



Midwestern State University Request for Proposal

RFQ# 735-17-6195

Request for Qualifications – Engineering Services UTILITY MAPPING

General:

Midwestern State University (MSU) solicits responses to the Request of Qualifications (RFQ) for firms interested in providing utility mapping services for MSU's main campus.

Project Background

MSU is located in Wichita Falls, Texas and occupies approximately 179 acres in the heart of the city. The main campus is 100 acres with an additional 79 acres located south of Midwestern Parkway. MSU's current student headcount is ~6,100 with an on-campus student resident population of approximately 1,300 students. The campus contains 68 buildings in the Wichita Falls area which occupy 1,533,279 square feet.

Records of underground utilities are inadequate and need to be verified. The firm shall locate and electronically map infrastructure features on the main campus. The data collected is to be integrated into a CAD utility map system that is to be established by the firm.

Project Objectives

The proposed project shall encompass documentation of the following underground and surface utilities:

- Telephone
- Fiber
- Sewer
- Electrical
- Gas
- Water
- Irrigation
- Storm Drainage
- Any other utilities identified in existing drawings.

The existing electronic campus master drawing should be updated to reflect current conditions and add additional infrastructure features as needed. The end product for this project is a CAD-based campus-wide utility electricity gas, water, sewer, telephone, fiber, etc. information system map with GPS accuracy on the location of these utility lines.

Scope of Services

The RFQ will be awarded to the Proposer best demonstrating the experience and qualifications to locate and document surface and underground utilities. The scope shall include:

1. Development of an AutoCAD utility map system covering the main campus area.
2. The end product for this project is a CAD-based campus wide utility map that will be populated with utilities reflecting current, existing, or “as-built” conditions.

The Scope of Services is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project.

The following are work tasks assumed necessary to develop an AutoCAD utility map system for the campus. Proposing teams may suggest a modified scope as part of their proposal.

Work Tasks for Phase I - DATA COLLECTION

An initial effort of building an AutoCAD utility system map for the campus from an existing electronic file and paper based drawings will require fact finding and research using the following suggested work steps.

1. The contractor shall evaluate the following utility data available in the Daniel Building files:
 - Electrical, water supply, storm drain, and sewer plans in AutoCAD. These will be provided to be used as the base map.
 - Paper based drawings.
 - Scans of paper based utility plans.

Contractor shall verify for completeness and currency by comparing various versions and choose the best version for areas of interest. Scan additional paper based maps, if needed for the development of final product.

2. Create list of entities & attributes needing to be captured.
3. Create the layer list using MSU CAD standards.
4. Finalize all the layers and attributes with MSU staff.

Specific Deliverables of Phase I:

1. List of documents and scans needing to be converted.

2. List of entities & attributes.
3. List of layers.
4. Recommendation using existing campus master drawing in AutoCAD.
5. Scope, schedule, and cost of Phase II
6. Detailed cost estimate:
 - Fixed price cost for Phase I, including any travel costs to MSU.
 - Line item costs for administrative/overhead charges.
 - Line items for any other expenses (reproduction, meetings, etc.).

Work Tasks for Phase II – DIGITIZATION

Digitization is the conversion of drawings, maps, plans, etc., into a file that is ready to use by a CAD program. The result shall be a file separated into layers with standard, recognizable entities (such as conduits, piping, walls, windows, roads, lakes, etc.). The entities are ready to be changed, copied, or deleted with little effort. Each utility shall be in a separate layer, including a separate layer for abandoned utilities.

MSU currently uses AutoCAD 2014; AutoCAD is the preferred format desired.

Specific Deliverables of Phase II:

1. Raster (image) files created in TIFF format as needed.
2. Vector files such that they can be imported and modified in the preferred AutoCAD format.
3. Scope, schedule, and cost of Phase III.

Work Tasks for Phase III - DEVELOPMENT OF UTILITY INFORMATION MAPPING

Update campus master drawing for quality assurance. Again, utilities on the map should correspond to current, existing, or “as-built” conditions. The contractor shall verify the correctness of the digitization by visually comparing both the digitized drawings and actual field conditions. Use additional services for CAD and drafting support as required. This phase will involve subsurface investigations by the contractor using probes, drilling rigs, infrared, or other technology to identify the exact location of sub service utilities.

