

**REQUEST FOR PROPOSAL  
MIDWESTERN STATE UNIVERSITY  
PURCHASING & CONTRACT MANAGEMENT DEPARTMENT  
3410 Taft Blvd., Daniel Bldg., Rm. 202  
Wichita Falls, TX. 76308**

BID NUMBER	BID TITLE
735-17-4258	HVAC Systems for West Campus Annex

**BIDS WILL BE RECEIVED BY SEALED BID OR EMAIL UNTIL:  
2:00 P.M.,  
December 13, 2016 to:  
the office of the Assistant Director of Purchasing & Contract Management,  
3410 Taft Blvd., Daniel Bldg., Rm. 202  
Wichita Falls, TX. 76308**

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**GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions apply to all offers made to Midwestern State University (herein after referred to as "University") by all prospective vendors (herein after referred to as "Bidders") on behalf of Solicitations including, but not limited to, Invitations to Bid and Request for Quotes.

**INSTRUCTIONS FOR SUBMITTING BIDS**

Review this document in its entirety. Be sure your bid is complete, and double check your bid for accuracy.

Questions requiring only clarification of instructions or specifications will be handled through the email process. If any questions results in a change or addition to this Bid, the change(s) and addition(s) will be addressed to all vendors involved as quickly as possible in the form of an addendum. It is the responsibility of the bidder to view the posting on the MSU purchasing web page located at <http://mwsu.edu/purchasing/>.

Sign the **Vendor's Affidavit Notice** and return with your bid.

**BIDDERS SHALL SUBMIT BID ON THE FORM PROVIDED, SIGN THE VENDOR AFFIDAVIT, AND RETURN ENTIRE BID PACKET.** In the event of inclement weather and the University Offices are officially closed on a bid opening day, bids will be received until 2:00 p.m. of the next business day. At which time said bids will be privately opened.

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**BIDS SUBMITTED AFTER THE SUBMISSION DEADLINE SHALL BE RETURNED UNOPENED AND WILL BE CONSIDERED VOID AND UNACCEPTABLE.**

SUCCESSFUL VENDOR WILL BE NOTIFIED BY EMAIL OR MAIL. All responding vendors will receive written notification regarding the outcome of the award. Bid tabulations will be posted to the MSU Purchasing we page.

**PLEASE NOTE CAREFULLY**

**THIS IS THE ONLY APPROVED INSTRUCTION FOR THIS BID. ITEMS BELOW APPLY TO AND BECOME PART OF TERMS AND CONDITIONS OF BID. ANY EXCEPTIONS THERETO MUST BE IN WRITING.**

1. Each bid shall be emailed or placed in a separate envelope completely and properly identified with the name and number of bid. Bids must be in the Purchasing Office **BEFORE** the hour and date specified.
2. **QUOTE F.O.B. DESTINATION.** If otherwise, show exact cost to deliver. Bid unit price on quantity specified – extend and show total. In case of errors in extension, UNIT prices shall govern. Bids subject to unlimited price increase will not be considered.
3. Bids **MUST** give full firm name and address of the bidder. Failure to manually sign bid will disqualify it. Person signing bid should show TITLE or AUTHORITY TO BIND HIS FIRM IN A CONTRACT.
4. Bids **CANNOT** be altered or amended after opening time. Any alterations made before opening time must be initialed by bidder or his authorized agent. No bid can be withdrawn after opening without the approval by the Vice-President of Administration & Finance based on a written acceptable reason.
5. The University is exempt from State Sales Tax and Federal Excise Tax. **DO NOT INCLUDE TAX IN BID.**
6. Any catalog, brand name or manufacturer's reference used in a bid invitation is descriptive-**NOT** restrictive-it is to indicate type and quality desired unless otherwise indicated. Bids on brand of like nature and quality will be considered. If bid is based on other than referenced specifications, proposal must show manufacturer, brand or trade name, lot number, etc., of article offered. If other than brand(s) specified is offered, illustrations and complete description should be made part of the bid. If bidder takes no exception to specifications or reference data, he will be required to furnish brand names, numbers, etc., as specified.
7. Samples, when requested, must be furnished free of expense to the University. If not destroyed in examination, they will be returned to the bidder on request, at his

expense. Each sample should be marked with bidder's name, address, and University bid number. **DO NOT ENCLOSE OR ATTACH SAMPLE TO BID.**

