AGREEMENT	80253
USDOTNO	379643V (F1830)
DATED	
S.P.	27-00258
MINN. PROJ.	STPX 2704(120)
FUNDS	Federal and City
Railroad Crossing Signals and Gates	
33rd St. E. (MSAS 245) Minneapolis, Minnesota Hennepin County	
Minnesota Commercial Railway Company	
Standard Agreement "A" Dated September 1, 1998	

THIS AGREEMENT, made and entered into by and between the CITY OF MINNEAPOLIS, hereinafter called the "Local Agency", the MINNESOTA COMMERCIAL RAILWAY COMPANY, hereinafter called the "Company"; and the COMMISSIONER OF TRANSPORTATION, STATE OF MINNESOTA, hereinafter called the "State", WITNESSETH:

WHEREAS, the Federal Highway Administration, when acting in cooperation with the State of Minnesota, is authorized by Section 130 of Title 23 of the United States Code to make Federal Aid available for the purpose of eliminating hazards at railroad grade crossings within the State of Minnesota; and

WHEREAS, the State, pursuant to Minnesota Statute Section 161.36, is authorized to cooperate with the United States Government in contracting for the construction, improvement and maintenance of roads and bridges not included in the trunk highway system which are financed in whole or in part by federal monies; and

WHEREAS, 33rd St. E. (MSAS 245), as now established, crosses the track of the Company at grade in Minneapolis, Hennepin County, Minnesota, the location of said crossing and railway track being shown on the print hereto attached, marked Exhibit "B"; and

WHEREAS, the Local Agency and the Company desire that the 33rd St. E. (USDOTNO: 379643V) grade crossing be provided with railroad flashing light signals, with gates, and circuitry, and the Company is willing to install, maintain and operate such signal system upon the terms and conditions hereinafter stated; and

WHEREAS, the Local Agency is willing to do roadway modifications to accommodate proper clearances in front of and behind said signal system; and

WHEREAS, the State, pursuant to Minnesota Statute Section 219.26, has reviewed the proposed selection of warning devices for the railroad grade crossing and has determined that the proposed selection is appropriate for said crossing.

NOW, THEN, IT IS AGREED:

1. **EXHIBITS**

The State of Minnesota, Department of Transportation, "Standard Clauses for Railroad- Highway Agreements", is attached hereto as Exhibit "A", and hereinafter referred to as "Standard Clauses". Except as hereinafter expressly modified, all of the terms and conditions set forth in the "Standard Clauses" are hereby incorporated by reference and made a part of this agreement with the same force and effect as though fully set forth therein.

Exhibit "B", the location print; Exhibit "C", the detailed cost estimate; and Exhibit "D", the Agreement Estimate Summary, are attached hereto and made a part of this agreement.

2. **WORK PERFORMANCE AND TIME SCHEDULE**

The Company shall furnish all material for and with its regularly employed forces install a complete railroad crossing signal system with gates on the 33rd St. E. (USDOTNO: 379643V) at-grade railroad crossing, as the location indicated on attached plan marked Exhibit "B". The placement of the signal system shall be in accordance with Part VIII of the Minnesota Manual on Uniform Traffic Control

Devices (MMUTCD). Detailed plans, specifications and the work to be done shall be subject to the approval of the Department of Transportation of the State of Minnesota.

If the Company determines that it is unable to perform all or a portion of the work with its own forces or equipment, it may contract the work only after notifying and receiving approval to proceed from the State. The selection of a contractor shall be subject to approval by the State prior to the awarding of the contract.

Work by the Company shall be prosecuted to be completed within 12 months after the date the Company is authorized to begin work. If the Company determines it is not possible to complete the work within the period herein specified, it shall make a written request to the State for an extension of time for completion, setting forth therein the reason for such extension.

The Daily Utility Report provided for in Article 7a of the Standard Clauses, Exhibit "A", shall not be required if the duration of the construction work is expected to last 10 working days or less.

