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REQUEST FOR PROPOSALS FOR INVESTMENT BANKING SERVICES RFP #6-160226KH

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LIST OF ACRONYMS

A-3	Missouri Constitutional Amendment 3 (amending article IV, section 30(b))
BABs	Build America Bonds
Commission	Missouri Highways and Transportation Commission
GARVEE	Grant Anticipation Revenue Vehicles
MCDC	Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative
MHTC	Missouri Highways and Transportation Commission
MoDOT	Missouri Department of Transportation
MOU	Memorandum of Understanding
RFP	Request for Proposals
RSMo	Revised Statutes of Missouri
SRBF	State Road Bond Fund

ATTACHMENTS

Attachment 1: MHTC's Debt Management Policy

Attachment 2: Lien Structure

INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified firms (**Firms**) 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) February 26, 2016**, 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 Investment Banking Services RFP***”. **Proposals shall not exceed 20 pages, front and back, excluding a one page cover page, with minimum margins of 1 inch, and minimum 11 point font size.**

MHTC retains the right to reject any and all proposals for any reason whatsoever. Firms selected through this RFP process will comprise a pre-qualified investment banking services pool (**Pool**). The size, use and relationship of the Pool shall remain subject to the discretion of the MHTC. Selection for inclusion in the Pool does not assure any Firm that they will be selected to lead or co-manage any future MHTC negotiated debt transaction. Assignment of investment banking or remarketing responsibilities for any Firm in the Pool shall be at the sole discretion of the MHTC, based on the Commission’s judgment of the marketing strengths of the various Firms, and the specific characteristics of the debt transaction to be executed. Compensation for the services described herein shall be contingent upon the actual issuance of bonds and shall be negotiated with the assistance of the MHTC’s municipal advisor, subject to approval of the MHTC’s representative as delegated by the MHTC. The MHTC also reserves the right to choose a competitive sale transaction for any future new or refunding Bond issues that would not use investment banking services of any entity in the Pool.

Time is of the essence for responding to the RFP within the submission deadlines.

PROPOSAL SUBMITTAL CERTIFICATION BY FIRM

- (1) The Firm shall provide a proposal to the MHTC in accordance with the terms of this RFP.
- (2) The Firm agrees to provide the services under the terms of this RFP.
- (3) By submission of this proposal, each Firm and each person signing on behalf of any Firm, under penalty of perjury, certifies to the best of its knowledge and belief:
 - (A) This proposal has been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition with any other Firm or any competitor;
 - (B) No attempt has been made or will be made by the Firm to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition; and
 - (C) The Firm 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 Firm: _____

Date of Proposal: _____

Name of the Firm: _____

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 provide investment banking services to the MHTC and MoDOT. The purpose of the RFP is to solicit your Firm's proposal to be included in a Pool that shall be selected by the MHTC. The MHTC may select from the Pool that number of Firms that shall underwrite the Commission's Bonds (as book-running senior manager, as a co-senior manager or as a co-manager) and other debt instruments authorized by the MHTC's Debt Management Policy (**Attachment 1**) to be issued by the MHTC on a negotiated basis to meet its debt financing requirements. The MHTC has the sole discretion to use less than all of the Firms selected under this RFP for a particular bond issuance during the period covered by this RFP. The MHTC reserves the right to rotate the members of its Pool on future financings. The Firms chosen to be part of the Pool are not guaranteed to participate in any future MHTC Bond issuance. The MHTC reserves the right in its sole discretion to conduct during the time period that this RFP is effective any or all MHTC Bond issues as a competitive sale that would not use investment banking services of any entity in the pool. **No joint proposals will be accepted.**

(B) Background: The MHTC is seeking qualified Firms to provide investment banking services related to the negotiated underwriting of refunding Bonds issued under the Senior Master Indenture, dated December 1, 2000, as amended, and new and refunding Bonds issued pursuant to the Master Bond Indentures, dated as of July 1, 2005 and December 1, 2008 as amended and supplemented. The Pool would also be eligible to provide investment banking services related to the negotiated underwriting of new bonds issued under future indentures as a result of newly created funding sources. The MHTC's multi-lien debt structure provides the framework for financing construction or reconstruction of the State Highway System.