8. **Delivery:** Bid must show number of days required to make delivery to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates bidder to complete delivery in 14 calendar days. A five-day difference in delivery promise may break a tie. Unrealistically short or long delivery promises may cause bid to be disregarded. Consistent failure to meet delivery promises without valid reason may cause removal from bidder list. Delivery shall be made during normal working hours only, 8:00 a.m. to 5:00 p.m., unless prior approval for late delivery has been obtained from the Director of Purchasing.
9. If delay is foreseen, contractor shall give written notice to Director of Purchasing. The University has the right to extend delivery date if reasons appear valid. Contractor must keep University advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes the University to purchase supplies elsewhere and charge full increase in cost and handling to defaulting contractor.
10. All items proposed shall be new, in first class condition suitable for shipment and storage (Midwestern State University prefers recycled packaging whenever possible), unless otherwise indicated in bid. Verbal agreements to the University will not be recognized. All materials and services shall be subject to Purchaser's approval. Unsatisfactory materials will be returned at Seller's expense.
11. Written and verbal inquiries pertaining to bids must give Bid Number and Commodity.
12. No substitutions or cancellations permitted without written approval of Director of Purchasing.
13. The University reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award to the Bidder that bids to the Best Value to the University. The University reserves the right to award by item or by total bid. Prices should be itemized.
14. Consistent and continued tie bidding could cause rejection of bids by the University and/or investigation for Anti-Trust violations.
15. The contractor agrees to protect the University from claims involving infringement of patents or copyrights.
16. This is a Quotation inquiry only and implies no obligation on the part of the University. All costs quotations must include all the various features needed to satisfy the requirements. Note: No amounts will be paid for the items in this BID in excess of the amounts quoted.

17. **Award:** A written purchase order or notice of award mailed or otherwise furnished to the successful bidder within the time of acceptance specified in this package results in a binding contract without further action by either party.
18. **Variation in Quantity:** The University assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.
19. **Invoicing:** Bidder shall submit two (2) copies of an itemized invoice showing bid number and purchase order number to:

**Midwestern State University  
Accounts Payable  
3410 Taft Blvd.  
Wichita Falls, TX. 76308**

20. **Payments:** The University, after receipt of completed order will make payment to the contractor within 30 days from the receipt of goods or invoice whichever is later. All partial shipment must be pre-approved by the Director of Purchasing. In the event of partial shipments the University is not required to make payments until the order is complete. Acceptance of and final payment for the item will be contingent upon satisfactory performance of the product received by the University.
21. **Discrimination:** In order to comply with the provisions of fair employment practices, the contractor agrees as follows; 1.) the contractor will not discriminate against any employee or applicant for employment because of race, sex, religion, handicap, or national origin; 2.) in all solicitations or advertisements for employees, the contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; 3.) the contractor will furnish such relevant information and reports as request by the University for the purpose of determining compliance with these regulations; and 4.) failure of the contractor to comply with these laws will be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part.
22. **Assignment:** Any contract entered into pursuant to this request is not assignable, nor the duties thereunder, by either party without the written consent of the other party in the contract.
23. **Other Remedies:** In addition to the remedies stated herein, the University has the right to pursue other remedies permitted by law or in equity.
24. **E-Verify:** Contractor is responsible to verify all employees are approved by The Homeland Security E-Verify program.

## REQUEST FOR PROPOSAL

### HVAC SYSTEMS FOR WEST CAMPUS ANNEX MIDWESTERN STATE UNIVERSITY

It is the intent of these specifications to describe the minimum requirements for **the above titled project** at Midwestern State University in sufficient detail to secure comparable bids.

Each bidder must confirm he fully understands these specifications and the University's needs and satisfies himself that he is cognizant of all factors relating to requirements contained in these specifications.

The bid analysis will include compliance to bid specifications, past performance with vendor, references, which will have a weighted average of 30 percent and the overall cost to the university, which will have a weighted average of 70 percent. Midwestern State University reserves the right to consider deviations from these specifications.

Award of this bid will be contingent on availability of Midwestern State University funds.

References shall be included on this bid form. Three current customers with a comparable purchase shall be listed with complete name, address, telephone number and contact person.

Bids must be submitted on this form and the bidder shall return the entire bid/specification package which will constitute a contract equally binding between the bidder and Midwestern State University if bids accepted by the University. Each bid shall be placed in a sealed envelope or emailed, signed by a person having the authority to bind his/her firm in a contract.

This contract shall remain in effect until completion and acceptance by the University. Midwestern State University reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the University in the event of breach or default if this contract. Midwestern State University reserves the right to terminate the contract immediately in the event the successful bidder fails to make delivery in accordance with the specifications.

**Questions** concerning these specifications should be directed via email no later than 2 PM, December 05, 2016 to:

Lori Case, Assistant Director of Purchasing and Contract Management  
3410 Taft Blvd. Daniel Bldg. Rm. 200  
Wichita Falls, TX. 76308  
[lori.case@mwsu.edu](mailto:lori.case@mwsu.edu)  
(940) 397-4010

Midwestern State University may in its sole discretion respond in writing to questions concerning this bid request. Only MSU responses made by formal written addendum to this proposal shall be binding and shall be posted on the MSU purchasing web site located at <http://mwsu.edu/purchasing/>. Oral or other written interpretations or clarifications shall be without legal effect.

