

CCO Form: DE06  
Approved: 02/14 (AR)  
Revised:  
Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
ELECTRONIC SIGNATURE AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter "Commission") and the \_\_\_\_\_ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the Contractor intends to participate in the Commission's monthly letting of roadway construction and maintenance projects; and

WHEREAS, the Commission and Contractor (collectively hereinafter referred to as "Parties") utilize Bid Express Services (hereinafter, "Bid Express") provided by the third party service provider Info Tech Inc. (hereinafter, "Info Tech"), which allows the Parties access to one or more Bid Express Web Sites through which the Contractor submits its bids in response to the Commission's solicitation for bids on its projects; and

WHEREAS, Bid Express, through its Contract Signing Service component, provides the ability for the Commission and the Contractor to transact agreements electronically, including but not limited to, signing the construction contract documents and exchanging various communications electronically, by allowing the Commission and the Contractor to electronically transmit and/or receive executory contract documents and to electronically sign those documents with Info Tech Digital ID technology (hereinafter, "Contract Signing Service"); and

WHEREAS, the Contractor desires to utilize the Contract Signing Service of Bid Express to electronically transmit and execute contract documentation upon being awarded the contract for the construction of Commission projects.

NOW, THEREFORE, in consideration of these mutual covenants, the parties agree as follows:

(1) AGREEMENT TO CONTRACT ELECTRONICALLY: By agreeing to contract with the Commission electronically, the Contractor specifically consents and agrees that the Commission may provide all disclosures, agreements, contracts, notices, change orders, modifications, amendments, supplements, and all other evidence of the transaction between the Commission and the Contractor electronically (hereinafter all such documentation is referred to as "electronic record(s)").

(2) RIGHT TO WITHDRAW CONSENT: The Contractor has a right to withdraw its consent and revoke its agreement to contract with the Commission and receive and send electronic records electronically. To withdraw its consent and agreement to contract and receive and send electronic records electronically, the Contractor shall give the Commission 30 day written notice, as set forth in this Agreement.

(3) TERMS OF AGREEMENT: The Parties agreement is governed by the following provisions:

(A) Contractor's Use of Contract Signing Service: The Contractor's use of the Bid Express Services, including its Contract Signing Service component, is governed by the "Info Tech Bid Express Services Subscriber Agreement", as it may be amended, between Info Tech and the Contractor (hereinafter, "Subscriber Agreement"). Upon using the Contract Signing Service component of Bid Express provided by Info Tech, pursuant to the Subscriber Agreement between the Contractor and Info Tech, the Contractor agrees to the terms and conditions set forth in this Electronic Signature Agreement and any instructional material provided to the Contractor either by the Commission or InfoTech regarding the Contract Signing Service.

(B) Commission's Use of Contract Signing Service: The Commission's use of the Bid Express Services, including its Contract Signing Service component, is governed by the "Bid Express Service and License Agreement", as it may be amended, between Info Tech and the Commission (hereinafter, "License Agreement"). Upon using the Contract Signing Service component of Bid Express provided by Info Tech, pursuant to the License Agreement between the Commission and Info Tech, the Commission agrees to the terms and conditions set forth in this Electronic Signature Agreement regarding the Contract Signing Service.

(C) Assumption of Risk: The Contractor acknowledges that transactions through Bid Express are conducted over the Internet, which is inherently not a secure means of giving instructions and transaction requests and that the Contractor is aware of the inherent risks involved, including those arising out of such transmission.

(D) Communications in-Writing: All Communications in electronic format from the Commission to the Contractor through Bid Express and its Contract Signing Service component will be considered "in-writing." The Contractor shall print or download for the Contractor's records a copy of any communication that is important to the Contractor to retain.

(E) Binding Agreement: The terms and conditions set out in this Agreement are a binding contract between Contractor and Commission for each Party's use of the Contract Signing Service component of Bid Express, provided to each Party by Info Tech through the separate agreement between Info Tech and each Party referenced herein.

(4) ELECTRONIC TRANSACTION PROCEDURES: The Parties agree to the following procedural requirements:

(A) Info Tech Digital ID: Each Party's use of Bid Express and its Contract Signing Service component is made by the use of Info Tech Digital ID technology as the means of establishing each Party's identity and acceptance of the electronic communications, which is acceptable to both Parties. For a user authorized by the Commission and Contractor to access the Bid Express services, the user must submit to Info Tech a completed and notarized application for an Info Tech Digital ID, upon receipt of which Info Tech validates and enables the Info Tech Digital ID for the user. The Contractor shall comply with the Info Tech Digital ID Policy available from Info Tech.

