

**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
<b>735-17-8168</b>	<b>Board of Regents Management Software</b>

**BIDS WILL BE RECEIVED BY SEALED BID OR EMAIL UNTIL:  
2:00 P.M.,  
October 6, 2016 to:  
the office's of the 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 cost 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

### BOARD OF REGENTS MANAGEMENT SOFTWARE 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, delivery time, 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 September 27, 2016 to:

Stephen Shelley, Director of Purchasing and Contract Management  
3410 Taft Blvd. Daniel Bldg. Rm. 202  
Wichita Falls, TX. 76308  
[stephen.shelley@mwsu.edu](mailto:stephen.shelley@mwsu.edu)  
(940) 397-4110

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 *MANDATORY* pre bid meeting will be held at 1:15 p.m. on Thursday, September 11, 2014 on the west side of the Hardin Administration Building near the president's office, Midwestern State University, 3410 Taft Blvd., Wichita Falls, Texas.**~~

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

Stephen Shelley, Director of Purchasing and Contract Management  
3410 Taft Blvd. Daniel Bldg. Rm. 202  
Wichita Falls, TX. 76308  
[stephen.shelley@mwsu.edu](mailto:stephen.shelley@mwsu.edu)  
(940) 397-4110

# **SPECIFICATIONS**

## **RFP #735-17-8168**

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

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

~~Please supply a HUB Subcontracting Plan with your bid, which can be found at the below listed link:~~

~~<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>~~

Please supply schedule and lead time for project with bid:

Supply an insurance certificate with your Bid.

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

~~2005 Uniform General Conditions apply to this Bid and can be found at the below listed link:~~

~~<http://mwsu.edu/purchasing/contract-management>~~

**General:**

Midwestern State University (MSU) solicits responses to the Request for Proposals (RFP) for firms interested in providing Board Management Software

**Background:**

The MSU Board of Regents currently relies upon email and mail as their primary sources of information related to all Midwestern State University communications, board meetings and materials, routine reports, etc. After receiving feedback from the Board about information delivery issues, and the desire to improve Board communications and feedback, the Director of Board and Government Relations, in consultation with the Director of Internal Audits, the General Counsel, and the President, concluded it is necessary to select secure board management software that is compatible with iPads, Android devices, and PCs.

**Overview:**

The Offices of the President, Board and Government Relations, General Counsel, and Internal Audits are responsible for the majority of MSU communications with Board of Regents members, which includes preparing monthly updates, polling the Board for meeting times, submitting working documents to the Board for review, scheduling full Board and committee meetings, preparing agendas and minutes of all meetings, and notifying the Board of newsworthy matters and events. The purpose for searching for a board portal is to consolidate all communications and projects into a single, secure location, accessible by all parties intended.

**Scope of Work:**

In accordance with Texas Education Code, Section 51.9335, Midwestern State University is accepting proposals and intends to enter into an agreement with a vendor that specializes in computer software support in accordance with the terms and conditions and requirements set forth in this Request for Proposal.

- I. Objectives
  - a. Ability to create, distribute, and manage electronic books quickly and easily.
  - b. Ability to create and distribute confidential documents quickly and easily.
  - c. Ability to access documents from anywhere, at any time, increasing productivity and efficiency.
  - d. Increased mobility.
  - e. Immediate access to documents and materials.
  
- II. Vendor qualifications  
Minimum of three (3) years' experience with other higher education institution(s) with similar needs to those of MSU.
  
- III. Requirements
  - a. Software will be a hosted solution, operated, supported, and maintained by Provider.
  - b. Flexible file storage with customizable security and unlimited data storage.
  - c. 24/7 Help Desk availability with unlimited access for all users at no extra cost.