All bids meeting the intent of this invitation to bid will be considered for award. Bidders taking exception to the specifications, or offering substitutions, shall state these exceptions by attachment as part of the bid. The absence of such a list shall indicate that the bidder has not taken exception and shall hold the bidder responsible to perform in strict accordance with the specifications of the invitation. Midwestern State University reserves the right to accept any and all or none of the exception(s) / substitution(s) deemed to be in the best interest of the University.

**PRE-BID MEETING:** A non-mandatory pre-bid meeting will be held at **10:00 a.m. on December 01, 2016** at the east entrance (i.e. circle drive) at the West Campus Annex, Midwestern State University, 3410 Taft Blvd., Wichita Falls, Texas. This is the only scheduled time for contractors to view this project.

**Proposals** are to be sent via email or hand delivered to:

Lori Case, Assistant Director of Purchasing and Contract Management  
3410 Taft Blvd. Daniel Bldg. Rm. 200  
Wichita Falls, TX. 76308  
[lori.case@mwsu.edu](mailto:lori.case@mwsu.edu)  
(940) 397-4041

# **SPECIFICATIONS**

## **RFP #735-17-4258**

**Please see specifications and drawing at the below Link under current bid opportunities listed under the RFP number:**

<http://mwsu.edu/purchasing/>

Supply an insurance certificate with your Bid.

Supply a W-9 With your Bid if new to Midwestern State University.

A Bid Bond of 5% will be required with your Bid.

### **Schedule:**

Work to begin no sooner than January 17, 2017 and be completed no later than March 10, 2017.

Questions will be received through December 05, 2016 @ 2 PM.

**BID SHEET  
HVAC SYSTEMS FOR WEST CAMPUS ANNEX  
RFP #735-17-4258**

**Base Bid:** \_\_\_\_\_

**Alternate 1:** \_\_\_\_\_

**Total:** \_\_\_\_\_

**A/C Manufacturer and model number for all units:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_



**VENDOR REFERENCES**

Please list three (3) references of current customers who can verify the quality of service your company provides. The University prefers customers of similar size and scope of work to this proposal. ***THIS FORM MUST BE RETURNED WITH YOUR PROPOSAL.***

**REFERENCE ONE**

Government/CompanyName: \_\_\_\_\_

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

ContactPersonandTitle: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contract Period: \_\_\_\_\_ ScopeofWork: \_\_\_\_\_

**REFERENCE TWO**

Government/CompanyName: \_\_\_\_\_

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

ContactPersonandTitle: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contract Period: \_\_\_\_\_ ScopeofWork: \_\_\_\_\_

**REFERENCE THREE**

Government/CompanyName: \_\_\_\_\_

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

ContactPersonandTitle: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contract Period: \_\_\_\_\_ ScopeofWork: \_\_\_\_\_

## AFFIDAVIT

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final and if bid is accepted (within 90 days unless otherwise noted by vendor), agrees to furnish any and/or all items upon which prices are offered, at the price(s) and upon the conditions contained in the Specifications.

STATE OF TEXAS  
COUNTY OF WICHITA

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared

\_\_\_\_\_ who, after having first been duly sworn, upon oath did depose and say;

That the foregoing proposal submitted by \_\_\_\_\_

\_\_\_\_\_ hereinafter called "Bidder" is the duly authorized agent of said company and that the person signing said proposal has been duly authorized to execute the same. Bidder affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid.

Name and Address of Bidder:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone number \_\_\_\_\_

Email \_\_\_\_\_

\_\_\_\_\_  
Signature

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

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

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas.

## **WEST CAMPUS ANNEX HVAC MODIFICATIONS STATEMENT OF WORK**

Midwestern State University has a need to occupy parts of the West Campus Annex (WCA) facility (formerly called "Christ Academy" or "The Episcopal School"). HVAC upgrades are necessary as part of the renovation plans and are defined in the scope below, as well as in Alternate 1 for the Burns Chapel which is attached to WCA. Installation of three new units, duct additions/modifications, and two units in the chapel is the purpose of this project.

