Shepherd
UNIVERSITY

Procurement Services

P.O. Box 5000
Shepherdstown
West Virginia 25443-5000
T 304-876-5216
F 304-876-5001

September 10, 2021

Shepherd University is soliciting proposals to establish an open-end contract to retain a firm of attorneys to serve as bond/transactions counsel in connection with the multi-million-dollar transaction financing, complex and P3 real estate transactions, and other future large and complex capital transactions on an as-needed basis.

Attached, please find the University's Request for Proposals No. SU22-03. Please note that all responses are due no later than 4:00 PM local time on September 17, 2021 to:

Shepherd University Procurement Services
301 N King Street
215 Ikenberry Hall
PO Box 5000
Shepherdstown WV 25443
Attn: Debra Langford

If you have any questions please email me at dlangfor@shepherd.edu. Thank you for your interest in Shepherd University

Debra Langford
Executive Director of Purchasing

REQUEST FOR PROPOSALS

for

BOND/TRANSACTIONS COUNSEL SERVICES

Issued by:

Shepherd University
Procurement Services

September 2021

SECTION 1 - INSTRUCTIONS TO PROPOSERS

1.1 SCOPE OF WORK

Shepherd University intends to establish an open-end contract with an attorney/firm to provide bond/transactions counsel services in connection with multi-million-dollar transaction financing, complex and P3 real estate transactions, and other future large and complex capital transactions on an as needed basis.

1.2 PROPOSAL SUBMISSION

Sealed Proposals and other required documents shall be enclosed in a sealed opaque envelope and shall be identified as a "Request for Proposals Response" including the RFP number, and the RFP opening time and date. The proposer, by making a Proposal, represents that: (a) the proposer has read and understands the RFP documents, terms and conditions, and that the Proposal is made in accordance therewith; and (b) the Proposal is based upon the services specified.

The envelope shall be addressed to Shepherd University Procurement Services, 215 Ikenberry Hall, PO Box 5000, Shepherdstown, WV 25443 and must be submitted on or before September 17, 2021 at 4:00 p.m., local time. Proposals received after the time and date for the proposal opening will be returned unopened. The proposer shall assume full responsibility for timely delivery at the location designated for receipt of proposals. Oral, telephonic, facsimile, emailed, or telegraphic proposals are invalid and will not receive consideration. Proposals received after the time and date for the Proposal opening will be returned unopened. The proposer shall assume full responsibility for timely delivery at the location designated for receipt of proposals. Oral, telephonic, facsimile, or telegraphically-transmitted proposals are invalid and will not receive consideration.

The Proposal must be signed by such individual or individuals who have full authority from the proposer to enter into a binding contract on behalf of the proposer so that a contract may be established as a result of acceptance of the Proposal submitted. By reference, the terms and conditions set forth in the Request for Proposal shall serve as the contract terms and conditions. No other terms and conditions will apply unless submitted as a part of the Proposal response and accepted by the University.

In submitting a Proposal, the proposer represents and warrants:

A. That it is currently licensed to do business and to provide services in the State of West Virginia and that it will take such action as, required hereafter, to remain so qualified;

B. That it is not in arrears with respect to payment of any monies due and owing the State of West Virginia, or any department or agency thereof,

including, but not limited to, the payment of taxes and employee benefits, and that it shall not fall into arrears during the term of the services being provided; that it shall comply with all federal, State, and local laws, ordinances, and legally enforceable rules and regulations applicable to its activities and obligations under the contract;

C. That it shall procure, at its expense, all licenses permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations with respect to the consulting services;

D. That it will be responsible for any expenses incurred in the preparation and/or presentation of the RFP response, and any oral interviews, if conducted, or for the disclosure of any information or material received in connection with this solicitation, whether by negligence or otherwise;

E. That the facts and matters set forth in this RFP response are true and correct.

1.3 PROPOSAL COPIES

One original, signed and completed, and three (3) copies of the Proposal, and one digital copy, shall be submitted to the University in the sealed submission envelope.

1.4 OFFER ACCEPTANCE PERIOD

Proposal (offer) shall remain in effect for a minimum period of ninety-(90) calendar days from the proposal opening date unless otherwise indicated and is irrevocable.

