

**Missouri Department of Transportation**  
*Roberta Broeker, Interim Director*

573.751.2551  
Fax: 573.751.6555  
1.888.ASK MODOT (275.6636)

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Approved: 2/15 (AR)  
Modified: 8/15 (MWH)

**REQUEST FOR PROPOSALS  
FOR  
TRUSTEE, PAYING AGENT, REGISTRAR, ESCROW AGENT, CALCULATION AGENT  
AND DISSEMINATION AGENT SERVICES  
RFP #6-150923KH**

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## **LIST OF ACRONYMS**

<b>DTC</b>	Depository Trust Company
<b>GARVEE</b>	Grant Anticipation Revenue Vehicles
<b>MHTC</b>	Missouri Highways and Transportation Commission
<b>MoDOT</b>	Missouri Department of Transportation
<b>MOU</b>	Memorandum of Understanding
<b>RFP</b>	Request for Proposals
<b>RSMo</b>	Revised Statutes of Missouri

## **ATTACHMENTS**

**Attachment 1:** Master Bond Indentures & Supplemental Bond Trust Indentures

**Attachment 2:** Lien Structure

**Attachment 3:** Master Bond Indenture dated as of December 1, 2000

**Attachment 4:** Master Bond Indenture dated as of July 1, 2005

**Attachment 5:** Master Bond Indenture dated as of December 1, 2008

**Attachment 6:** Supplemental Bond Trust Indenture No. 6 (Series 2006 Refunding)

**Attachment 7:** Supplemental Bond Trust Indenture No. 7 (Series C 2010 Refunding)

**Attachment 8:** Supplemental Bond Trust Indenture No. 3 (Series A & B 2006)

**Attachment 9:** Supplemental Bond Trust Indenture No. 4 (Series 2007)

**Attachment 10:** Supplemental Bond Trust Indenture No. 5 (Series C 2009)

**Attachment 11:** Supplemental Bond Trust Indenture No. 6 (Series A & B 2014 Refunding)

**Attachment 12:** Supplemental Bond Trust Indenture No. 1 (Series A 2008)

**Attachment 13:** Supplemental Bond Trust Indenture No. 2 (Series A & B 2009)

**Attachment 14:** Supplemental Bond Trust Indenture No. 3 (Series A & B 2010)

**Attachment 15:** Fixed Pricing Table

## INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified firms (“**Offerors**”) to furnish the described services to the Missouri Highways and Transportation Commission (**MHTC** or **Commission**) and the Missouri Department of Transportation (**MoDOT**).

Proposals in the required format provided for in this RFP must be mailed in a sealed envelope or box, or else delivered by hand or courier service (UPS, Federal Express, DHL, etc.) to be **received on or before 3:00 p.m. (Central Time) September 23, 2015**, at the office of the RFP Buyer of Record:

Kristi Hixson  
Senior General Services Specialist (Physical Address)  
Missouri Department of Transportation  
Central Office General Services  
830 MoDOT Drive  
Jefferson City, MO 65109

Kristi Hixson  
Senior General Services Specialist (Mailing Address)  
Missouri Department of Transportation  
Central Office General Services  
P.O. Box 270  
Jefferson City, MO 65102

All documents must be sealed and should be clearly marked “**MODOT’S TRUSTEE SERVICES RFP**”.

**Proposals shall not exceed 15 pages (excludes Fixed Pricing Table and required forms).**

MHTC retains the right to reject any and all proposals, elect to continue discussions with one or more firms, or act in any manner which, in the sole discretion of the MHTC, is deemed to be in its and the bondholders best interest. Time is of the essence for responding to the RFP within the submission deadlines.

**PROPOSAL SUBMITTAL CERTIFICATION BY OFFEROR**

- (1) The Offeror shall provide a fee proposal to MHTC in accordance with the terms of this RFP.
- (2) The Offeror agrees to provide the services at the fees quoted, under the terms of this RFP.
- (3) By submission of this proposal, each Offeror and each person signing on behalf of any Offeror, and in the case of a joint proposal, each party thereto as to its own organization, under penalty of perjury, certifies to the best of its knowledge and belief:
  - (A) The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or any competitor; and
  - (B) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Offeror prior to the opening, directly or indirectly, to any other Offeror or to any competitor; and
  - (C) No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
  - (D) The Offeror certifies that this proposal is made without any connection with any other person/firm/organization/business entity making a proposal for the same purpose, and is in all respects fair and without collusion or fraud, and that no elected official or other member, officer or employee or person whose salary is payable in whole or in part from the MHTC/MoDOT is directly or indirectly interested therein, or in any portion of the profits thereof.

