contractor shall, as directed by the Owner, remove from the vicinity of the work all equipment and all temporary structures, waste materials, and rubbish from his operations, leaving the premises in a neat and presentable condition. In the event of his failure to do so, the same may be done by the Owner at the expense of the Contractor, and his surety shall be responsible therefore.
39. Guarantee and Correction of Work After Final Payment: Neither the final certificate nor payment nor any provisions in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work by the Owner. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this article shall be decided by the Owner subject to arbitration.

The Contractor and through him each subcontractor, in accepting the contract for this construction or respective portions of the construction covered by these plans and specifications, does hereby agree to replace and make good, without expense to the Owner, any work or material which may be found to be defective within one year from the date of the final certificate of payment to said Contractor. The deterioration due to ordinary use and normal wear is excepted from this guarantee. This guarantee shall include damage done by settlement of backfills, such damage and sinking of backfills being considered as defective workmanship. Backfilled areas that are unpaved shall be refilled if the filled material settles more than two inches below original grade. The Contractor shall reimburse the Owner for cost of damage if any, as well as cost of replacing defective materials or workmanship. If replacement is not made within ten days after notice is given of such defect in workmanship, or thirty days in case of materials, then the Owner shall have the right to make replacements and charge cost of same to Contractor or his bondsman.

40. OSHA: The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational and Health act of 1970 (O4PL 91-596) and under Section 107 of the Contract Work House and Safety Standards Act (PL 92-54).

41. Chemicals: All chemicals used during project construction or furnished for project operation, whether herbicide, pesticide, disinfectant polymer, reactant, or of other classification, must show approval of either EPA and USDA. Use of all such chemicals and disposal or residues shall be in strict conformance with instructions.

42. Safety: Vendor will ensure that its employees observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.

All buildings, appurtenances and finishing shall be protected by the vendor from damage, which might be done or caused by work performed under this contract.

Such damages to the foregoing shall be repaired and/or replaced by approved methods so as to restore the damaged areas to their original condition at the expense of the Vendor.

The Vendor shall erect, install and maintain all temporary public walks, warning signs, barricades, and other protective means as may be necessary for the protection of the public from injury. The Vendor shall assume all responsibility for properly securing the work area for the safety of its employees and the general public.

43. Obligations, Rights and Remedies: The following items are Obligations, Rights and Remedies that shall be part of the Contract. The Owner reserves the right to negotiate other terms and conditions it deems appropriate and necessary under the circumstances to protect the public interest.

a. INCORPORATION: All specifications, drawings, technical information, invitation to bid, bid, award and similar items referred to or attached or which are the basis for this contract are deemed incorporated by reference as if set out fully herein.

b. ALTERATIONS OR AMENDMENTS: No alterations, amendments, changes, modifications or additions to this Contract shall be binding on the Town of Shepherdstown without the prior written approval of the Town.



- c. ASSIGNMENT: Contractor shall not assign or sub-contract this agreement, its obligations or rights hereunder to any party, company, partnership, incorporation or person without the prior written specific consent of the Town of Shepherdstown.
- d. WARRANTY: Contractor warrants to the Town of Shepherdstown that all items delivered, and all services rendered shall conform to the specifications, drawings, bid and/or other descriptions furnished and/or incorporated by reference, and will be fit for the particular purpose purchased, of merchantable quality, good workmanship, and free from defects. Contractor extends to the Town of Shepherdstown all warranties allowed under the U.C.C. Contractor shall provide copies of warranties to the Town of Shepherdstown. Return of merchandise not meeting warranties shall be at contractor's expense.
- e. REMEDIES: The Town of Shepherdstown shall have all rights and remedies afforded under the U.C.C. and West Virginia law in contract and in tort, including but not limited to rejection of goods, rescission, right of set-off, refund, incidental, consequential and compensatory damages and reasonable attorneys' fees.
- f. INSPECTION AND ACCEPTANCE: Warranty periods shall not commence until the Town of Shepherdstown inspects and formally accepts the goods and/or services. The terms, conditions and timing of acceptance shall be determined by the Town of Shepherdstown. The Town of Shepherdstown reserves the right to reject any or all items or services not in conformance with applicable specifications, and Contractor assumes the costs associated with such nonconformance. Acceptance of goods or services does not constitute a waiver of latent or hidden defects or defects not readily detectable by a reasonable person under the circumstances.
- g. ORDER OF PRECEDENCE: In the event of inconsistent or conflicting provision of this Contract and referenced documents, the following descending order of precedence shall prevail: (1) Item Description, (2) Invitation to Bid, (3) Bid, (4) Award, (5) Special Terms and Conditions, (6) General Terms and Conditions, (7) Specifications, (8) Drawings.
- h. SEVERABILITY: If any provision of this Contract is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.
- i. GOVERNING LAW: This Contract shall be governed by the laws of the State of West Virginia, and all obligations of the parties are performable in Jefferson County, West Virginia. The Circuit Court of Jefferson County, West Virginia, shall have exclusive and concurrent jurisdiction of any disputes which arise hereunder.
- j. DEFAULT: If Contractor fails to perform or comply with any provision of this contract or the terms or conditions of any documents referenced and made a part hereof, The Town of Shepherdstown may terminate this contract, in whole or in part, and may consider such failure or noncompliance a breach of contract. The Town of Shepherdstown expressly retains all its rights and remedies provided by law in case of such breach, and no action by Town of Shepherdstown shall constitute a waiver of any such rights or remedies. In the event of termination for default, Town of Shepherdstown reserves the right to purchase its requirements elsewhere, with or without competitive bidding.