### **CORRIDOR HVAC MODIFICATIONS:**

1. Demo existing return air ducts from the roof top unit (RTU) above room 114 and 1MECH2. All return air ductwork between the RTU and the roof shall be removed. Contractor to cover roof penetrations with 18 gauge minimum galvanized sheet metal and seal it to prevent leaks using silicone caulk.
2. Demo existing RTU supply air ducts where they enter into rooms 112 and 114 (i.e., below the roof and before they enter these two rooms). The remaining supply duct from the RTU shall be connected to the new flex duct described in item 5 below.
3. Install a return air register in the corridor outside of room 118. Galvanized, 18 gauge, exterior insulated duct shall penetrate the roof and connect to the existing RTU above 114/1MECH2. All duct on roof and from the return air grill shall be internally insulated with 1" duct board insulation. Size of the duct shall be by the contractor and be of sufficient area to ensure optimum performance of the RTU. The roof does not have a warranty on it. Contractor is responsible for installing the new roof penetration in the corridor area.
4. Install insulated flex duct such as Atco Flex Duct, R-22, in the corridors shown in the attached sketch which include from 114 to 102, a branch from 108 to 122, and another branch from 103 to 116. Note a new wall will be installed by others between 103 and 122; new flex duct shall not extend west of this wall's location. Duct shall be sized to ensure equitable air flow to all corridor areas. Install sufficient registers in the ceiling grid to control the temperature in the corridors. Registers shall have dampers to allow for air flow adjustment such as commercial grade Air Mate registers. New flex duct shall be supported from the roof structure per the manufacturer's recommendations, not just resting on top of the ceiling tile/insulation. Location and quantity of registers shown in the sketch are diagrammatic; contractor is responsible for providing a sufficient amount to ensure good temperature control in the corridors.
5. Contractor responsible for removal and installation of all ceiling tile and insulation to complete the installations. Contractor is also responsible for damage to these items and the ceiling grid, unless it is identified PRIOR to beginning the work.
6. Contractor shall balance system to ensure even distribution of air to all corridor areas.
7. Thermostat to be located near room 120, but verify with Owner prior to its installation.

### **ROOMS 120, 122 HVAC:**

1. Install a new 3 ton Carrier (or equivalent), minimum of 13 SEER, HVAC split system with gas heat inside room 120. Condenser unit for the system shall be installed on the roof (roof penetrations and support of condenser on roof is by the contractor).
2. Owner will provide a new 3 phase, 208 volt disconnect on the west wall of room 120 for the contractor to use for powering the new HVAC unit.
3. Contractor is responsible for extending existing gas connections to the new HVAC unit. An existing gas line runs east-west on the roof and can be used for this unit (50' max distance).
4. Contractor to install new uninsulated high pressure duct (18 GA. Minimum) in room 122 wherever the ducts is visually exposed. Insulated flex duct can be used in other locations. The quantity and location of registers shall be defined by the contractor and shall be sufficient to provide good temperature

control in these spaces. Registers to include dampers to adjust air flow. Contractor is responsible for new wall penetrations to install the ductwork into rooms 120 and 122 as well as a return air system. For room 120, the supply air vent shall be in north wall of 120A and the return air shall be via a new louver/vent in the door installed by the contractor. For room 122, the supply and return air vents shall be cut in block wall above the ceiling. Owner to approve of all penetrations and distribution systems prior to installation. Contractor to provide a wooden base for the unit in 120A, as well as a condensate pump. The return air vents to 120 and 122 shall be sized in order to achieve proportional return air amounts from each room (i.e., do not want the majority of the RA to come from 120 just because it is closer to the unit).

5. Contractor shall balance system to ensure even distribution of air to 120 and 122.
6. Thermostat to be installed on east or north wall of room 122; verify exact location with Owner prior to installation.

#### **ROOMS 103, 1RR2, 1RR3 HVAC:**

1. Install a new 3 ton Carrier (or equivalent), minimum of 13 SEER, HVAC split system with gas heat inside room 1RR4. Condenser unit for the system shall be installed on the roof (roof penetrations and support of condenser on roof is by the contractor).
2. Owner will provide a new 3 phase, 208 volt disconnect on the north wall of room 1RR4 for the contractor to use for powering the new HVAC unit.
3. Contractor is responsible for extending existing gas connections to the new HVAC unit. An existing gas line runs east-west on the roof and can be used for this unit (50' max distance).
4. Contractor to install new uninsulated high pressure duct (18 GA. Minimum) in room 103 wherever the ducts is visually exposed. Insulated flex duct shall be used in other locations to deliver air to 1RR2 and 1RR3. The quantity and location of registers shall be defined by the contractor and shall be sufficient to provide good temperature control in these spaces. Registers to include dampers to adjust air flow. Contractor is responsible for new wall penetrations to install the ductwork into rooms 103, 1RR2, and 1RR3, as well as a return air system. For room 103, the return air shall be via a new louver/vent in the door installed by the contractor. Owner to approve of all penetrations and distribution systems prior to installation. Contractor to provide a wooden base for the unit in 1RR4 and use the existing sink drain for the condensate. The return air vents to 120 and 122 shall be sized in order to achieve proportional return air amounts from each room (i.e., do not want the majority of the RA to come from 120 just because it is closer to the unit).
5. Contractor shall balance system to ensure even distribution of air to 103, 1RR2, and 1RR3.
6. Thermostat to be installed on east or south wall of room 103; verify exact location with Owner prior to installation.

#### **ROOM 118 HVAC:**

1. Room will be used to store a small Information Technologies' server. Contractor to install a Lennox, (1/2 ton, MWMA-012=outside unit, MPA-012=inside unit), Gree, or equivalent mini-split system to provide cooling ONLY to this room. Condenser shall be mounted on exterior wall south of 118 and shall not interfere with the egress from the exits near it.
2. Owner will provide a new 3 phase, 208 volt disconnect on the west wall of room 118 for the contractor to use for powering the new HVAC unit.

