

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

State of Illinois, Illinois Department of Transportation, :
Petitioner, :

v. :

T10-0078

The Kansas City Southern Railway Company, :
Respondent. :

RECEIVED

MAY 19 2010

ILLINOIS COMMERCE COMMISSION
RAIL SAFETY SECTION

Petition for an Order granting authority to construct :
two grade separation structures carrying relocated :
Interstate Route 70 (FAP Route 999) over and :
across The Kansas City Southern Railway Company :
Yard Tracks and Brooklyn Main Track at Railroad :
Milepost 279.34 in the East St. Louis Subdivision, :
near the Village of Brooklyn in St. Clair County, :
Illinois. :

RESPONSE TO PROPOSED AGREED ORDER

NOW comes Respondent The Kansas City Southern Railway Company in response to the Proposed Agreed Order on the above noted matter filed on May 18, 2010.

Respondent has no objections to the Proposed Agreed Order as submitted and attached to this Response as Exhibit A.

Respectfully submitted,

The Kansas City Southern Railway Company

By: David R. [Signature]

Dated: May 18, 2010

DOCKETED

MAY 19 2010

UPS
JS

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS,)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)
Petitioner,)

v.)

THE KANSAS CITY SOUTHERN RAILWAY)
COMPANY,)
Respondent,)

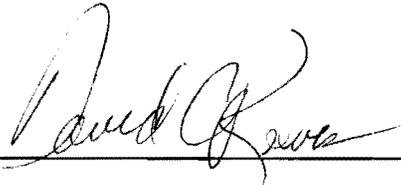
Docket No. T10-0078

Petition for an Order granting authority to construct)
two grade separation structures carrying)
relocated Interstate Route 70 (FAP Route 999))
over and across The Kansas City Southern Railway)
Company Yard Tracks and Brooklyn Main Track at)
Railroad Mile Post 279.34 in the East St. Louis)
Subdivision near the Village of Brooklyn in St. Clair)
County, Illinois.)

NOTICE OF FILING

To: David Lazarides
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Please take notice that I have this 18th day of May, 2010 filed the attached Response to Proposed Agreed Order in the above entitled matter with the Illinois Commerce Commission. A copy of the aforementioned Response has been sent to all the parties of record via first class mail.



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS,)
ILLINOIS DEPARTMENT OF TRANSPORTATION,)
Petitioner,)

v.)

THE KANSAS CITY SOUTHERN RAILWAY)
COMPANY,)
Respondent,)

Docket No. T10-0078

Petition for an Order granting authority to construct)
two grade separation structures carrying)
relocated Interstate Route 70 (FAP Route 999))
over and across The Kansas City Southern Railway)
Company Yard Tracks and Brooklyn Main Track at)
Railroad Mile Post 279.34 in the East St. Louis)
Subdivision near the Village of Brooklyn in St. Clair)
County, Illinois.)

CERTIFICATE OF SERVICE

I, David C. Reeves, an attorney, certify that I have served a true and correct copy of the foregoing Response to Proposed Order upon the parties to this proceeding on this 18th day of May, 2010 at their respective addresses set forth below:

Mr. David C. Reeves
Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335
dreeves@kcsouthern.com

CT Corporation System
Kansas City Southern Railway Company
208 South LaSalle Street
Chicago, IL 60604

Ms. Christine Reed
Director of Highways, IDOT
ATTN: JEFF HARPRING, ROOM 205
2300 South Dirksen Parkway
Springfield, IL 62764
Jeff.harpring@illinois.gov

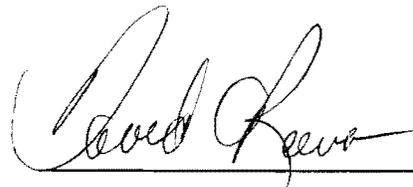
Ms. Ellen J. Schanzle-Haskins
Chief Counsel - IDOT
2300 South Dirksen Parkway, Room 300
Springfield, IL 62764
Ellen.schanzle-haskins@illinois.gov

Mr. Lance T. Jones
Deputy Chief Counsel - IDOT
2300 South Dirksen Parkway, Room 300
Springfield, IL 62764
Lance.jones@illinois.gov

Ms. Gloria Camarena
Assistant Chief Counsel – IDOT
JRTC – Suite 6-600
100 West Randolph
Chicago, IL 60601
Gloria.camarena@illinois.gov

Ms. Cindy Bushur-Hallam
Special Assistant Chief Counsel – IDOT
2300 South Dirksen Parkway
Springfield, IL 62764
Cindy.bushur-hallam@illinois.gov

Mr. Michael Van Tiem
Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335



STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF TRANSPORTATION,
Petitioner,

v.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
Respondent,

T10-0078

Petition for an Order granting authority to construct
two grade separation structures carrying Relocated
Interstate Route 70 (FAP Route 999) over and
across The Kansas City Southern Railway Company
Yard Tracks and Brooklyn Main Track at Railroad
Milepost 279.34 in the East St. Louis Subdivision,
near the Village of Brooklyn in St. Clair County, Illinois

AGREED ORDER

By the Commission:

PROCEDURAL HISTORY

On May 10, 2010, the Illinois Department of Transportation (the "Department") filed with the Illinois Commerce Commission (the "Commission") a verified Petition in the above captioned matter naming as respondent The Kansas City Southern Railway Company (the "Company"). The Petition sought authorization from the Commission to construct, as part of the New Mississippi River Bridge Project (as further described below), two (2) grade separation structures carrying the eastbound and westbound traffic lanes, respectively, of relocated Interstate Route 70 (FAP Route 999) and other highway facilities over and across the Company's property and tracks, at approximately Railroad Milepost 279.34 (the "Project Area"), in the East St. Louis Subdivision, near the Village of Brooklyn in St. Clair County, Illinois. The Company owns and operates property, yard tracks and the Brooklyn Main Track in the Project Area. The Petition requested the Commission enter an order without a hearing.