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 and requires that the first priority for payment from the State Road Fund shall be the principal and interest on outstanding State Road Bonds. Also, moneys deposited in the State Road Bond Fund (**SRBF**) shall only be used to fund the repayment of MHTC Bonds issued to fund construction and reconstruction of the state highway system or to fund refunding Bonds.

During the 2000 legislative session, the Missouri General Assembly passed legislation authorizing the MHTC to issue up to \$2.25 billion of Bonds. The intent was to jumpstart road and bridge construction prior to passing a statewide tax increase for transportation. From December 2000 through November 2003, the MHTC issued four Bond series totaling \$907 million for statewide construction projects. The MHTC decided not to utilize the entire bonding authority after a proposed transportation tax was defeated by the voters in 2002. The Bonds issued under this authority are referred to as Senior Lien Bonds.

On November 2, 2004, Missouri voters passed Constitutional Amendment 3 (**A-3**) to amend Article IV, Section 30(b) of the Missouri Constitution to require proceeds from the state's motor vehicle sales tax that were previously deposited into the General Revenue Fund to instead be deposited into the SRBF. Since 2005, the MHTC has issued six series of new A-3 Bonds totaling \$1.977 billion through a multi-lien debt structure.

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 \$928 million in Grant Anticipation Revenue Vehicles (**GARVEE**) Bonds, with the MHTC's reimbursements of federal-aid highway moneys pledged as the primary revenue stream for repayment of the GARVEE Bonds. The outstanding GARVEE Bonds also have a subordinate pledge of State Road Fund and SRBF revenues.

The MHTC has issued various types of Bonds, including tax-exempt fixed rate debt, taxable fixed rate Build America Bonds (**BABs**) and tax-exempt variable rate debt (which has been fully paid off). **Attachment 2** provides a summary of the MHTC's lien structure. As of February 2, 2016, debt outstanding and credit ratings on outstanding MHTC debt are as follows:

Liens	Par Amount Outstanding	Ratings (S&P, Moody's & Fitch)
Senior Lien	\$330,830,000	AAA Aaa AAA
First Lien	\$611,535,000	AAA Aaa AAA
Second Lien	\$455,150,000	AAA Aa1 AA+
Third Lien	\$300,000,000	AA+ Aa2 AA
GARVEE Lien	\$760,140,000	AA+ Aa1 AA-
Total	\$2,457,655,000	

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. Respondents should refer to the MHTC's Debt Management Policy for parameters related to debt coverage and debt issuance.

(C) Service Period: The selected Pool of pre-qualified Firms will provide investment banking services for the performance of the services described in this RFP from July 1, 2016 through an initial period ending June 30, 2019 with an option for two additional one-year periods, or any portion therein, at the sole discretion of the MHTC's representative.

(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. The 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
February 8, 2016	Issue RFP.
February 16, 2016	Deadline for Firms to submit written questions and requests for clarification to the RFP.
February 22, 2016	Issuance of Amendment with resolution of any questions submitted. http://www.modot.org/business/contractor_resources/g_s_bidding/CO/COcommodities.htm
February 26, 2016 by 3:00 p.m.	Deadline for submission of proposals.
March 23, 2016	Interview Conference with Firms in Jefferson City (if needed).

SECTION 2: SCOPE OF WORK AND SPECIFIC SERVICES

(A) **Scope of Work:** The MHTC seeks to select a Pool to provide investment banking services. The Firms selected for the Pool agree to provide these services to the MHTC. In addition, Firms selected to participate in the investment banking services for MHTC Bond transactions issued by the MHTC on a negotiated basis will consult with the MHTC's representative regarding any problems involved with the administration of the services provided pursuant to this RFP.

(B) **Specific Services:** The Firms shall work as team members with the MHTC's representative and designated staff, trustee, bond counsel, municipal advisor and others to complete work tasks related to the negotiated sale of MHTC Bonds and other debt instruments authorized by the MHTC's Debt Management Policy. In addition, the Firms shall provide the following specific professional services that result in a completed debt financing that is in the best interests of the MHTC:

1. Assist in the structuring of any MHTC Bond issue, including, but not limited to, the evaluation of the mode of debt to be issued, fixed or variable rate debt, as well as the determination of need for capitalizing interest, the establishment of specific redemption provisions and use of serial versus term Bonds.