Work by the Local Agency includes all curb relocation and sidewalk work at the grade crossing to facilitate the installation of the signal system in accordance with Part VIII of the Minnesota Manual on Uniform Traffic Control Devices (MMUTCD).

If the Local Agency determines that it is unable to perform all or a portion of the work with its own forces or equipment, it may contract the work out and therefore will be responsible for project oversight.

3. **COST ESTIMATE**

The actual costs of the project herein contemplated, including preliminary engineering costs, are to be financed with Federal Funds and Local Agency Funds. The State and Local Agency will reimburse the Company as provided herein for only such items of work and expense as are proper and eligible for payment with Federal Funds. Only materials actually incorporated into the project will be eligible for Federal reimbursement.

The State's portion (reimbursable with Federal Funds) and the Local Agency's portion will be paid to the Company in accordance with Article 8 of the Standard Clauses, Exhibit "A".

It is understood that the following estimate is for informational purposes only. The estimated cost of the work to be done by the Company hereunder with its own equipment and regularly employed forces

and in accordance with the Company's agreements with such regularly employed forces is as follows and in further accordance with the detailed estimate, Exhibit "C", and summarized in Exhibit "D".

Estimated Cost of Signals

90%	State Funds (reimbursable with federal funds)	$134,126.15
10%	Local Agency Funds	$14,902.90
	Total Estimated Cost of Signals	$ 149,029.05
	TOTAL ESTIMATED COST OF PROJECT	$ 149,029.05

The State's total financial obligation shall not increase without its approval and the encumbrance of additional funds. The total obligation under this Agreement is limited to the total amount listed above as "Total Estimated Cost of Project". However, this obligation may be increased to 120 percent of the "Total Estimated Cost of Project" listed above if the Company performs work that is previously accepted in writing by the State and additional money was encumbered. The State reserves the right to not participate in project costs incurred without its prior consent. Notwithstanding any provision to the contrary, the State and Local Agency's total financial obligation under this Agreement shall not exceed the "Total Estimated Cost of Project" plus 20 percent, of which the State shall pay 90 percent and the Local Agency shall pay 10 percent.

The roadwork done by the Local Agency will be paid for with 100 percent Local Agency Funds.

4. **WORK CHANGES**

In the event it is determined that a change from the statement of work to be performed by the Company, as outlined in the detailed estimate, Exhibit "C", is required, it shall be authorized only by an amendment to this agreement executed prior to the performance of the work involved in the change.

In the event it is found that the work has not changed from the said statement of work to be performed by the Company, but the estimated amount in this agreement is less than the actual cost of performing the work, then an increase in eligible reimbursement will be allowed to the extent of such

actual cost without an amendment in accordance with Section 3 of this Agreement and Article 12 of the Standard Clauses, Exhibit "A".

5. **MAINTENANCE**

The grade crossing signal system provided for in this agreement shall be maintained and operated by the Company upon completion of its installation. The obligation to maintain said signal system shall continue in accordance with the law of the State as it shall be from time to time in the future.

6. **FUTURE REMOVAL**

The signal system provided for in this agreement shall not be removed unless there has been a determination by the State that said signal system is no longer required at this location. If the signal system is to be removed, the Company shall notify the State of their pending removal. Upon request of the State, the Company shall reinstall said signal system at some other crossing within the State on the Company's tracks. The location and division of cost of such relocation shall be agreed upon between the Company and the State prior to such removal.

In the event that either railway or highway improvements will necessitate a rearrangement of the signal system at said crossing, the party whose improvement causes said changes will bear the entire cost of the same without obligation to the other.

7. **DETOURS AND WORK ZONE TRAFFIC CONTROL**

If there is a need for a road detour in connection with the installation of said signal system, it shall be the Local Agency's responsibility to set up the road detour and detour signing. It is understood that the Company shall coordinate any necessary road detour with the Local Agency prior to the starting date. The Local Agency shall bear all costs involved in setting up the road detour.