#### IV. Deliverables

- a. Hosted software to include the following features:
  - 1) Electronic access
    - a) Files, presentations, attachments, electronic books
    - b) Annotation/signature capabilities
    - c) Agenda compilation
    - d) Archive capabilities
    - e) Online and offline access
    - f) Search feature in current and archived files
  - 2) Collaboration capabilities
    - a) Electronic member directory
    - b) Collaboration space with administrative controls that allow for the disabling of discussion/viewing/participation/printing capabilities for selected users.
    - c) Polling/survey/signature and authorization capture
    - d) Calendar
  - 3) Notification capabilities
    - a) Meeting notices to personal calendars
    - b) New content notification
    - c) Automated workflow capabilities and notifications
  - 4) Accessibility
    - a) Browser agnostic
    - b) Mobile- and tablet-device enabled
    - c) iOS and Android operating systems
  - 5) Secure environment
    - a) Data must be encrypted in transit and at rest.
    - b) Program must be in compliance with TAC202 (and by extension the NIST controls) for hosted products.
- b. Implementation and configuration services
- c. Training
  - 1) On-site
  - 2) One-on-one administrator and user, as needed
  - 3) On-going for new members, users, and administrators
  - 4) Self-service guides, videos or webinars
- d. Application up-time guarantee of 99.9%, including disaster recovery services.
- e. Maintain and/or update security against vulnerabilities and malware.
- f. Application to be tested quarterly, at minimum, and/or prior to deployment of major release(s). Provider will submit results of said tests electronically to MSU designee(s) upon request.

#### **Pricing (option to renew and escalation clause):**

It is agreed that MSU shall have the option to extend the contract for three (3) additional years, occurring in one-year increments and under the same terms and conditions. MSU may exercise its option to extend by the issuance of a new fiscal year purchase order prior to the expiration of the then current term. This option to extend is at the sole discretion of MSU and will not be considered if legislative funding is not appropriated.

If market conditions exist which dictate an increase, the successful bidders must submit documentation no later than thirty (30) days before an extension becomes effective. Escalation may only occur at the time of renewal and ONLY upon supplying documented manufacturer's invoicing or other relevant data which reflects the increase. Written approval from MSU must be secured.

The base year shall be from the date of a signed contract until the end of MSU fiscal year 2017, which ends 08/31/17. Please estimate the anticipated percentage increase for each of the option years. The formula is (base year x escalation). Each subsequent year is based on previous years' pricing.

Requested increases may not exceed two (2%) percent and are non-cumulative with the base year used as the base figure.

Escalation/First additional year	FY18	<u>09/01/17 to 08/31/18</u>	%
Escalation/Second additional year	FY19	<u>09/01/18 to 08/31/19</u>	%
Escalation/Third additional year	FY20	<u>09/01/19 to 08/31/20</u>	%

Please forecast percentage as accurately as possible. If you anticipate no increase note 0% escalation. If no percentage is listed, it will be assumed as 0%.

**Proposal Evaluation:**

As provided by statute, awards will be based on the best proposal most advantageous to MSU. Determination will be made by consideration of prices offered, delivery date, quality, general reputation and performance of the respondents, service as related to past performance, suitability of items for the intended use and conformity to specifications, terms, and conditions of this Request for Proposal. MSU reserves the right to reject all proposals that MSU determines in its sole judgment are not in the best interest of the institution.

The successful offer will be the offer that is submitted in response to this Proposal by the Submittal Deadline and is the most advantageous to MSU in MSU's sole discretion. Offers will be evaluated by an evaluation committee made up of MSU employees. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to MSU by the respondent in response to the Specifications section of this Proposal. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to MSU. The successful respondent will be required to enter into a contract acceptable to MSU.

The evaluation committee will determine if Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. MSU may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of MSU and will be extended in writing

In evaluating Proposals to determine the best value for the State, MSU may consider information related to past contract performance of a Respondent including, but not limited to, Texas Comptroller of Public Account's Vendor Performance Tracking System.

<b>No.</b>	<b>Criteria</b>	<b>Weight</b>
<b>1</b>	Functional requirements, including formatting, deliverables, content, and guidelines	<b>50%</b>
<b>2</b>	Project methodology and timeline	<b>15%</b>
<b>3</b>	Company reputation and experience	<b>10%</b>
<b>4</b>	Understanding of scope of work	<b>5%</b>
<b>5</b>	Costs	<b>20%</b>

**BID SHEET**  
**RFP #735-17-8168**  
**BOARD OF REGENTS MANAGEMENT SOFTWARE**

Pricing Base Year: \_\_\_\_\_  
Supply detail on separate sheet (if necessary)

First Additional Year Escalation %: \_\_\_\_\_

Second Additional Year Escalation %: \_\_\_\_\_

Third Additional Year Escalation %: \_\_\_\_\_

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

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

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

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

**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.

## **AGREEMENT BETWEEN UNIVERSITY AND CONSULTANT**

This Agreement between University and Consultant ("Agreement") is made and entered into as of           , 20\_\_ by and between Midwestern State University for and on behalf of the Board of Regents of Midwestern State University ("University"), and ("Consultant").