2. Assist in the timely review and preparation of documents, including the Official Statement, Continuing Disclosure Agreement, indentures and other necessary bond-issuance related documents.

3. Market and underwrite the Bonds. Lead bankers are expected to develop a marketing plan that results in the most favorable Bond terms for the MHTC and prepare a pre-pricing analysis document for timely discussion prior to the Bond sale. The marketing plan will address current market conditions and present approaches to ensure that in-state retail, out-of-state retail and institutional markets are thoroughly addressed in advance of the pricing to maximize investor interest and participation.

4. As requested, assist in obtaining credit ratings and enhancements for the Bonds, participate in credit strategy discussions and attend credit rating agency presentations.

5. Purchase the Bonds at interest rates appropriate to the structure, size, term, credit quality and market conditions at the time of the sale of the Bonds.

6. Follow the MHTC's written policies and verbal directions, for liability and designation procedures, pricing procedures and the process of selling debt obligations authorized under the MHTC's Bond program.

7. Provide remarketing services on variable rate financings.

8. Participate in the closing and post-sale analysis of the Bond issue.

9. Participate in meetings / conference calls as requested, including but not limited to informational and due diligence meetings.

Firms that propose only for a co-manager role will be limited to the following scope of services:

1. Participate, if requested, in informational and due diligence meetings.

2. Assist the MHTC in successful marketing and sale of debt obligations authorized under the MHTC's Bond program to achieve the lowest possible borrowing cost.

3. Follow the MHTC's written policies and verbal directions, for liability and designation procedures, pricing procedures and the process of selling debt obligations authorized under the MHTC's Bond program.

SECTION 3: REQUIRED ELEMENTS OF PROPOSAL AND SUBMISSION

(A) Required Elements of Proposal: Each Firm 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 the MHTC in response to this RFP. Indicate the role(s) your Firm is seeking consideration for in this RFP (book running senior, co-senior, co-manager positions relative to fixed rate bonds; remarketing agent positions relative to variable rate debt instruments; etc.). Firms not considered as book running senior manager for debt transactions may be considered for co-senior or co-manager roles. For the Firms seeking to serve in a co-manager position only, provide past examples and detailed information how your Firm proposes to provide "added value" to the debt transaction. Each Firm's proposal must be divided into sections corresponding to the list of elements in this RFP.

1. Commitment to Public Finance and Missouri: Describe your Firm's commitment to public finance, including any pending plans that will affect the commitment to

capital or resources to the municipal sector. Provide a broad overview of the scope of your business, addressing the following:

- A. Staffing committed to public finance;
- B. Rankings as reported by Thomson-Reuters for the full year – 2015 in the categories of Transportation Long Term Municipal New Issues and Variable Rate Long Term Municipal New Issues;
- C. Strength of national retail, Missouri retail and institutional distribution capabilities; and
- D. Identify Missouri banking or brokerage office locations, employment, number of accounts under management and assets under management.

2. Experience and Expertise: Identify your Firm's experience in offering the services requested in this RFP during the past two years. The description should include a list of the state transportation agencies and bond issues which your Firm has served or currently serves including your Firm's role (senior, co-senior, etc.). Include, at a minimum, the name of the issue, the name of the issuer, the sale date, the size of the issue, whether the interest rate was fixed or variable, the amount of underwriting liability and the amount of securities sold by your firm at the initial offering price, percent sold retail and underlying ratings. Please also include the name, location, telephone number and email address of the person in your Firm so that the MHTC may contact them to discuss particulars of these municipal issuances. Describe how your Firm's experience with other transportation issuers enhances your capacity to serve as a member of the Pool.

As part of this element, also include information describing your Firm's experience and expertise working with state departments of transportation who have issued bonds, including but not limited to municipal and GARVEE bonds. Finally, address your experience working with other Missouri issuers as a senior and/or co-managing underwriter.

In addition, provide a list of three municipal references for state transportation agencies, including name, address, telephone number, email address and type of financing completed for these clients in the past three years.