## **ALTERNATE 1: A/C FOR BURNS CHAPEL**

The following scope of work shall be priced as Alternate 1:

### **Demo.**

1. The contractor shall remove two existing condensing coil sections from the roof on the west side of the West Campus Annex (WCA) Chapel and two AHUs from the second floor storage area accessed from this same roof. All penetrations from removal including pitch pans shall be sealed water tight. Demolition is back to the source in all cases.
2. All piping accessible in the AHU location (i.e., other than in chase) shall be removed and any holes created will be filled and sealed from weather and soil (i.e., slab penetrations).
3. Duct demo to be minimal so that the new air handlers can be reconnected to the existing distribution ductwork.
4. ACM is currently present (asbestos containing material), but will be removed by Owner prior to the start of any demolition by the contractor.

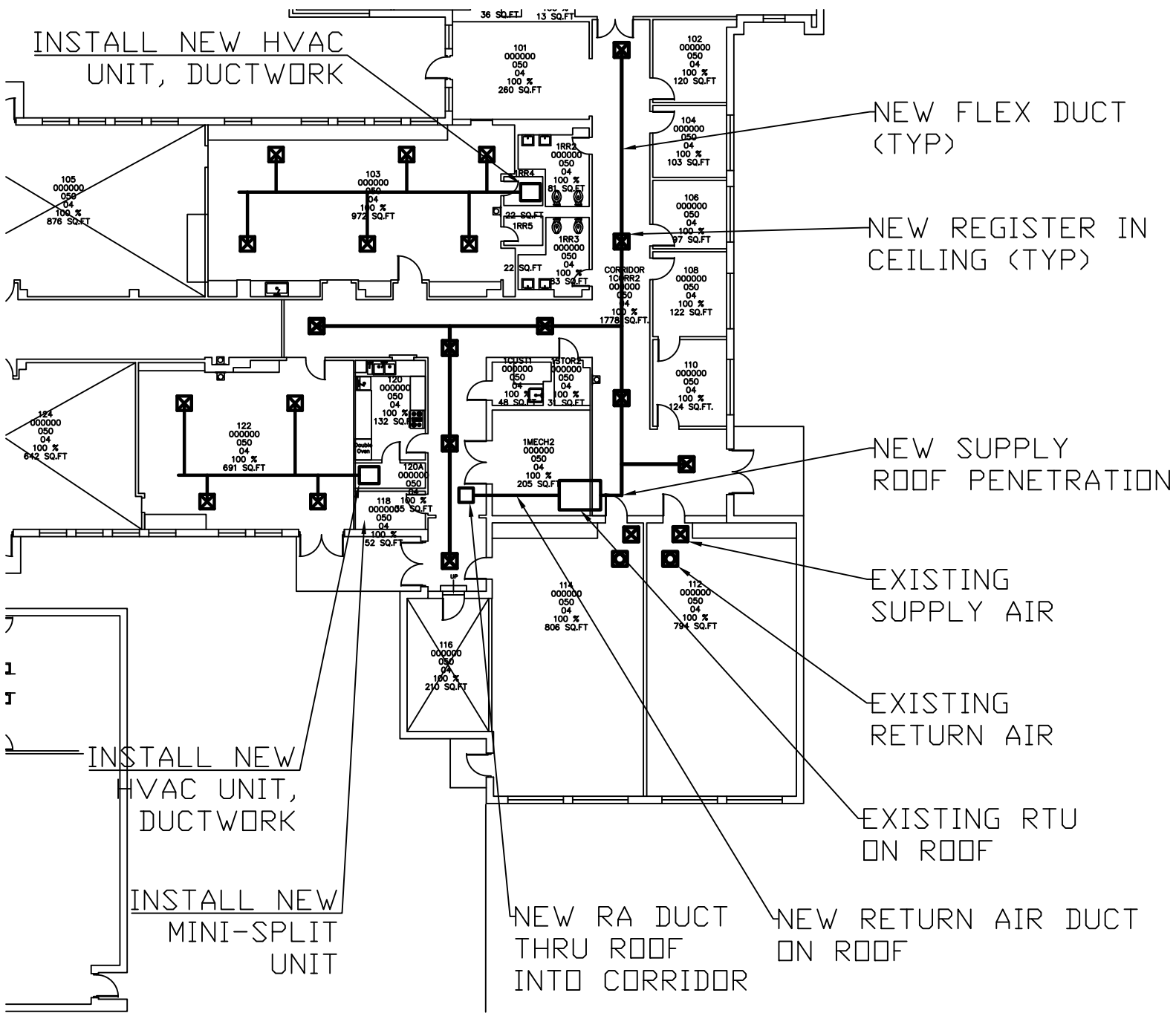
### **Equipment Installation.**

1. There shall be four new split system 3 phase AHUs installed in the old equipment's footprint inside the second floor storage room:
  - a) Three 5 ton AHUs with gas heat for the chapel.
  - b) One 3 ton AHU with gas heat for the rooms on the west end of the chapel.
2. Acceptable AHU equipment includes Carrier, Lennox, Bryant, or equivalent and shall have matching condensing unit (13 SEER rating minimum).
3. Condensing units shall be placed on the roof in the area of the AHU room entrance (i.e., similar to existing), with pitch pans to protect the roof.
4. All piping shall be supported on blocks on the roof, anchored on pitch pans, and insulated with ¾" ArmorFlex rubber insulation.
5. All piping shall be isolated and not be in any danger of rubbing against sharp edges.
6. All piping shall be anchored, hung in the air handler room, and insulated with ¾" ArmorFlex rubber insulation.
7. The three 5 ton units will be connected in parallel to the existing ductwork for the chapel. The 3 ton unit will be connected to the existing ductwork for the rooms on the west end of the chapel. The new units shall be sealed and insulated with 2" duct wrap.
8. Connect new units to outside makeup air with damper control.
9. Existing building return air ducts to be reconnected to new units.
10. Programmable thermostats (Venstar T 2900) with locking covers shall be installed in existing locations.
11. Contractor shall be responsible for (a) gas connection (located on first floor outside the mechanical room), (b) any crane rental, (c) any roof penetrations and repair, (d) or any other equipment/materials required to complete the turnkey installation.
12. Owner will provide four 3 phase, 208 volt disconnects near the existing units for the contractor to use for powering the new HVAC units.

### **BID INFO AND SCHEDULE:**

Contractor to identify the A/C manufacturer and model number for all required HVAC units with their bid submission.

Work to begin no sooner than January 17, 2017 and be completed no later than March 10, 2017.



# WEST CAMPUS ANNEX HVAC MODIFICATIONS



11-3-16

**PURCHASING AGREEMENT  
BETWEEN  
MIDWESTERN STATE UNIVERSITY  
AND**

Choose an item.