PETITIONER'S EVIDENCE

The Department proposes to construct two (2) grade separation structures carrying the eastbound and westbound traffic lanes, respectively, of relocated Interstate Route 70 (FAP Route 999) over and across the Company's property and tracks at approximately Railroad Milepost 279.34. The Department and Missouri Highways and Transportation Commission ("MHTC") accept financial responsibility for constructing and maintaining the two (2) grade separation structures and other highway facilities. The total estimated cost of construction is

\$47,000,000. No Grade Crossing Protection Funds are being sought for this project. The Department's schedule calls for a bid letting on the proposed project to be May 14, 2010, and completion of the project by December 31, 2013. The new structures meet all of the requirements set forth in 92 Illinois Administrative Code Part 1500.

STAFF'S POSITION

Staff concurs with the Grade Separation Construction and Maintenance Agreement, dated May 17, 2010 negotiated by and between the parties (the "Grade Separation Agreement"), and is also of the opinion that the construction project is necessary to improve the safety, convenience and necessity of the traveling public. Staff supports this Agreed Order granting the Petition.

COMMISSION FINDINGS AND CONCLUSIONS

The Commission, having given due consideration to the entire record herein, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding.
- (2) The Department, as Petitioner, and MHTC propose to construct and maintain two (2) new highway overpass structures carrying relocated Interstate Route 70 (FAP 999) over and across Company's property and tracks.
- (3) The proposed two (2) grade separation structures are part of the New Mississippi River Bridge Project.
- (4) The New Mississippi River Bridge Project is a public project and serves a public purpose and necessity, namely the construction of relocated Interstate Route 70.
- (5) The proposed grade separation structures, as part of the New Mississippi River Bridge Project, are necessary to preserve the safety of the public and for public convenience and necessity.
- (6) The obligations of the Department and MHTC with respect to the New Mississippi River Bridge Project are set forth in the Second Amended and Restated Bi-State Agreement between the parties dated November 24, 2009 (the "Bi-State Agreement").
- (7) The Department, MHTC and the Company agree as fully set forth in the Grade Separation Agreement attached hereto as Exhibit 1 and incorporated herein by reference.
- (8) The Department and MHTC accept financial responsibility for constructing and maintaining the two (2) new grade separation structures and other highway facilities. No Grade Crossing Protection

Funds are being sought for this project.

- (9) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
- (10) Any person making a request for an extension of time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (11) Any person making a request for an extension of time that exceeds 30 days must file a petition for supplemental order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide petitions for supplemental orders.
- (12) Requests for extension of time and petitions for supplemental orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a request for extension of time or a petition for supplemental order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.
- (13) The Commission or its Administrative Law Judge reserves the right to deny petitions for supplemental orders and requests for extension of time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the State of Illinois, Department is hereby authorized to construct two (2) grade separation structures carrying relocated Interstate 70 over and across the Company's property and tracks and other highway facilities, all at a point near the Company's Railroad Milepost 279.34, in the East St. Louis Subdivision, near the Village of Brooklyn in St. Clair County, Illinois.

IT IS FURTHER ORDERED that the costs for the work to be performed by

the Department, MHTC and the Company to construct the new grade separation structures shall be assessed in accordance with the terms and conditions of the Grade Separation Agreement attached hereto as Exhibit 1.

IT IS FURTHER ORDERED that the Department shall own, have jurisdiction of, and MHTC shall be responsible for all future maintenance of the two (2) grade separation structures, the highway approaches and all other highway facilities, as more particularly set forth in the Bi-State Agreement, and the Company shall continue to be responsible for maintaining the existing ballast, ties, rail and all other railroad facilities.

IT IS FURTHER ORDERED that the Department is and it is hereby, required and directed to proceed immediately in performing the work set forth above and shall complete the work within sixty (60) months from the date of this Order.

IT IS FURTHER ORDERED that since federal funding is being utilized for the grade separation construction, all such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991. Contractor liability insurance will be required.

IT IS FURTHER ORDERED the Department shall, at six (6) month intervals from the date of Commission Order, submit to the Director of Processing and Information, Transportation Bureau of the Commission, a Project Status Report stating the progress it has made toward completion of the work herein required. Each Project Status Report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the Department's Project Manager.

IT IS FURTHER ORDERED that the Department shall within five (5) days of the completion of the work herein required, submit a completely updated United States Department of Transportation Inventory Form (#6180.71) to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the Department be, and it is hereby required and directed to submit a Project Completion Report, to the Director of Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. The Project Completion Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that any person making a request for an extension of time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person making a request for an extension of time that exceeds 30 days must file a petition for supplemental order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide petitions for supplemental orders.

