

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Department of Transportation of the State of Illinois, for and on behalf of the People of the State of Illinois,

Petitioner,

v.

T09-0018

The Kansas City Southern Railway Company and Union Pacific Railroad Company,

Respondents.

MCI Communications Services, Inc., Intervenor

Petition to construct FAP Route 310 (ILL Route 255) near the Village of Godfrey, Madison County, Illinois and to construct two grade separation structures to carry ILL Route 255 over and across the Respondents mainline tracks at approximate UP milepost 251.5

ORDER

By the Commission:

On February 9, 2009, the Illinois Department of Transportation ("Petitioner" or "IDOT") filed the above captioned petition with the Illinois Commerce Commission ("Commission") naming The Kansas City Southern Railway Company ("KCS" or "Kansas City Southern") and The Union Pacific Railroad Company ("UP" or "Union Pacific") as Respondents. The Petition sought approval from the Commission for the construction of two grade separation structures near the Village of Godfrey, Madison County, Illinois to carry Illinois Route 255 over the mainline tracks of Kansas City Southern Railway Company and the Union Pacific Railroad Company.

PROCEDURAL HISTORY

Pursuant to notice as required by Law and rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission on March 12, 2009, April 7, 2009, April 29, 2009 and May 14, 2009 at the Commission's offices in Springfield and Chicago, Illinois. Petitioner was represented by counsel and presented the testimony of Kirk Brown, a Project Support Engineer employed by IDOT. KCS was represented by counsel and presented the testimony of William J. Flies, a design engineer employed by the consulting firm Design Nine Incorporated, retained by KCS in the case. Union Pacific

was represented by counsel. Joe VonDeBur, Railroad Safety Specialist, appeared on behalf of the Commission's Rail Safety Section, representing Staff ("Staff"). At the hearing held on April 29, 2009, counsel appeared for MCI Communications Services, Inc. ("MCI") and presented a Motion to Intervene in the case, which was granted by the ALJ, without objection. At the conclusion of the May 14, 2009 hearing, the record was marked "Heard and Taken."

PROJECT BACKGROUND AND AGREED ORDER

The Petition alleges that due to Petitioner's desire to construct IL 255 (FAP Route 310); two new highway overpass structures must be constructed to carry IL 255 (FAP Route 310) over the Respondents' mainline tracks near the Village of Godfrey, Madison County, Illinois. Furthermore, the Petition alleges that the construction project is necessary to preserve and promote the safety of the public and for public convenience and necessity. The estimate of construction costs for the two grade separations is approximately \$7,000,000. All of the funding for the project will be the responsibility of IDOT, through federal funding sources. IDOT contemplates a bid letting in June 2009 in order to qualify for receiving the federal funding. No Grade Crossing Protection Funds are requested or involved in the case.

At the initial hearings held on the Petition, a number of engineering related issues arose among the Parties. Unresolved issues involved the location and construction of one of the grade separation piers, the location, and construction of a concrete slopewall on one of the grade separations, and the location/relocation and protection of fiber optic cables during the construction phases of the project. Throughout the hearings held in the matter, the Parties held numerous meetings, including on-site to perform various testing required in order to resolve the engineering issues remaining between the Parties. Ultimately, at the last hearing held on May 14, 2009, the Parties agreed to a general draft Order approving the project and executed "Illinois 255 Stipulations" setting forth the scope of the project and responsibilities of the Parties for various phases of the project. The substance of the draft Order and the Illinois 255 Stipulations are incorporated herein or attached hereto.

Also at the final hearing held May 14, 2009, Intervenor MCI presented to the ALJ a draft agreed Supplemental Order for consideration by the Commission. Attached to the draft Supplemental Order was a separate agreement to govern project construction responsibilities as they relate to removal or relocation or protection of the fiber optic cables located at or near the area in which the grade separation structure construction will take place. The ALJ requested and obtained the consent and agreement of each and every Party to the separate MCI agreement, which will be presented to the Commission in a Supplemental Order at a later date. Finally, at the conclusion of the May 14, 2009 hearing, each and every Party, including Intervenor MCI, consented, and agreed to the substance and entry of this Order approving the project as a whole, and allocating responsibility for the \$7,000,000 project construction costs to IDOT utilizing federal funding. Additionally, on May 13 and 14, 2009 Petitioner IDOT and Respondents each filed written consents to this Order in the case docket.

