

ORIGINAL

FAP 310 (IL 255)
Section 60-15-2
Madison County
Job No. C-98-159-01
Contract No. 76624

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 THE KANSAS CITY SOUTHERN RAILWAY COMPANY, hereinafter referred to as the "COMPANY",

WITNESSETH:

THAT, WHEREAS, IL 111, known as Montclair Avenue as located and constructed in the city of Godfrey in Madison County, Illinois, there crosses at grade the single mainline track (s) of the COMPANY, and crossing thus formed (DOT/AAR No. 294 530B) is constructed of timber material and protected by automatic flashing light signals ; and

THAT, WHEREAS, the STATE proposes to widen IL 111 by adding a second lane in both directions from its intersection with US 67 easterly to its intersection with Humbert Road; and

WHEREAS, this improvement will involve modifications to the COMPANY'S facilities at its intersection with IL 111; and

WHEREAS, in the interest of public safety and convenience, the parties hereto desire, to complete this improvement and make the modifications and upgrades to the COMPANY'S facilities all as shown on the prints of the general drawings marked Exhibit A, attached hereto and made a part hereof; and

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

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**Illinois Commerce Commission
RAIL SAFETY SECTION**

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SECTION 1. If necessary, the parties will negotiate by separate agreement the terms of an appropriate easement from the COMPANY conveying to the STATE any property rights necessary to construct the improvement as herein proposed.

SECTION 2. The STATE shall secure or cause to be secured, without expense to the COMPANY, all the right of way required for or incident to the construction of the highway improvement.

SECTION 3. The preliminary and detailed plans, specifications and special provisions for the highway improvement shall be prepared by or for the STATE at its expense; and, all such plans, specifications and special provisions, affecting the interests of the COMPANY, shall be subject to approval by the COMPANY's authorized representative.

SECTION 4. The plans and estimates of cost for changes in the COMPANY's facilities and appurtenances on the COMPANY's right of way, as necessitated by the proposed improvement, shall be prepared by or on behalf of the COMPANY at the expense of the STATE; and, all such plans and estimates shall be subject to approval by an authorized representative of the STATE.

SECTION 5. No changes shall be made on any approved plans, specifications or special provisions by either party hereto without the consent in writing of the other party.

SECTION 6. The parties hereto shall construct or cause to be constructed, in substantial accordance with the approved plans, specifications and special provisions, the following items of work:

- (l) 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 1401) and supplements, all the labor, materials and work equipment required to perform and complete:
- (a) Engineering for this project has been accounted for by a previously executed AGREEMENT dated April 16, 2007. This will cover the preliminary engineering required for the review of plans, specifications and special provisions prepared by the STATE as set forth in Section 3 and required for the preparation of plans and estimates by the COMPANY as set forth in Section 4.
 - (b) The removal of the existing grade crossing proper.
 - (c) The raising of track to meet the proposed grade of the highway as shown on the plans approved by the COMPANY.
 - (d) The installation of an 97.5-foot prefabricated concrete crossing proper including the installation of new rail, ties, ballast, OTM, engineering filter fabric and drainage pipes to tie in with the STATE'S highway ditches.
 - (e) The installation of automatic flashing cantilevered signals with gates and new control circuitry in a new bungalow.
 - (f) The new crossing and signals will need to be staged with the proposed grading.
 - (g) Construction engineering and inspection as set forth in Section 9.
 - (h) Provide flagging services as set forth in Section 7 (approximately 80 days).
 - (i) Incidental work necessary to complete the items hereinabove specified.

The estimated cost of the COMPANY'S work set forth above is \$509,701.00 as shown on the estimate attached hereto and made a part hereof.

- (I) WORK BY THE STATE. The STATE shall furnish or cause to be furnished, 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 as set forth in Section 3.
 - (b) The removal of the existing two-lane pavement for IL 111, and replacing it with four-lane pavement with a raised median or a flush median and left-turn lane.
 - (c) In conjunction with pavement construction, the placement of concrete curb and gutter.
 - (d) Engineering and inspection as set forth in Section 9.
 - (e) Incidental work necessary to complete the items hereinabove specified.