University and Consultant hereby agree as follows:

### **1. Scope of Work.**

- a) The scope of the work ("Work"), and the time for performance thereof, is as set forth in Exhibit A attached hereto and made a part hereof for all purposes.
- b) Upon execution of this Agreement, all services previously performed by Consultant on behalf of University and included in the description of the Work, shall become a part of the Work and shall be subject to the terms and conditions hereof.
- c) Consultant shall obtain and make payment for any and all approvals and permits that are necessary for the performance of the Work.
- d) If the Work includes providing any designs, drawings, specifications or information of any kind ("Work Product") for the use of others in the construction, manufacture, fabrication, installation, or purchase of any items described by the Work Product, then Consultant and University shall mutually agree on a cost for such items ("Budget") prior to the commencement of the Work if such items are not included in the Consultant's Fee. The performance of the Work by Consultant shall be responsive to and in conformance with the Budget. If the costs, as bid or negotiated, exceed the Budget, University shall have the option to:
  - (1) authorize an increase in the Budget;
  - (2) authorize rebidding or negotiation; or
  - (3) authorize revisions to the Work Product at no additional cost to University.
- e) If option (3) is chosen, Consultant will, without additional compensation and in a prompt and timely manner, revise its Work Product to achieve a cost that is within the Budget. The foregoing shall be in addition to, and not in lieu of, any remedies that University may have at law or in equity.
- f) University shall provide Consultant with a program of its requirements for the Work or for work by others which utilizes Consultant's Work Product ("Program"). The Program may be a series of documents or other communications. Consultant shall, at all times, conform its Work to the requirements of the Program and to the requirements of University.

### **2. The Project.**

The Work as described in Exhibit A shall be provided in preparation for, and production of, and other related necessary and appropriate services ("Project").

### **3. Time for Commencement and Completion.**

It is understood that time is of the essence of this Agreement and that Consultant shall complete all authorized Work in accordance with the time for performance described for the Work, and in a minimum of time consistent with the highest customs, standards, and practices of Consultant's business or profession. Work is to commence as set forth in Exhibit B ("Schedule") attached hereto, and shall be substantially complete as set forth in Exhibit B "Schedule" attached hereto.

### **4. Consultant's Duties and Representations.**

- a) Notwithstanding anything to the contrary contained in this Agreement, University and Consultant agree and acknowledge that University is entering into this Agreement in reliance on Consultant's special and unique abilities with respect to performing the Work, and Consultant's special and unique abilities with respect to [REDACTED]. The Consultant accepts the relationship of trust and confidence established between it and the University by this Agreement. Consultant covenants with University to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of University in accordance with University's requirements and procedures, in accordance with the highest standards of Consultant's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Consultant warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Work.
- b) The Consultant warrants, represents, covenants, and agrees that all of the Work to be performed by the Consultant under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.
- c) Consultant warrants, represents, covenants, and agrees that the Work will be accurate and free from any material errors. The Consultant's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the University nor shall the Consultant be released from any liability by reason of such approval by the University, it being understood that the University at all times is ultimately relying upon the Consultant's skill and knowledge in performing the Work.
- d) The Consultant warrants, represents, covenants, and agrees that all persons connected with the Consultant directly in charge of the Work are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- e) The Consultant warrants, represents, covenants, and agrees to call to University's attention anything of any nature in any drawings, specifications, plans, sketches,



instructions, information, requirements, procedures, and other data supplied to the Consultant (by the University or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Consultant's responsibilities or obligations hereunder in a case where such document or data is furnished unless the Consultant advises University in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and University confirms in writing that it wishes the Consultant to proceed in accordance with the data as originally given.