This Standard Purchasing Agreement ("Agreement") is entered into between the **Midwestern State University ("University") and, ("Contractor")**. University and Contractor may be referred to singularly as a "Party" and collectively as the "Parties." The Parties mutually agree and covenant as follows:

1. **TERM:** The term of this Agreement ("Term") will begin on \_\_\_\_\_, and end on \_\_\_\_\_, unless terminated earlier pursuant to the terms of this Agreement or extended by mutual written agreement of the Parties.

2. **GOODS/SERVICES :**

Check here if an exhibit, offer, proposal or other similar document (collectively, "Attachment") is being added as part of this Agreement. Any such Attachment: (i) should be described above in this Section 2 and attached to this Agreement; and (ii) is hereby incorporated by reference. In the event of any inconsistency between the Attachment and this Agreement, or any other similar document of Contractor and this Agreement, this Agreement will prevail.

3. **COMPENSATION:** Check one box only:

**This is a fixed price contract.** University will pay Contractor the amount of **\$0.00**.

**This is not a fixed price contract.** University will pay Contractor an amount not to exceed \$ \_\_\_\_\_ based on an hourly fee and /or other method of calculation as follows:

**This is not a fixed price contract and will be performed on a service-order basis.** University will pay Contractor an amount not to exceed \$ \_\_\_\_\_ (based on service order form(s) to be completed and signed by the Parties, a version of which will be provided to Contractor by University). University will engage Contractor on an "as-needed if needed" basis and does not guarantee the purchase of any quantity or dollar amount of services.

4. **PAYMENT TERMS:** Contractor shall submit detailed invoices to University describing the services rendered the times when such services were performed, compensable expenses and the amount due. University will pay undisputed amounts within thirty (30) days of receiving goods or invoices, whichever occurs later. Payment terms are subject to Chapter 2251 of the *Texas Government Code*. Contractor understands and agrees that payments under the Agreement may be subject to the withholding requirements of §3402(t) of the *Internal Revenue Code*. University, an agency of the State of Texas, is exempt from Texas sales and use tax on goods and services in accordance with §151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (TAC) Section 3.322.

Notwithstanding any contrary provision of this Agreement, each payment obligation of the University created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of the goods or services. If such funds are not allocated and available, this Agreement may be terminated by the University. The University shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to the

**PURCHASING AGREEMENT  
BETWEEN  
MIDWESTERN STATE UNIVERSITY  
AND**

Choose an item.

University in the event this provision is exercised, and the University shall not be obligated or liable for any future payments due or any damages as a result of termination under this section. This provision shall not be construed so as to permit the University to terminate this Agreement in order to purchase, lease, or rent similar goods or services from another party.