If a road detour is not feasible, the Local Agency shall furnish, erect and maintain all necessary traffic control devices required to provide safe movement of vehicular traffic through the project area during the entire period from the beginning of construction to the final completion thereof. Traffic control devices include, but are not limited to, barricades, warning signs, trailers, flashers, cones, drums, pavement markings and flagmen as required and sufficient barricade weights to maintain barricade

stability. The Local Agency shall be responsible for the immediate repair or replacement of all traffic control devices that become damaged, moved or destroyed, of all lights that cease to function properly, and of all barricade weights that are damaged, destroyed or otherwise fail to stabilize the barricades.

8. SIGNING AND PAVEMENT MARKINGS

Subsequent to the installation of said signal system, the Local Agency agrees to install, as may be needed, appropriate advance warning signs, other supplemental signs and pavement markings in accordance with the Minnesota Manual on Uniform Traffic Control Devices (MMUTCD). The Local Agency agrees to install said signs using Wide Angle Prismatic Retroreflective Sheeting for Visual Impact Performance (VIP) manufactured by 3M Company. The Local Agency also agrees to remove signs that are no longer needed as a result of said signal installation.

9. ASSIGNMENT OF RECEIVABLES

Any party to this agreement may assign any receivables due them under this agreement, provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this agreement.

(The remainder of this page has been left intentionally blank.)

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed.

CITY OF MINNEAPOLIS

By: _____

Title: _____

Dated: _____

By: _____

Title: _____

Dated: _____

MINNESOTA COMMERCIAL RAILWAY COMPANY

By: _____

Title: _____

Dated: _____

STATE OF MINNESOTA
Recommended for Approval:

By: _____
Director, Railroad Administration

Dated: _____

Commissioner of Transportation

By: _____
Director, Freight, Railroads & Waterways

Dated: _____

STATE ENCUMBRANCE VERIFICATION
individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Signed: _____ Dated: _____

MAPS: _____

APPROVED
Department of Administration

By: _____
Authorized Signature

Dated: _____

RESOLUTION

BE IT RESOLVED, that the City of Minneapolis enter into an agreement with the Minnesota Commercial Railway Company and the Commissioner of Transportation for the installation and maintenance of railroad flashing light signals, gates, and circuitry at the intersection of 33rd St. E. (MSAS 245) with the tracks of the Minnesota Commercial Railway Company in Minneapolis, Hennepin County, Minnesota, and appointing the Commissioner of Transportation agent for the City to supervise said project and administer available Federal Funds in accordance with Minnesota Statute, Section 161.36. The City's share of the cost shall be 10 percent of the total signal cost and 100% of the roadwork needed for adequate railroad signal clearances.

BE IT FURTHER RESOLVED, that the _____ and _____
(Title) (Title)
be and they are hereby authorized to execute said agreement and any amendments thereto for and on behalf of the City.

Dated this _____ day of _____, 2004.

STATE OF MINNESOTA)
)ss CERTIFICATION
CITY OF MINNEAPOLIS)

I hereby certify that the foregoing Resolution is a true and correct copy of a Resolution presented to and adopted by the City Council of the City of Minneapolis at a duly authorized meeting thereof held in the City Hall in Minneapolis, Minnesota, on the _____ day of _____, 2004, as disclosed by the records of said City Council in my possession.

By: _____

Title: _____

EXHIBIT "A"

STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION

STANDARD CLAUSES
FOR
RAILROAD-HIGHWAY AGREEMENTS
May 15, 2000

1. EFFECTIVE DATE

This Agreement will become effective upon the date State obtains all signatures required by Minnesota Statutes Section 16C.05 (Subd. 2).

2. CANCELLATION

The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Company. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Company will be entitled to payment, determined on a pro rata basis for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Company notice of the lack of funding within a reasonable time of the State's receiving that notice.

3. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, will be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

4. COMMISSIONER'S OFFICIAL CAPACITY

The Commissioner of Transportation of the State of Minnesota is acting in an official capacity only and is not personally responsible or liable to the Company or to any person or persons whomsoever for any claims, damages, actions, or causes of action of any kind or character arising out of or by reason of the execution of this Agreement or the performance or completion of the project.

