

**ORIGINAL**

STATE OF ILLINOIS,  
ILLINOIS DEPARTMENT OF  
TRANSPORTATION

Petitioner,  
v.

THE TERMINAL RAILROAD ASSOCIATION  
OF ST. LOUIS (TRRA)

Respondent.

Petition for an Order granting authority to construct  
two grade separation structures carrying  
Relocated Interstate Route 70 (FAP Route 999)  
over and across TRRA's property, including  
TRRA's Wiggin's #2 yard tracks at Railroad Mile  
Post 1.9 Wiggins Main, near the Village of  
Brooklyn in St. Clair County, Illinois

Docket No. T09-0074

**RECEIVED**

JUL 9 2009

Illinois Commerce Commission  
RAIL SAFETY SECTION

**IDOT'S RESPONSE AND OBJECTIONS TO TRRA'S MOTION FOR  
MORE DEFINITE STATEMENT, OR, IN THE ALTERNATIVE,  
FOR AN EXTENSION OF TIME TO RESPOND TO PETITION**

TRRA's motion seeks a more definite statement or, alternatively, an extension of time to respond to IDOT's petition. IDOT objects to the motion, submits hereinafter its response to the motion, and requests that a hearing on its petition relating to the construction of the New Mississippi River Bridge (the "MRB Project" or the "Project") be scheduled for a date certain on or shortly after July 24, 2009.

Preliminary Statement

For approximately the past 17 months, IDOT and MoDOT (collectively "the DOTs") and TRRA have been actively engaged in planning and designing the MRB Project. The DOTs recognized at the outset that the railroads, in general, and TRRA, in particular, were a critical part of the Project. For that reason, the DOTs invited the

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Railroads, including TRRA, to meet early in the process for the purpose of introducing the MRB Project to the Railroads.

The MRB Project is an extremely high priority public works construction project. The Project is scheduled to advertise the Main Span of the bridge structure for bids in September 2009, award the construction contract(s) in October 2009 and commence construction in January 2010. All required construction permits from the Coast Guard, IEPA, DNR, FAA, Army Corps of Engineers and others are proceeding under this schedule. The DOTs have committed to the public that construction of this Project would commence in January 2010, and the DOTs are committed to keeping this Project of national significance on schedule and to make the best use of federally awarded funds.

Most of the Project's design plans involving TRRA's property have been reviewed and approved by TRRA. Neither a more definite statement nor an extension of time (as requested by TRRA) is warranted, and IDOT requests that TRRA's motion be denied and that a hearing be scheduled for a date certain on IDOT's petition. IDOT has committed to TRRA that it would agree to a fourteen day extension of time given the parties were able to meet on July 7, 2009 in an effort to resolve the remaining issues. Therefore, IDOT would request said hearing be rescheduled on or shortly after July 24, 2009.

In further support of its Response, IDOT herein below sets forth the highlights of discussions, negotiations and agreements between and amongst the DOTs and TRRA over the past 17 months.

#### The Mississippi River Bridge Project

1. TRRA's railroad property is situated adjacent to and along the Illinois side of the Mississippi River. The Illinois mainline approach to the new bridge will be constructed as an elevated roadway (I-70) that spans over and across portions of TRRA's property. The location of pier structures needed to support the elevated highway has been reviewed and approved by TRRA seeking to minimize any impact to TRRA's railroad operations, both now and in the future.

2. In March 2008, the DOTs began negotiating with TRRA and other railroad companies affected by the Project. In May 2008, TRRA executed a preliminary engineering agreement with IDOT, under which agreement IDOT has now reimbursed TRRA approximately \$45,000 for preliminary engineering services relating to reviewing and commenting on design plans and drawings. The preliminary engineering agreement is attached hereto and incorporated herein as Petitioner's Exhibit 1.

3. From and after March 2008, the DOTs have a) provided TRRA with pier and access road design locations, b) requested and received comments from TRRA and other railroads, and c) incorporated comments and changes into the Project plans that have ultimately been approved by TRRA.