COMMISSION FINDINGS AND ORDERS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the subject matter and the Parties hereto;
- (2) the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (3) Petitioner proposes to construct two new highway overpass structures carrying IL 255 (FAP Route 310) over the KCS's and UP's mainline tracks near the Village of Godfrey, Madison County, Illinois at or near approximately UP milepost 251.5 and KCS milepost 252.3;
- (4) the proposed overpass structures are part of a roadway improvement project on IL 255 initiated by Petitioner and is necessary to preserve the safety of the public and for public convenience and necessity;
- (5) the cost of the project shall be borne by the Petitioner;
- (6) Petitioner and Respondents have substantially agreed upon the terms and conditions for the proposed construction as fully set forth in the Illinois 255 Stipulations attached hereto and incorporated by this reference herein;
- (7) Chapter 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-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;
- (8) 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;
- (9) 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;

- (10) 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;
- (11) 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 permission and authority be, and they are hereby, granted to the Illinois Department of Transportation to construct two new grade separation structures to carry IL Route 255 (FAP Route 310) over the mainline tracks of The Kansas City Southern Railway Company and the Union Pacific Railroad Company near the Village of Godfrey, Madison County, Illinois at approximate UP milepost 251.5 and KCS milepost 252.3, as set forth in the plan sheets submitted by the Illinois Department of Transportation and attached hereto in the Illinois 255 Stipulations

IT IS FURTHER ORDERED that the costs for the work to be performed by the Illinois Department of Transportation, The Kansas City Southern Railway Company and the Union Pacific Railroad Company to construct the new grade separation structures shall be assessed in accordance with the terms and conditions of the attached Illinois 255 Stipulations.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall be responsible for the new highway overpass structures, the highway approaches, and all other highway facilities, including the slope walls and/or vertical retaining walls under the structures; and The Kansas City Southern Railway Company, and the Union Pacific Railroad Company shall continue to be responsible for maintaining the existing railroad ballast, ties, rail, and all other railroad facilities.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at six-month intervals from the date of this Order, file with the Director of Processing, Transportation Division, Illinois Commerce Commission (the "Director of Processing"), written progress reports for the project herein authorized.

IT IS FURTHER ORDERED that the work herein required shall be completed within forty (40) months of the date of this Order.

IT IS FURTHER ORDERED that, within five (5) days after the completion of the work herein authorized, Petitioner shall provide written notice thereof to the Director of Processing.

IT IS FURTHER ORDERED that any person making a Request For Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the schedule deadline. An Administrative law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extensions 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 Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is 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, The Kansas City Southern Railway Company and the Union Pacific Railroad 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 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 20th day of May 2009.

JUDGE
SECTION CHIEF
<i>[Signature]</i> ORDERS SUPERVISOR

[Signature]
 CHARLES E. BOX
 CHAIRMAN

ILLINOIS 255 STIPULATIONS

THIS STIPULATION is made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE", THE KANSAS CITY SOUTHERN RAILWAY COMPANY, hereinafter referred to as "KCS", and UNION PACIFIC RAILROAD COMPANY, hereinafter referred to as "UP", with UP and KCS collectively referred to as the "COMPANY",

THE PARTIES HEREBY STIPULATE AS TO THE FOLLOWING:

- A. FAP Route 310 (IL 255) is proposed to be constructed near the Village of Godfrey, Madison County, Illinois (the "Project"). As part of this proposed construction by IDOT, two grade separation structures will be necessary to carry the relocated IL Route 255 over and across the COMPANY's mainline tracks at approximate UP Milepost 251.5, Springfield Subdivision and KCS Milepost 252.3 on the East St. Louis Terminal Subdivision. The structure numbers for the proposed bridges are 060-0310 (North Bound and Ramp C), and 060-0311 (South Bound and Ramp D); and
- B. In the interest of public safety and convenience, the STATE hereto proposes to construct the new three span 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**, attached hereto and made a part hereof; and
- C. For said purposes the STATE needs to acquire permanent and temporary easements over a parcel of real estate (hereinafter referred to as the "Premises") outlined with hatch marks and shaded purple on the Plat of Highways marked **Exhibit 1A**, attached hereto and made part hereof, and to perform work on said parcel in order to make improvements shown on the Plan sheets marked **Exhibit 1B**, attached hereto and made a part hereof; and
- D. To the best of the Parties' knowledge, the ownership of the Premises and the tracks thereon is as follows, with the track ownership also being reflected in the corresponding markings by each track at the left edge of **Exhibit 1C** attached hereto and made a part hereof:
 - a. The Premises is owned by UP and KCS either jointly or with UP and KCS owning the land under the tracks in accord with the ownership of the tracks as specified below;
 - b. The two easterly-most tracks (hereinafter "UP Main Lines") are owned solely by UP;
 - c. The next track to the west of the two UP tracks described in b. above, and which track is also the farthest west track at the north edge of the Premises, is owned solely by KCS (and will hereinafter be referenced as "KCS Main Line").
 - d. The track which diverges from the KCS track described in c. above in the southerly portion of the Premises, and which at the southerly end of

the Premises is the most westerly track, is owned jointly by UP and KCS and, by preexisting agreement between UP and KCS, is currently managed and controlled by UP. This track, which shall hereinafter be referenced as the "Joint Side Track", will not be spanned by the grade separation structure itself but is included in the Premises because it will be impacted by grading and drainage work associated with the construction of the structure; and

- E. The STATE has petitioned the Illinois Commerce Commission in accordance with 92 Illinois Administrative Code 1535 to take Jurisdiction in this matter and to enter such orders as may be necessary.

THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

SECTION 1. The "State Required Ethical Standards Governing Contract Procurement" attached hereto as **Exhibit 2**, shall be applicable to the Project and are considered a part of this Agreement.

SECTION 2. The preliminary and detailed plans, specifications and special provisions for the proposed overpass structures shall be prepared by or for the STATE at its expense; and all such plans, specifications and special provisions, affecting the interests of the UP and KCS, or either of them, shall be subject to approval by the authorized representative of UP or KCS, or both, in accordance with their respective ownership interests. The STATE's contractor shall not commence any work on the COMPANY's right of way until such approval is obtained in writing from the COMPANY's representative.

SECTION 3. No changes shall be made on any approved plans, specifications or special provisions affecting any party hereto without the consent in writing of the affected party.

SECTION 4. The parties hereto shall construct or cause to be constructed, in substantial accordance with the approved plans, specifications and special provisions, the following items of work:

- (I). WORK BY THE STATE. The STATE shall furnish or cause to be furnished, at its expense, all the labor, materials and work equipment required to perform and complete:
- (a). The preliminary engineering required for preparation of plans, specifications and special provisions as set forth in Section 2.
 - (b). The construction of 2 three span overpass structures to carry IL 255 over the COMPANY's tracks.
 - (c). Construction engineering and inspection as set forth in Section 7.
 - (d). Incidental work necessary to complete the items hereinabove specified.

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

- (II). WORK BY THE COMPANY. The UP and KCS shall each furnish or cause to be furnished, at the expense of the STATE, and in accordance with the stipulations as contained in the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, (23 CFR 140I) and supplements, all the labor, materials and work equipment required to perform and complete:
- (a). Preliminary and construction engineering as set forth in Sections 2 and 7.
 - (b). Provide flagging services as set forth in Section 5. (**approx. 175 days**)
 - (c). The relocation of the COMPANY's signal/communication wires if necessary.
 - (d). Incidental work necessary to complete the item hereinabove specified.