Authorized Signature of Offeror: \_\_\_\_\_

Date of Proposal: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Electronic Mail Address: \_\_\_\_\_

\_\_\_\_\_

## SECTION 1: GENERAL DESCRIPTION AND BACKGROUND

**(A) Request for Proposal:** This document constitutes a RFP from qualified firms to act as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent for the MHTC's outstanding bonds issued pursuant to the Master Bond Indentures and Supplemental Bond Trust Indentures outlined in **Attachment 1** between the MHTC and The Bank of New York Mellon Trust Company, N.A. (collectively, the "**Indentures**") as set forth in this RFP.

**(B) Background:** MHTC is seeking a qualified firm to act as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent for the MHTC's outstanding bonds. The intent of this RFP is to have the successful Offeror enter into a Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent Agreement with the MHTC (hereinafter "**Resulting Agreement**"), to supply Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent services as outlined herein.

The MHTC is created by Article IV, Section 29 of the Missouri Constitution which, together with Chapters 226 and 227 of the Revised Statutes of Missouri (**RSMo**), as amended, grant the MHTC authority over MoDOT and the state highway system, as well as all other transportation programs and facilities as provided by law, including aviation, railroads, mass transportation, ports and waterborne commerce. Article IV, Section 29 through 34 of the Missouri Constitution together with the statutes referenced above authorize the MHTC to issue state road bonds to finance or refinance the construction or reconstruction of the state highway system.

MoDOT's state revenues consist of highway user taxes and fees and are pledged for repayment of Senior, First, Second and Third Lien bonds. The MHTC also has issued Grant Anticipation Revenue Vehicles (**GARVEE**) bonds, with the MHTC's apportionment of federal-aid highway moneys pledged as the primary revenue stream for repayment of the GARVEE bonds. **Attachment 2** provides a summary of the MHTC's lien structure.

MoDOT operates as a customer focused and results driven, state agency under a decentralized organization structure with headquarters in Jefferson City, and is governed by the MHTC, a six (6) member commission appointed by the Governor. The Central Office provides oversight and support to seven (7) geographical districts primarily responsible for delivery of MoDOT's mission and tangible results.

The MHTC currently does not anticipate issuing new bonds until additional transportation funding is identified. New debt capacity will be influenced by future new or additional pledged revenues, the amortization of existing debt obligations as well as the possible development of new revenue sources that may be authorized in the future by the Missouri legislature and Missouri voters. Future revenue sources may result in the issuance of additional bonds pursuant to separate or different trust indentures and fees should include reference to additional charges that may be assessed for this additional work.

(C) **Contract Period:** The Contract Period for the performance of the services described in this RFP is from the date of the fully executed Resulting Agreement through the final maturity of all of MHTC's outstanding bonds or until such point at the MHTC's option, it decides to re-bid and award the services to another entity. The successful Offeror shall perform any and all the services listed herein as often as requested by MHTC for the entire duration of the Contract Period as defined herein at the fees submitted and not to exceed the fees submitted by the successful Offeror in response to **SECTION 6: FIXED PRICING TABLE** of this RFP.

(D) **Schedule of Events:** Below is the schedule that will be followed. Unless otherwise specified, the time of day will be 7:30 a.m. to 4:00 p.m. Central Time. MHTC reserves the right at its sole discretion to expand this schedule, as deemed necessary, without any notification except for the deadline date for submitting a proposal.

DATE	EVENT
August 31, 2015	Issue RFP.
September 9, 2015	Deadline for Offerors to submit written questions and requests for clarification to the RFP.
September 15, 2015	Issuance of Amendment with resolution of any questions submitted. <a href="http://www.modot.org/business/contractor_resources/gc_bidding/CO/COcommodities.htm">http://www.modot.org/business/contractor_resources/gc_bidding/CO/COcommodities.htm</a>
September 23, 2015 by 3:00 p.m.	Deadline for submission of proposals.