3. Personnel Assigned to the MHTC: Indicate the name, location, telephone number and email address of the primary contact person for your Firm, including a biography with particular attention to transportation experience. Also identify the lead trading desk professional who will be directing the marketing and pricing efforts for the MHTC Bonds and other debt instruments. Please provide a biography for each individual and their experience related to the development of transportation financing programs for the primary contact person and the marketing of transportation debt for the lead trading desk professional. In addition, list other personnel that would be assigned to the MHTC transactions and indicate their role. Information presented should highlight such personnel's previous experience in providing investment banking services for tax-exempt bond programs, BABs and also should include the length of time in current position, current firm and municipal industry.

4. Distinguishing Attributes: Briefly describe any attributes / services that distinguish your Firm from others offering similar services that would prove helpful to the MHTC in our evaluation, rating and selection process.

5. Retail and Institutional Capabilities: Describe your Firm's retail and institutional distribution capabilities nationally and in Missouri. Describe any industry surveys or recent reports that support your claims of capital market penetration relative to your Firm's competitors. If your Firm desires consideration for potential variable rate financings, please comment on the marketing and distribution capabilities of short-term interest rate products for your Firm nationally and in Missouri.

6. Financial Condition and Litigation / Investigations: Provide a three-year history of your Firm's capital levels, specifically indicating the following:

- A. Total Capital;
- B. Uncommitted Excess Net Capital;
- C. Limitation on Municipal Liability (per transaction); and
- D. Total Public Finance Employees.

Describe any pending investigation of your Firm, or enforcement or disciplinary actions taken within the past three years by the Securities and Exchange Commission or other federal or state regulatory bodies in regard to your Firm.

In addition, address if your Firm self-reported any violations under the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. If your Firm self-reported, provide a list indicating the issuer, the issuance date, a summary of the violation and the process your Firm used to notify the issuer of your Firm's decision to self-report under the MCDC Initiative.

Also, provide a summary of insurance coverage / bonding carried by the Firm that would be relevant to the services requested under this RFP.

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

(B) Submission of Proposals: Firms 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 Firm 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 Firm 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 Firms to submit proposals. Only the execution of a Bond Purchase Agreement with the senior managing underwriter to negotiate a

future bond issue (the **Resulting Agreement**) will obligate the MHTC in accordance with the terms and conditions contained therein.

1. Proposal Format: The Firm's submittal must include one (1) original hardcopy document. Three (3) copies and one (1) electronic copy of the proposal are desired in addition to the hardcopy document. Electronic copies of the proposal must be in Microsoft compatible format or in ".pdf" and stored on CD(s) or flash drive(s). The Firm 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, etc., must be manually signed and included as part of the proposal.

3. Payments: The MHTC shall not make any payment to the successful Firms in advance of the services rendered by the successful Firms. Each Firm 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 Firms must include a statement in the proposal that indicates the length of time during which the MHTC may rely on all proposal commitments. All proposals made in response to this RFP must remain in effect for a period of not less than 120 days after the date for proposal submission. Any proposal accepted by the MHTC for the purpose of contract negotiations shall remain valid until superseded by a contract or until rejected by the MHTC.

5. Submission of All Information Required: The Firms 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 Firms are hereby advised that all proposals and the information contained in or related thereto are subject to Missouri Open Records Act (see Chapter 610, RSMo) and after the Pool has been approved by the MHTC shall be open to public inspection and may be viewed and copied by any member of the public; therefore, the MHTC does not assume any responsibility whatsoever in the event that such information is used or copied by individual persons or organizations.

A. Firms 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 Firm must also specify which statutory exception provision applies. The MHTC reserves the right to make determinations of confidentiality. If the 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 Firm. If agreement can be reached, the proposal will be

considered. If agreement cannot be reached, the MHTC will remove the proposal from consideration for award and return the proposal to the Firm.