The STATE'S work shall be awarded to a competent and experienced contractor(s) who has (have) adequate equipment, organization and finances, and the COMPANY shall be notified of the contractor(s) receiving such award for all work affecting the COMPANY'S interest.

Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, Section 140.922(b) (23 CFR 1401) requires that the STATE certify that the work at the job site is complete, acceptable and in accordance with the terms of this AGREEMENT. A representative of the STATE shall be present at the job site during construction to certify the work and to assure that all work and materials meet the requirements as set forth in the

STATE's "Standard Specifications for Road and Bridge Construction" and supplements thereto. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this AGREEMENT.

SECTION 7. The STATE shall require its contractor(s) to perform his/her (their) work in accordance with the "Standard Specifications for Road and Bridge Construction" adopted January 1, 2007, and the "Supplemental Specifications" in effect on the date of invitation for bids. A single Railroad Protective Liability Insurance policy, naming the COMPANY, shall be carried in limits of \$5,000,000 combined single limit per occurrence for bodily injury liability and property damage liability with an aggregate limit of \$10,000,000 over the life of the policy as set forth in Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart A (23 CFR 646A).

The COMPANY agrees to make all reasonable efforts to furnish, at the STATE'S sole expense, the services of flaggers. The COMPANY further agrees that should the COMPANY be unable to provide a flagger or flaggers when needed by the STATE'S contractor, the COMPANY shall provide other means of protecting its facilities. These alternate means shall be acceptable to the STATE. Nothing contained herein shall preclude or limit the COMPANY'S right to require or provide a railroad flagger when in the COMPANY'S sole judgment such railroad flagger is necessary. Said railroad flagger or alternate means shall be provided by the COMPANY at the STATE'S sole cost and expense. The total estimated cost for flagging services for this improvement is reflected in the COMPANY'S estimate attached hereto.

Flagging bills may be presented by the COMPANY to the STATE on a monthly basis with a final bill presented in a timely manner after completion of the project. The COMPANY will thereupon receive prompt payment from the contractor who will be reimbursed by the

STATE in accordance with the "Standard Specifications", supplements or revisions thereto and/or any applicable special provisions.

SECTION 8. Subsequent to the award of any contract(s), and before any work is started on this project, a conference shall be held between the representatives of the STATE, the COMPANY, and the interested contractor(s), at a time and place as designated by the STATE's representative, for the purpose of coordinating the work to be performed by the several parties, and at which time a schedule of operations will be adopted.

SECTION 9. Each party will provide the necessary engineering and inspection for carrying out its work as herein set forth, and the costs for such services shall be borne by the STATE. The costs as incurred by the COMPANY for inspecting the work performed by the STATE as may affect its properties and facilities, or the safety and continuity of train operations, shall be borne by the STATE.

SECTION 10. The STATE shall require its contractor(s), before entering upon the COMPANY's right of way for performance of any construction work, or work preparatory thereto, to notify the authorized representative of the COMPANY for the occupancy and use of the COMPANY's right of way outside the limits of the structure, and to comply with his recommendations relative to the requirements for railroad clearances, operation and general safety regulations.

SECTION 11. The safety and continuity of operation of the traffic of the COMPANY shall be at all times protected and safeguarded, and the STATE shall require its contractor(s) to perform the work accordingly. Whenever the work may affect the safety of trains, the method of doing such work shall first be submitted to the COMPANY's authorized representative for his approval without which it shall not be commenced or prosecuted. The

approval of the COMPANY's authorized representative shall not be considered as a release from responsibility, or liability for any damage which the COMPANY may suffer, or for which it may be held liable by the acts of the contractor(s), or those of their subcontractor(s), or their employees.