**SECTION 2:  
SCOPE OF WORK AND SPECIFIC SERVICES**

(A) **Scope of Work:** The MHTC seeks to engage a qualified bank or trust company to serve as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent as required under the MHTC's Indentures. The Indentures establish the technical duties and requirements for the Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent. Copies of the Indentures are attached in **Attachments 3 - 14** for reference and for additional information necessary to complete a proposal. The successful Offeror agrees to provide these services to MHTC.

(B) **Specific Services:** The Offerors agree to perform specific services within the above stated scope of work. The MHTC has determined that it is in its best interest and that of its bondholders to select one firm to serve as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent for its bonds. Any firm selected to serve as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent must continue to meet the requirements specified in this RFP throughout the term of the Resulting Agreement. The MHTC expects the Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent will review relevant documents in connection with the outstanding bonds; provide timely, required information to the MHTC prior to each debt service payment date of the bonds; maintain the funds and accounts as required by the

Indentures; and, as necessary, provide required information to comply with current securities rules on secondary market disclosure. The MHTC expects to enter into a contract with the successful Offeror specifying fees and administrative requirements. Additional duties and requirements may be imposed by the MHTC on the Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent through any subsequent execution of any supplemental indentures.

### **SECTION 3: REQUIRED ELEMENTS OF PROPOSAL AND SUBMISSION**

**(A) Required Elements of Proposal:** Each Offeror shall provide a cover letter signed by an authorized firm representative stating he/she has read and understands all of the terms and conditions of doing business with MHTC in response to this request for proposal. Each Offeror's proposal must be divided into sections corresponding to the list of elements in this RFP.

**1. Eligibility Requirements:** The following are essential requirements to serve as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent. Provide documentation affirming the bank / trust corporation meets the following requirements.

A. The bank or trust company is authorized to do business under the laws of the State of Missouri or is a national banking association.

B. The bank or trust company is authorized by law to perform all duties imposed by the Master Bond Indentures and Supplemental Bond Trust Indentures.

C. The bank or trust company must have capital and surplus aggregating at least Three Hundred Million Dollars (\$300,000,000).

D. The bank or trust company will assign a trust officer with authority to make and implement decisions and process banking activities on the MHTC's account.

**2. Organizational Experience:** The proposal must clearly identify the Offeror's experience in offering the services requested in this RFP. Special interest will be given to experience with Missouri and other tax exempt organizations and well as other state level transportation departments. Please address the following items:

A. State the corporate name and business address. List all locations providing the requested services, including which office will perform each specific service.

B. Submit the firm's most current Annual Report and audited Financial Statements.

C. Describe the "business model" used by the organization in handling trust accounts. Include details about the location of back office operations and describe how and where responsibilities and authority for day-to-day transactions are handled. Provide specific information on how the MHTC's account will be serviced.

D. Describe briefly your firm's additional qualifications and experiences which clearly demonstrate its capability to serve as Trustee, Paying Agent,

Registrar, Escrow Agent, Calculation Agent and Dissemination Agent under the MHTC's Indentures. Indicate clearly in which states and for how many issuers within each state your firm is currently serving tax-exempt issuers as Trustee, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent. Clearly denote those in the State of Missouri.

E. Indicate the total number of public finance trust accounts for which your firm currently serves as Trustee, the number of bond issues and the total principal amount of debt outstanding for these accounts (Do not list accounts for which your firm serves only as paying agent and/or registrar.).

F. List the number of the clients and the number of debt issuances your firm serves as Calculation Agent with respect to Build America Bonds subsidy payments.

G. List by size your top five public finance trust accounts, indicating the number of debt issues and dollar amount outstanding for each.

H. Provide the name, title, address and telephone number of three different comparable issuers for whom your firm has served as trustee in the last five years.

I. In the last five years, has your firm or related entity, ever voluntarily resigned from being a trustee for a client? If yes, describe the circumstance.

J. In the last five years, has your firm or related entity, ever been requested to resign or been removed as a trustee? If yes, describe the circumstance.

K. Within the last five years, has your firm or related entity, been involved in any actual or threatened lawsuits or litigations involving bondholders? If yes, describe the circumstances.

L. Within the last five years, has your firm or related entity had negative audit findings in connection with bond trustee activities? If yes, describe the circumstances.

M. Indicate any instances of late bondholder payments or late transfers to the Depository Trust Company (**DTC**) during the last five years.