(B) System Storage Requirements: The Contractor agrees that the systems through which its users access Bid Express and its Contract Signing Service component meet the minimum requirements to access Bid Express, view, receive, retrieve, download, print, store, send and transmit all documents, including but not limited to contracts and any and all other communications with the Commission through the Bid Express web site(s). Subsequent to receiving notification through Bid Express that the contract is fully executed by all parties, the Contractor may download a copy of the electronically signed contract from the Bid Express web site within 30 days from notification of contract execution. In the event the Contractor fails to download the electronically executed contract from the Bid Express website within 30 days, the Contractor may request and obtain an electronic copy of the contract by contacting the Commission.

(C) Bid Express Web-based Application Characteristics: The Contractor agrees that the appearance and operation of the web screens and outputs therefrom may differ based on the nature of the software used by the Contractor to browse the Bid Express website.

(D) Electronic Signature by Authorized Person / User: The Contractor hereby acknowledges that each of its users who possess a validated and enabled Info Tech Digital ID that enables the user to create the user-specific electronic signature to place on each contract document transmitted and received via the Contract Signing Service component of Bid Express, has authority to sign on behalf of the Contractor binding the Contractor to the electronically signed document. In the event the Contractor adds or deletes authorized users to its Bid Express account, it is the responsibility of the Contractor to promptly notify Info Tech of such changes.

(E) Security & Confidentiality of the Information: The Contractor agrees to abide by all the terms governing its use of Bid Express and its Contract Signing Service component, provided for in its Subscriber Agreement, Info Tech Digital ID Agreement and all other policies, procedures, manuals, directives, instructions or other communications published by Info Tech or the Commission. It shall be the sole

responsibility of the Contractor to ensure its users' adequate protection, confidentiality and secrecy of the Info Tech Digital IDs, and any other user ID and/or Password combinations that may be required for users accessing the Bid Express services and any disclosure thereof to any other person or communication thereof through unsecure medium, such as traditional electronic mail, shall be entirely at the Contractor's risk. The Commission in such cases will not accept any responsibility or liability for any loss, damage or harm caused by the violation of this provision.

(5) DISCLAIMERS: Neither the Commission, nor the service provider InfoTech, shall be liable for any unauthorized usage of the PIN /Password and Info Tech Digital ID, and the Contractor hereby fully indemnifies and holds the Commission and its members, employees, officers, successors, assigns, agents, representatives and InfoTech harmless against any action, suit, proceedings, initiated against it for any loss, cost or damage incurred by it as a result thereof.

(6) LIMITATION OF LIABILITY: Without prejudice to any other provisions of this Agreement, the Commission and its service provider InfoTech shall not be liable for any loss or damage whatsoever caused, arising directly or indirectly, in connection with the services and /or this Agreement, including without limitation any: (A) Loss of data; and (B) Interruption or stoppages to the Contractor's access to Bid Express and its Contract Signing Service and/or processing of electronic transactions due to any operational or technical difficulties/reason beyond the control of the Commission or its service provider InfoTech for any other reason. The Commission, along with its members, employees, agents, executors, successors and assigns shall not be liable for any damages or claims or injuries arising out of or in connection with the use of Bid Express and its Contract Signing Service component or its non-use including non-availability or failure of performance, loss or corruption of data, loss of or damage to property (including profit and goodwill), work stoppage, computer failure or malfunctioning or interruption of business, error, omission, deletion, defect, delay in operation or transmission, communication line failure or for any failure to act upon electronic transaction for any cause.

(7) CONTRACTOR COVENANTS: The Contractor hereby agrees that its use of Bid Express and its Contract Signing Service component as provided for herein will be deemed acceptance of the terms and conditions governing such use as posted on the Bid Express website and the Contractor will unequivocally be bound by such terms and conditions.

(A) Authority to Respond: The Contractor agrees and authorizes the Commission to respond to and act upon any and all transactions initiated and transmitted by the Contractor electronically through Bid Express and its Contract Signing Service component. Any transaction initiated and transmitted by the Contractor to the Commission through Bid Express and its Contract Signing Service component shall be deemed to have been authorized by the Contractor, and the Commission shall be entitled to assume that the said transactions are so authorized by the Contractor and shall be protected upon acting thereon. If any unauthorized person gains access to Bid

Express and its Contract Signing Service component by using the Contractor's Info Tech Digital ID, the Contractor agrees to at all times to indemnify the Commission, its officers, employees, representative, agents, successors and assigns from and against all actions, proceedings, claims and demands whatsoever for or on account of or in relation to any unauthorized use of Bid Express and its Contract Signing Service component and from and against all damages, costs, charges and expenses in respect thereof.

(B) Unauthorized Use: The Contractor shall be fully liable to the Commission for every transaction entered into using a valid Info Tech Digital ID issued to the Contractor users through the Bid Express website(s), with or without the knowledge of the Contractor. In no event will the Commission be liable to the Contractor for any special, direct, indirect, consequential or incidental loss or damages even if the Contractor has advised the Commission or InfoTech of such possibility. The Commission shall not be liable for any misuse, if any, of any data placed on the internet by third parties "hacking" or accessing the application and hosting server without authorization.