Specific Deliverables of Phase III:

1. Plan revisions correcting discrepancies noted during verification.
2. Scope, schedule, and cost of Phase IV.

Work Tasks for Phase IV – MAINTENANCE

Ongoing post-project maintenance and updating of digital maps as needed. The contractor shall provide ongoing collection, scanning, and converting of utility data and to update the utility maps.

Specific Deliverables of Phase IV:

1. Plan revisions indicating “as-built” or current conditions

Respondent Submission:

Midwestern State University will not be responsible for any expenses relating to response development, documentation, or interview/presentation that may result from this solicitation. Failure to provide the following information shall result in the disqualification of your response.

- The respondent shall submit an electronic response with the maximum length no more than 30 pages.
- Response information submitted shall correspond to the sections listed below and shall be in the following order:
 1. Company name, address, phone number, legal status (corporation, partnership, etc.)
 2. Name, phone number and email address of person Midwestern State University should contact with any questions.
 3. Name and title of person submitting solicitation.
 4. Documentation of vendor history, including capabilities in the area of services to be provided, size and scope of operation. This shall include similar experience, including scope of work that demonstrates an expertise in providing the required services, and number of years in business.
 5. Company licenses required by the State of Texas.
- The respondent shall provide at least three references of comparable projects which preferably have been reviewed within the last 3-5 years; the more recent, the better.
- The respondent shall include only profiles of the staff assigned to this project, and preferably with project experience from the three references noted in the previous bullet. Expected percent of time committed to this project shall be included for each staff member identified in the profiles.
- The respondent shall document a time frame when vendor will be ready to provide the required services at Midwestern State University. State the actual number of days that the vendor will be available to start the design services and project management. For example, “Upon award of contract our company can begin within (indicate number) days or upon issuance of contract.”
- Ensure the proposal is signed by the owner, principal partner, or chief executive officer.

Selection Procedure:

Following receipt and evaluation of responses to the RFQ, a firm or firms will be selected for further consideration. Responses to the RFQ will be evaluated by an appointed committee based on technical qualifications, the firm's ability to provide the services, and price. Firms may be requested to make presentations if deemed necessary. Negotiations will begin with the firm determined to be most qualified for the project.

Proposal Evaluation:

The following criteria will be used to evaluate all submissions. Proposals must be organized and tabbed in accordance with the below evaluation criteria:

No.	Criteria	Weight
1	Successful completion of recent (<3-5 yrs.) assessments with similar complexity and style.	30%
2	Profiles of the principals' and staffs' <u>directly assigned to this project</u> identifying their professional and technical competence and experience as it relates to assessments of similar complexity and style. Include percentage of their time assigned to this project.	45%
3	Past performance in terms of quality work and compliance with performance schedules.	10%
4	Prior favorable service to Texas higher education.	5%
5	Evidence that the firm is currently licensed/registered to provide services in the State of Texas.	Mandatory
6	Demonstrated knowledge of local building codes.	Mandatory
7	Certified statement that the firm is not debarred, suspended, or otherwise prohibited from professional practice by any Federal, State, or Local agency.	Mandatory
8	Completeness and general response to this Request for Proposal.	10%

Submission Deadline:

The qualification information is to be submitted by 2:00 pm CST, **Friday, January 6, 2017**. The university may, at its sole discretion, request oral presentations by firms selected for final consideration. Proposals are to be no more than 30 pages long, and E-mailed to:

Stephen Shelley
Director of Purchasing/Contract Management
Midwestern State University
3410 Taft Blvd, Daniel Building
Wichita Falls, Texas 76308-2099
Phone: (940) 397-4110
stephen.shelley@mwsu.edu

Late statements will not be accepted. Each firm is responsible for insuring responses to the RFQ have been delivered by date, time and location specified.

Questions related to the scope of services, submittal of proposals, or the solicitation process shall be directed no later than December 16, 2016 to:

Stephen Shelley
Director of Purchasing/Contract Management
Midwestern State University
3410 Taft Bldg, Daniel Building
Wichita Falls, TX 76308-2099
Phone: (940) 397-4110
stephen.shelley@mwsu.edu

A sample of the contract is attached for review. Questions concerning this document should be handled during this process.