B. The Firm must submit its proposal based on the conditions contained in this paragraph 6 without reservations.

7. Clarification of Requirements: It shall be the Firms' 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

A. Any and all communication from Firms regarding specifications, requirements, competitive proposal, etc., must be directed to the individual 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 Firm receives an adequate and prompt response. However, in order to maintain a fair and equitable proposal process, all Firms will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, Firms 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 Firms 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. The MHTC reserves the right, in its sole discretion, to decide to conduct interviews with any or all of the Firms. If an interview is conducted, it is preferred that the interviewed Firm'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 the MHTC: Firms are cautioned that the only official position of the MHTC and MoDOT is that which is issued by the 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 Firms providing the best proposals to the MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria:

Evaluation Criterion Description	Evaluation Points
Commitment to Public Finance and Missouri	10 Points
Experience and Expertise	20 Points
Personnel Assigned to the MHTC	25 Points
Distinguishing Attributes	10 Points
Retail and Institutional Capabilities	25 Points
Financial Condition and Litigation / Investigations	5 Points
Overall Clarity and Quality of Proposal	5 Points
Total	100 Points

2. Historic Information: The MHTC reserves the right to consider historic information and facts, whether gained from the Firm'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 Firm is cautioned that it is the Firm's sole responsibility to submit information related to the evaluation criteria and the MHTC is under no obligation to solicit such information if it is not included with the Firm's proposal. Failure of the Firm to submit such information may cause an adverse impact on the evaluation of the Firm's proposal.

(B) Proposal Review/Evaluation: The MHTC will select a group of individuals to comprise the proposal review team. The 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 selection process. If the MHTC opts to not create a separate subgroup proposal evaluation team, the proposal review team shall also act as the proposal evaluation team.

(C) Other Information:

1. Sole Authority to Select Firm(s): The MHTC has the sole authority to select the Firms that will be authorized to be a member of the Pool through this RFP. The MHTC also reserves the right to select among those Firms in the Pool for participation, or not, in each negotiated sale of bonds as the MHTC deems necessary for each sale.

2. Request for Ideas and Advice: The MHTC or MoDOT may, from time to time, seek ideas, advice and proposals from Firms included in the Pool. The MHTC and MoDOT will consult with its municipal advisor before acting on any ideas and advice provided by the Firms. The Firms will not be asked to, and shall not serve in, a municipal advisor role to the Commission.

3. Option to Form Selling Group: The MHTC retains the option of forming a selling group for any transaction and members of the selling group need not be included in the Pool selected through this RFP.

4. Underwriters' Counsel: If seeking selection as senior manager or co-senior manager, the Firm should propose the law firm(s) to serve as counsel to the investment bankers or offer a list of law firms from which counsel will be selected. The MHTC reserves the right to approve the counsel and related compensation.

A. The Firm will require the Firm's proposed counsel to undertake a conflict of interest check and by executing this RFP the Firm represents such counsel has no actual conflict of interest or the appearance of a conflict of interest in undertaking this representation and the Firm's proposed counsel agrees not to undertake any representation that may create an actual conflict of interest or give the appearance of a conflict of interest during the performance of any future negotiated Bond issuance. The Firm further agrees to require its proposed counsel to provide the MHTC's representative with written notice of any representation which the counsel has or desires to undertake which may present a conflict of interest or the appearance of a conflict of interest during the term of the Resulting Agreement and any extension thereof.

B. The MHTC shall have the final determination as to what constitutes a conflict of interest pursuant to this Paragraph 4 of this Subsection (C). The decision by the MHTC shall be final and without recourse; however, the MHTC will not make any such decision without first providing the Firm or Firm's counsel an opportunity to present comments.

5. Competitive Sale of Bonds: The MHTC may, at any time, and in its sole and absolute discretion, competitively sell its Bonds without utilizing any Firm in the Pool selected through this RFP.

6. No Guarantee Firm Will Be Used: Firms chosen to be part of the Pool are not guaranteed to participate in any future MHTC Bond issuances. The MHTC reserves the right to use the selected Firms in the Pool on an as needed, when needed, basis.

SECTION 5: TERMS AND CONDITIONS

(A) Agreement Components: At the time of a Bond issuance, the MHTC will negotiate a Resulting Agreement with a pre-qualified Firm. If the parties are unable to agree to terms and not able to enter into a Resulting Agreement, the MHTC shall reserve the right to

terminate negotiations and select a different pre-qualified Firm. The Resulting Agreement between MHTC and the successful Firms shall incorporate by reference as its components the following: the RFP and any written amendments thereto and the proposal submitted by the successful Firm 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 Firm 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. The 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 Firms' proposal.