N. Given all the increased attention being placed on disclosure activities, has your firm in its role as a dissemination agent missed any filing deadlines and/or not filed required documents for your clients on a timely basis? If yes, describe the circumstances and how the issues were resolved.

**3. Organizational Policies and Practices:** Proposals will be evaluated based on the Offeror's policies and practices as it relates to the Scope of Work. Please address the following items:

A. Describe your processes for the required services including invoicing, processing payments and providing trust reports.

B. Do the funds held in trust earn interest? If yes, describe how the interest is determined.

C. Describe your processes to insure funds are not subject to investment loss while being held in trust before being forwarded to the DTC.

D. Describe your firm's practices with respect to the payment of registered bond interest. Specify the date checks are released to bondholders and under what circumstances wire payments are used (Note, these practices may be governed by the Indentures.).

E. List the location and name of your agent bank for the delivery of wireable and physical collateral.

F. Describe the automated system that is used for payment of principal and interest on bonds.

G. Describe the monthly turnaround percentage on security re-registration for routine items for the past twelve months as required by the Securities and Exchange Commission.

H. Describe your firm's capabilities in the area of technical support available for use by or in the support of the MHTC.

I. Provide a short statement as to your firm's policy on notification of changes in key personnel.

J. Describe the resources your firm has dedicated to disclosure activities and the processes used to notify your client that the disclosures have been posted in a timely and accurate manner.

K. Describe briefly your firm's policies and actions taken to comply with amended Securities and Exchange Commission Rule 15c2-12 as well as your firm's policies regarding responsibility for secondary market disclosure.

L. Provide a sample of a trust statement prepared for a client.

**4. Organizational Staffing:** Proposals will be evaluated based on the Offeror's proposed staffing as it relates to the Scope of Work. Please address the following items:

A. Indicate the number of professional level employees in your firm directly in corporate fiduciary services.

B. Indicate the number of clients or bond issues each staff member routinely, or is required to, administer.

C. List members of staff to be assigned to the MHTC's account, indicating name, position, education, years and type of corporate trust experience, years and type of other related experience and the locations of these staff members. Identify the primary contact person assigned to the MHTC and describe back-up coverage proposed in the event of the absence or unavailability of the designated contact person.

D. State if your firm or any subsidiary, division, parent or other related entity is or employs a lobbyist registered in the State of Missouri, and identify the firms involved.

**5. Overall Clarity and Quality of Proposal:** The proposals will be evaluated based on the adequacy of the Offeror's response in addressing each of the **REQUIRED ELEMENTS OF PROPOSAL AND SUBMISSION** as listed in **SECTION 3**.

**6. Proposed Fee:** Offerors must complete **SECTION 6: FIXED PRICING TABLE** of this RFP as specifically directed herein.

**(B) Submission of Proposals:** Offerors are responsible for submission of accurate, adequate and clear descriptions of the information requested. Omissions, vagueness or inaccurate descriptions or responses shall not be interpreted in favor of the Offeror and shall be

grounds for rejection. This document is not an offer to contract, but is an RFP. Neither the issuance of the RFP, preparation and submission of a response, nor the subsequent receipt and evaluation of any response by the MHTC, will commit the MHTC to award a contract to any Offeror even if all of the requirements in the RFP are met. The MHTC may modify these requirements in whole or in part and/or seek additional Offerors to submit proposals. Only the execution of the Resulting Agreement will obligate the MHTC in accordance with the terms and conditions contained therein.

**1. Proposal Format:** The Offeror's submittal must include one (1) original hardcopy document, three (3) copies and one (1) electronic copy of the proposal. Electronic copies of the proposal must be in Microsoft compatible format or in ".pdf" and stored on CD(s) or flash drive(s). The Offeror shall ensure the electronic copy of the proposal document stored in all media is identical to the original hardcopy response document. In case of a discrepancy, the original hardcopy proposal document language shall govern.

**2. Signatures:** Any form containing a signature line in this RFP and any amendments, pricing table, etc., must be manually signed and included as part of the proposal.

**3. Pricing:** The Offeror is required to specify the fees associated with this RFP as firm fixed fees for the duration of the RFP and Resulting Agreement. The MHTC is seeking a pricing structure that is fee based for services required on each outstanding bond series and is payable six-months in arrears. The fixed fees should include all annual and routine Trust, Paying Agent, Registrar, Escrow Agent, Calculation Agent and Dissemination Agent services. The successful Offeror will be responsible for performing all services listed in this RFP at the prices referenced in **SECTION 6: FIXED PRICING TABLE** of the RFP. The MHTC will not be liable for any charges beyond those detailed in the proposal.