1.5 REQUEST FOR PROPOSAL SCHEDULE

September 10, 2021:	Request for Proposals is issued
September 17, 2021:	Proposals Due 4:00 PM
September 21, 2021:	Completion of Selection; Contract effective upon Attorney General approval

1.6 TERM OF AGREEMENT

The initial term of this agreement shall be for ten years and 1 month commencing in proximity to September 27, 2021 through October 31, 2031. The agreement may be extended as mutually agreed upon by the University and the awarded proposer.

1.7 INQUIRIES

Communications with employees of Shepherd University concerning this RFP by the proposer or on the proposer's behalf, except as is specified below would not be appropriate during the submission and selection process. **Failure to comply with this requirement may disqualify a proposer.**

All questions and/or inquiries concerning this request shall be submitted in writing by close of business on Wednesday, September 15, 2021 to:

Shepherd University Procurement Services
215 Ikenberry Hall
301 N King Street
PO Box 5000
Shepherdstown WV 25443
Debra Langford, Executive Director
Dlangfor@shepherd.edu

Inquiries submitted after close of business on Wednesday, September 15, 2021 may be disregarded by the University at its discretion due to proximity to the opening date. Proposers should consider the Department of Procurement Services as the first and primary point of contact on all matters related to the procedures associated with this RFP. If additional information is needed from any source, Procurement Services will work with the Proposer and the various offices of the University to gather that information.

Should any firm find discrepancies in or omissions from this RFP or be in doubt of the meaning, the firm should at once request in writing an interpretation from the University as described above. All necessary interpretations will be made available to all recipients of this RFP in the form of addenda to the RFP and such addenda shall become part of this RFP. Failure of any recipient of this RFP to receive any such addendum or interpretation shall not relieve such recipient from any obligation under their proposal as submitted, as all such addenda are also posted on the University website. The University will assume no responsibility for oral instructions or suggestions. ORAL ANSWERS SHALL NOT BE BINDING ON Shepherd University regardless of who made the statement. Every official and binding interpretation made by the University will be made in the form of an addendum that, if issued, will be sent by the University to all interested parties by Shepherd University Procurement Services and posted on the website located at the following URL:

http://www.shepherd.edu/procurement/current-bids

Shepherd University Procurement Services can also be reached by:

Telephone: (304) 876-5216
Facsimile: (304) 876-5001

But no substantive information will be provided to proposers verbally or on an individualized basis.

1.8 ELIGIBLE PROPOSERS

Proposals will be accepted only from entities who:

A. Are free from all obligations and interests which might conflict with the interests of Shepherd University, the Shepherd University Governing Board, the West Virginia Higher Education Policy Commission, and the State of West Virginia, or as to which such actual or perceived conflicts are readily resolvable under standards applicable to the practice of law in West Virginia.

B. Are experienced in municipal/ public finance transactions and have an established reputation for excellence and the ability to successfully transact public finance business.

C. Are experienced in public real estate/commercial/entrepreneurial transactions and have an established reputation for excellence and the ability to successfully transact such business.

D. Are able to provide assurances to Shepherd University that neither they personally, nor the firm they represent, have in any way violated the ethics provisions of Chapter 6B of the West Virginia Code.

Failure to meet the four criteria listed above will be cause for disqualification of the Proposal.

1.9 INTERPRETATION, CORRECTIONS OR CHANGES IN RFP

Any interpretation, correction or change in the RFP will be made by formal addendum by the University. Interpretations, corrections, or changes to the RFP allegedly made in any other manner will not be binding, and no proposer may rely upon any such interpretation, correction or change.

1.10 MODIFICATION OR WITHDRAWAL OF PROPOSALS

At any time prior to the specified time and date designated for receipt of proposals, a proposal submitted may be modified or withdrawn by notice to the party receiving proposals at the place designated for receipt of proposals. Such notice shall be in writing over the signature of the proposer with authority as set forth under paragraph 1.2 above and shall be received prior to the designated time and date for receipt of proposals. A notice of modification shall be worded so

as not to reveal the amount of the original proposal and the modified proposal shall be under seal.