(B) MHTC's Representative: MoDOT's Chief Financial Officer is designated as the MHTC's representative with authority to act on behalf of the MHTC for the purpose of administering the Resulting Agreement. The MHTC's representative may designate by written notice other persons having the authority to act on behalf of the MHTC in furtherance of the performance of the Resulting Agreement. Each Firm 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. The 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, effective period of any Resulting Agreement and overall service period of the Pool.

(C) Assignment: The successful Firms 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's representative. The successful Firms 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 Firm 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 Firms and the MHTC.

(E) Disputes Under the RFP and Resulting Agreement: The MHTC's representative, as applicable, will decide all questions which may arise as to the quality, quantity, and acceptability of any Firm's proposals submitted in response to this RFP, and of the services under this RFP and the Resulting Agreement performed by the successful Firms 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 Firms; 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 Firms, whether claims under this RFP and the Resulting Agreement or otherwise. The decision of the MHTC's representative, as applicable, shall be conclusive,

binding, and incontestable.

(F) Successors and Assigns: The Commission and the Firms 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 Firms.

(H) Cancellation of Resulting Agreement: The MHTC may cancel the Resulting Agreement at any time and for any reason by providing the successful Firms with a written notice of cancellation. Should the Commission exercise its right to cancel the Resulting Agreement, the cancellation will become effective upon the date specified in the notice of cancellation sent to the Firm.

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

(J) Status as Independent Contractor: The successful Firm(s) 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 the MHTC or MoDOT. Therefore, the successful Firms 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 Firm's proposal must identify all subcontractors, if any, and outline the contractual relationship between the Firm 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. The MHTC must approve the successful Firms' subcontracting of any portion of the services to be provided under this RFP and any Resulting Agreement. The successful Firms are responsible for the performance of any obligations that may result from this RFP and the Resulting Agreement and shall not be relieved by the non-performance of any subcontractor.

(L) MBE/WBE Participation Encouraged:

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

2. Minority Participation Encouraged: Firms 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. Firm's Responsibility Unconditional: Regardless of which persons or firms, if any, that the successful Firms may use as subcontractors or suppliers of goods or services for the services to be provided, the successful Firms ultimately remain responsible and liable to the MHTC for the complete, accurate, and professional quality/performance of these services.

(M) Nondiscrimination: The Firms shall comply with all state and federal statutes applicable to the Firms 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 Firms shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) 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. Firm's Certification: By signing the proposal to this RFP, the Firm hereby certifies that any employee of the Firm 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 Firm 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 Firm 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 Firm'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 Firms shall include the provisions of this paragraph in every subcontract. The successful Firms 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 Firm, or for any Firm receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the Firm 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 Firm 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 Firms 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. Firms 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 Firm 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, Firms 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 Firms must comply with the following requirements to do business in Missouri:

1. Registration with Secretary of State: The Firm 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 Firms shall submit to the 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 Firms 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 Firms shall comply with all local, state, and federal laws and regulations relating to this RFP and, if applicable, the performance of the Resulting 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 Resulting 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 Firms at the direction of the MHTC's representative and information supplied by the MHTC's representative shall remain the property of the MHTC.

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

(V) **Prohibition Against Kickbacks and Gratuities/Nonsolicitation:** Any kickback, gratuity, or other payment by the Firms 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 Firm warrants that it has not employed or retained any company or person, other than a bonafide employee working for the Firm, to solicit or secure this RFP and as applicable the Resulting Agreement, and that the Firm 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 Firm'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:** By executing this RFP, each Firm covenants as follows: (1) 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 the Resulting Agreement; (2) 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 by the Firm; (3) that it is in lawful compliance with all federal and securities laws; (4) that it is in lawful compliance with all of the campaign contribution limitations, restrictions, reporting requirements and other campaign-related provisions of any state and federal laws, as well as all Missouri laws and regulations regarding campaign contributions, including, but not limited to, Section 226.136, RSMo; and (5) that it will stay in compliance with all such state and federal securities laws and campaign-related contribution, reporting and related laws during the conduct of the RFP and if such Firm is selected for inclusion in the Pool.

(X) **Audit of Records:** The successful Firms must maintain all working papers and records relating to the Resulting Agreement. These records must be made available at all reasonable times at no charge to the MHTC and/or the Missouri State Auditor during the term of

the Resulting Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Resulting Agreement. The MHTC's representative shall have the right to reproduce and/or use any products derived from the successful Firms' work without payment of any royalties, fees, etc. The MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.

