

CCO FORM: N/A
Approved:
Revised:
Modified:

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 NORFOLK 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 Main tracks, approximate RR Milepost D-484.28, 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, access roadways, and all related highway facilities eastward from the Main Span anchor pier to 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, the highway approaches to these structures, access roadways, 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 and access roadways adjacent to and across the Company's tracks including a private grade crossing, 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, 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 the Main Span anchor pier to the IL Route 3 at IDOT's expense. 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.

- (I) IDOT shall furnish or cause to be furnished, at its expense and in accordance with the Bi-State 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, access roadways 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 interest.

- (III) IDOT shall require its contractor to perform its work in accordance with the final plans and specifications approved by the COMPANY and in accordance with "Special Provisions For Protection Of Railway Interests" marked **Exhibit 2**, which are attached hereto and made a part thereof. 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) Flagging services as provided in Section 7 of this Agreement. (Approximately 220 days)
 - (c) Construction of a private grade crossing with asphalt paving and rubber flange way.
 - (d) The relocation of the Company's signal/communication wires, if necessary.
 - (e) Incidental work necessary to complete the items specified in Section 5 of this Agreement.
- (II) The estimated cost of the COMPANY's work set forth above is \$376,000.00 as shown and described in the COMPANY's Materials and Force Account Estimates dated March 25, 2010, marked **Exhibit 3** 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.
- (IV) The COMPANY shall complete the work required in subsection (I)(c) of Section 5 of this Agreement within sixty (60) days of the pre-construction conference, or within sixty (60) days after the private crossing agreement, marked **Exhibit 5** attached hereto and made a part hereof, is executed, whichever is longer.

SECTION 6. INSURANCE. IDOT's contractor, during the construction period, shall procure and maintain 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).

SECTION 7. RAILROAD FLAGGING SERVICES. The COMPANY shall make all reasonable efforts to furnish the services of a COMPANY employed flagger or flaggers. If a railroad emergency or other extraordinary situation occurs and the COMPANY is unable to provide a flagger or flaggers when needed by IDOT's contractor during the construction phase, and or any persons engaged or assigned by MHTC during the maintenance phase, then IDOT's contractor or any persons assigned by MHTC shall delay work on, over, under, or adjacent to COMPANY's right-of-way until such time as the flagger or flaggers is/are again available. Any additional costs resulting from such delay shall be borne by IDOT's contractor or any person assigned by MHTC and not the IDOT or MHTC or the COMPANY. 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. The COMPANY shall provide the railroad flagger or flaggers during the construction phase at IDOT's or IDOT's contractor sole cost and expense as per the IDOT Standard Specifications for Road and Bridge Construction Article 107.12, and during maintenance work after the Project is completed and accepted at MHTC's sole cost and expense. IDOT, or IDOT's contractor, per the IDOT Standard Specifications for Road and Bridge Construction Article 107.12, will reimburse the Railroad directly for the cost of providing these flagging services. MHTC will reimburse the Railroad directly for the cost of providing these flagging services by deducting these amounts from MHTC's payments to its contractor.

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.

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-two feet, zero inches (22'-0") above the top of the highest rail; and
- (II) Lateral - Fifteen feet (15') from the centerline of the track.

SECTION 11. CONTRACTOR REQUIREMENTS. IDOT shall require its contractor, 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 as outlined in **Exhibit 2**, and
- (III) To execute a Contractor's Right of Entry Agreement with the COMPANY before entering the Company's property outside the limits of IDOT's easements.
- (IV) To execute a private crossing agreement, attached as **Exhibit 5**, for proposed private grade crossing included in subsection (I)(c) of Section 5 of this Agreement.

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 require 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. 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, upon the completion of its work on this Project, 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.

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 (except as noted below) and all related highway facilities located within the limits of the Project as defined above in this Agreement. MHTC shall have access to the dual grade separation structures, access roadway and related highway facilities at all times for the performance of inspections, repair and maintenance. IDOT and MHTC hereby authorize the COMPANY and its officers, agents, employees, successors, assigns and contractors, as well as COMPANY's fiber optic, telecommunication and utility licensees, tenants or grantees, their officers, agents, employees and contractors, to utilize the access road constructed on the COMPANY's property (but now held by IDOT as a permanent easement) for railroad, fiber optic, telecommunication or utility purposes. If COMPANY's use, or the use its officers, agents, employees and contractors, as well as its fiber optic, telecommunication and utility licensees, tenants or grantees, their officers, agents, employees and contractors, of the access road causes damage to said access road, the COMPANY at the COMPANY'S sole costs and expense, will cause such damage to be repaired in a timely and expedient manner, but this shall not prevent COMPANY from seeking in an appropriate case the reimbursement of those costs from its officers, agents, employees and

contractors, as well as its fiber optic, telecommunication and utility licensees, tenants, or grantees, or their officers, agents, employees and contractors. IDOT, at IDOT's sole expense, will construct a gate at the public access point of the access road to restrict unauthorized use. MHTC shall notify COMPANY whenever it will perform maintenance work within COMPANY's right-of-way. In accordance with existing maintenance policies, MHTC will not cause snow, ice or other materials to be plowed over the sides of the structures

SECTION 15. MAINTENANCE OF RAILROAD FACILITIES. 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. COMPANY shall keep an accurate and detailed account of the actual cost and expense incurred by them, or for their account, in the performance of the work they herein agree to perform.