1.11 ERASURES AND INTERLINEATIONS

Erasures, interlineations, or other changes in the Proposal must be initialed by the person(s) signing the Proposal.

1.12 ACKNOWLEDGMENT OF AMENDMENTS OF RFP

Receipt of an addendum to this RFP must be acknowledged by a proposer on the Proposal Response Certification (Attachment A). This RFP and all addenda, if any, may be accessed on the University's web site at the following URL:

www.shepherd.edu/procurement/current-bids

1.13 TAX EXEMPTION

The State of West Virginia, the Higher Education Policy Commission, and Shepherd University are exempt from federal and state taxes and will not pay or reimburse such taxes. Vendors may be subject to local as well as State and federal taxes and must exercise due diligence in incorporating all applicable taxes into any financial components of the response to the RFP.

1.14 REJECTION OF PROPOSALS

The University shall have the right to reject any and all proposals, in whole or part; to reject a Proposal not accompanied by a required security or other data required by the RFP documents; to reject a Proposal, which is in any way incomplete or irregular; or to reissue a Request for Proposals.

1.15 COST OF SERVICES

The costs, fees and expenses submitted in the proposal shall include everything necessary to complete the services being requested including, but not limited to, furnishing all materials and all management, supervision, labor and service, except as may be provided otherwise in the Proposal.

1.16 AWARD OF CONTRACT

The award shall be made by the University to the responsible proposer whose proposal will be most advantageous to the University as further described in Section 4. The

University is not required or constrained to award the contract to the proposer proposing the lowest price. All proposals are governed by the West Virginia Code and the Procedural Rules of the WV HEPC and Shepherd University.

The University may award a contract on the basis of initial offers received, without discussion; therefore, each initial offer should contain the offerer's best terms as to services and cost. The University is not required or constrained to award the contract to the proposer proposing the lowest price.

The State of West Virginia may require certain terms and conditions as a component of the contract not included herein. If additional terms and conditions are required by the State and are deemed unacceptable to vendor, vendor may opt to withdraw the proposal at that time without penalty.

1.17 TRADE SECRETS

If the response contains any trade secrets that should not be disclosed to the public or used by the University for any purpose other than evaluation of your proposal, the top of each sheet of such information must be marked with the following legend:

"CONFIDENTIAL INFORMATION"

All information submitted as part of the proposal must be open to public inspection (except items marked as trade secrets and considered trade secrets pursuant to the State of West Virginia laws after the award has been made). Should a request be made of the University for information that has been designated as confidential by the Vendor and, on the basis of that designation the University denies the request for information, the Vendor may be responsible for all legal costs necessary to defend such action if the denial is challenged in a court of law.

1.18 CONFLICT OF INTEREST/ETHICS

By signing the proposal, the vendor affirms that it and its officers, members and employees have no actual or potential conflict of interest, beyond the conflicts disclosed in its proposal. Vendor will not acquire any interest, direct or indirect, that would conflict or compromise in any manner or degree with the performance of its services under this contract. If any potential conflict is later discovered or if one arises, the vendor must disclose it to the University promptly.

A proposal will not be considered for award, or may be disqualified, if the price in the proposal was not arrived at independently, without collusion, consultation, communication or agreement as to any matter relating to such prices with any other offer, or with any competitor, or with any improper source of information. A proposal

may be subject to rejection if its acceptance would or could constitute an unethical conflict of interest for a University administrator or employee.

1.19 PROPOSAL PRICE

The prices submitted in the proposal shall include everything necessary for the completion of the contracted services including, but not limited to, furnishing all materials and all management, supervision, labor and service, except as may be provided otherwise in the Proposal. The University may reject an offer if it is materially unbalanced as to process for the basic requirements. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices, which are significantly overstated for other work.

1.20 OWNERSHIP OF ALL PROPOSAL DOCUMENTATION

Ownership of all data, material and documentation originated and prepared for the University pursuant to the RFP shall belong exclusively to the University and may be subject to public inspection in accordance with the West Virginia Freedom of Information Act.