SECTION 12. If, in connection with the parties' performance under this AGREEMENT, any loss, damage, destruction, injury or death occurs to any person or property as a result of the negligent acts or negligent omissions of the COMPANY, the COMPANY agrees to indemnify and hold harmless the STATE from any and all liability of the STATE which may result from any such loss, damage, destruction, injury or death including all related costs and attorneys' fees and expenses. The COMPANY shall not be obligated to indemnify or hold harmless the STATE with respect to any loss, damage, destruction, injury or death occurring to any person or property as a result of the intentional or negligent acts or negligent omissions of any employee or agent of the STATE, including but not necessarily limited to the STATE's contractor.

The STATE will further incorporate, by special provision amending Article 107.11 of the Standard Specifications for Road and Bridge Construction, an indemnification provision running in favor of the COMPANY from the STATE's contractor in the following form:

To the fullest extent permitted by law, the contractor shall indemnify and hold harmless the COMPANY and its officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the work by the contractor on or about the COMPANY's property but only to the extent caused in whole or in part by negligent acts or omissions of the contractor and provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom. Moreover, provided that the contractor shall not be obligated to indemnify and hold harmless the COMPANY from liability or injury or

death or damages to the extent proximately caused by the negligence of any employee or agent of the COMPANY. The indemnification herein is not limited by the required minimum insurance coverage that is to be provided in accordance with the contract or by any limitation as to the amount or type of damages payable pursuant to law including but not limited to the Federal Employers Liability Act.

SECTION 13. The STATE shall require its contractor(s), upon the completion of the work of such contractor(s), to remove from within the limits of the COMPANY'S right of way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such contractor(s), and to leave the right of way upon which the said contractor(s) carried on operations in a neat condition, satisfactory to the authorized representative of the COMPANY. Neither the STATE nor its contractor(s) may use the COMPANY'S right-of-way for storage of machinery, equipment, surplus materials, falsework, rubbish or temporary buildings.

SECTION 14. When the construction of this improvement project is completed, the STATE shall maintain at its expense, or by AGREEMENT with others provide for the maintenance of, the highway and all drainage and highway facilities constructed under this improvement.

The COMPANY shall maintain at its expense, its tracks, grade crossing and if any, grade crossing warning devices installed under this improvement.

SECTION 15. 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 6 hereof, may bill the STATE monthly (in sets of four) for the costs and expenses incurred. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.

The COMPANY, upon the completion of its work, shall render to the STATE a detailed statement (in sets of four) of the actual cost and expense as incurred by it or for its account.

After the STATE's representatives have checked the progressive invoices and the final statement 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 for the amount of the final bill; however, all progressive bills and the final bill are subject to the provisions of Section 17 hereof.

The COMPANY shall maintain, for three years after the completion of its work, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract 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 reasonably with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials.

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 retained 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 retained amounts, then the COMPANY shall promptly reimburse the STATE for the overpayment.

SECTION 16. The COMPANY, subrecipient or subcontractor 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 DOT-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 deemed appropriate. The parties hereby incorporate the requirements of 41 CFR SS 60—1.4(a)(7), 60-250.5, 60-741.5, and 29 CFR Part 470, relating to equal employment opportunity, if applicable.

In the event any work is performed by other than COMPANY forces, the provisions of “an act regulating wages of laborers, mechanics and other workers employed in public works by the state, county, city or any public body or any political subdivision or by anyone under contract for public works” (Illinois Compiled Statutes, 820 ILCS 130/1) shall apply.

SECTION 17. The project herein contemplated 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.

SECTION 18. 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 construction of the project, then at any time before a construction contract is executed or actual construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this AGREEMENT shall thereupon become null and void.

SECTION 19. Obligations of the STATE under this AGREEMENT shall cease immediately without penalty or payment should the Illinois General Assembly or the federal funding source fail to appropriate or otherwise make available funds for the project. The STATE shall nevertheless be fully liable for the cost of work under this contract which was authorized and has been performed prior to such event, for the costs of materials ordered for the work under this contract prior to such event, and for the costs of completing after such event work begun before such event to the extent necessary to restore COMPANY'S affected property to safe and usable condition.