A. MHTC shall not make any payment to the successful Offeror in advance of the services rendered by the successful Offeror.

B. Each Offeror is responsible for its own expense in preparing, delivering or presenting a proposal, and for subsequent interviews or negotiations with MHTC, if any, as provided for in this RFP.

**4. Proposal Life:** The Offerors must include a statement in the proposal that indicates the length of time during which MHTC may rely on all proposal commitments. All proposals made in response to this RFP and quoted pricing must remain in effect for a period of not less than 90 days after the date for proposal submission. Any proposal accepted by MHTC for the purpose of contract negotiations shall remain valid until superseded by a contract or until rejected by MHTC.

**5. Submission of All Information Required:** The Offerors must respond to this RFP by submitting all the information required herein for its proposal to be evaluated and considered for award. Failure to submit all the required information shall be deemed sufficient cause for disqualification of a proposal from consideration.

**6. Public Inspection:** The Offerors are hereby advised that all proposals and the information contained in or related thereto are subject to Missouri Open Records Act and after contract award and execution of the Resulting Agreement shall be open to public inspection

and may be viewed and copied by any member of the public; therefore, MHTC does not assume any responsibility whatsoever in the event that such information is used or copied by individual persons or organizations.

A. Offerors claiming a statutory exception to the Missouri Open Records Act must place all confidential documents in a sealed envelope and clearly mark "Confidential Materials Enclosed." The Offeror must also specify which statutory exception provision applies. MHTC reserves the right to make determinations of confidentiality. If MHTC does not agree that the information designated is confidential under one of the disclosure exceptions to the Missouri Open Records Act, it may either reject the proposal or discuss its interpretation of the allowable exceptions with the Offeror. If agreement can be reached, the proposal will be considered. If agreement cannot be reached, MHTC will remove the proposal from consideration for award and return the proposal to the Offeror.

B. MHTC will not consider prices to be confidential information.

C. The Offeror must submit its proposal based on the conditions contained in this paragraph without reservations.

**7. Clarification of Requirements:** It shall be the Offerors' responsibility to ask questions, request changes or clarification, or otherwise advise MHTC/MoDOT if any language, specifications or requirements of the RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Send all questions to Kristi Hixson at [Kristi.Hixson@modot.mo.gov](mailto:Kristi.Hixson@modot.mo.gov)

A. Any and all communication from Offerors regarding specifications, requirements, competitive proposal, etc., must be directed to the individuals listed in the **INTRODUCTION**. Such communication shall be received by the date noted in **SECTION 1: GENERAL DESCRIPTION AND BACKGROUND, (D) Schedule of Events**.

B. Every attempt will be made to ensure that the Offeror receives an adequate and prompt response. However, in order to maintain a fair and equitable proposal process, all Offerors will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, Offerors are advised that unless specified elsewhere in the RFP, any questions received after the listed date may not be answered.

**8. Interview Conference:** After an initial screening of the written proposals, any, or all of the Offerors submitting a proposal in response to this RFP may be required to give an oral presentation of their proposal. Additional technical information may be requested for clarification purposes, but in no way to change the original written proposal submitted. MHTC reserves the right, in its sole discretion, to decide to conduct interviews with any or all of the Offerors. If an interview is conducted, it is preferred that the interviewed Offeror's personnel to be assigned to the work, as well as key representatives, be present at and participate in the interview.

**9. Official Position of MHTC:** Offerors are cautioned that the only official position of the MHTC and MoDOT is that which is issued by MHTC in the RFP or an

amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

**SECTION 4:  
EVALUATION FACTORS AND PROCESS:**

**(A) Evaluation Factors:** The following factors shall be considered in the evaluation of the proposals:

**1. Evaluation Criteria:** Any agreement for services resulting from this RFP shall be awarded to the Offeror providing the best proposal to MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria:

<b>Evaluation Criterion Description</b>	<b>Evaluation Points</b>
Eligibility Requirements	Used for determination of Responsiveness
Organizational Experience	20 Points
Organizational Policies and Practices	20 Points
Organizational Staffing	20 Points
Overall Clarity and Quality of Proposal	10 Points
Proposed Fee	30 Points
Total	100 Points

**2. Historic Information:** MHTC reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, presentations or interviews as applicable, references, or other sources, including but not limited to the listed subcontractors, in the evaluation process.