1.21 CONFIDENTIALITY OF UNIVERSITY DATA AND INFORMATION

All financial, statistical, personal, technical and other data and information which are designated confidential by the University and not otherwise subject to disclosure, and made available to the Vendor in order to carry out this Contract, or which become available to the Vendor in carrying out this Contract, shall be protected by the Vendor using the same level of care in preventing unauthorized disclosure or use of the confidential information that the Contractor takes to protect its own information of a similar nature, but in no event, less than reasonable care and consistent with University's legal obligations as to such information under FERPA and GLBA.

Vendor shall not use such information for any purpose other than as expressly authorized in the contract.

SECTION 2 - INSTRUCTIONS FOR PREPARING PROPOSALS

2.1 GENERAL

To aid in the evaluation process, it is required that all responses comply with the items and sequence as presented in paragraph 2.2, RFP Response Outline. Paragraph 2.2 outlines the minimum requirements and packaging for the preparation and presentation of a response. Each request should be identified by its own numbered tab within the proposal for ease of reference. Failure to comply may result in rejection of the response. The Proposal should be specific and complete in every detail, prepared in a simple and straightforward manner.

Proposers are expected to examine the entire Request for Proposals, including all specifications, standard provisions and instructions. Failure to do so will be at the proposer's risk. Each proposer shall furnish the information required by the invitation. It is required that Proposal entries be typewritten. Periods of time, stated in number of days, in this request or in the proposer's response, shall be in calendar days.

Each item identified below and required to be addressed will be further clarified in Section 3 of the Proposal.

2.2 RFP RESPONSE OUTLINE

A. Response Sheet: The Proposal Response Certification (Attachment A) shall be attached to the front of the Proposal and shall contain the proposer's certification of the submission. It shall be signed by an official who has full authority to enter into a contract.

B. Experience and Personnel: (Attachment B) Please provide information regarding the experience in the types of services being described and the personnel that would be assigned to work with Shepherd University should the proposer be awarded the contract. (details provided in Section 3).

C. Service Costs: Include a cost that would be charged to the University for Services as described in Section 3. Please identify in Attachment C.

D. Conflict Affirmation (Attachment D):
   1. Affirm that your firm and all individuals that will be assigned to this work are free from all obligations and interests which might conflict with the interests of Shepherd University in this work.

   2. Identify any pending litigation or regulatory action, either state or federal, if any, related to public finance in which your firm or any predecessors or associated firm is a party. For each matter, state:

      a. Style of the case;

b. Summary of the nature of the case or claim;
c. Status of the case or claim (e.g., circuit court, on appeal to the district court, awaiting certiorari, etc.);
d. Approximate dollar amount involved, if any; and
e. Improper conduct alleged, if any.

3. Disclose any information about your firm which presently or in the future could impair your firm's ability to provide the level of services required of bond/issuer/transactions counsel.

E. Please provide additional information to consider that may be relevant to consideration of the proposer's firm as bond counsel or issuer's counsel (Attachment E).

F. Please provide any concerns that the proposer may have about this solicitation (Attachment F).

G. Disclosure of Interested Parties to Contract (Attachment G):

1. Affirm that your firm and all individuals that will be assigned to this transaction are free from all obligations, interest and regulatory problems which might conflict with the interests of Shepherd University or which might create ethical conflicts for employees/officers of University.

2. Disclose any information about your firm that presently, or in the future, could impair your firm's ability to provide the services required for this transaction.

H. Fully executed Non-Collusion Certificate (Attachment H): The Non-Collusion Certificate affirms that the contractor has not performed any collusion while putting the proposal documentation together for submission to agency.

I. Purchasing Affidavit (Attachment J): The Purchasing Affidavit acknowledges that neither the responding vendor nor any related party owes a debt to the State of West Virginia.

SECTION 3 - TECHNICAL SPECIFICATIONS

3.1 GENERAL

Shepherd University is soliciting proposals to retain a firm of attorneys to provide bond/transactions counsel services in connection with multi-million-dollar transaction financing, complex and P3 real estate transactions, and other future large and complex capital transactions on an as-needed basis during the term of the Agreement.