IT IS FURTHER ORDERED that requests for extension of time and petitions for supplemental orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a request for extension of time or a petition for supplemental order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny petitions for supplemental orders and requests for extension of time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Illinois Department of Transportation and The Kansas City Southern Railway Company shall comply with the clearance requirements of 92 Ill. Adm. Code 1500.

IT IS FURTHER ORDERED that in accordance with 625 ILCS 5/18c-2201 and 18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this ____ day of _____ 2010.

MANUEL FLORES
ACTING CHAIRMAN

CCO FORM:
Approved:
Revised:
Modified: 04/10 (DW)

I-70, Brooklyn, St. Clair County, IL
IDOT Job No. C-98-041-10
IDOT Bridge No. 082-0379 (EB);
082-0382 (WB)

**GRADE SEPARATION
CONSTRUCTION AND MAINTENANCE
AGREEMENT**



THIS AGREEMENT is made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as "IDOT", the MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION, hereinafter referred to as "MHTC", and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, hereinafter referred to as the "COMPANY", which are collectively referred to hereinafter as "parties".

WITNESSETH:

THAT, WHEREAS, IDOT proposes to construct FAP Route 999 ("Relocated I-70"). As part of this proposed construction, dual grade separation structures will be necessary to carry the eastbound and westbound traffic lanes, respectively, of Relocated I-70 over and across the COMPANY's Yard tracks and Brooklyn Main track at approximate RR Milepost 279.34 East St. Louis Subdivision, near the Village of Brooklyn in St. Clair County, Illinois. The construction of the proposed dual grade separation structures, together with the highway approaches to these structures, and all related highway facilities westward from the junction of I-70 and IL Route 3, is hereinafter referred to as the "Project". The structure number for the proposed bridges are 082-0379 (EB) and 082-0382 (WB); and

WHEREAS, MHTC and IDOT entered into a Bi-State Agreement dated February 28, 2008, amended by that certain Second Amended and Restated Bi-State Agreement dated November 24, 2009, regarding the construction and maintenance of Relocated I-70 (together the "Bi-State Agreement"). Pursuant to the Bi-State Agreement, IDOT is responsible for constructing Relocated I-70 eastward from the Main Span anchor pier to IL Route 3, including all associated access roadways for construction of said structures, and acquiring all necessary rights-of-way for construction and maintenance of these structures and facilities located in the State of Illinois; and MHTC is responsible for maintaining Relocated I-70 westward from its junction with IL Route 3 over and across the Mississippi River, including the dual grade separation structures, highway approaches to these structures, and all related highway facilities contemplated herein; and

WHEREAS, in the interest of public safety and convenience, IDOT proposes to construct these dual ten-span grade separation structures over and across the COMPANY's tracks, substantially as shown at the location on the general overview map and the general plan sheets marked **Exhibit 1**, which are attached hereto and made a part hereof; and

WHEREAS, the parties will address in a separate agreement the obligations of all parties related to the construction and maintenance of the access roadways and/or use of existing roadways located on the COMPANY's property that will be necessary to allow contractor and maintenance access along and across the COMPANY's tracks; and

WHEREAS, IDOT will petition the Illinois Commerce Commission in accordance with 92 Illinois Administrative Code 1500 to take Jurisdiction in this matter and to enter such orders as may be necessary; and

WHEREAS, the Project requires the services of the COMPANY that are described in Section 5 of this Agreement;

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** and hereby made a part of this Agreement.

SECTION 2. PROJECT PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS.
IDOT will prepare the plans, specifications and special provisions for the construction of the proposed dual overpass structures, the highway approaches to these structures, access roadways and all related highway facilities eastward from Main Span anchor pier to IL Route 3, at IDOT's expense. All plans, specifications and special provisions for the construction of the proposed dual overpass structures, the highway approaches to these structures, and all related elevated highway facilities provide for a minimum vertical clearance of thirty seven point zero three feet (37.03') above the top of the highest rail. IDOT will obtain written approval by the COMPANY's authorized representative of all such plans, specifications and special provisions affecting the interests of the COMPANY, before IDOT's contractor shall commence any work on the COMPANY's right of way. The COMPANY's authorized representative shall not unreasonably withhold approval of IDOT's plans, specifications and special provisions relating to this Project.

SECTION 3. CHANGES TO PLANS, SPECIFICATIONS OR SPECIAL PROVISIONS.
None of the parties shall make any changes on any approved plans, specifications or special provisions, without first obtaining the consent in writing of the other parties.

SECTION 4. WORK BY IDOT.

- (l) IDOT shall furnish or cause to be furnished, at its expense and in accordance with the Bi-State Agreement and this Agreement, and in accordance with the approved plans, specifications and special provisions, 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 2 of this Agreement.
 - (b) The construction of two (2) ten-span grade separation structures to carry the eastbound and westbound traffic lanes, respectively, of Relocated I-70 over the COMPANY's tracks, together with the highway approaches, and all related highway facilities eastward from the Main Span anchor pier to IL Route 3.
 - (c) Construction engineering and inspection as set forth in Section 9 of this Agreement.