- f) The Consultant warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of University.
- g) The Consultant warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Work as soon as the Consultant becomes aware of such defects or is notified of such defects. Should the Consultant refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the University shall be entitled to make good such defective Work at the expense of the Consultant. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective Work which the University may have at law or in equity.
- h) Consultant warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Consultant has been duly authorized to act for and bind Consultant; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Consultant has been duly authorized to act for and bind Consultant.
- i) Neither the execution and delivery of this Agreement by Consultant nor the performance of its obligation hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Consultant is bound, or any agreement by which Consultant is bound or to the best of the Consultant's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Consultant.
- j) Except for the obligation of University to pay Consultant certain fees and expenses pursuant to the terms of this Agreement, University shall have no liability to Consultant or to anyone claiming through or under Consultant by reason of the execution or

performance of this Agreement. Notwithstanding any obligation or liability of University to Consultant, no present or future partner or affiliate of University or any agent, officer, director, employee, or regent of University, Midwestern State University, or of the components comprising Midwestern State University, or anyone claiming under University has or shall have any personal liability to Consultant or to anyone claiming through or under Consultant by reason of the execution or performance of this Agreement.

**5. The Contract Sum.**

- a) The University shall pay Consultant in current funds for the performance of the Work, subject to adjustments, additional services and reimbursable expenses, if any, as set forth in Exhibit C.
- b) The Contract Sum includes any applicable Federal, State or Local Sales or use tax payable on this transaction.

**6. Payment Terms.**

- a) Prior to ten (10) days before the end of each calendar month during the term of this Agreement, Consultant shall submit to the University an application for payment covering the services performed to that date, in accordance with Exhibit C, which application shall be accompanied by lien waivers and other forms, statements, invoices, and payroll reports that University may reasonably require to support the amount requested and to be submitted. The University will, within thirty (30) days from the date it receives such application and supporting documentation for payment, approve or disapprove the amount reflected in such application and if University approves such amount or any portion of such amount, it shall promptly pay to Consultant the amount so approved, provided Consultant is not in breach of or in default under this Agreement. If University disapproves any amount requested by Consultant, University shall give Consultant specific reasons for its disapproval in writing.
- b) The cumulative amounts of monthly progress payments as set forth in this Article ("Progress Payment") shall not exceed the amounts listed in Exhibit C.
- c) Ten (10) days after final completion of the Work and acceptance thereof by University or as soon thereafter as possible, Consultant shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to Consultant and upon approval thereof by University, University shall pay to Consultant the amount due ("Final Payment") under such Final Request.
- d) Any provision hereof to the contrary notwithstanding, University shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Consultant hereunder if any one or more of the following conditions precedent exist:
  - (1) Consultant is in breach or default under this Agreement;
  - (2) Any part of such payment is attributable to Work which is not performed in accordance with this Agreement; provided, however, such payment shall be made

as to the part thereof attributable to Work which is performed in accordance with this Agreement;

- (3) Consultant has failed to make payments promptly to its consultants or subcontractors or other third parties used in connection with the Work for which University has made payment to Consultant; or
- (4) If University, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Work in accordance with this Agreement, no additional payments will be due Consultant hereunder unless and until Consultant, at its sole cost, performs a sufficient portion of the Work so that such portion of the compensation then remaining unpaid is determined by University to be sufficient to so complete the Work.
- e) No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Work to which such partial payment relates or relieve Consultant of any of its obligations hereunder with respect thereto.
- f) Consultant shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Work.
- g) The acceptance of Final Payment shall constitute a waiver of all claims by the Consultant except those previously made in writing and identified by the Consultant as unsettled at the time of the Final Request for payment.

#### **7. Verification.**

University shall have the right to verify the details set forth in Consultant's billings, certificates, and statements, either before or after payment therefore, by (1) inspecting the books and records of Consultant at mutually convenient times; (2) examining any reports with respect to this Project; (3) interviewing Consultant's business employees; (4) visiting any place where performance of all or a portion of the Project occurs; and (5) other reasonable action.

#### **8. Ownership and Use of Documents.**

- a) All drawings, specifications, computations, sketches, data, photographs, tapes, renderings, models, publications, and other materials particular to the Work prepared by Consultant or Consultant's consultants and subcontractors ("Work Material"), are the property of the University and for its exclusive use and reuse at any time without further compensation and without any restrictions.
- b) Except for such Work Material which is intended to be made public as part of the Project, Consultant shall treat all such Work Material as confidential, and Consultant shall neither use any such Work Material or copies thereof on other work nor disclose such material or information to any other party without University's prior written approval.