5. **ELIGIBILITY TO RECEIVE PAYMENT:** In accordance with Section 231.006 of the *Texas Family Code* and Sections 2155.004 and 2155.006 of the *Texas Government Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is or becomes inaccurate. Contractor acknowledges that, in accordance with Section 403.055 of the *Texas Government Code*, as applicable, if the Texas Comptroller of Public Accounts is currently prohibited from issuing a warrant to Contractor, Contractor agrees that payment under this Agreement will be applied to the debt or delinquent taxes are paid in full. And pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
6. **CONTRACTOR'S STATUS AND RESPONSIBILITIES:** In performing the services, Contractor will be deemed an independent contractor and not the University's agent or employee. This Agreement will not be construed to create any partnership, joint venture or other similar relationship between the Parties. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the services. Contractor shall perform the services in strict accordance with this Agreement and in accordance with the highest standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar services.  
 Check here if Contractor is an individual and has been a temporary or permanent employee of the State of Texas (including any employment with Midwestern State University) within the past two (2) years; if so, Contractor must attach a separate statement setting for the name of the agency or department by which Contractor was employed, the dates of employment, the annual rate(s) of compensation during such employment and the nature of the Contractor's duties.
7. **INTELLECTUAL PROPERTY:** Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.
8. **OWNERSHIP OF WORK PRODUCT:** All work products, including any software, research, reports, studies, data photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligation under this Agreement will be deemed work for University upon completion, termination or cancellation of this Agreement. Any program data or other materials furnished by University for use by Contractor in connection with the services performed under this Agreement will remain University's property.
9. **INDEMNITY:** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless University, and each of their directors, officers, agents and employees from and against all liability, loss, expense (including reasonable litigation costs and attorney fees), or claims for injury or damages arising out of the performance of this Agreement (collectively, "Claim") to the extent the Claim arises from the negligence, willful act, breach of contract or violation of law by Contractor, its employees,



**PURCHASING AGREEMENT  
BETWEEN  
MIDWESTERN STATE UNIVERSITY  
AND**

Choose an item.

agents, contractors or subcontractors.

10. **INSURANCE:** Unless an appropriate University representative agrees to waive the requirements by initialing the designated space near the signature block below, Contractor shall comply with general liability insurance coverage of \$1,000,000 per occurrence. If, during the term, Contractor will enter University property, Contractor shall also maintain the following insurance: (i) worker's compensation coverage as required by law with statutory limits for the State of Texas, including employers liability coverage of \$500,000 per accident; (ii) commercial automobile liability coverage of \$1,000,000 combined single limit; (iii) for engineers and architects only: professional liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: builders risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against University. Comprehensive general liability and commercial automobile liability policies must name University as additional insured. Contractor shall provide certificates of Insurance evidencing the insurance requirements prior to the start of work.
11. **INSPECTION AND ACCEPTANCE OF SERVICES:** University reserves the right to inspect the services provided under this Agreement at all reasonable times and places during the term. If any of the services do not conform to the requirements set forth in this Agreement, University may (i) require Contractor to perform the services again in conformity with such requirements, with no additional charge to the University; or (ii) equitably reduce payment due Contractor to reflect the reduced value of the Services performed. These remedies do not limit other remedies available to University in this Agreement or otherwise available at law.
12. **RISK OF LOSS:** All work performed by Contractor pursuant to this Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by University. In the case of any loss or damage to the work prior to the University's acceptance, such loss or damage will be Contractor's responsibility. Delivery of any goods to University pursuant to this Agreement must be FOB destination.
13. **COMPLIANCE:** Contractor shall observe and abide by all applicable state and federal law requirements and University policies and procedures. Contractor shall certify that he/she or it is in compliance with all applicable state and federal laws as it relates to the terms and conditions of this Agreement.
14. **CONFIDENTIALITY; DATA PROTECTION:** Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval. As applicable, Contractor shall maintain and process all information it receives in compliance with all applicable data protect/privacy laws and regulations and University policies.
15. **PUBLICITY:** Contractor shall not use University's name, logo or other likeness in any press release, marketing material or other announcement without University's prior written approval.
16. **SUBCONTRACTORS:** If Contractor is permitted to subcontract any of the services, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of

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the services.