- k. **TERMINATION:** The Town of Shepherdstown may terminate this agreement with or without cause at anytime. In the event of termination by either party, fees due for services satisfactorily performed or goods accepted prior to the termination date shall be paid.
- l. **APPROPRIATION:** In the event no funds are appropriated by the Town of Shepherdstown for the goods or services in any fiscal year or insufficient funds exist to purchase the goods or services, then the Contract shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.
- m. **COMPLIANCE WITH ALL LAWS:** Contractor is assumed to be familiar with and agrees to observe and comply with all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services, and all instructions and prohibitive orders issued regarding this work and shall obtain all necessary permits.
- n. **INDEMNIFICATION/HOLD HARMLESS:** Contractor shall indemnify, defend, save and hold harmless the Town of Shepherdstown, its officers, agents and employees from all suits, claims, actions or damages of any nature brought because of, arising out of, or due to breach of the agreement by Contractor, its subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of Contractor, its subcontractors, suppliers, agents or employees.
- o. **INDEPENDENT CONTRACTOR:** Contractor shall acknowledge that it and its employees serve as independent contractors and that the Town of Shepherdstown shall not be responsible for any payment, insurance or incurred liability.
- p. **RIGHT TO INSPECT:** The Town of Shepherdstown reserves the right to make periodic inspections of the manner and means the service is performed or the goods are supplied.
- q. **NONDISCRIMINATION AND NON-CONFLICT STATEMENT:** Contractor agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this agreement, or in the employment practices of Vendor. Contractor shall upon request show proof of such nondiscrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Contractor covenants that it complies with the Fair Wage and Hour Laws, the National Labor Relations Act, and other federal and state employment laws as applicable. Contractor covenants that it does not engage in any illegal employment practices. Contractor covenants that it has no public or private interest, and shall not acquire directly or indirectly any interest, that would conflict in any manner with the provision of its goods or performance of its services. Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the Town of Shepherdstown as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to Contractor in connection with any good provided or work contemplated or performed relative to the agreement.
- r. **CHILD LABOR:** Contractor agrees that that no products will be provided or used under this Contract which have been manufactured or assembled by child labor. This Contract

shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

- s. TITLE VI OF THE 1964 CIVIL RIGHTS ACT: "Nondiscrimination in Federally Assisted Programs" - No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. section 2000 et seq. It is the policy of the Town of Shepherdstown that all its services and activities be administered in conformance with the requirements of Title VI.

**Signatures**

**Town of Shepherdstown**

**Contractor**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

Attested by: \_\_\_\_\_  
Town Clerk

Its: \_\_\_\_\_

Appendix C: Bid Forms

**FORM 1 – EXECUTION OF PROPOSAL**

The person executing the Proposal, on behalf of the Company, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the Company has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of full and open competition in connection with any proposal or contract and that the Company intends to do the work with its own bona fide employees or subcontractors and is not proposing for the benefit of another company.