(C) Proof of Transaction: The Contractor shall take responsibility for all the transactions with the Commission conducted electronically through Bid Express and will abide by the record of the transactions generated by Info Tech or the Commission through Bid Express. Further such record of transactions shall be conclusive proof and binding for all purposes and may be used as conclusive evidence in any proceedings. All records of the Commission and InfoTech, whether in electronic form, magnetic medium, documents or any other form, with respect to electronic transactions sent or received through use of Bid Express shall be conclusive evidence of such transactions and shall be binding on the Contractor.

(8) CONTINUING DURATION: The term of this Agreement will be of a continuing duration until terminated pursuant to the terms of this Agreement.

(9) TERMINATION: The Contractor may terminate this Agreement with 30 days written notice to the Commission as provided for in this Agreement. The Commission is authorized to terminate the Contractor's ability to use Bid Express and its Contract Signing Service component without prior notice on the occurrence of any event, which in the sole discretion of the Commission, may have a material or adverse impact on the Commission's activities, including but not limited to:

1. Non-compliance of the terms and conditions set out herein;
2. Death, insolvency, bankruptcy or liquidation of the Contractor;
3. Any other cause arising out of operation of law; or
4. Such other reason(s) as the Commission may in its sole and absolute discretion deem proper.

(10) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after

delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_

Facsimile No: \_\_\_\_\_

(B) To the Commission:  
Missouri Highways and Transportation Commission  
State Design Engineer  
Attention: Bidding and Contract Services  
105 West Capitol Avenue, P. O. Box 270  
Jefferson City, MO 65102

Facsimile No: (573) 526-3261

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(11) INDEMNITY: The Contractor shall indemnify and save harmless the Commission, its members, employees, officers, successors, assigns, agents and representatives against any and all claims, losses, damages, costs, liabilities and expense actually incurred, suffered or paid by the Commission, its members, employees, officers, successors, assigns, agents and representatives, directly or indirectly, and also against all demands, actions, suits, proceedings made, filed, instituted against the Commission, its members, employees, officers, successors, agents and representatives in connection with, or arising out of, or relating to the Commission accepting and acting or not accepting and not acting for any reason whatsoever pursuant to, in accordance with or relying upon, data received, through Bid Express and its Contract Signing Service component from the Contractor or authorized representative of the Contractor or any unauthorized use of the Contractor's Info Tech Digital ID. The Commission reserves the right to discontinue its use of Bid Express and its Contract Signing Service component at any time, with notice to the Contractor.

(12) SEVERABILITY: If any clause or provision of this 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.

(13) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Contractor.

(14) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed

according to the laws of the State of Missouri. The Contractor shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(15) INTEGRATION: This Agreement is the final, complete and exclusive statement and expression of the Agreement among the parties hereto with relation to the subject matter of this Agreement, it being agreed and understood that there are no oral representations, understanding, or agreements covering the same subject matter of this Agreement. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind.

(16) CONTRACT LANGUAGE: The language of this Agreement reflects negotiations between the Commission and the Contractor, each of which have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Agreement, general rules construing ambiguities against the drafter shall not apply. It is agreed that more than one copy of this document may be executed and that the original filed with the Secretary to the Missouri Highways and Transportation Commission shall be deemed to be the controlling original.

(17) WAIVER OF BREACH: No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Contractor, the Commission may nevertheless accept from the Contractor and/or act upon any electronic transaction initiated by the Contractor pursuant to this Agreement without in any way waiving the breach by the Contractor which was in existence at the time when such electronic transaction was accepted and/or acted upon by the MTFC.

(18) COMMISSION REPRESENTATIVE: The Commission's State Design Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(19) CONTRACTOR'S REPRESENTATIVE: The Contractor's \_\_\_\_\_ is designated as the Contractor's representative for the purpose of administering the provisions of this Agreement. The Contractor's representative may designate by written notice other persons having the authority to act on behalf of the Contractor in furtherance of the performance of this Agreement.

(20) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(21) AMENDMENTS: Any change in this Agreement, whether by modification

or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Contractor and the Commission.

(22) ASSIGNMENT: The Contractor shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(23) SUCCESSORS AND ASSIGNS: The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through or for the parties agreeing hereto.

(24) 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.

(25) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(26) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

*[Remainder of Page Intentionally Left Blank. Signatures Appear on Following Page.]*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the Contractor this \_\_\_\_ day of \_\_\_\_\_, 2014.

Executed by the Commission this \_\_\_\_ day of \_\_\_\_\_, 2014.

**MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

**[INSERT CONTRACTOR NAME HERE]**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ATTEST: (Commission seal)

By \_\_\_\_\_

\_\_\_\_\_  
Secretary to the Commission

Title \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_

\_\_\_\_\_  
Commission Counsel

Title \_\_\_\_\_

ATTEST: (Contractor seal, if existing)

By \_\_\_\_\_

Title \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_

Title \_\_\_\_\_