- (d) Incidental work necessary to complete the items specified in Section 4 of this Agreement.
- (II) IDOT may employ competent and experienced contractors, including their subcontractors and employees, which are referred to in this Agreement as "contractor", with adequate equipment, organization and finances to perform the work required of IDOT by Section 4 of this Agreement. IDOT will notify the COMPANY of the identity of each contractor performing any work affecting the COMPANY's interest.
- (III) IDOT shall require its contractor to perform its work in accordance with the final plans and specifications approved by the COMPANY. IDOT shall assign a representative to be present at the job site during construction, to certify the work and to assure that all work and materials meet the requirements set forth in the approved plans and specifications.

SECTION 5. WORK BY THE COMPANY.

- (I) The COMPANY shall furnish or cause to be furnished, at the expense of IDOT, and in accordance with the approved plans, specifications and special provisions, and the applicable requirements 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) Construction engineering as set forth in Section 9 of this Agreement.
 - (b) The relocation of the COMPANY's signal/communication wires, if necessary.
 - (c) Incidental work necessary to complete the items specified in Section 5 of this Agreement, including the eligible expenses of reviewing and approving the project plans.
- (II) The estimated costs of the COMPANY's work set forth above is \$50,000 as shown and described in the COMPANY's Material and Force Account Estimates dated February 5, 2010, marked Exhibit 2 attached hereto and made a part hereof.
- (III) A representative of IDOT 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 IDOT's "Standard Specifications for Road and Bridge Construction" and supplements thereto. The COMPANY shall, therefore, give IDOT a 48-hour notice in advance of commencement of the work set forth in this Agreement.

SECTION 6. INSURANCE.

- (I) IDOT's contractor, throughout the construction phase, shall procure and maintain insurance policies as follows.

- (a) **Comprehensive General Liability Insurance Policy.** This insurance must contain broad form contractual liability with limits of not less than three million dollars (\$3,000,000) for bodily injury and property damage per occurrence and not less than six million dollars (\$6,000,000) aggregate for all occurrences. If any part of the Project is sublet, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations.
 - (b) **Contractors' Protective Liability Insurance.** IDOT's contractor shall furnish evidence to COMPANY that IDOT's contractor carries a contractors' Protective Liability Insurance Policy providing for a limit of not less than three million dollars (\$3,000,000) for bodily injury and property damage per occurrence and not less than six million dollars (\$6,000,000) aggregate for all occurrences.
 - (c) **Railroad Protective Liability Insurance (which includes Bodily Injury, Property Damage, and Physical Damage Insurance).** A single Railroad Protective Liability Insurance policy, naming the COMPANY as insured, with minimum 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).
 - (d) **Automobile Liability insurance with combined single limits of not less than \$1,000,000 per occurrence covering all vehicles owned, used or hired.**
 - (e) **Workers' Compensation and Employer's Liability insurance coverage (Part B).** Employer's liability must have limits of at least \$500,000 each accident, \$500,000 by disease each employee, and \$500,000 by disease policy limit.
- (II) **General.** The insurance specified in paragraphs (a) and (b) within subsection (I) of this section shall be carried until all work required to be performed under the terms of this Agreement is satisfactorily completed as evidenced by formal acceptance by IDOT. The insurance specified in paragraph (c) within subsection (I) of this section shall be carried until all work performed on Railway right-of-way has been completed and the right-of-way is no longer used by contractor.
- (III) **Each policy must be issued by financially reputable insurers licensed to do business in all jurisdictions where work is performed during the term of the Agreement.** Comprehensive General Liability and any Umbrella Liability policy will each name Kansas City Southern and Subsidiaries as an additional insured and to the fullest extent allowed under law contain a waiver of subrogation in favor of the COMPANY. Contractor will provide to COMPANY a certificate of insurance reasonably satisfactory in form and content to COMPANY, evidencing that all the required coverage is in force and has been endorsed to provide that no policy will be canceled or materially altered without first giving the Company 30 days' prior written notice. All policies will be primary to any insurance or self-insurance COMPANY may maintain for acts or omissions of Contractor or anyone for whom IDOT or MHTC is responsible. Contractor will include copies of

relevant endorsements or policy provisions with the required certificate of insurance.

- (IV) If Contractor utilizes subcontractors in performance of this Agreement, the subcontractors must meet the same insurance requirements as the Contractor. If a subcontractor does not meet the coverage requirements of this Section, subcontractor must either supplement the deficient areas of coverage or Contractor must certify that Contractor has acquired sufficient coverage to supplement any deficiency of subcontractor.

SECTION 7. RAILROAD FLAGGING SERVICES.

- (I) Performance of any work by IDOT's contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, will require railroad flagging services or other protective measures. Flagging services shall be provided by a COMPANY-approved flagging contractor. IDOT or IDOT's contractor shall make all reasonable efforts to furnish the services of a COMPANY-approved flagger or flaggers. Nothing contained in this section shall preclude or limit the COMPANY's right to require or provide a railroad flagger when, in the COMPANY's sole judgment, the services of a railroad flagger are necessary to protect the COMPANY's railroad operations or property.
- (II) Before MHTC begins any future maintenance work upon or over the COMPANY's property within twenty-five (25) feet of any railroad track of the COMPANY, MHTC and the COMPANY will reach agreement upon any further contractual terms and conditions that will be applicable to the provision of railroad flagging services during the performance of that maintenance work.