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/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work: _____

REFERENCE TWO

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work: _____

REFERENCE THREE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work: _____

AFFIDAVIT

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

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, 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:

Signature

Name: _____

Title: _____

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

Notary Public in and for the State of _____.

AGREEMENT
for
MISCELLANEOUS ARCHITECTURAL SERVICES
on
PROJECTS OF LIMITED SCOPE

This Agreement is made as of _____, 20 (the “Effective Date”), by and between:

The Owner: Midwestern State University
3410 Taft Blvd.
Wichita Falls, Texas 76308

and

The Architect: _____

This Agreement is for the provision of miscellaneous architectural and technical support services for renovation, repair and minor construction projects of limited scope, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement. Architect represents that he has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The Owner and the Architect agree as follows:

ARTICLE 1
TERM OF AGREEMENT

1.01 **Initial Term:** This initial term of this Agreement shall begin on the effective date and shall expire twelve (12) months after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02 **Renewal Option:** The Owner has the option to renew this Agreement terms for two (2) successive twelve (12) month periods upon written notice to the Architect at least sixty (60) days prior to the expiration of the initial or any subsequent term.

1.03 **Completion of Work in Progress:** The Owner has the option to extend the term of this Agreement, or any renewal period, as necessary for Architect to complete work on any project approved by the Owner prior to the expiration of the Agreement.

ARTICLE 2
MAXIMUM AUTHORIZED CONTRACT SUM

2.01 **Maximum Contract Sum:** The total, maximum, not-to-exceed amount of money authorized for payment to Architect for services provided pursuant to this Agreement is Dollars (\$) .00). Total billings for authorized work performed by the Architect shall not exceed this maximum contract sum. The maximum contract sum shall not be increased except by written amendment to this Agreement executed by the Owner and the Architect.

2.02 **No Minimum Amount of Work:** Owner makes no representations regarding the amount or type of services, if any, that Architect will be asked to provide to Owner during the term(s) of this Agreement. It is expressly understood that the Owner is under no obligation to request any services from Architect and no minimum amount of work is required or contemplated under this Agreement. All service requests will be made by the Owner on an as-needed basis, subject to future agreement on the scope of the work and the fee.

ARTICLE 3
SCOPE OF WORK

3.01 **In General:** The Architect agrees to provide architectural and technical services on a per-project basis as requested by the Owner in accordance with the terms of this Agreement. These services are generally describes as, but are not limited to:

- Interior Modifications and Renovations including Programming
- Exterior Restorations and Waterproofing
- Roofing Improvements and Repairs
- Walkway, Roadway, and Parking Lot Work
- Architectural Work Associated with Utilities
- Pre-Engineered CMU and Other Small Buildings
- Life Safety System Work
- ADA Upgrades and Inspections
- Signage and Wayfinding
- Maintenance Projects

3.02 **Project Scope:** The specific scope of work for each project shall be determined in advance and in writing between the Owner and the Architect.

3.03 **Project RFP:** The Owner shall prepare a Project Request for Proposal (“Project RFP”) identifying the project and describing, in general, the intended scope and character of the project, the preliminary cost estimate and schedule for the project, and the basic services to be provided by the Architect for the project.

3.04 Project Proposal: In response to a Project RFP, the Architect shall provide Owner with a written Project Proposal. The Project Proposal shall include the following:

- a. An narrative description of Architect's understanding of the project scope of work;
- b. A detailed statement of the basic and additional services anticipated for the project, including a list of deliverables;
- c. A description of particular phases of the scope of the work, if applicable;
- d. A Fee Proposal detailing:
 1. the total fee for providing the basic services expressed as a "Not to Exceed" amount;
 2. the total fee for providing additional services expressed as a "Not to Exceed" amount; and
 3. the total anticipated amount for reimbursable expenses;
- e. A proposed date to commence the work;
- f. A list of all consultants, persons and firms that Architect proposes to use in the performance of Architect's scope of work;
- g. A schedule of hourly billing rates for any consultants that Architect proposes to use in the performance of Architect's scope of work;
- h. A HUB Subcontracting plan, if required;
- i. Any qualifications or conditions applicable to the Project Proposal; and
- j. A summary statement of the amount of all previous proposals entered into under this Agreement to date.