- (I) 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 billing company's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, IDOT shall promptly reimburse the billing company, for one hundred (100) percent of the invoices 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. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.
- (II) COMPANY, upon the completion of their 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 billing 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.
- (III) COMPANY shall maintain, for a minimum of 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; 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 IDOT auditors and MHTC auditors; and COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other IDOT auditors or by MHTC 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.

- (IV) After the Federal, IDOT representatives or MHTC representatives have audited the expenses incurred by the COMPANY, including such amounts as may have been suspended from any previous payment, IDOT shall promptly reimburse the appropriate company for the suspended amounts, less the deduction of any item(s) of expense as may be found by the auditors as not being eligible 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 appropriate company shall promptly reimburse IDOT for the overpayment.

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.

SECTION 18. NONDISCRIMINATION ASSURANCE.

- (I) It is the policy of the U.S. Department of Transportation that minority business enterprises, as defined in 49 Code of Federal Regulations (CFR) Part 26, shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consequently, the minority business enterprises requirements of 49 CFR Part 26 apply to this agreement.
- (a) 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.
- (b) 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.
- (II) 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 the applicable requirements of 49 CFR Part 26 in the award and administration of federally-assisted contracts. The Company's failure to carry out these requirements is a material breach of this Agreement, because of which MHTC may terminate this Agreement or pursue any other lawful remedy.

- (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, 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 has executed a construction contract or started actual construction work on this Project, IDOT may serve formal notice of cancellation upon all other parties and this Agreement shall thereupon become null and void.

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 the Federal Highway Administration 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 or any part of this Agreement.

SECTION 21. PROPERTY RIGHTS. By separate document, the COMPANY will convey to IDOT any temporary or permanent property rights necessary to construct, maintain

and inspect the proposed dual grade separation structures, the highway approaches, access roadways and any related highway facilities described in this Agreement.

SECTION 22. 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 23. 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 C. Lamie, P.E.
Title or Position: Deputy Director of Highways, Region Five Engineer
Illinois Department of Transportation
Street Address: 1102 Eastport Plaza Drive
Collinsville, IL 62234
Facsimile No: 618-346-3119
Telephone No: 618-346-3110
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

(III) The Company's Designated Representative:

ATTN: David Wyatt
Title or Position: System Engineer Public Improvements
Norfolk Southern Corporation
Street Address: 1200 Peachtree Street, N.E.
Atlanta, Georgia 30309
Mailing Address (if different): _____
Facsimile No 404/527-2769
Telephone No: 404/529-1641
E-mail: dave.wyatt@nscorp.com

SECTION 24. 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 25. AMENDMENTS: The duly authorized representatives of the parties must approve any change in this Agreement, whether by modification or supplementation, by means of a formal contract amendment.

SECTION 26. 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.

SECTION 27. 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 28. EFFECTIVE DATE: This Agreement shall become effective when it is approved and signed by IDOT's authorized representative.

SECTION 29. 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 30. SOVEREIGNTY: Missouri and Illinois enter into this Agreement as sovereign States and not as principal and agent or as a joint venture.

SECTION 31. 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 such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
- (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 any services performed by the COMPANY, or by its contractor, subcontractor or employee, 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 4**, and is incorporated by reference in this Agreement.
 - (c) The COMPANY shall include the provisions of Section 31 of this Agreement in every subcontract. The COMPANY shall take such action with respect to any subcontract as MHTC may direct as a means of enforcing such provisions, including sanctions for noncompliance.

SECTION 32. 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 _____ day of _____, 2010

NORFOLK SOUTHERN RAILWAY COMPANY

By: Robert A. Baetz
Title: General Manager

APPROVED AS TO FORM

By: Sandra Gambrell
Title: Asst. to General Manager

Executed by IDOT, this 7 day of June, 2010

By: Gary Hannig
Gary Hannig
Secretary

Date: _____

By: Ann Schneider James C. McDaniel
Ann Schneider
Director of Finance and Administration

Date: 6-7-10

STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION

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

Date: 6/7/10

By: Ellen Schanzle-Haskins
Ellen Schanzle-Haskins
Chief Counsel

Date: 6-3-10

Executed by MHTC, this 19 day of MAY, 2010

By: MAB
Title: Director

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

ATTESTED:

By: Commission Secretary
Commission Secretary

APPROVED AS TO FORM

By: Senior Administrative Counsel
Senior Administrative Counsel

The COMPANY certifies that:

1. 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
2. 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 IDOT that the COMPANY is no longer subject to back-up withholding , and
3. 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

Norfolk Southern Railway
Company 53-6002016

(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 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 |

Signature _____ Date _____

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.

Drug Free Workplace. Company will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and COMPANY and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580).

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.

State Prohibition of Goods from Forced Labor Act. The COMPANY certifies in accordance with Public Act 93-0307 that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

Application of Prevailing Wage Act to Grant Recipients. All projects for the construction of fixed works which are financed in whole or in part with funds provided by this Grant Agreement shall be subject to the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) unless the provisions of that Act exempt its application. In the construction of the project, the Grantee shall comply with the requirements of the Prevailing Wage Act, which the parties recognize and agree is satisfied so long as the Grantee abides by its collective bargaining agreements since, pursuant to the Railway Labor Act, increases in wages and other benefits for a nationwide class or craft of employees of Class I railroads are determined by industry labor negotiations. The Grantee also shall insert into all contracts for such construction a stipulation to the effect that not less than the prevailing rate of wages as applicable to the project shall be paid to all laborers, workers, and mechanics performing work under the contract and requiring all bonds of contractors to include a provisions as will guarantee the faithful performance of such prevailing wage clause as provided by contract.

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