**3. Responsibility to Submit Information:** Each Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation criteria and MHTC is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

**(B) Proposal Review/Evaluation:** MHTC will select a group of individuals to comprise the proposal review team. MHTC may, in its sole discretion, form a subgroup of the proposal review team, consisting of one or more team members, to comprise a separate proposal evaluation team that would be responsible for evaluating proposals with regard to compliance with RFP requirements. All evaluation team members will use the evaluation criteria stated above and present the evaluations to the review team for further action in the proposal evaluation and contract award process. If MHTC opts to not create a separate subgroup proposal evaluation team, the proposal review team shall also act as the proposal evaluation team.

## **SECTION 5: TERMS AND CONDITIONS**

**(A) Agreement Components:** The Resulting Agreement between MHTC and the successful Offeror shall incorporate by reference as its components the following: the RFP and any written amendments thereto and the proposal submitted by the successful Offeror in response to the RFP. In case of a conflict between or inconsistency in the terms contained in the RFP and the proposal submitted by the Offeror in response to the RFP, the terms of the RFP shall govern. In the event of a conflict between or inconsistency in the terms of the RFP and the Resulting Agreement, the terms of the Resulting Agreement shall govern. MHTC reserves the right, in its sole discretion, to clarify any relationship in writing and such written clarification shall govern in case of any conflict with or inconsistency in the applicable requirements stated in the RFP and the successful Offeror's proposal.

**(B) MHTC's Representative:** MoDOT's Chief Financial Officer or Financial Services Director is designated as MHTC's representative with authority to act on behalf of MHTC for the purpose of administering the Resulting Agreement. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Resulting Agreement. Each Offeror shall fully coordinate its activities with the designated representative and shall consult the MHTC representative regarding any problem arising out of the provision of the services to the MHTC pursuant to this RFP and the Resulting Agreement. As the work of the successful Offeror progresses, advice and information on matters covered by the Resulting Agreement shall be made available by the successful Offeror to the designated representative throughout the effective period of the Agreement. MHTC reserves the right to limit the authority of the MHTC's representative provided herein as it deems necessary in its sole discretion at any time and from time to time throughout the duration of the RFP process and the Contract Period.

**(C) Assignment:** The successful Offeror shall not assign, transfer, or delegate any interest in the services to be provided under this RFP and the Resulting Agreement without the prior written consent of the MHTC representative. The successful Offeror may at its own expense employ clerical or technical assistance in the performance of the services under this RFP and the Resulting Agreement, such clerical and technical assistance provider being as fully bound as the Offeror to all confidentiality and work product provisions of this RFP and the Resulting Agreement.

**(D) Amendments:** Any change in the Resulting Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representative of the successful Offeror and MHTC.

**(E) Disputes Under the RFP and Resulting Agreement:** The MHTC representative, as applicable, will decide all questions which may arise as to the quality, quantity, and acceptability of any Offeror's proposals submitted in response to this RFP, and of the services under this RFP and the Resulting Agreement performed by the successful Offeror and as

to the rate of progress of the services; all questions which may arise as to the interpretation of the services to be performed under this RFP and the Resulting Agreement; all questions as to the acceptable fulfillment of the Resulting Agreement on the part of the successful Offeror; the proper compensation for performance or breach of the Resulting Agreement; and all claims of any character whatsoever in connection with or growing out of the services to be performed or performed by the successful Offeror, whether claims under this RFP and the Resulting Agreement or otherwise. The decision of the MHTC representative, as applicable, shall be conclusive, binding, and incontestable.

**(F) Successors and Assigns:** The Commission and the Offerors agree that this RFP and, as applicable, the Resulting Agreement as well as all agreements entered into under the provisions of this RFP, shall be binding upon the parties thereto and their successors and assigns.

**(G) Sole Beneficiary:** The Resulting Agreement will be made for the sole benefit of the parties thereto and nothing in this RFP or the Resulting Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the successful Offeror.

**(H) Cancellation of Resulting Agreement:** MHTC may cancel the Resulting Agreement at any time and for any reason by providing the successful Offeror with a written notice of cancellation. Should the Commission exercise its right to cancel the Resulting Agreement, the cancellation will become effective upon the acceptance of appointment of a successor Trustee consistent with the provisions in the Indentures.