3.05 Project Proposal Review: The Owner and the Architect shall review Architect's Project Proposal and negotiate any changes, clarifications or modifications thereto. The Architect shall submit a revised Project Proposal incorporating any changes, clarifications or modifications made in the review process. The Owner may accept, reject or seek modification of any Project Proposal.

3.06 Notice to Proceed: Upon approval of a Project Proposal by the Owner, the Owner shall issue a written Notice to Proceed. The Notice to Proceed authorizes the Architect to begin the work identified in the Project Proposal on the date specified in the Notice. The Notice to Proceed shall include a Purchase Order number specific to the project.

ARTICLE 4 ARCHITECT'S GENERAL SERVICES AND RESPONSIBILITIES

4.01 Project Manager: The Architect shall manage the Architect's services and administer any project authorized pursuant to this Agreement. The Architect shall provided and/or coordinate the basic services necessary and reasonably inferable for the complete performance of any project authorized pursuant to this Agreement.

4.02 **Standard of Care:** Architect agrees to use its best professional efforts, skill, judgment, and abilities to perform Architect's services in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Architect shall at all times provide a sufficient number of qualified personnel to accomplish Architect's services within the time limits set forth in the schedule.

4.03 **Compliance with Laws:** Architect shall endeavor to perform Architect's Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

4.04 **Existing Conditions:** Architect shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Architect by Owner, or any other party, that Architect uses for the Project.

4.05 **Correction of Work:** Architect's services shall be reasonably accurate and free from material errors or omissions. Upon notice, Architect shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to Owner.

4.06 **Phasing:** The Architect shall not proceed beyond any previously authorized phase of the work for a project unless authorized by the Owner in writing, except at the Architect's own financial risk. Applicable phases of the scope of work shall be identified in the Project Proposal.

4.07 **Representative:** Architect shall designate a representative primarily responsible for Architect's services under this Agreement. The designated representative shall act on behalf of Architect with respect to all phases of Architect's services and shall be available as required for the benefit of any project and the Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

4.08 **Documentation:** The Architect shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Project Proposal. The Architect shall bear the cost of providing all plans, specifications and other documents used by the Architect and its consultants.

ARTICLE 5 THE OWNER'S RESPONSIBILITIES

5.01 **Project Program:** The Owner shall provide a Project RFP setting forth the Owner's description of the project scope; preliminary project budget; schedule; objectives, characteristics and constraints; and a description of the basic services to be provided by the Architect for the project.

5.02 **Representative:** The Owner designates the Office of Facilities Services as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner designates the Director of Facilities Services or his designee as its representative for the purpose of administering this contract.

5.03 **Special Information:** The Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the project. Owner shall furnish other special investigations of the Project site as requested by the Architect and as reasonably necessary for the Project. Architect shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to the Architect by the Owner or by others.

5.04 **Entry on Land:** The Owner shall assist Architect in gaining entry to state owned or controlled property as necessary for Architect to perform its services under this Agreement.

5.05 **Administrative Services:** The Owner shall furnish all legal, accounting, auditing and insurance counseling services that it requires for the Project.

5.06 **Review of Work:** The Owner will review the Architect's documents at the completion of each stage of development as described in the Project Proposal. Owner's review comments or decisions regarding the documents will be furnished to the Architect in a reasonably prompt manner. The Owner will notify the Architect in writing of any material error or omission or other defect in the project or any conflict in the contract documents that the Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

5.07 **Time for Response:** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

ARTICLE 6 ACCEPTANCE OF WORK

6.01 **Owner's Satisfaction:** All work performed under this Agreement shall be completed to the satisfaction of the Owner's representative assigned to the project. The Owner's representative shall decide all questions regarding Architect's performance under the Agreement and such decisions shall be final and conclusive.