SECTION 20. Under penalties of perjury, the COMPANY certifies that its correct Federal Taxpayer Identification Number (TIN) is 44-6000758 and the COMPANY is doing business as a corporation.

SECTION 21. The "Illinois Procurement Code Ethical Standards" (Attachment A) attached hereto are hereby made a part of this AGREEMENT.

SECTION 22. This AGREEMENT shall be binding upon the parties hereto, their successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be
executed in duplicate counterparts, each of which shall be considered as an original, by their
duly authorized officials as of the dates below indicated.

Executed by the COMPANY, this 17

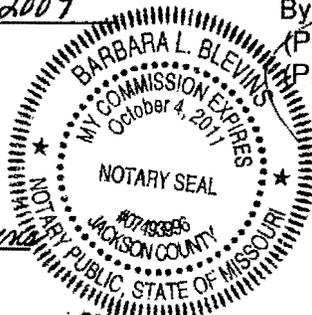
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY.

day of April, 2009

By: [Signature]
(Print Name) Trish Jacobsen
(Print Title) VICE PRES & CHIEF EXEC

Attest:

[Signature]
Barbara L. Blevins



Executed by the STATE, this 12th

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

day of MAY, 2009.

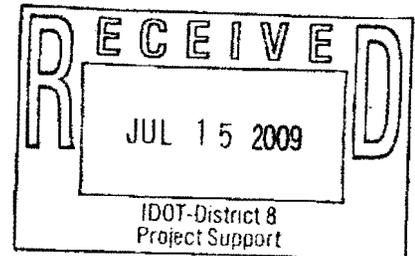
By: [Signature]
Gary Hannig
Acting Secretary

By: [Signature]
Ann L. Schneider
Director - Finance & Administration

By: [Signature]
Christine M. Reed, P.E.,
Director of Highways
Chief Engineer

By: [Signature]
Ellen J. Schanzle-Haskins
Chief Counsel

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**ESTIMATED COST FOR TRACK CONSTRUCTION
 (DOT ROUTE 111 UPGRADE & WIDENING, KCS MP. 28.93
 NEAR GODFREY, MADISON COUNTY, ILLINOIS)**