SECTION 8. SCHEDULING RAILROAD FLAGGING SERVICES. IDOT will invite a representative of the COMPANY to IDOT's "Pre-construction Conference". At this Conference IDOT's contractor shall furnish the COMPANY the approximate dates flagging services are needed. After this conference, IDOT's contractor shall furnish the COMPANY not less than thirty (30) calendar days' notice of the need of flagging services. For the purposes of this Agreement, a calendar day is defined as any day shown on the calendar. If any changes to this schedule occur at anytime during the project, IDOT's contractor shall request a flagman from COMPANY by providing at least thirty (30) calendar days' notice from the day the flagman is required.

SECTION 9. ENGINEERING AND INSPECTION OF PROJECT. Each of the parties will provide the necessary construction engineering for carrying out its work as set forth in this Agreement. IDOT will bear the costs for these services, including costs incurred by the COMPANY for inspecting the work performed by IDOT that may affect the COMPANY's properties and facilities or the safety and continuity of train operations.

SECTION 10. CONSTRUCTION CLEARANCES. IDOT and its contractor shall maintain temporary minimum clearances between the COMPANY's track and any falsework, bracings or forms required for the construction of the Project, which shall be not less than:

- (I) Vertical - Twenty-one feet, six inches (21'6") above the top of the highest rail; and

- (II) Lateral - Twelve feet (12') from the centerline of the track.

SECTION 11. CONTRACTOR REQUIREMENTS. IDOT, throughout the construction phase shall require its contractor, and MHTC throughout the maintenance phase shall require all persons it engages or assigns to perform maintenance work, before performing any work on the COMPANY's property:

- (I) To notify the authorized representative of the COMPANY as provided in Section 24 of this Agreement;
- (II) To provide to the COMPANY the insurance policies, binders, certificates and endorsements as provided in Section 6 of this Agreement, and
- (III) Before entering the COMPANY's property outside the limits of IDOT's easements, to obtain (including paying the fee of COMPANY's contractor that prepares right of entry agreements for the COMPANY) and execute a Contractor's Right of Entry Agreement with the COMPANY.
- (IV) Shall provide and show proof of insurance as required in Section 6 of this Agreement prior to entering, working over or under the COMPANY's property.

SECTION 12. INTERFERENCE WITH RAILROAD OPERATIONS. IDOT's contractor, and all persons engaged or assigned by MHTC to perform maintenance work, shall at all times protect the safety and continuity of operation of the railroad traffic of the COMPANY, and IDOT shall require its contractor and MHTC shall required all persons it engages or assigns to perform maintenance work, to perform the work accordingly. Whenever the work may affect the safety of trains, IDOT's contractor and all persons engaged or assigned by MHTC, shall not proceed with this work until it has submitted the method of doing such work to the COMPANY's authorized representative and has obtained the representative's approval. Costs that the COMPANY reasonably incurs for review of this submittal shall be reimbursed by the responsible agency, IDOT or MHTC, for that project. If any work is required by the COMPANY to execute the work planned by IDOT or MHTC, all costs associated with this work including but not limited to engineering design and review, surveying, field visits and inspections, construction and construction inspections, cost of materials including delivery charges, taxes, etc., shall be reimbursed by the responsible agency, IDOT or MHTC, for that project. IDOT or MHTC will reimburse the COMPANY as provided in this Agreement, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment, including all eligible preliminary engineering costs, legal fees and expenses that are properly reimbursable in accordance with 23 CFR Part 646 and subpart I of 23 CFR Part 140. 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.

SECTION 13. CLEANUP. IDOT shall require its contractor, and MHTC shall require all persons it engages or assigns to perform maintenance work, upon the completion of its work on this Project, at their own costs 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 COMPANY'S right of way upon which the contractor performed its work pursuant to this Agreement, in a neat condition, satisfactory to the authorized

representative of the COMPANY. IDOT and MHTC shall require its contractor to do a final walk through with COMPANY's representative at the completion of the work and obtain a no objection letter from the COMPANY before the final acceptance of work. If any work is required to bring the COMPANY's property to its original condition, IDOT and MHTC shall note in its requirements that this repair work shall be done to COMPANY's satisfaction at its contractor's own cost. The COMPANY shall perform the walk through within 10 days of the Contractor's notice of completion. The COMPANY acceptance of the work shall not be unreasonably withheld. IDOT's contractor, and any person MHTC engages or assigns, shall not store equipment or materials on COMPANY's right of way before, during or after the Project without COMPANY's express, written permission. In no event shall IDOT's contractor, or any person MHTC engages or assigns, store equipment or materials within twenty-five feet of the center line of any COMPANY track or within 500 feet of an at-grade road crossing.

