

**AGREEMENT BETWEEN
MIDWESTERN STATE UNIVERSITY
AND**

CONTRACT NO.

This Agreement made the _____ day of _____ in the year 20____, by and between _____, hereinafter called the Contractor, and the Board of Regents of Midwestern State University, hereinafter called the Owner,

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK: The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled _____. These drawings and specifications prepared for Midwestern State University by _____, acting as and in these Contract Documents entitled the Project Architect. The Contractor shall do everything required by this Agreement, the General and Supplemental Conditions of the Contract, the Special Conditions, the Addenda, the Specifications, the Drawings, the Historically Underutilized Business (HUB) Subcontracting Plan, and the Proposal attached as **Exhibit 1** (including any unit prices stated therein).

The Specifications and Drawings are enumerated as follows:

SPECIFICATIONS: See attached as **Exhibit 2**.

DRAWINGS: See attached as **Exhibit 2**.

ADDENDA: See attached as **Exhibit 2**.

ALTERNATES: The following Alternate Proposals, fully described in the Specifications, are included as a part of this Contract:

ARTICLE 2. TIME OF COMPLETION: The Owner shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor shall achieve substantial completion of the work within _____ () calendar days after such commencement date, as such completion date may be extended by approved Change Orders. The time set forth for completion of the work is an essential element of the Contract.

ARTICLE 3. THE CONTRACT SUM: The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of (\$ _____), and make payment on account as hereinafter provided.

ARTICLE 4. HUB SUBCONTRACTING PLAN: The Owner has adopted Exhibit H, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Contractor, as a provision of the Agreement must comply with the requirements of the Policy and adhere to the HUB Subcontracting Plan submitted with Contractor's Proposal and attached as **Exhibit 3**. No changes to the HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 5. LIQUIDATED DAMAGES: For each consecutive calendar day after the substantial completion period set forth in Article 2 above that any work, including the correction of deficiencies found during the final testing and inspection, is not completed, the amount of (\$) will be deducted from the money due or becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE 6. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK:

The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

All materials used on this Project shall be certified as non Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;

Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

ARTICLE 7. ACCEPTANCE OF BID OR AWARD OF CONTRACT: By signing this Agreement, the undersigned certifies as follows:

Assignment. This Agreement is a personal service contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Service Provider 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.

Eligibility Certification. Pursuant to Section 2155.004, Texas Government Code, Service Provider 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.

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.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor 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.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. 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 Contractor and Owner.

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.

Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

Waivers. No delay or omission by either party in exercising any right or power arising from non compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative.

Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

Ethics Matters/No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy, University's Standards of Conduct Guide 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.

By signature hereon, Contractor certifies that no member of the Board of Regents of Midwestern State University, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

SAMPLE

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

MIDWESTERN STATE UNIVERSITY

By: _____
Signature

Print name

Date: _____

By: _____
Signature

Print name

Date: _____

SAMPLE