**(I) Bankruptcy:** Upon filing for any bankruptcy or insolvency proceeding by or against any Offeror or assignee, whether voluntarily, or upon the appointment of a receiver for the benefit of creditors, Commission reserves the right and sole discretion to reject the Offeror's proposal, or, as applicable, either cancel the Resulting Agreement or affirm the Resulting Agreement and hold the successful Offeror responsible for damages.

**(J) Status as Independent Contractor:** The successful Offeror represents itself to be an independent contractor offering such services to the general public and shall not represent itself or its employees to be an employee of MHTC or MoDOT. Therefore, the successful Offeror shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, or other such benefits or obligations.

**(K) Subcontractor:** Any Offeror's proposal must identify all subcontractors, if any, and outline the contractual relationship between the Offeror and each subcontractor. Either a copy of the executed subcontract or a letter of agreement over the official signature of the firms involved must accompany each proposal. MHTC must approve the successful Offeror's subcontracting any portion of the services to be provided under the Agreement. The successful Offeror is responsible for the performance of any obligations that may result from this RFP and the Agreement and shall not be relieved by the non-performance of any subcontractor.

**(L) MBE/WBE Participation Encouraged:**

**1. Affirmative Action Program:** Offerors are encouraged to submit copies of their existing affirmative action programs, if any. Offerors are also encouraged to directly hire minorities and women as direct employees of the Offerors.

**2. Minority Participation Encouraged:** Offerors are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBEs (i.e. 10% MBE and 5% WBE participation).

**3. Offeror's Responsibility Unconditional:** Regardless of which persons or firms, if any, that the successful Offeror may use as subcontractors or suppliers of goods or services for the services to be provided, the successful Offeror ultimately remains responsible and liable to MHTC for the complete, accurate, and professional quality/performance of these services.

**(M) Nondiscrimination:** The Offerors shall comply with all state and federal statutes applicable to the Offerors relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

**(N) Executive Order:** The Offerors shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.

**1. Offeror's Certification:** By signing the proposal to this RFP, the Offeror hereby certifies that any employee of the Offeror assigned to perform services herein is eligible and authorized to work in the United States in compliance with federal law.

**2. Failure to Comply:** In the event the Offeror fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the Offeror has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to reject the Offeror's proposal or, as applicable, impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.

**3. Incorporation of Provisions:** The successful Offeror shall include the provisions of this paragraph in every subcontract. The successful Offeror shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

**(O) Non-employment of Unauthorized Aliens:** Pursuant to Section 285.530, RSMo., no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the State or by any political subdivision of the State to any Offeror, or for any Offeror receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the Offeror shall:

**1. Enrollment in Federal Work Authorization Program:** By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The Offeror must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by providing acceptable enrollment and participation documentation consisting of completed copy of the E-Verify Memorandum of Understanding (**MOU**). For Offerors that are not already enrolled and participating in a federal work authorization program, E-Verify is available at <http://www.uscis.gov/e-verify>.

**2. Annual Worker Eligibility Affidavit:** By sworn affidavit, affirm that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Offerors are required to complete and submit with their proposal the affidavit referenced herein, which is provided within this document and attached as **Exhibit 1**.

**(P) Proof of Lawful Presence For Sole Proprietorships and Partnerships:** If the Offeror is a sole proprietorship or partnership, pursuant to Section 208.009, RSMo., each sole proprietor and each general partner shall provide affirmative proof of lawful presence in the United States. Such sole proprietorship or partnership is eligible for temporary public benefits upon submission by each sole proprietor and general partner of a sworn affidavit of his/her lawful presence on the United States until such lawful presence is affirmatively determined, or as otherwise provided by Section 208.009, RSMo. As applicable, Offerors are required to complete and submit with their proposals the copy of the affidavit referenced herein, which is provided within this document and attached as **Exhibit 2**.

**(Q) Requirements to Do Business in Missouri:** Out-of-state Offerors must comply with the following requirements to do business in Missouri:

**1. Registration with Secretary of State:** The Offerors must be registered and maintain good standing with the Secretary of State of the State of Missouri, Missouri Department of Revenue, and other regulatory agencies, as may be required by law or regulations. Prior to execution of the Resulting Agreement, the successful Offeror shall submit to MHTC a copy of its current Authority Certificate from the Secretary of State of the State of Missouri and/or a copy of its Certificate of No Tax Due from the Missouri Department of Revenue.