SECTION 14. MAINTENANCE OF HIGHWAY FACILITIES. MHTC shall maintain at its expense, or by agreement with others provide for the maintenance of, the dual highway grade separation structures, the highway approaches to these structures, access roadways and all related highway facilities. MHTC shall have access to the dual grade separation structures, highway approaches, access roadways and related highway facilities at all times for the performance of inspections, repair and maintenance, but only within the scope of the easements granted by COMPANY for said purposes. MHTC shall notify the COMPANY at least thirty (30) calendar days in advance of whenever it will perform maintenance work within 25 feet of COMPANY's nearest track or that otherwise affects the COMPANY'S railroad operations within the Project boundaries, except that, if any emergency maintenance or repair is needed, then MHTC or IDOT, as soon as practicable, may notify the COMPANY that emergency flagging is required. In accordance with existing maintenance policies, MHTC will not cause snow, ice or other materials to be plowed over the sides of the structures. Safety fencing will be added if MHTC and the COMPANY determine that a safety issue can be mitigated by the installation of safety fencing.

SECTION 15. MAINTENANCE OF RAILROAD FACILITIES.

- (I) During construction of the Project, IDOT will not be responsible for routine maintenance of or making improvements to the COMPANY's track or railroad facilities. However, during construction of the Project, IDOT or its contractors will repair or remediate any damage to the COMPANY's track or railroad facilities caused by IDOT or its contractor at IDOT's and/or IDOT's contractor's expense.
- (II) The COMPANY shall maintain, at its own expense, its track and all railroad facilities. The COMPANY further shall comply with all applicable provisions of federal, state, and local law, including, but not limited to the following: The COMPANY shall not erect any advertising sign that would be visible from the highway pavement on the COMPANY's property within the limits of the highway right-of-way lines extended across the COMPANY's property.

SECTION 16. RECORDS.

- (I) The COMPANY shall keep an accurate and detailed account of the actual cost and expense as incurred by COMPANY, or for the COMPANY's account, in the performance of the work it herein agrees to perform.

- (II) The COMPANY, for performance of their work as outlined in Section 5 hereof, may bill IDOT monthly, for the costs and expenses incurred. After IDOT's representatives have checked the progressive invoices and they have agreed with the Company's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, IDOT shall promptly reimburse the COMPANY, for one hundred (100) percent of the invoices within sixty (60) days. If the COMPANY is not in receipt of payment within sixty (60) days, the applicable portions of 30 ILCS 540 (State Prompt Payment Act) shall be enforced. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.
- (III) The COMPANY, upon the completion of its respective parts of the work, shall, within one hundred twenty (120) calendar days, render to IDOT a detailed statement of the actual cost and expense incurred by it or for its account. After IDOT's representatives have checked the progressive invoices and they have agreed with the COMPANY's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, IDOT shall promptly reimburse the COMPANY for one hundred (100) percent of the final invoice within sixty (60) days. If the billing company is not in receipt of payment within sixty (60) days, the applicable portions of 30 ILCS 540 (State Prompt Payment Act) shall be enforced.
- (IV) The COMPANY shall maintain, for a minimum of three (3) years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; and the COMPANY shall promptly make the contract and all books, records, and supporting documents related to the contract available for review and audit by the Auditor General and other IDOT auditors or by MHTC's auditors. COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other IDOT auditors or MHTC's 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 IDOT for the recovery of any funds paid by IDOT under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.
- (V) After the Federal, IDOT or MHTC representatives have audited the expenses incurred by the COMPANY, including any amounts suspended from any previous payment, IDOT shall promptly reimburse the COMPANY for the suspended amounts, less the deduction of any item(s) of expense the auditors find to be ineligible for reimbursement. If the total of the item(s) of expense as may be found by the auditors as not being eligible for reimbursement exceeds any amounts which may have been suspended, then the COMPANY shall promptly reimburse IDOT for the overpayment.
- (VI) The COMPANY agrees not to commence construction work for said Project until receipt from IDOT of written notice to proceed with the work, and reimbursement will be limited to construction costs incurred subsequent to the date of said notification.

SECTION 17. COMPLIANCE WITH FEDERAL REQUIREMENTS. The parties shall comply with all federal laws, rules, regulations, orders and approvals pertaining to this Project, including the requirements applicable to all agreements, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. IDOT will reimburse the COMPANY as provided in this Agreement, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment, including all preliminary engineering costs in connection with this Project that were accrued before the execution of this Agreement. To the best of its knowledge and belief, IDOT is not aware of any provision of this Agreement that presently conflicts with any applicable federal regulation and will advise COMPANY if it learns of any such conflict. However, nothing in this paragraph relieves COMPANY of any due diligence obligation to apprise itself of any and all laws and regulations that apply to it.

SECTION 18. NONDISCRIMINATION ASSURANCE. If this Agreement is funded in whole or in part with federal funds, the following provisions shall apply:

- (I) 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 federally-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.
- (II) In the event any work is performed by other than the 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.
- (III) With regard to maintenance work performed by any person engaged or assigned by MHTC under this Agreement, including any flagging services provided by the COMPANY during the performance of such maintenance work, the COMPANY agrees as follows:
 - (a) **Civil Rights Statutes:** The COMPANY shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e, *et seq.*), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the COMPANY is providing services or operating programs on behalf of MHTC, then the COMPANY shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.
 - (b) **Administrative Rules:** The COMPANY shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.
 - (c) **Nondiscrimination:** The COMPANY shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or

ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The COMPANY shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices.