Of immediate prospect for the University is work relating to:

A. A Campus Energy Savings initiative within the scope of Article 3B of Chapter 5A of the Code of West Virginia, for which a lease purchase financing of equipment is anticipated in an amount exceeding Ten Million Dollars;

B. Entrepreneurial transactions support for the University's East Loop Development initiatives, as described at https://media.suweb.site/2020/05/East-Campus-Loop-RFP-SU20-09-Final.pdf?v=1625230021?v=1588357119

3.2 EXPERIENCE AND PERSONNEL (Section 2.2 B Requested Information)

1. Provide a description of the proposer's experience as bond counsel/public transactions counsel, for bond issues, public financing, and/or complex public entrepreneurial transactions during the past three years which you believe qualify the proposer to be counsel for Shepherd University's public financing and entrepreneurial transactions. For each issue/project, please indicate the following:

    a. The name of the governmental entity on whose behalf the work was performed;

    b. Financial size and date of completed public transactions;

    c. The type of transaction;

    d. Description of the project for which the legal services were performed;

    e. The nature of the security pledge (e.g., special fund, full faith and credit, etc.); and

    f. Names, addresses and telephone numbers of a reference-contact for the above listed transactions.

2. Provide a description of the proposer's experience representing parties other than a public entity in comparable transactions.

3. Specify the attorney(s) who will be assigned to this representation, the role of each person, their qualifications and their experience in comparable transactions. Include a brief resume for each person.

4. Provide a statement as to the professional liability coverage carried by the proposer.

3.3 COST (Section 2.2C Requested Information)

A. Provide the proposer's proposed fee and estimated expenses for providing the services of counsel described herein for the two projects identified.

B. An hourly rate will also be requested for the different levels of counsel that may work on any other future or upcoming project. Actual fees and expenses will be negotiated but may not exceed the amounts specified in your proposal unless caused by unforeseen circumstances and approved by the Chief Procurement Officer in advance in writing.

SECTION 4 - PROCUREMENT PROCESS

4-1 PROPOSER LIST AND QUALIFICATION EVALUATION

After the established date for receipt of proposals, a listing of vendors submitting proposals will be prepared, and will be available for public inspection. Proposals will not be opened nor read publicly. Qualifications and proposals submitted by interested vendors will be reviewed and evaluated based on the evaluation factors set forth in the RFP.

4-2 PROPOSAL CLASSIFICATION

For the purpose of conducting discussions with individual proposers, if required, proposals will initially be classified as:

A. Acceptable
B. Potentially Acceptable
C. Unacceptable

Discussions may be conducted, if required, with any or all of the proposers whose proposals are found acceptable or potentially acceptable. Offerers whose proposals are unacceptable will be notified promptly. The Executive Director of Procurement Services will establish procedures and schedules for conducting oral and/or written discussions.

Vendors are advised the University may award a contract on the basis of initial offers received, without discussions; therefore, each initial offer should contain the offerer's best terms from a cost or price and technical standpoint.

4-3 VENDOR INVESTIGATION

The University will make such investigations, as it considers necessary to obtain full information on the vendors selected for discussions.

4-4 FINAL OFFERS AND AWARD OF CONTRACT

Following any discussions with proposers regarding their technical proposals, alternative approaches or optional features, a number of the firms may be requested to submit best and final offers. The committee will rank the final vendors for the project, giving due consideration to the established evaluation criteria. The committee will propose award to the proposal which is found to be most advantageous to the University based on the factors set forth in the Request for Proposals.

SECTION 5 - EVALUATION PROCESS/CRITERIA

5-1 EVALUATION PROCESS

Shepherd University will evaluate all acceptable proposals based on the criteria identified. Proposals will be rated using a weighted point scheme, then ranked. The proposal receiving the highest ranking will be declared the most advantageous to the University.

5.2 EVALUATION CRITERIA

The evaluation criteria are listed below:

EXPERIENCE AND PERSONNEL

Demonstrated ability as counsel for bond issues/public financings/ entrepreneurial transactions that would make selection of the firm advantageous to Shepherd University.

COSTS

Costs to perform services being requested as identified.

SECTION 6-CONTRACTUAL TERMS AND CONDITIONS

1. **ORDER OF PRECEDENCE:** This Section Six of this contract modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Contract. IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS SECTION SIX, THIS SECTION SIX SHALL CONTROL unless a contract change order is executed by both parties which expressly references a modification of this Section Two.