6.02 **Correction of Work:** Should Architect's services not conform to the requirements of this Agreement and the Project Proposal as determined by the Owner's representative, Owner may order the Architect to re-perform such services at no additional expense to the Owner or deduct the fees for such services from any other fees payable to the Architect.

6.03 **Liability:** Owner's approval or acceptance of Architect's services will not release Architect from any liability for such services because Owner is, at all times, relying upon Architect's skill and knowledge in performing Architect's services.

ARTICLE 7 COMPENSATION FOR SERVICES RENDERED

7.01 **Owner's Approval Required:** Owner agrees to pay Architect for those services rendered at Owner's specific request, in advance and in writing.

7.02 **Scheduled Billing Rates:** Attached as Exhibit A, and incorporated herein, is Architect's Schedule of Billing Rates, including hourly billing rates and/or per service billing rates as applicable. The Billing Rates include all costs for any identified services and the Architect shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the term of this Agreement, including all renewal periods.

7.03 **Basic Service:** For Basic Services rendered in connection with any project authorized pursuant to this Agreement, Architect shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Architect's Project Proposal, up to the maximum "Not to Exceed" amount approved in Architect's Project Proposal.

7.04 **Additional Services:** Additional Services are services not identified or reasonably inferable as Basic Services included in a Project Proposal. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. For approved Additional Services provided in connection with any project authorized by this Agreement, Architect shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Architect's Additional Services Proposal, up to the maximum "Not to Exceed" amount approved in Architect's Additional Services Proposal.

7.05 **Consultant Costs:** Unless approved in advance by the Owner, Architect shall pay for all consultant services and costs associated with his services under this Agreement, whether basic services or additional services, out of his fees. Owner is not responsible for any such consultant fees or costs unless otherwise agreed to in writing.

ARTICLE 8 REIMBURSABLE EXPENSES

8.01 **Reimbursable Expenses:** Reimbursable Expenses are in addition to compensation for basic and additional services. Reimbursable Expenses recoverable by the Architect under this Agreement are limited to the following:

- a. Expenses in connection with out-of-state travel, including coach class air fare and reasonable living expenses, as directed and approved in advance and in writing by the Owner;
- b. Expenses in connection with in-state travel, including reasonable travel and living expenses, for Architect's employees and consultants when a project is located more than 50 miles from the place where they are usually and customarily assigned, but only as directed and approved in advance and in writing by Owner;
- c. Fees paid for securing approval of authorities having jurisdiction over any particular project;
- d. Expenses of reproductions, printing, collating, postage and handling of Drawings, Specifications, Reports and other documents or other project related work product, but excluding plotting costs of drawings, reproductions for the use of Architect and Architect's consultants as well as up to three (3) review sets as necessary for progressive reviews by Owner in accordance with the Project Proposal.
- e. Communication expenses such as long distance telephone, facsimile transmissions, express charges and postage that are directly attributable to the project;
- f. Disbursements made by the Architect under approved subcontracts;
- g. Reasonable costs for rental or use of special equipment, tools, and electronic data processing equipment required in connection with the project if approved in advance and in writing by Owner;
- h. Expense of any additional insurance coverage or limits, requested by the Owner excluding professional liability and errors and omissions insurance required under Basic Services of this contract that exceed those normally carried by the Architect and the Architect's consultants.

8.02 Compensation for Reimbursable Expenses: The Architect and its employees and consultants, shall be compensated for the actual, out-of-pocket, reasonable costs for all approved Reimbursable Expenses that are incurred solely and directly in connection with the performance of the Architect's services and duties under this Agreement or in the interest of any particular project.

8.03 Proposal Costs Not Recoverable: Architect is solely responsible for any expenses or costs, including expenditures of time, incurred by the Architect and its employees and consultants in the development of Project Proposals or Additional Services Proposals. Such expenses or costs are not Reimbursable Expenses.