## 9. Default and Termination.

- a) In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.
- b) University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance notice to the Consultant. Upon termination pursuant to this paragraph, the Consultant shall be entitled to payment of such amount as shall compensate Consultant for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, Provided the Consultant shall have delivered to University such statements, accounts, reports and other materials as required by clause (e) below, and provided that Consultant shall have delivered to University all reports, documents and other materials prepared by Consultant prior to termination. University shall not be required to reimburse Consultant for any services performed or expenses incurred after the date of the termination notice.
- c) A termination under sections a and b above shall not relieve the Consultant or any of its employees of liability for violations of this Agreement or any other act or omission of the Consultant and the provisions of Paragraphs 6.h., 9, 12.g., and 12.j. shall survive the termination of this Agreement. In the event of a termination under sections a) and b) above, Consultant hereby consents to employment by University of a substitute Consultant to complete the Work under this Agreement, with the substitute Consultant having all rights and privileges of the original Consultant of the Project. If Consultant is terminated pursuant to Section a above, and the cost to complete the Work exceeds the remaining balance of Consultant's fee, then Consultant shall be liable to University and shall reimburse University on demand for the amount of such excess.
- d) As of the date of termination of this Agreement, Consultant shall furnish to University all statements, accounts, reports, and other materials as are required hereunder or as have been prepared by Consultant in connection with its responsibilities hereunder. University shall have the right to use the ideas and designs therein contained for the completion of the work hereunder or otherwise. In the event of termination of this Agreement or upon completion of the work hereunder, the University may, at all times, retain the originals of all such lists, publications, data, drawings, originals of renderings, special art work, or models. All such lists, publications, data, drawings, plans, specifications, renderings and models, etc. are the property of the University as described in Section 12.g hereof. They are not to be used by any person other than the University on other projects unless expressly authorized by the University.
- e) If Consultant fails to cure any default hereunder within fifteen (15) days after receiving written notice of such default, University shall be entitled (but shall not be obligated) to cure any such default and shall have the right to offset against all amounts due to

Consultant hereunder, any and all reasonable expenses incurred in connection with such curative actions.

**10. Indemnification.**

- a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONSULTANT AND ITS AGENTS, PARTNERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS THE UNIVERSITY, ITS AFFILIATED ENTERPRISES, REPRESENTATIVES OF THE UNIVERSITY, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, REGENTS, PARTNERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE WORK OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONSULTANT, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH UNIVERSITY OR ANY OF THE INDEMNITEES HAS BY LAW.
- b) CONSULTANT SHALL PROTECT AND INDEMNIFY THE UNIVERSITY FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONSULTANT, OR BY UNIVERSITY AT THE DIRECTION OF CONSULTANT, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, UNIVERSITY SHALL PROMPTLY NOTIFY CONSULTANT AND

CONSULTANT SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSULTANT DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF UNIVERSITY'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO COOPERATE REASONABLY WITH CONSULTANT AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

- c) The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

#### **11. Independent Contractor.**

Consultant recognizes that it is engaged as an independent contractor and acknowledges that University will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Consultant, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of University by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of University, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Consultant hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

#### **12. Insurance.**

- a) Consultant, consistent with its status as an independent contractor, shall carry at least the following insurance in such form, in such companies and in such amounts (unless otherwise specified) as University may require:
  - (1) Worker's Compensation and Employer's Liability insurance, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas, and to the extent necessary to protect University against workers' compensation claims;
  - (2) Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Completed Operations/Products Liability, Premises Medical Payments, Interest of Employees as additional insureds, Incidental Medical Malpractice and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis;
  - (3) Comprehensive Automobile Liability insurance covering all owned, non-owned or hired automobiles to be used by Consultant, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage;

- b) Consultant shall deliver to University:
  - (1) Certificates evidencing the existence of all such insurance promptly after the execution and delivery hereof and prior to the continued or additional performance of any services to be performed by Consultant hereunder from or after the date of this Agreement; and
  - (2) Replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Consultant fails to pay any of the renewal premiums for the expiring policies, University shall have the right to make such payments and set-off the amount thereof against the next payment coming due to Consultant under this Agreement; and
  - (3) Such Certificates shall name University as an Additional Insured, with the exception of Workers' Compensation and Employer's Liability, and shall provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to University, giving the University the right to pay the Premium to maintain coverage, in which event Paragraph 11.b)(2) shall apply.
- c) The insurance policies required in this Agreement shall be kept in force for the periods specified below:
  - (1) Commercial General Liability Insurance shall be kept in force until receipt of final payment by the Consultant;
  - (2) Workers' Compensation Insurance shall be kept in force until the Consultant's Services have been fully performed and accepted by University in writing.