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 0or 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-l, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

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

19. **THIRD-PARTY SOFTWARE-If** this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that is has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.

20. **AMENDMENTS** - The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

    Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~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.

ATTACHMENT A

PROPOSAL RESPONSE CERTIFICATION

SHEPHERD UNIVERSITY

_____
DATE

The undersigned, as proposer, declares that he/she has read the Request for Proposals and the following proposal is submitted on the basis that the undersigned, the company and its employees or agents, shall meet, or agree to, all specifications contained therein. It is further acknowledged addenda numbers _____ to ____ have been received and were examined as part of the RFP document.

_____
Name of Proposer

_____
Signature of Proposer

_____
Title

_____
Firm Name

_____
Street Address

_____
City, State, Zip

_____
Telephone

_____
Facsimile Number

ATTACHMENT B

EXPERIENCE AND PERSONNEL

ATTACHMENT C

SERVICE COSTS

A Campus Energy Savings initiative within the scope of Article 3B of Chapter 5A of the Code of West Virginia, for which a lease purchase financing of equipment is anticipated in an amount exceeding Ten Million Dollars

Cost for Project: _____

Entrepreneurial transactions support for the University's East Loop Development initiatives, as described at https://media.suweb.site/2020/05/East-Campus-Loop-RFP-SU20-09-Final.pdf?v=1625230021?v=1588357119

Cost for Project: _____

Please insert hourly rates for other Personnel in the Agency who may perform duties or tasks related to other projects below:

ATTACHMENT D

CONFLICE AFFIRMATION

ATTACHMENT E

ADDITIONAL RELEVANT INFORMATION

ATTACHMENT F

CONCERNS ABOUT THE PROPOSAL

Attachment G

West Virginia Ethics Commission

Disclosure of Interested Parties to Contracts

Pursuant to *W. Va. Code* § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of $1 million or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

"Interested party" or *"Interested parties"* means:

(1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
(2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
(3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

"State agency" means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: ethics@wv.gov; website: www.ethics.wv.gov.

Revised June 8, 2018

West Virginia Ethics Commission

Disclosure of Interested Parties to Contracts

(Required by *W. Va. Code* § 6D-1-2)

Name of Contracting Business Entity: _____ **Address:** _____

_____

Name of Authorized Agent: _____ **Address:** _____

Contract Number: _____ **Contract Description:** _____

Governmental agency awarding contract: _____

☐ **Check here if this is a Supplemental Disclosure**

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below *(attach additional pages if necessary)*:

1. **Subcontractors or other entities performing work or service under the Contract**
   ☐ Check here if none, otherwise list entity/individual names below.

2. **Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**
   ☐ Check here if none, otherwise list entity/individual names below.

3. **Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding lega services related to the negotiation or drafting of the applicable contract)**
   ☐ Check here if none, otherwise list entity/individual names below.

Signature: _____ Date Signed: _____

Notary Verification

State of _____, County of _____:

_____, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this _____ day of _____, _____.

_____
Notary Public's Signature

To be completed by State Agency:
Date Received by State Agency: _____
Date submitted to Ethics Commission: _____
Governmental agency submitting Disclosure: _____

Revised June 8, 2018

ATTACHMENT H

NON-COLLUSION CERTIFICATE

I HEREBY CERTIFY I am the _____ (Title) and the duly authorized representative of _____ _____

_____

_____

_____ whose address is _____.

AND THAT NEITHER I nor, to the best of my knowledge, information and belief, the above entity nor any of its other representatives I here represent have:

(a) Agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the proposal or offer being submitted herewith;

(b) Not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the proposal of the bidder or offeror herein or any competitor, or competitive bidding in connection with the financing for which the within proposal or offer is submitted; and that no member of the _____, administrative or supervisory personnel or other employees of _____ have any interest in the proposing entity except as follows: (complete if applicable)

_____

_____

_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

_____
Signature

_____ _____
Date Printed or Typed Name

Attachment I

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ___ day of _____, 20___.

My Commission expires _____, 20___.

AFFIX SEAL HERE **NOTARY PUBLIC** _____