(Y) Indemnification: No indemnification is required to respond to this RFP or to be selected into the Pool. In the event a Firm is awarded membership in the Commission's Pool under this RFP, and such Firm is later chosen by the Commission to be a member of the Commission's investment banking team in a future State Road Bond issuance, the Firm will be required to execute a Bond Purchase Agreement with the Commission including a indemnification section in substantially the following form:

1. The Purchasers agree to indemnify and hold harmless the Commission, each director, member, officer or employee of the Commission and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Commission pursuant to the 1933 Act, by contract or otherwise (collectively in this Subsection called the "Indemnified Parties") from and against any and all losses, claims, demands, damages, liabilities or expenses whatsoever caused by (i) any untrue or misleading statement, whether actual or alleged, of a material fact contained in the Official Statement, or caused by any omission, whether actual or alleged, from the Official Statement of any material fact required to be stated or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, providing that such indemnification shall be limited solely to statements that appear under, or matters omitted pertaining to material appearing under, the caption "UNDERWRITING" or other sections of the Official Statement related to the pricing of the Bonds, but in each case, only to the extent that such untrue or misleading statement or omission was made in such section of the Official Statement in reliance upon and in conformity with information furnished to the Commission in writing by the Purchasers for inclusion in the Official Statement.

2. The Purchasers agree to indemnify and hold harmless the Indemnified Parties from and against any and all losses, claims, demands, damages, liabilities or expenses caused by the failure of the Purchasers to comply with any registration or qualification requirements applicable to the Purchasers or the Bonds in any securities or "Blue Sky" law of any jurisdiction in which such registration or qualification is required; provided, however, that the Purchasers shall not be required to indemnify and hold harmless the Indemnified Parties if the Purchasers failed to comply with such registration or qualification requirements or furnished inaccurate information in connection with such registration or qualification requirements in reasonable reliance upon information furnished by the Commission or in reliance on the opinion of Bond Counsel or due to the failure by the Commission to comply with the requirements set forth in the Official Statement and cooperating in Blue Sky filings in states where needed.

3. The Purchasers agree to indemnify and hold harmless the Indemnified Parties from and against any and all losses, claims, demands, damages, liabilities or expenses caused any representations, oral or written, by the Purchasers or any of their officers, employees,

agents, brokers or salespersons, other than the information and representations contained in the Official Statement, in connection with the offering of the Bonds.

(Z) 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.

(AA) 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.

(BB) 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: COMPENSATION

The MHTC reserves the right to negotiate compensation terms for investment banking services under this RFP at the time of each financing. The MHTC reserves the right to use incentive based compensation for variable rate programs. **Compensation will be contingent upon the issuance of Bonds and a Resulting Agreement.**

EXHIBIT 1

ANNUAL WORKER ELIGIBILITY VERIFICATION AFFIDAVIT (for joint ventures, a separate affidavit is required for each business entity)

STATE OF _____)
) ss
COUNTY OF _____)

On the _____ day of _____, 20____, before me appeared
_____, personally known to me or proved to me on the basis of satisfactory
Affiant name
evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, stated as follows:

- I, the Affiant, am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

- I, the Affiant, am the _____ of _____, and I am duly
title business name
authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.

- I, the Affiant, hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security, and the aforementioned business entity shall participate in said program to verify the employment eligibility of newly hired employees working in connection with any services contracted by the Missouri Highways and Transportation Commission (MHTC). I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.

- I, the Affiant, also hereby affirm and warrant that the aforementioned business entity does not and shall not knowingly employ, in connection with any services contracted by MHTC, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

- I, the Affiant, am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 through 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the state of Missouri.

- I, the Affiant, acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

Subscribed and sworn to before me in _____, _____, the day and year first above-
written. state

Affiant Signature

Notary Public

My commission expires:

[attach documentation of enrollment/participation in a federal work authorization program]

APPLICANT AFFIDAVIT FOR SOLE-PROPRIETORSHIP OR PARTNERSHIP

STATE OF _____)
) ss
COUNTY OF _____)

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