DESCRIPTION	UOM	ORIGINAL ESTIMATE - 03/06/06			REVISED ESTIMATE - 01/06/06		
		QTY	COST	TOTAL	QTY	COST	TOTAL
TRACK WORK LABOR							
1) Mobilization/Demobilization	LS	1	\$3,200.00	\$3,200			\$0
2) Construct Skeleton Trackage	TF	130.5	\$25.00	\$3,263			\$0
3) Place Ballast (17' depth)	TN	250	\$3.00	\$750			\$0
4) Surface, Line and Tamp	TF	650	\$8.00	\$5,200			\$0
5) Thermo Welds	EACH	14	\$450.00	\$6,300			\$0
6) Remove, Dismantle & Stockpile Track	TR	130.5	\$10.00	\$1,305			\$0
7) Relay Rail	LF	12	\$20.00	\$240			\$0
TOTAL - TRACK WORK LABOR				\$18,358			\$0
CONTRACTOR SUPPLIED MATERIAL							
Track							
1) Rail - New 136# CWR	LF	273	\$23.00	\$6,279			\$0
2) Tie Plates - New AREMA Plan 12	EACH	176	\$15.00	\$2,640			\$0
3) Spikes - New (3 per plate) (242 keg)	KEG	3	\$120.00	\$360			\$0
4) Anchors - New 136#	EACH	476	\$2.00	\$952			\$0
5) Cross Ties - New AREMA Grade 7x9x10'0"	EACH	80	\$60.00	\$4,800			\$0
6) Cross Ties - New AREMA Grade 7x9x9'0"	EACH	0	\$5.00	\$0			\$0
7) Conduit - 4" Dia./Schedule 40 PVC	LF	320	\$1.00	\$320			\$0
8) Perforated Coastal 6" Dia. Steel Pipe (Incl. elbows & hardware)	LF	250	\$8.00	\$2,000			\$0
9) Concrete Crossing Panel (MFR - Century Precast)	TF	97.5	\$240.00	\$23,400			\$0
10) Transition Rail - New 136#/112#	EACH	4	\$2,400.00	\$9,600			\$0
11) Non-Woven Geotextile Filter Fabric	BY	164	\$1.25	\$205			\$0
Sub Total - Track				\$51,196			\$0
Rock							
1) Ballast - KCS 2 1/2" Granite	TN	250	\$35.00	\$8,750			\$0
2) Underdrain Aggregate (DOT CA-13)	CY	6	\$24.00	\$144			\$0
Sub Total - Rock				\$8,894			\$0
TOTAL - CONTRACTOR SUPPLIED MATERIAL				\$60,090			\$0
ROAD CROSSINGS							
1) Install Concrete Crossing Panels (12 panels)	TF	97.5	\$25.00	\$2,438			\$0
TOTAL - ROAD CROSSINGS				\$2,438			\$0
MISCELLANEOUS							
1) Reinforced Protective Insurance	LS	1	\$5,000.00	\$5,000			\$0
2) Flagging	BY	10	\$1,000.00	\$10,000			\$0
3) Furnish & Place Temporary Road Signs, Barricades & Detours	LS	1	\$3,500.00	\$3,500			\$0
4) Open Inlet of 18" Dia. RCP Under Roadway, Clean Pipe, & Restore Positive Drainage	LS	1	\$2,000.00	\$2,000			\$0
TOTAL - MISCELLANEOUS				\$20,500			\$0
SUBTOTAL				\$101,985			\$0
ENGINEERING							
1) Engineering - Design Nine, Inc.	%	15%	\$101,985.00	\$15,298			\$0
TOTAL - ENGINEERING				\$15,298			\$0
SIGNAL							
1) Install Cantilevered Gates Per JaKey Signaling, Inc. (See attachment for break down of signal costs)	EACH	1	\$282,859.00	\$282,859			\$0
TOTAL - SIGNAL				\$282,859			\$0
KCS OVERHEAD CHARGES							
1) 5% of entire Project Cost	%	5%	\$399,452	\$19,973			\$0
TOTAL - OVERHEAD CHARGES				\$19,973			\$0
CONTINGENCIES							
1) Contingencies	%	20%	\$101,985.00	\$20,397			\$0
TOTAL - CONTINGENCIES				\$20,397			\$0
TOTAL				\$480,608			\$0

NOTES:

- Track panels 130.5 TF, relay West rail South end & LF, relay East rail North end & LF.
- Rail joints from centerline of existing crossing: North and West rail at 55.5 LF, North and East rail at 61.5 LF, South end West rail at 61 LF, South end East rail at 75 LF.
- Signal cost estimate provided by JaKey Signaling, Inc. on 09/22/07.
- Track Work Labor, Contractor Supplied Material, Road Crossings & Miscellaneous costs provided by Capital Railroad Contracting on 03/06/06.

ESTIMATE

Date: 04/02/09

Applicant: Illinois

Location: Hartford Il.

Dot #: 294-530 B

Mile Post: AG 28.93

Road Name: Route 111

Project #: C-98-159-01

Asset #: 982343

Project Summary:

Provide third party flagging to protect State Contractor working near Railroad Crossing.

All time may or may not be used, if not, the final billing will reflect actual hours worked.

This is an ESTIMATE of cost, and the final bill may vary, but will reflect actual cost.

Estimated Project Cost \$ 70,000

Grading - Sub grade Preparation

(1) Materials

Total Materials Cost \$0

(2) Contractor Labor and Equipment

70 Days based on 12hours a day- Flagging

\$1,000.00 per Day

\$70,000

Total Contractor Cost \$70,000

Crossing and Trackwork

(1) Materials

Total Materials Cost \$0

(2) Labor

Total Labor Cost \$0

(3) Equipment

Total Equipment Cost \$0

Estimated Project Cost \$70,000