### **13. Miscellaneous.**

- a) Assignment. This Agreement is a personal service contract for the services of Consultant, and Consultant's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by University.
- b) Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- c) Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Consultant and University and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by University and Consultant.

- d) 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.
- e) Governing Law. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by an enforced under the laws of the State of Texas.
- f) Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- g) Proprietary Interests. Consultant agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities hereunder, whether or not any of the same is accepted or rejected by University, shall remain the property of University and shall not be used or published by Consultant or any other party without the express prior consent of University. In implementation of the foregoing, Consultant hereby grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with University in any steps University may take to obtain copyrights, trademark or like protections with respect thereto. All information owned, possessed or used by University which is communicated to, learned, developed or otherwise acquired by Consultant in the performance of consulting services for University, which is not generally known to the public, shall be confidential and Consultant shall not, beginning on the date of first association or communication between University and Consultant and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Consultant's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Consultant shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Consultant as an independent contractor of University in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of University. Consultant shall obtain assurances similar to those contained in this Subparagraph from persons, contractors, and subcontractors retained by Consultant. Consultant acknowledges and agrees that a breach by Consultant of the provisions hereof will cause University irreparable injury and damage. Consultant, therefore, expressly agrees that University shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.



- h) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- i) Appointment. University hereby expressly reserves the right from time to time to designate by notice to Consultant a representative to act partially or wholly for University in connection with the performance of University's obligations hereunder. Consultant shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.
- j) Records. Records of Consultant's costs, reimbursable expenses pertaining to the Project and payments shall be available to University or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless University otherwise instructs Consultant in writing.
- k) Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:
- (1) If to University: \_\_\_\_\_
- (2) With Copies to: \_\_\_\_\_
- (3) If to Consultant: \_\_\_\_\_  
 \_\_\_\_\_ [Street Address]  
 Suite \_\_\_\_\_  
 \_\_\_\_\_, \_\_\_\_\_ [zip code]  
 Attention: \_\_\_\_\_
- (4) or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.
- l) Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.
- m) Enforcement. It is acknowledged and agreed that Consultant's services to University are unique, which gives Consultant a peculiar value to University and for the loss of which University cannot be reasonably or adequately compensated in damages; accordingly, Consultant acknowledges and agrees that a breach by Consultant of the provisions hereof will cause University irreparable injury and damage. Consultant, therefore, expressly agrees that University shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if University is not in breach of this Agreement.

IN WITNESS WHEREOF, University and Consultant have executed this Agreement as of the date first above written.

**UNIVERSITY:**

**CONSULTANT:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A SCOPE OF WORK**

*[include a detailed description and break-down of all tasks the consultant is to perform and technical standards if appropriate]*

**EXHIBIT B SCHEDULE**

*[specify specific time deadlines for each phase of the work, if appropriate, and for the work as a whole]*

**EXHIBIT C PAYMENT FOR SERVICES Fee:** *[specify phased payments as appropriate. If fee is not a stipulated lump sum, include a guaranteed maximum or not to exceed amount.]*

Expenses and disbursements: Consultant shall be reimbursed without mark-up for reasonable expenses, including meals (when traveling to the \_\_\_\_\_ area), lodging (when traveling to the \_\_\_\_\_), and coach class airfare for travel to the \_\_\_\_\_ area, validly incurred directly and solely in support of the Project and approved by University in advance. Consultant and University anticipate \_\_\_\_\_ trips by Consultant to \_\_\_\_\_. As a condition precedent to receiving reimbursement for expenses and disbursements, Consultant shall submit to University receipts, invoices, and other documentation as required by University. Notwithstanding the foregoing, reimbursement for expenses and disbursements shall not exceed a maximum of \$\_\_\_\_\_.

If University requests, in writing and in advance, additional services not contemplated or reasonably inferred by the Agreement, Consultant shall be reimbursed for actual hours incurred by Consultant's personnel directly and solely in support of such additional services at the Personnel Rates set forth below.

**RATES**

Labor Category Hourly Rate

**EXHIBIT D**

**FRANCHISE TAX CERTIFICATE**

(for corporations and limited liability companies)