4. Notwithstanding TRRA's assertion in its Motion that it believes the Project as described in its petition does not reflect previously provided information and location, the record of written approval and concurrences by TRRA indicates that the belief is not warranted. For instance, TRRA has given written approval and/or concurrence to the following items included in the petition:

- a. approved the pier locations via TRRA's letter dated December 22, 2008, a copy of which letter is attached hereto and incorporated herein as Petitioner's Exhibit 2;

- b. approved the provided vertical clearance, which is excess of the ICC requirement of 23', via TRRA's letter dated February 13, 2009, a copy of which letter is attached hereto and incorporated herein as Petitioner's Exhibit 3; and
- c. provided the location of the access roads based on TRRA's letter dated February 13, 2009, Petitioner's Exhibit 3 which the DOTs then incorporated into the Project plans.

#### Easements For Pier and Access Road Locations

5. The Project design requires IDOT to acquire permanent and temporary easements from TRRA to construct piers needed to support the elevated I-70 over portions of TRRA's property. These easements include areas needed for access roads to construct, operate, maintain and inspect the elevated roadway and bridge piers supporting the elevated roadway.

6. Although the permanent highway easements transect portions of the railroad's property, TRRA's property remains essentially unified in use after the imposition of the easements. After imposition of the highway easements, TRRA will enjoy substantial use of the property below the elevated roadway for railroad purposes not inconsistent with IDOT's elevated highway use.

7. The DOTs' use of the easement areas will be consistent with the typical uses of similar and numerous other easements for elevated roadways (highway bridge structures) over railroad property in Illinois and other states. The easements required for access roads will be used by the DOTs to a) facilitate construction activities, b) allow contractor access to the work area, and c) gain access approximately once or twice per year to inspect and/or maintain the bridge piers and structure.

8. In a March 26, 2008 meeting with all the railroads, including TRRA, the DOTs advised TRRA that permanent easements for access, inspection and maintenance of the bridge would be required for the Project. At that same meeting and at the railroads' request, the DOTs agreed to provide locked gates to restrict unauthorized access to the access roads. The minutes from this meeting are attached hereto and incorporated herein as Petitioner's Exhibit 4.

9. The permanent easements for the access roads include a provision whereby IDOT acknowledges a possible anticipated railroad yard expansion of the TRRA property and indicates the access roads were located to minimize potential future conflicts. These provisions were added based on the location provided by TRRA for the access roads in its letter dated February 13, 2009, Exhibit 3. In addition, IDOT commits to relocating the access roads should this be required by TRRA's future expansion and has included such commitment in the proposed permanent easement sent to TRRA.

10. Based on TRRA's recommendations since March 2008, and the design and construction plan approvals and/or concurrences given by TRRA to the DOTs, IDOT planned and located the access roadway easements to minimize potential conflicts with the possible future expansion of TRRA's property.

#### Schedule

11. In September 2008, MoDOT, as lead agency for the Project, advised all railroads affected by the Main Span and the Illinois approach structures that construction was scheduled to begin in 2010 and that access roads were included for future bridge maintenance and inspection. The meeting minutes from this meeting are attached hereto and incorporated herein as Petitioner's Exhibit 5.

### Land Acquisition

12. On June 9, 2009, IDOT made an offer to TRRA to acquire the permanent and temporary easements needed for the Project. IDOT is currently negotiating with TRRA to acquire those easements, and will be filing, if unable to acquire by negotiation, a supplemental proceeding in this docket seeking approval to acquire these property interests from TRRA by using its powers of eminent domain.

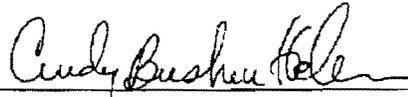
### Conclusion

13. TRRA has been provided engineering plans and drawings for the Project starting in March of 2008. Updated planning documents have been continuously provided to TRRA by the DOTs. For instance, TRRA gave written approval and/or concurrence to the vertical clearance and location of the access roads, along with other requested changes in its letter dated February 13, 2009, Exhibit 3. The DOTs submitted revised TS&Ls to TRRA via email on March 13, 2009 reflecting the majority of TRRA's requested changes. The DOTs were unable to agree to TRRA's requested changes regarding fencing and lighting.