17. **PRODUCTS AND MATERIALS PRODUCED IN TEXAS:** In performing its obligations under this Agreement, Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas. [Section 2155.4441 of the Texas Government Code]
18. **TRAVEL EXPENSES:** In the event the Agreement requires the University to reimburse Contractor for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.
19. **BONDS:** If applicable to the Services and this Agreement, Contractor shall secure payment and/or performance bonds in accordance with Section 2253.021 of the Texas Government Code upon executing this Agreement.
20. **AUDIT:** Execution of this Agreement constitutes Contractor's acceptance of the authority of University, the Texas State Auditors and/or their designated representative (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. Contractor agrees to cooperate with the Auditor conducting such audits or investigations and to provide all information and documents reasonably requested.
21. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
22. **DEFAULT:** A party will be in default of this Agreement if such Party fails to comply with any obligation in this Agreement and such failure continues for ten (10) days after receiving written notice from the non-defaulting Party. In the event of default, upon written notice to the defaulting Party, the non-defaulting Party may terminate this Agreement as of the date specified in the notice, and may seek other relief as provided by law.
23. **TERMINATION FOR CONVENIENCE:** University may terminate this Agreement in writing at any time upon providing at least thirty (30) days written notice to Contractor. University will only be liable for payment for Services received prior to the effective date of such termination.
24. **NOTICE:** Any notice required or permitted by this Agreement must be in writing and addressed to the Party at the address set forth below, or such other address as is subsequently specified in writing. Notice will be effective at the date: (i) delivered by national courier service or Registered/Certified Main, postage prepaid, return receipt required, or (iii) received by facsimile.
25. **BREACH OF CONTRACT CLAIMS:** To the extent Chapter 2260 of the *Texas Government Code* is applicable to this Agreement and is not preempted by other law, the dispute resolution process provided by Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by the Parties to attempt to resolve any claim for breach of contract made by Contractor against University that cannot be resolved in the ordinary course of business. An event or claim for breach of contract is not grounds for Contractor to suspend performance under this Agreement. The Parties specifically agree that (1) neither the execution of the Agreement by

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University nor any other conduct, action or inaction of any representative of University relating to the Agreement constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit; and (2) University has not waived its right to seek redress in the courts.

26. **FUNDING CONTINGENCY:** University's performance under this Agreement may be dependent upon appropriation of funds by the Texas State legislature ("Legislature") and/or allocation of funds by University's Board of Regents ("Board"). If the Legislature fails to appropriate the necessary funds or the Board fails to allocate the necessary funds, University may terminate this Agreement without liability by providing written notice to Contractor.
27. **CONTRACTOR REPRESENTATIONS:** If Contractor is a business entity, it represents that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) it is authorized and in good standing to conduct business in the State of Texas; (iii) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (iv) the individual executing this Agreement on behalf of Contractor is authorized to do so. If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
28. **WAIVER:** Waiver by either Party of a breach or violation of any provision of this Agreement will not operate as waiver of any subsequent breach.
29. **SURVIVAL:** Termination or expiration of this Agreement will not affect the Parties' rights obligations that, by their nature and context, are intended to survive termination or expiration.
30. **ELECTRONIC DELIVERY:** Execution and delivery of this Agreement by exchange of email or fax copy containing the signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party.
31. **LIMITATIONS:** The University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on the University property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; indemnities; and confidential information. Terms and conditions of this Agreement relating to these limitations will only be binding on the University to the extent permitted by the Constitution and the laws of the State of Texas.
32. **JURISDICTION AND VENUE; GOVERNING LAW:** It is expressly understood and agreed that the location and place of performance for this Agreement is stipulated to be in Wichita Falls, Wichita County, Texas, and the proper place of venue for suit of all disputes arising under this Agreement shall solely be in Wichita County, Texas. This Agreement and all of the rights and obligations of the Parties thereto and all of the terms and conditions hereof will be construed, interpreted and applied in

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accordance with and governed under the laws of the State of Texas.

33. **AUTHORITY:** The person signing below on behalf of the University and Contractor warrants that he/she has the authority to execute this Agreement according to its terms.
34. **OFFICIAL NOT TO BENEFIT:** No trustee, officer, director, regent, employee, administrator and representative of University shall be admitted to any share or part of this Agreement or to any benefit that may arise there from.
35. **NONDISCRIMINATION:** Contractor shall comply with State of Texas and federal civil rights laws and University policies prohibiting discrimination and harassment. Contractor shall not discriminate against an employee or applicant for employment with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, gender, national origin, age, sexual orientation, veteran status, or disability that is unrelated to the individual's ability to perform the duties of a particular position. A breach of this covenant may be regarded as a material breach of this Agreement.
36. **NON-ASSIGNABLE CONTRACT:** This Agreement cannot be assigned, in whole or in part, by either party.
37. **MISCELLANEOUS:** This Agreement, together with any Attachment(s), constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior contracts, agreements, representation and understanding made by the Parties relating to such subject matter. This Agreement may not be waived, altered, amended or otherwise modified except by the written agreement of both Parties. Contractor may not assign this Agreement with University's prior written consent. The invalidity or unenforceability of any provision(s) of this Agreement will not impair the validity and enforceability of the remaining provisions.
38. **EFFECTIVE DATE:** This Agreement shall be deemed to be effective on \_\_\_\_\_ and is signed by the respective Parties on the dates of their respective signatures as appear below.

**INSURANCE REQUIREMENTS WAIVER** - IF the Insurance Requirements are not applicable to the services or if University otherwise chooses to waive such requirements for purposes of this Agreement, the appropriate University representative may waive the requirements by initialing here -----> \_\_\_\_\_. Otherwise, Contractor must satisfy the insurance requirements specified in this Agreement.

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Choose an item.

**IN WITNESS WHEREOF:**

**Midwestern State University:**

\_\_\_\_\_ ::

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

SAMPLE