- (d) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the COMPANY. These apply to all solicitations either by competitive bidding or negotiation made by the COMPANY for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the COMPANY of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.
- (e) Information and Reports: The COMPANY shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MHTC or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the COMPANY is in the exclusive possession of another who fails or refuses to furnish this information, the COMPANY shall so certify to MHTC or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.
- (f) Sanctions for Noncompliance: In the event the COMPANY fails to comply with the nondiscrimination provisions of this Agreement, MHTC shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:
- (1) Withholding of payments under this Agreement until the COMPANY complies; and/or
 - (2) Cancellation, termination or suspension of this Agreement, in whole or in part, or both.
- (g) Incorporation of Provisions: The COMPANY shall include the provisions of Section 18 of this Agreement in every subcontract executed following the full execution of this Agreement, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by MHTC or the United States Department of Transportation. The COMPANY will take such action with respect to any subcontract or procurement as MHTC or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the COMPANY becomes involved or is

threatened with litigation with a subcontractor or supplier as a result of such direction, the COMPANY may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 19. CANCELLATION. 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 IDOT or MHTC render it impracticable to proceed with the construction of the Project, then at any time before IDOT or MHTC has executed a construction contract or started actual construction work on this Project, IDOT or MHTC may serve formal notice of cancellation upon all other parties and this Agreement shall thereupon become null and void. Cancellation of this Agreement shall not eliminate IDOT's responsibility to pay costs incurred by COMPANY pursuant to this Agreement prior to cancellation hereof.

SECTION 20. SOVEREIGN APPROPRIATION. At the time this Agreement was executed, there were funds available for this Project; however, obligations assumed by IDOT under this Agreement shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly, or any federal funding source for the Project fails to appropriate or otherwise to make available funds for the Project. MHTC's obligations under this Agreement shall cease immediately, without penalty of further payment being required, in any year for which the Missouri General Assembly or any Federal funding source for the subject of this Agreement fails to make an appropriation or re-appropriation to pay such obligations, and MHTC's obligations under this Agreement shall cease immediately without penalty of further payment being required at any time where there are not sufficient authorized funds lawfully available to MHTC to meet such obligations. IDOT or MHTC shall give to all the other parties notice of such termination of funding as soon as practicable after becoming aware of the failure of funding. If either IDOT or MHTC provides such notice, the other State may terminate this Agreement. None of the preceding provisions of this paragraph shall relieve IDOT or MHTC of their responsibility to pay to COMPANY costs incurred by COMPANY pursuant to this Agreement prior to termination of this Agreement by IDOT or MHTC as previously set forth in this paragraph.

SECTION 21. PROPERTY RIGHTS. By separate document, the COMPANY will convey to IDOT any temporary or permanent property rights necessary to construct the proposed dual grade separation structures, the highway approaches, access roadways and any related highway facilities described in this Agreement.

SECTION 22. CORPORATE IDENTITY OF THE COMPANY.

- (I) The number shown on this form is the COMPANY's correct taxpayer identification number (or the COMPANY is waiting for a number to be issued to them), and
- (II) The COMPANY is not subject to backup withholding because: (a) the COMPANY is exempt from backup withholding, or (b) the COMPANY has not been notified by the Internal Revenue Service (IRS) that the COMPANY is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that the COMPANY is no longer subject to back-up withholding, and

(III) The COMPANY's person with signatory authority for this AGREEMENT is a U. S. person (including a U.S. resident alien)

Taxpayer Identification Number:

Social Security Number _____

Or

Employer Identification Number _____

The Kansas City Southern
Railway Company
44-6000758

(If you are an individual, enter your name and SSN as it appears on your Social Security Card. If completing this certification for a sole proprietorship, enter the owner's name followed by the name of the business and the owners SSN or EIN. For all other entities enter the name of the entity as used to apply for the entity EIN and the EIN.)

Legal Status

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Government |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident Alien |
| <input type="checkbox"/> Partnership/Legal Corporation | <input type="checkbox"/> Estate or Trust |
| <input type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy (Non Corp.) |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services | <input type="checkbox"/> Pharmacy/Funeral home /Cemetery |
| <input checked="" type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> D= Disregarded entity |
| | <input type="checkbox"/> C= Corporation |
| | <input type="checkbox"/> P= Partnership |

SECTION 23. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the parties hereto, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties.

SECTION 24. DESIGNATED REPRESENTATIVES; NOTICES: Each of the parties has designated the person identified in this Section as its representative for purposes of administering the provisions of this Agreement. The current addresses of these designated representatives are set forth in subsections (I), (II) and (III) of this Section. Each party to this Agreement shall give any notice or other communication required or permitted by this Agreement, in writing, to the designated representatives of all the other parties, at their respective addresses as provided in this Section. The designated representative or other authorized personnel of each party may designate, by written notice to all other parties, the identity of any other persons having the authority to act on behalf of that party in furtherance of the performance of this Agreement, and in like manner may designate any change of address to which the other parties shall thereafter give notice. Notice to another party shall be deemed

given three (3) days after mailing by United States mail, with regular mail postage prepaid, addressed to the other party's designated representative as provided in this Section, or upon receipt by the other party's designated representative by personal, facsimile or E-mail delivery. To be valid, facsimile delivery to another party shall be followed by delivery of the original document, or a clear and legible copy thereof, to the other party within three (3) business days after the date of the facsimile transmission.