14. The DOTs have diligently sought to conclude the execution of a construction agreement with TRRA, but has been unable to do so at this time. At the initial meeting with TRRA in March 2008, the DOTs laid out the MRB Project and schedule, requested the railroads' cooperation to keep the Project on track and on schedule and stated that if an impasse is reached or the schedule is compromised, the ICC may be the best solution for both the railroads and the DOTs. To meet the current schedule for this high-priority project, and for the public to enjoy, as soon as possible, the significant and substantial economic and other public benefits flowing from this

construction Project, it has become necessary for IDOT to file its petition with the Illinois Commerce Commission seeking appropriate relief. The filing of a more definitive statement will not advance the timely resolution of this matter or provide TRRA with more information than it has currently. IDOT would request a hearing on this matter to avoid any delay on this high priority project. For these reasons, IDOT respectfully requests that TRRA's motion be denied, and that this cause be set for a hearing on IDOT's petition on or shortly after July 24, 2009.

Respectfully submitted,  
ILLINOIS DEPARTMENT OF  
TRANSPORTATION

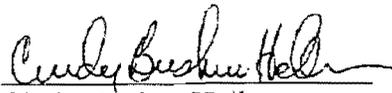


Cindy Bushur-Hallam  
Special Assistant Attorney General

Dated: July 9, 2009  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, IL 62764  
Telephone (217) 782-3215

#### Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.



Cindy Bushur-Hallam  
Special Assistant Attorney General

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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ILLINOIS DEPARTMENT OF TRANSPORTATION )

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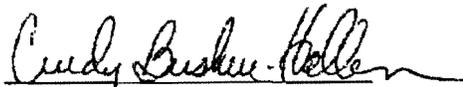
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Petition for an Order granting authority to )  
Construct two grade separation structures )  
carrying relocated Interstate Route 70 )  
(FAP Route 999) over and across TRRA's )  
property, including TRRA's Wiggin's #2 yard )  
tracks at Railroad Mile Post 1.9 Wiggins Main, )  
Near the Village of Brooklyn in St. Clair )  
County, Illinois )

NOTICE OF FILING

To: See Attached Service List

Please take notice that on this 9th day of July, 2009 I have filed with the Chief Clerk of the Illinois Commerce Commission the attached IDOT's Response and Objections to TRRA's Motion for More Definite Statement, or In the Alternative, For an Extension of Time to Respond to Petition in the above entitled matter with the Illinois Commerce Commission, copies of which are hereby served upon you.



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2300 South Dirksen Parkway  
Springfield, IL 62764  
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E-mail: Cindy.Bushur-Hallam@illinois.gov

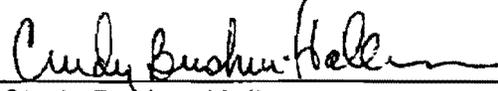
TRANSPORTATION DIV

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ILLINOIS COMMERCE

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Filing, together with the IDOT's Response and Objections to TRRA's Motion for More Definite Statement, or In the Alternative, For an Extension of Time to Respond to Petition were served upon the parties on the attached service list by E-Mail on the 9<sup>th</sup> day of July, 2009.



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**Docket No. 09-0074**  
**Service List**

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Director of Highways  
Illinois Department of Transportation  
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Illinois Commerce Commission Staff  
Dean W. Jackson, Administrative Law Judge  
John R. Saladino, Case Staff  
John J. Blair, Case Staff



# Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

May 21, 2008

SUBJECT: PRELIMINARY ENGINEERING  
New Mississippi River Bridge Project  
FAP 999 & 998 (Relocated I-70)  
St. Clair County  
East St. Louis, Illinois

Dist. 8 RR 2008-1  
Job No. C-98-097-08  
Agrmt. No. RR-808-003

Mr. Rick McQueen  
Director of Engineering Services  
Terminal Railroad Association of St. Louis  
1000 St. Louis Union Station, Suite 200  
St. Louis, MO 63103

Dear Mr. McQueen:

Enclosed for your company's file and future use is one fully-executed agreement for engineering services performed by the Terminal Railroad Association of St. Louis.