Submission of a response to this RFP/BID constitutes certification that the Company and all proposed team members are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Project by any State or Federal department or agency. Submission is also agreement that the Town will be notified of any change in this status.

Town Policy prohibits any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of this Proposal, you attest, for your organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization. The information contained in this Proposal, including its forms and other documents, delivered or to be delivered to the Town, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the Town as to any material facts.

Type of Company:  
(check 1 box)

- Sole Proprietor       Partnership       Joint Venture
- Corporation \_\_\_\_\_ (Identify the State of incorporation)

(If joint venture, complete this "Proposal Submission" sheet for each joint venture company and identify the "Name of Joint Venture" on each sheet)

**ACKNOWLEDGMENT OF ADDENDA:**

The undersigned acknowledges receipt of the following addenda:

No: \_\_\_\_\_ Date: \_\_\_\_\_ | No: \_\_\_\_\_ Date: \_\_\_\_\_ | No: \_\_\_\_\_ Date: \_\_\_\_\_

Company Legal Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Town/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative (or Designee)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**\*\*\*FILL OUT FORMS 1 THROUGH 6 AND RETURN AS PART OF SUBMITTAL\*\*\***

**FORM 2 – NON-DISCRIMINATION AND EQUAL OPPORTUNITY CERTIFICATION**

COMPANY NAME: \_\_\_\_\_

RFP/BID NAME: \_\_\_\_\_

RFP/BID NUMBER: \_\_\_\_\_

The undersigned Company hereby certifies and agrees that the following information is correct:

1. In preparing the proposal, the Company has considered all proposals submitted from qualified, potential subcontractors and suppliers and has not engaged in discrimination as defined in Section 2.
2. For purposes of this certification discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age, religion, national origin, marital status, familial status, sexual orientation, gender identity, gender expression, or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination. The undersigned contractor does hereby certify to the Town of Shepherdstown that it is an equal employment opportunity employer and complies with the equal employment opportunity provisions of Title VII of the United States Civil Rights Act of 1964, as amended and supplemented.
3. Without limiting any other remedies that the Town may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Town to reject the proposal submitted with this certification and terminate any contract awarded based on such proposal. It shall also constitute a violation of the Town’s Non-Discrimination Ordinance and shall subject the Company to any remedies allowed thereunder.
4. As a condition of contracting with the Town, the Company agrees to promptly provide to the Town all information and documentation that may be requested by the Town from time to time regarding the solicitation and selection of subcontractors in connection with this contract. Failure to maintain or failure to provide such information shall constitute grounds for the Town to reject the proposal submitted by the Bidder and terminate any contract awarded on such proposal. It shall also constitute a violation of the Town’s Non-Discrimination Ordinance and shall subject the Company to any remedies allowed thereunder.
5. As part of its proposal, the Company shall provide to the Town a list of all instances within the past ten years where a complaint was filed or pending against the Company in a legal or administrative proceeding alleging that the Company discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a proposal to the Town, the Company agrees to comply with the Town’s Non-Discrimination Policy as described in the Shepherdstown Town Code.

\_\_\_\_\_  
Signature of Authorized Representative (or Designee)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**FORM 3 – AFFIDAVIT OF NON-COLLUSION**

THIS AFFIDAVIT IS TO BE FILLED OUT AND EXECUTED BY THE BIDDER.  
IF THE BID IS MADE BY A CORPORATION, THEN BY ITS  
PROPERLY AUTHORIZED AGENT

State of \_\_\_\_\_, County of \_\_\_\_\_:

\_\_\_\_\_  
(Name of Authorized Individual Making Bid)

residing at \_\_\_\_\_, being duly

sworn does depose and say that \_\_\_\_\_,  
(Give Name of Bidder or Bidders)

\_\_\_\_\_  
(Business Address)

and, \_\_\_\_\_  
(Give Names and Address of All other persons, firms or Corporations interested)

is or are the only person or persons interested with sharing in the profits of the herein contained Bid; that the said Bid is made without any connection or interest in the profits thereof with any other persons making any bid or proposal for said work; that said bid is on our part, in all respects fair and without collusion and fraud; and also that no member of, head of any department or Bureau, or employee therein, or any Officer of the Town of Shepherdstown, County of Jefferson is directly or indirectly interested therein.