The estimated cost of UP's work set forth above is \$170,000.00 as shown and described in UP's Material and Force Account Estimates dated April 14, 2009, marked **Exhibit 3A** attached hereto and made a part hereof. The estimated cost of KCS' work set forth above is \$283,750.00 as shown and described in KCS' Material and Force Account Estimates dated May 13, 2009, marked **Exhibit 3B** attached hereto and made a part hereof.

In addition, the STATE has agreed to allow KCS to prepare and submit, at its cost, a redesign regarding the dual structures' western slope walls. The re-design will include the replacement of these slope walls with vertical retaining walls and drainage appurtenances in order to accommodate a future rail track beneath the western span of both bridges. An IDOT pre-qualified KCS consultant will provide the re-design to the Department for review and insertion into the construction plans. In order to maintain the construction schedule, the KCS shall submit the above described design changes to the Department no later than June 12, 2009. The STATE's Bureau of Bridges and Structures will review, provide comments (if necessary) back to KCS within two weeks. KCS will make appropriate changes if necessary and resubmit to obtain final approval by August 1, 2009. Failure by the KCS to meet these deadlines will result in the STATE proceeding with the dual structures' western slope walls design.

If in the future additional tracks or a railroad service road needs to be constructed east of the east piers, the STATE will cooperate with UP to grant the necessary rights and modify the embankment and retention walls between the east piers and the east abutment to permit such construction.

A representative of the STATE shall be present at the job site during construction to certify the work and to assure that all work and materials meet the requirements as set forth in the STATE's "Standard Specifications for Road and Bridge Construction" and supplements thereto. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this Agreement.

SECTION 5.

- I. The STATE shall require its contractor(s) to perform his/her (their) work in accordance with the final plans approved by Company, the "Standard Specifications for Road and Bridge Construction" adopted January 1, 2007, the "Supplemental Specifications" in effect on the date of invitation for bids and, with respect to The UP

Main Lines and the Joint Side Track, UP's "Railroad Minimum Requirements" marked **Exhibit 4A**, and with respect to the KCS track the "Minimum Construction Guidelines," Contractor Agreement and Right of Entry Permit Application, marked as **Exhibit 4B**, all of which are attached hereto and made a part hereof, a copy of which shall be included in STATE's bid proposal.

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

SECTION 6. The STATE agrees to invite representatives of both KCS and UP to the STATE's "Pre-construction Conference". At this Conference the STATE's contractor shall furnish the COMPANY the approximate dates flagging services are needed. Subsequent to the conference, the STATE's contractor shall furnish the COMPANY 30 (thirty) 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 7. Each party will provide the necessary preliminary and construction engineering for carrying out its work as herein set forth, and the costs for such services shall be borne by the STATE except as set forth in Section 4 above. The costs as incurred by the COMPANY for inspecting the work performed by the STATE as may affect its properties and facilities, or the safety and continuity of train operations, shall be borne by the STATE.

SECTION 8. The temporary minimum clearances, with reference to the COMPANY's track, of any necessary falsework, bracings or forms as required for the construction of the highway overpass structure, shall be not less than:

Vertical - 21.5' above top of high rail; and
Lateral - 12' from centerline of the track.

SECTION 9. The STATE shall require its contractor(s), before performing any work on the COMPANY's property, to (i) notify the authorized representatives of KCS and UP as provided in Section 6, (ii) provide to KCS and UP the insurance policies, binders, certificates

and endorsements described in **Exhibit 5** (for UP) and **Exhibit 4B** (for KCS), attached hereto and hereby made a part hereof, a copy of which shall be included in the STATE's bid proposal, and (iii) before entering COMPANY property outside the limits of the STATE's permanent easements, to execute an appropriate Contractor's Right of Entry Agreement with COMPANY in the form attached hereto as **Exhibit 6** (for UP) and **Exhibit 4B** (for KCS), a copy of which shall be included in the STATE's bid proposal.