As indicated in Ms. Lamie's March 28, 2008 letter, costs incurred by your company from March 26, 2008 forward will be eligible for reimbursement in accordance with federal regulations.

Thank you for your cooperation and understanding in the processing of this agreement.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Cheryl Cathey'.

Cheryl Cathey, P.E.  
Chief of Preliminary Engineering

Enclosure

s:\gen\wpdocs\letters\207258.doc\JRM

cc: Mary C. Lamie (R-5) – Attn: Jeffrey L. Keirn (D-8) w/copy of agreement  
Attn: Brooks Brestall (D-8) w/copy of agreement

Mike Stead, ICC  
Design & Environment File  
Unit File

THIS AGREEMENT made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, hereinafter referred to as the "COMPANY",

WITNESSETH:

WHEREAS, in the interest of public safety and convenience, the State desires to construct highway railroad grade separations by constructing Relocated I-70 over the COMPANY'S track(s) and right of way in a manner substantially as shown on the print(s) of the general drawing(s) marked Exhibit(s) A, attached hereto and made a part hereof (hereinafter "Project"); and

WHEREAS, said proposed roadway improvements shall be constructed on FAP 999 and 998, (marked I-70), in St. Clair County; and

WHEREAS, said proposed structures shall be known as 082-0348 (I-70 Main Span Approach), 082-0318 (EB I-70) and 082-0319 (WB I-70); and

WHEREAS, the STATE is in the preliminary stages of plan preparation and is requesting the COMPANY to attend coordination meetings, review and approve the STATE'S pier locations and contractor access locations, review and approve the STATE'S TS&Ls and final bridge plans, expedite the COMPANY'S review time for the above to meet the accelerated project schedule and provide construction engineering services in accordance herewith; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1. The "State Required Ethical Standards Governing Contract Procurement", attached hereto as Attachment A, is hereby made a part hereof.

SECTION 2. The parties hereto shall perform the following items of work:

- (I) WORK BY THE STATE. The STATE shall furnish or cause to be furnished by contract or intergovernmental agreement, at its expense, all the labor, materials and work equipment required to perform and complete:
  - (a) The preliminary engineering required for preparation of plans, specifications and special provisions.
  - (b) Incidental work necessary to complete the item(s) hereinabove specified.
  
- (II) WORK BY THE COMPANY. The COMPANY shall furnish or cause to be furnished, at the expense of the STATE, and in accordance with the stipulations as contained in the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, (23 CFR 140I) and supplements, all the labor, materials and work equipment required to perform and complete:
  - (a) Preliminary engineering, railroad plan and specification preparation and survey work based upon plans for the proposed highway and bridge structures.
  - (b) Construction engineering in the event fund balances remain obligated to this AGREEMENT and the STATE pursues construction of the Project.
  - (c) Incidental work necessary to complete the item(s) hereinabove specified.

The estimated cost of COMPANY'S work set forth above is \$50,000. Reimbursement for this work will be on the basis of Actual Cost.

In the event the STATE requires access to the COMPANY'S property to perform any of the preliminary engineering work required by the STATE hereunder, such access shall be after due notice in accordance with the Illinois Highway Code. Further, the STATE acknowledges and agrees that the COMPANY makes no warranty as to the accuracy of any surveys, documents, plans, specifications, schematics, diagrams or any other documents delivered by the COMPANY to the STATE relating in any way to the COMPANY'S property or the

improvements or fixtures thereon. It is expressly understood that, subject to the requirements described in the first sentence of this paragraph, the STATE shall have the obligation to independently verify the accuracy of any documents proffered by the COMPANY and the actual conditions of such property as necessary for the performance of its work hereunder.