\_\_\_\_\_  
(Signature of Authorized Individual Making Bid)

Subscribed and sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before

\_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_

**FORM 4 – PROJECT REFERENCES**

COMPANY NAME: \_\_\_\_\_

RFP/BID NAME: \_\_\_\_\_

RFP/BID NUMBER: \_\_\_\_\_

List **no less than three (3) and no more than six (6) projects** performed and completed in the past five (5) years by your company that are similar in size and scope to this Project.

Project Name	Owner Name Address/Phone	Contract Amount	Contract Start Date/ Contract End Date	Project Scope/Description

**FORM 5 – VOLUNTARY ALTERNATES / DEVIATIONS FORM**

(If Contractor proposes no deviations or alternates, simply sign and return with bid proposal)

COMPANY NAME: \_\_\_\_\_

RFP/BID NAME: \_\_\_\_\_

RFP/BID NUMBER: \_\_\_\_\_

- A. The bidder is encouraged to review Contract Documents for Proposed Voluntary Alternates, especially those presenting a beneficial effect to project cost, quality, and scheduling.
- B. The undersigned Bidder proposes the amount below be added to or deducted from the Base Bid if particular alternates are accepted by Owner. Amounts listed for each alternate include costs of related coordination, modification, or adjustment.
- C. The Bidder shall be responsible for determining from the Contract Documents the effects of all alternates on the Contract Time and the Contract Sum of their work.
- D. Owner reserves the right to accept or reject any alternate, in any order, and to award or amend the Contract accordingly.
- E. Acceptance or non-acceptance of any alternates by the Owner shall have no effect on the Contract Time.
- F. The bidder shall provide sufficient detailed descriptions of all proposed voluntary alternates to determine scope and intent.

**SCHEDULE OF VOLUNTARY ALTERNATES:** If an Alternate is selected by the Owner, the Bidder proposes to do the Work as described by increasing or decreasing the Base Bid the following amount: (Fill in descriptions and amounts in words and numbers) Attach additional sheets if required.

- A. Alternate Item. – \_\_\_\_\_ (Increase) (Decrease)  
Base Bid by: \$ \_\_\_\_\_
  
- B. Alternate Item. – \_\_\_\_\_ (Increase) (Decrease)  
Base Bid by: \$ \_\_\_\_\_
  
- C. Alternate Item. – \_\_\_\_\_ (Increase) (Decrease)  
Base Bid by: \$ \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative (or Designee)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)



**FORM 6—CORPORATION OF SHEPHERDSTOWN  
DRUG-FREE WORKPLACE CONFORMANCE AFFIDAVIT**

STATE OF WEST VIRGINIA,

COUNTY OF \_\_\_\_\_, TO-WIT:

I, \_\_\_\_\_, after being first duly sworn, depose and state as follows:

1. I am an employee of \_\_\_\_\_; and,  
(Company Name)
  
2. I do hereby attest that \_\_\_\_\_  
(Company Name)

maintains a valid written drug-free workplace policy and that such policy is in compliance with *West Virginia Code* §21-1D-5.

The above statements are sworn to under the penalty of perjury.

\_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Taken, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

My Commission expires on \_\_\_\_\_.

(seal)

\_\_\_\_\_  
(Notary Public)

**NOTE:                This affidavit must be submitted with the bid in order to comply with WV Code provisions. Failure to include the affidavit with the bid may result in disqualification of the bid**

**FORM 7 - BID PROPOSAL**

COMPANY NAME: \_\_\_\_\_

RFP/BID NAME: \_\_\_\_\_

RFP/BID NUMBER: \_\_\_\_\_

We have received all documents related to the above referenced project. We have examined all documents and have had the opportunity to examine the site area where work is to be performed. We hereby propose to furnish all labor, materials, equipment and incidentals and to perform all operations necessary and required for the successful completion of the project.

**Lump Sum Price for Scope of Work, attached as Appendix A, contained in Request for Proposal including all addendums and attachments:**

\$ \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Ensure the following are attached:**

- Bid Forms 1-7
- Bid Bond (10%)
- Certificate of Insurance
- West Virginia Business Registration Certificate

\_\_\_\_\_  
Signature of Authorized Representative (or Designee)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Date)