ARTICLE 9
INVOICING

9.01 **Monthly Invoices:** Architect shall submit a monthly record or invoice of services performed under this Agreement identifying all fees earned and reimbursable expenses incurred in the previous month. Invoices shall be submitted in a format approved by the Owner and must contain at least the following information:

- a. Project Name and Work Order Number;
- b. Owner Agreement Number;
- c. Architect's Tax Identification Number;
- d. Name of Project Manager;
- e. Identification of billing period, by calendar month, to which the invoice applies;
- f. Itemized description of services provided including the names, billing rates and amount of time per task expended by all persons who performed services on the project during the billing period.
- g. Completion status of project by percentage;
- h. Total amount of invoice;
- i. Total amount of prior invoices and maximum contract sum;
- j. Copy of all receipts in support of any reimbursable expenses invoiced;

9.02 **Limited to Maximum Contract Sum:** It is the responsibility of Architect not to provide services or submit invoices that exceed the maximum contract sum. Services provided, and/or expenses incurred that exceed the maximum contract sum without Owner's written consent will be at Architect's financial risk and Owner shall not be obligated to pay for any such services or expenses.

9.03 **Prompt Payment:** For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of service is completed is the date when the Owner's representative approves the invoice. Payment of invoices shall be made within 30 days of Owner's approval.

9.04 **Invoice Submittal:** Invoices shall be submitted to:

Midwestern State University
3410 Taft Blvd.
Wichita Falls, Texas 76308

Attn: Accounts Payable

9.05 **Exceptions to Payment:** Regardless of any other provision of this Agreement, Owner shall not be obligated to make any payment requested by Architect under this Agreement if any of the following conditions precedent exist:

- a. Architect is in breach or default under this Agreement;

- b. The requested payment includes services not performed in accordance with this Agreement; provided, however, payment shall be made the balance of the services that are performed in accordance with this Agreement;
- c. The total of Architect's invoices exceed the maximum contract sum;
- d. Architect has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Architect;
- e. Architect becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws; or
- f. If Owner, in its good faith judgment, determines that the balance of unpaid compensation is insufficient to complete the services required under this Agreement.

9.06 **Partial Payment:** No partial payment by Owner shall constitute or be construed as final acceptance or approval of any services or as a release of any of Architect's obligations or liabilities with respect to such services.

9.07 **Subcontractor Payment:** Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

9.08 **Final Payment and Release:** The acceptance by Architect or Architect's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Architect or Architect's successors have or may have against Owner pursuant to this Agreement except those claims specifically identified in writing by Architect as unsettled at the time of the final request for payment.

ARTICLE 10 ARCHITECT'S ACCOUNTING RECORDS

Architect shall maintain records of costs, expenses and billings pertaining to services performed under this Agreement in accordance with generally accepted accounting principles. Such records shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after expiration or termination of this Agreement. Owner shall have the right to audit and to verify the details set forth in Architect's billings, certificates, and statements, either before or after payment. The terms of this paragraph shall survive any termination of the Agreement.

ARTICLE 11
OWNERSHIP AND USE OF DOCUMENTS

11.01 All documents prepared by the Architect are instruments of service and shall remain the property of the Architect. The Owner shall be permitted to retain copies, including reproducible copies, of all documents prepared by the Architect for information and reference in connection with the Owner's use and occupancy of the project. Owner shall have an irrevocable, fully paid-up perpetual license and right, which shall survive the termination of this agreement, to use the documents, including the originals thereof, and the ideas and designs contained therein, for any purpose.

11.02 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of the Architect's rights.

ARTICLE 12
TERMINATION OF AGREEMENT

12.01 **Termination for Cause:** This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period.

12.02 **Termination for Convenience:** This agreement may be terminated for convenience by the Owner in whole or in part, upon at least ten (10) days written notice to the Architect.

12.03 **Compensation:** In the event of termination not the fault of the Architect, the Architect shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Architect delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Architect prior to termination.

ARTICLE 13
DISPUTE RESOLUTION

13.01 **Government Code Chapter 2260 Controls:** Architect's claims for breach of this Agreement that are not resolved informally are governed by Texas Government Code, Chapter 2260, as it may be amended from time to time, unless preempted by other applicable law. The submission, processing and resolution of Architect's claims is governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, Chapter 68, as currently effective or subsequently amended.

13.02 **Owner's Representative:** The Owner designates the Director of Facilities Services, as its representative in dispute resolution procedures.