SECTION 10. The safety and continuity of operation of the traffic of the COMPANY shall be at all times protected and safeguarded, and the STATE shall require its contractor(s) to perform the work accordingly. Whenever the work may affect the safety of trains, the method of doing such work shall first be submitted to the COMPANY's appropriate authorized representative for approval without which it shall not be commenced or prosecuted. The approval of the COMPANY's appropriate authorized representative shall not be considered as a release from responsibility, or liability for any damage which the COMPANY may suffer, or for which it may be held liable by the acts of the contractor(s), or those of their subcontractor(s), or their employees.

SECTION 11. The STATE shall require its contractor(s), upon the completion of the work of such contractor(s), to remove from within the limits of the COMPANY's right of way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such contractor(s), and to leave the right of way upon which the said contractor(s) carried on operations in a neat condition, satisfactory to the authorized representative of the COMPANY.

SECTION 12. When the construction of this grade separation project is completed, the STATE shall maintain at its expense, or by agreement with others provide for the maintenance of the highway overpass structure, the approaches, and all highway facilities, including the slope walls and/or retaining walls under the structures.

In order to fulfill its maintenance obligation, the STATE shall have access to the structure at all times, for the performance of inspections, repair and maintenance by STATE forces. UP and KCS, or either of them as appropriate, shall be notified whenever work will be performed by STATE's contractor work forces within 25 feet of their nearest track or otherwise affects their operations and any right of entry required by the exhibits to this Stipulation shall be obtained. All repair or maintenance work shall be performed in accordance with the applicable STATE's "Standard Specifications" in effect on the date the work is performed.

In accordance with existing maintenance policies, the STATE will not cause snow, ice or other materials to be plowed over the sides of the structures. In consideration of this practice, the UP and KCS agree to waive any request for the STATE to attach splash boards to the sides of the structures.

The COMPANY shall maintain at its expense, its track and all railroad facilities. The COMPANY further agrees to comply with all applicable provisions of federal, state, and local law, including, but not limited to the following: The COMPANY further agrees not to erect any advertising signs 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 13. UP and KCS shall keep an accurate and detailed account of the actual cost and expense as incurred by them, or for their account, in the performance of the work they herein agree to perform.

UP and KCS, for performance of their work as outlined in Section 4 hereof, may bill the STATE monthly, for the costs and expenses incurred. After the STATE'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, the STATE 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.

UP and KCS, upon the completion of their respective parts of the work, shall, within one hundred twenty (120) calendar days, render to the STATE a detailed statement of the actual cost and expense as incurred by it or for its account. After the STATE's representatives have checked the progressive invoices and they have agreed with the billing company's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY for 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. If the STATE disagrees with one or more items in an invoice, STATE shall still make payment on the other items in the invoice in accord with this Section.

UP and KCS shall each maintain, for 3 years after the completion of their respective parts of the work, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other STATE auditors; and UP and KCS agree to cooperate reasonably with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials at their respective company headquarters. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

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

SECTION 14. The project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment, including all preliminary engineering costs that were accrued prior to the execution of this agreement.

SECTION 15. 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 23, 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 23 apply to this agreement.

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.

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

SECTION 16. In the event that delays or difficulties arise in securing Federal approval, or in acquiring rights of way, or in settling damages or damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the construction of the project, then at any time before a construction contract is executed or actual construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this agreement shall thereupon become null and void.

SECTION 17. At the time this Agreement was executed, there were funds available for the PROJECT; however, obligations assumed by the State under this Agreement shall cease immediately, without penalty or payment (except for any funds the COMPANY was authorized by the STATE to expend prior to such cessation), should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the PROJECT.

SECTION 18. By separate document, arrangements have been made for the COMPANY to convey to the STATE any temporary or permanent property rights necessary to construct the proposed grade separations and improvements as herein proposed.

SECTION 19. Under penalties of perjury, the UP certifies that its correct Federal Taxpayer Identification Number (TIN) is 94-6001323 and KCS certifies that its correct Federal Taxpayer Identification Number (TIN) is 44-6000758 and each certifies that it is doing business as a corporation.