**2. Transient Employer Certificate:** All out-of-state Offerors providing services within the State of Missouri must provide a copy of their current Transient Employer Certificate issued from the Missouri Department of Revenue. For assistance with obtaining a

Transient Employer Certificate, please call the Missouri Department of Revenue at (573) 751-0459.

**(R) Law of Missouri to Govern:** This RFP and the Resulting Agreement shall be construed according to the laws of the State of Missouri. The Offeror shall comply with all local, state, and federal laws and regulations relating to this RFP and, if applicable, the performance of the Agreement.

**(S) Venue:** It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

**(T) Ownership of Records:** All documents, reports, exhibits, etc., produced by the Offerors at the direction of MHTC's representative and information supplied by MHTC's representative shall remain the property of MHTC.

**(U) Release to Public/Confidentiality:** No material or reports prepared by the successful Offeror shall be released to the public without the prior consent of MHTC's representative. The Offerors shall not disclose to third parties confidential factual matters provided by MHTC's representative except as may be required by statute, ordinance, or order of court, or as authorized by MHTC's representative. The Offerors shall notify MHTC immediately of any request for such information.

**(V) Prohibition Against Kickbacks and Gratuities/Nonsolicitation:** Any kickback, gratuity, or other payment by the Offeror to any person employed by or on behalf of the Commission is prohibited except when such payment is made pursuant to the express terms of this RFP and, as applicable, the Resulting Agreement. Each Offeror warrants that it has not employed or retained any company or person, other than a bonafide employee working for the Offeror, to solicit or secure this RFP and as applicable the Resulting Agreement, and that the Offeror has not paid or agreed to pay any company or person, other than a bonafide employee, a fee, commission, percentage, brokerage fee, gift, or other consideration, which is contingent upon or Resulting from the award of this RFP and, as applicable, the Resulting Agreement. For breach or violation of this warranty, the Commission shall have the right to reject the Offeror's proposal and, as applicable, annul the Resulting Agreement without liability, or in its discretion, to withhold or recover said amounts from the compensation due or paid under the Resulting Agreement.

**(W) Conflict of Interest:** Each Offeror covenants that it presently has no actual conflict of interest or appearance of conflict of interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services under this Agreement. The Offeror further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in this RFP and the Resulting Agreement.

**(X) Audit of Records:** The successful Offeror must maintain all working papers and records relating to the Agreement. These records must be made available at all reasonable times

at no charge to MHTC and/or the Missouri State Auditor during the term of the Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Agreement. MHTC's representative shall have the right to reproduce and/or use any products derived from the successful Offeror's work without payment of any royalties, fees, etc. MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.

**(Y) Indemnification:** Each Offeror shall defend, indemnify, and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's submittal of its proposal in response to the RFP, performance of its obligations under this RFP and, as applicable, the Agreement.

**(Z) Insurance:** For proposal purposes, Offerors must submit copies of certificates of insurance for general and automobile liability and workers' compensation in the following coverage limits. The successful Offeror must provide original certificates prior to commencing services.

**1. General Liability:** Not less than \$500,000 for any one person in a single accident or occurrence, and not less than \$3,000,000 for all claims arising out of a single occurrence.

**2. Automobile Liability:** Not less than \$500,000 for any one person in a single accident or occurrence, and not less than \$3,000,000 for all claims arising out of a single occurrence.

**3. Missouri State Workmen's Compensation:** Policy or equivalent coverage in accordance with state law.

**(AA) Section Headings:** All section headings contained in this RFP and the Resulting Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this RFP and the Resulting Agreement.

**(BB) Severability:** If any clause or provision of this RFP and/or the Resulting Agreement is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

**(CC) No Adverse Inference:** This RFP and/or the Resulting Agreement shall not be construed more strongly against one party or the other. No rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this RFP and/or the Resulting Agreement.

**SECTION 6:  
FIXED PRICING TABLE**

The Offeror shall provide an itemized breakdown of each of the guaranteed, not-to-exceed fees detailing the services involved and the fees associated with the services. All fees associated with providing the required services shall be included on the Fixed Pricing Table (**Attachment 15**). The Fixed Pricing Table must be completed, signed and returned with the Offeror's proposal.