ARTICLE 14
INSURANCE

14.01 **Insurance:** For services performed on Owner's premises, the Architect shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	\$100,000 each occurrence
	\$300,000 aggregate
Comprehensive General Liability	
-Bodily Injury	\$300,000 each person
	\$500,000 each occurrence
-Property Damage	\$300,000 each occurrence
Comprehensive Auto Liability	
Bodily Injury	\$300,000 each person
	\$500,000 each occurrence
Property Damage	\$300,000 each occurrence

14.02 **Professional Liability Insurance:** The Architect shall carry such professional liability and errors and omissions insurance covering the services provided by the Architect and any and all consultants, as acceptable to and approved by the Owner. The fees for such insurance shall be at the expense of the Architect.

14.03 **Notice of Cancellation:** Required insurance shall not be cancelable without thirty (30) days prior written notice to Owner.

14.04 **Policy Review:** Upon request the Architect shall furnish complete sets of its insurance policies to Owner for review.

ARTICLE 15
INDEMNITY

The Architect shall hold Owner, Midwestern State University, and the Regents, officers, agents and employees of both institutions harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify Owner and Midwestern State University, their Regents, officers, employees, customers, agents, successors and assigns against any damage or claim of any type arising from the negligent or intentional acts or omission of the Architect, its employees, agents and/or assigns.

ARTICLE 16
HISTORICALLY UNDERUTILIZED BUSINESSES

The Owner has adopted Exhibit H, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Architect, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any HUB Subcontracting Plan submitted with Architect's Proposal. No changes to the HUB Subcontracting Plan can be made by the Architect without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 17
MISCELLANEOUS PROVISIONS

17.01 Appointment of Representative: Owner may designate a representative to act partially or wholly for Owner in connection with this Agreement. Architect shall coordinate its services solely through the designated representative.

17.02 Independent Contractor: Architect acknowledges that it is engaged as an independent contractor and that Owner shall have no responsibility to provide Architect or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Architect is responsible for all income taxes required by applicable law.

17.03 Confidentiality: The Architect shall treat any Owner supplied information or information pertaining to Owner's business as confidential and shall not disclose any such information to others except as necessary for the performance of this Agreement or as authorized by the Owner in writing.

17.04 Successors and Assigns. The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Architect, and Architect's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Agreement are, however, assignable by Owner.

17.05 Subcontracting: The Architect agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, the Architect must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses (HUB) Sub Contractor Plan is considered consent under this Article.

17.06 Loss of Funding: Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of Midwestern State University (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Architect

and Owner may terminate this Agreement without further duty or obligation hereunder. Architect acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

17.07 Open Records: All information, documentation and other material submitted by the Architect may be subject to public disclosure under the Public Information Act, Texas Government Code Chapter 552.

17.08 Family Code Child Support Certification: Pursuant to Section 231.006, *Texas Family Code*, the Architect certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

17.09 Franchise Tax Certification: A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

17.10 Payment of Debt or Delinquency to the State: Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Architect agrees that any payments owing to Architect under this 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

17.11 Taxes: Midwestern State University is a tax exempt State of Texas Agency under Chapter 151, Texas Tax Code and an institution of higher education. Architect shall avail itself of all tax exemptions applicable to Architect's work or expenses.

17.12 Eligibility Certification. Pursuant to Section 2155.004, *Texas Government Code*, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

17.13 Captions: The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

17.14 Severability: Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.

17.15 Waivers: No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of

any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.

17.16 **Force Majeure:** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

17.17 **Governing Law:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Travis County, Texas.

17.18 **Entire Agreement.** This Agreement constitutes the sole and only agreement between the parties with respect to the services contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement or explain any terms used in this Agreement.

17.19 **Ethics Matters/No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy and applicable state ethics laws and rules. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

ARTICLE 18 NOTICES

18.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of the Architect or Owner; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

18.2 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

(1) If to Owner: _____

Fax: _____

(2) With Copies to: _____

Fax: _____

(3) If to Architect: _____

Fax: _____

SAMPLE

IN WITNESS WHEREOF, Owner and Architect have executed and delivered this Agreement effective as of the date identified above.

OWNER:
MIDWESTERN STATE UNIVERSITY

ARCHITECT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBITS

SAMPLE