(I) IDOT's Designated Representative:

ATTN: Mary Lamie, P.E.
Title or Position: Regional Engineer
Illinois Department of Transportation
Street Address: 1102 Eastport Plaza Drive, Collinsville, IL 62234
Facsimile No: (618) 346-3119
Telephone No: (618) 345-3110
E-mail: Mary.Lamie@illinois.gov

(II) MHTC's Designated Representative:

ATTN: Gregory J. Horn, P.E.
Mississippi River Bridge Project Director
Missouri Department of Transportation
Street Address: 707 N. Second Street, Suite 300
St. Louis, MO 63102
Facsimile No: _____
Telephone No: (314) 236-2960
E-mail: Gregory.Horn@modot.mo.gov

(II) The COMPANY's Designated Representative:

ATTN: John Jacobsen
Title or Position: Vice President and Chief Engineer
The Kansas City Southern Railway Company
Street Address: 427 West 12th Street
Kansas City, MO 64105
Mailing Address (if different): P.O. Box 219335
Kansas City, MO 64121-9335
Facsimile No: 816-983-1186
Telephone No: 816-9831525
E-mail: jjacobsen@kcsouthern.com

SECTION 25. 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.

SECTION 26. AMENDMENTS: The duly authorized representatives of the parties must approve any change in this Agreement, whether by modification or supplementation, by means of a written contract amendment signed by all parties hereto.

SECTION 27. ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral

communications between the parties regarding this subject. However, this Agreement is not intended to alter or affect any other agreement between IDOT and MHTC, including the Bi-State Agreement.

SECTION 28. EXECUTION IN COUNTERPARTS: This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same agreement.

SECTION 29. EFFECTIVE DATE: This Agreement shall become effective when it is approved and signed by IDOT's authorized representative.

SECTION 30. SOVEREIGN IMMUNITY AND NO THIRD PARTY BENEFICIARIES: Nothing herein shall be construed as consent by the MHTC or the State of Missouri to suit in the courts of the State of Illinois or a waiver of its sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. Nothing herein shall be construed as consent by IDOT or the State of Illinois to suit in courts of the State of Missouri or a waiver of its sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party (except the COMPANY) claiming to have suffered a loss, damage or injury by virtue of any alleged failure by either IDOT or MHTC to comply with the terms of this Agreement. This Agreement does not grant any rights to any person other than the parties that are specifically identified in the first paragraph of this Agreement, their successors or assigns.

SECTION 31. SOVEREIGNTY: Missouri and Illinois enter into this Agreement as sovereign States and not as principal and agent or as a joint venture.

SECTION 32. NON-EMPLOYMENT OF ILLEGAL ALIENS FOR MAINTENANCE WORK: The provisions in this section shall be applicable only with reference to maintenance work performed by any person engaged or assigned by MHTC under this Agreement, including any flagging services provided by the COMPANY during the performance of such maintenance work.

- (I) The COMPANY 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. In the event the COMPANY fails to comply with the provisions of the Executive Order 07-13, or in the event that MHTC has reasonable cause to believe that the COMPANY has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, MHTC reserves the right to impose any contract sanctions that are described in Executive Order 07-13.
- (II) Section 285.530, RSMo, provides that 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 of the award of this contract by the State of Missouri to the COMPANY:

- (a) By sworn affidavit and provision of documentation, the COMPANY shall affirm to MHTC that the COMPANY is enrolled and participating in a federal work authorization program with respect to all employees working in connection with the services performed by the COMPANY in connection with this contract or by its employees, pursuant to this Agreement. E-Verify is an example of a federal work authorization program, which is available online at:

http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm

The COMPANY may affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees used to perform work as provided in this Agreement, by providing to MHTC a completed copy of the E-Verify Memorandum of Understanding.

- (b) The COMPANY shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services pursuant to this Agreement. A copy of the affidavit referenced herein is attached as Exhibit 3, and is incorporated by reference in this Agreement.
- (c) The COMPANY shall include the provisions of Section 32 of this Agreement in every subcontract for performance of work under this Agreement.

SECTION 33. GOVERNING LAW: All contracts and subcontracts that IDOT makes with any person to carry out IDOT's obligations under this Agreement shall be construed according to the laws of the State of Illinois. Each of the parties shall comply with all local, State and Federal laws and regulations that are applicable to the performance of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate 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 28 day
of April, 2010

**THE KANSAS CITY SOUTHERN
RAILWAY COMPANY**

By: [Signature]

Title: VP & CE

APPROVED AS TO FORM

By: [Signature]

Title: manager - Contract Services

Executed by IDOT, this 17th day
of MAY, 2010
By: [Signature]
Gary Hannig
Secretary

**STATE OF ILLINOIS,
DEPARTMENT OF TRANSPORTATION**
By: [Signature]
Christine M. Reed, P.E.
Director of Highways
Chief Engineer

Date: _____
By: [Signature]
Ann Schneider
Director of Finance and Administration
Date: 5/12/10

Date: 5/14/10
By: [Signature]
Ellen Schanzle-Haskins
Chief Counsel
Date: 5-11-10

Executed by MHTC, this 30 day
of April, 2010
By: [Signature]
Title: MHB Project Director

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

ATTESTED:
By: [Signature]
Commission Secretary

APPROVED AS TO FORM
By: [Signature]
Senior Administrative Counsel