SECTION 3. The COMPANY shall keep an accurate and detailed account of the actual cost and expense as incurred by it, or for its account, in the performance of the work it herein agrees to perform.

The COMPANY, for performance of its work as outlined in Section 2 hereof, may bill the STATE monthly for the costs and expenses incurred by delivering statements of the actual costs and expenses on the basis of an estimated percentage of the work completed, as determined by the COMPANY.

The COMPANY shall render to the STATE detailed statements of the actual cost and expense as incurred by it or for its account. After the STATE'S representatives have checked the statements and they have agreed with the COMPANY'S representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY based on said statements.

The COMPANY shall maintain, for a minimum of three (3) years after the final payment has been made by the STATE under this AGREEMENT, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the AGREEMENT; the AGREEMENT and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other STATE auditors; and, the COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the AGREEMENT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

After the federal or STATE representatives have audited the expenses as incurred by the COMPANY, including such amounts as may have been suspended from any previous payment, the STATE shall promptly reimburse the COMPANY for the suspended amounts, less the deduction of any item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement. If the total of the item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement exceeds any amounts which may have been suspended, then the COMPANY shall promptly reimburse the STATE for the overpayment.

SECTION 4. The work to be performed by the COMPANY hereunder shall be subject to all appropriate federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment.

Nothing herein shall be deemed to grant the STATE a property right in and to the COMPANY's property beyond any statutory authority granted to the STATE related to entry after notice the COMPANY. In the event the STATE proceeds to construct the Project, such construction shall be performed in accordance with construction and maintenance agreements with the COMPANY as approved or as otherwise ordered by the Illinois Commerce Commission and such easement or right-of-way agreements entered into between the parties or acquired through eminent domain proceedings.

SECTION 5. The COMPANY and its subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The COMPANY shall carry out applicable requirements of 49 CFR part 26 in the award and administration of STATE-assisted contracts. Failure by the COMPANY to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the State deems appropriate.

SECTION 6. In the event that delays or difficulties arise in securing federal approval, or in acquiring rights of way, or in settling damages or damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the design of the

project, then at any time the STATE may serve formal notice of cancellation upon the COMPANY and this AGREEMENT shall thereupon become null and void, except the STATE shall reimburse the COMPANY for all costs incurred by the COMPANY prior to notice of cancellation.

SECTION 7. At the time this AGREEMENT was executed, there were funds available for the AGREEMENT; however, obligations extending beyond the fiscal year assumed by the STATE under this AGREEMENT shall cease immediately, without penalty or payment, should the Illinois General Assembly or the federal Highway Administration fail to appropriate or otherwise make available funds for the PROJECT.

SECTION 8. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 43-6003713 and the COMPANY is doing business as a corporation.

SECTION 9. The COMPANY was hereby requested by the STATE, to perform preliminary engineering for the project, and authorized to accrue preliminary engineering costs, by letter dated March 28, 2008 and such costs are subject to this agreement.

SECTION 10. This AGREEMENT shall be binding upon the parties hereto, their successors or assigns.

SECTION 11. Any notice, demand or request which may be permitted, required or desired to be given in connection therewith shall be given in writing and directed to STATE and COMPANY as follows:

**The STATE:**

Mary Lamie, P.E.  
Deputy Director of Highways, Region Five Engineer  
Illinois Department of Transportation  
1102 Eastport Plaza Drive  
Collinsville, IL 62234

**The COMPANY:**

Rick McQueen  
Terminal Railroad Association of St. Louis  
1000 Union Station, Suite 200  
St. Louis, MO 63101

**With a copy to:**

Bruce E. Lowry, Jr.  
Bryan Cave LLP  
211 N. Broadway, Suite 3600  
St Louis, MO 63102-2750  
Fax: (314) 552-8530

Notices shall be either (i) personally delivered (including delivery by Federal Express or other courier service) to the addresses set forth above (or such other person or address which the STATE or the COMPANY shall designate upon notice as herein provided), in which case they shall be deemed delivered on the date of delivery to said addresses; or (ii) by facsimile, in which case they shall be deemed delivered on the date sent; provided a copy of said facsimile transmission and confirmation are delivered by (i) above.

SECTION 12. This AGREEMENT shall be construed and interpreted according to the laws of the State of Illinois.

SECTION 13. Time is of the essence with respect to each and every provision of this AGREEMENT.

SECTION 14. If any date for the occurrence of an event or act under this AGREEMENT falls on a Saturday or Sunday or legal holiday in the State of Illinois, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

SECTION 15. This AGREEMENT, together with all the Exhibits, if any, attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties.

SECTION 16. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this AGREEMENT or any provision hereof. If any party to this AGREEMENT is made up of more than one person, then all such persons shall be included jointly and severally, even though the

defined term for such party is used in the singular in this AGREEMENT. This AGREEMENT shall be construed without regard to any presumption or other rule requiring construction against the party causing this AGREEMENT to be drafted. If any words or phrases in this AGREEMENT shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this AGREEMENT shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this AGREEMENT and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

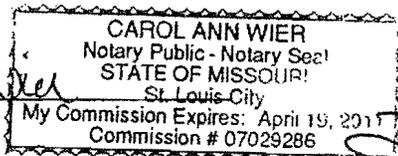
IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officials as of the dates below indicated.

Executed by the COMPANY, this 8th  
day of May, 2008.

TERMINAL RAILROAD  
ASSOCIATION OF ST. LOUIS

Attest:

Carol Ann Wier



By:

C. R. McQueen, Jr.

Director Eng. Services & Admin.

Executed by the STATE, this 19th  
day of May, 2008.

STATE OF ILLINOIS, acting by and  
through its Department of Transportation

By:

Milton R. Sees

Milton R. Sees, P.E.  
Secretary of Transportation

By:

Christine M. Reed

Christine M. Reed, P.E.  
Director - Division of Highways  
Chief Engineer

## ATTACHMENT A

### STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCUREMENT

The certifications hereinafter made by the COMPANY are each a material representation of fact. The STATE may terminate the agreement if it is later determined that the COMPANY rendered a false or erroneous certification.

**Bribery.** Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the COMPANY that it is not barred from being awarded a contract or subcontract under this Section. A COMPANY who makes a false statement, material to the certification, commits a Class 3 felony. The COMPANY certifies that it is not barred from being awarded a contract under Section 50-5.

**Educational Loan.** The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or services if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying that the individual is not in default on an educational loan as provided in this Section.

**Bid Rigging/Bid Rotating.** Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the COMPANY that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Code. The state and units of local government shall provide appropriate forms for such certification.

A COMPANY that makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person

convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

The COMPANY certifies that it is not barred from contracting with the Department by reason of a violation of either Section 33E-3 or Section 33E-4.

**International Anti-Boycott.** Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the COMPANY agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act. The COMPANY makes the certification set forth in Section 5 of the Act.

**Delinquent Payment.** The COMPANY certifies that it, or any affiliate, is not barred from being awarded a contract under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a person from entering into a contract with a State agency if it, or any affiliate, has failed to collect and remit Illinois Use tax on all sales of tangible property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. The COMPANY further acknowledges that the contracting State agency may declare the contract void if this certification is false or if the COMPANY, or any affiliate, is determined to be delinquent in the payment of any debt to the State during the term of the contract.

**Felony Convictions.** The COMPANY certifies in accordance with 30 ILCS 500/50-10.5 that no officer, director, partner or other managerial agent of the contracting business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or of a Class 3 or Class 2 felony under the Illinois Security Law of 1953 for a period of five years prior to the date of the AGREEMENT. The COMPANY acknowledges that the DEPARTMENT shall declare the contract void if this certification is false.

**Environmental Protection Act.** The COMPANY certifies in accordance with 30ILCS 500/50-12 that the COMPANY is not barred from being awarded a contract under this Section. The COMPANY acknowledges that the DEPARTMENT may declare the contract void if this certification is false.

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