5. DATA DISCLOSURE

Under Minnesota Statutes Section 270.66, and other applicable law, the Company consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Company to file state tax returns and pay delinquent state tax liabilities, if any.

6. ELIGIBILITY OF COSTS

The provisions contained in Federal-Aid Policy Guide, Chapter 1, Subchapter G, Part 646, Subpart B and Chapter1, Subchapter B, Part 140, Subpart I, apply to railway-highway project, regardless of the method of financing the project.

7. WORK REPORTS

The Company will furnish the State's Engineer in charge of the project:

a. "Form 21191, Minnesota Department of Transportation, Daily Utility Report", or equivalent approved by the State's engineer showing the number of people on payroll, classification, and total hours worked, and equipment used, at a time mutually agreed upon by the Company and the State.

b. Full detailed information as to progress of work and amount of labor and material used as of the time of request.

The Company will, make other reports, keep other records and perform other work in such manner a time as may be necessary to enable State to collect and obtain available federal aid.

8. REIMBURSEMENT

The State will reimburse the Company for actual expenses incurred performing the work set forth in this Agreement. Payments will be made in accordance with the following:

a. At least 90% of partial bills marked "Progressive Bill No. 1, No. 2, etc." or "First, Second, etc." signed by an officer of the Company.

b. Partial payment of the final bill marked "Final" signed by an officer of the Company and rendered in duplicate to the extent that retention by the State shall not exceed 10% of the total project cost prior to final audit.

c. Partial bills will be based on actual (not estimated) costs incurred. Partial bills need not be itemized, but State must be able to substantiate costs by checking the Company's records. The final bill will be a detailed, itemized statement of all items of work performed by the Company, as shown in the appropriate exhibit or exhibits attached to this Agreement.

Final payment will be made after audit of the final bill. The Company will keep account of its work in such a way that accounts may be readily audited. In the event that any amount previously paid to the company is in excess of the actual cost determined by audit, the Company, upon notice from the State, will promptly pay to the State the difference.

9. WORKERS' COMPENSATION

The Company certifies that it is in compliance with workers' compensation insurance coverage required by Minnesota Law, or Federal Law if the Company is subject to Federal Law which preempts the Minnesota Law. The Company will require its contractors to present proof of coverage under the Minnesota Workers Compensation Act. The Company's employees and agents will not be considered State employees. Any claims arising under workers compensation laws and any claims made by a third party as a consequence of the acts or omissions of the Company, its agents, employees or contractors are in no way the responsibility of the State.

10. COST-SHARING

If the cost of a project is being shared by the State and other parties, each party should receive a bill setting forth its proportional share of the costs whenever a project billing is submitted.

11. INSPECTION, STANDARDS OF PERFORMANCE

The Company and/or Local Agency will permit the State to inspect and approve the work performed under this Agreement during the regular working hours of the Company without prior notice. The State may refuse to approve any and all work performed under this Agreement for failure to comply with applicable standards for work of that type. If the State fails to approve the work performed under this Agreement, the State may refuse to make any further payments under this Agreement until the work at issue is performed in accordance with acceptable standards for work of this type and said work is approved by the State.

The Company and/or Local Agency warrants that it will perform all work under this Agreement in a workmanlike and timely manner in accordance with all applicable standards for work of the type at issue. Should the work fail to be performed in a timely manner or in accordance with applicable standards, the State may immediately suspend further payments under this Agreement and the Company must repay all funds expended on unsatisfactory work.

12. OVERRUN OF ESTIMATED COSTS WITH NO WORK CHANGES

If it appears to the Company, at any time subsequent to the date of this Agreement and prior to the final completion of such work, that the actual cost of the project will exceed the estimated cost, the Company must send written request for approval to the State. The request will explain the reasons for the additional costs and the amount of the costs. If State approves such request, State will encumber additional funds and then issue a notice to proceed. Any additional expenses incurred by the Company prior to receiving notice to proceed may not be reimbursed by State. State's maximum obligation under this Agreement will not exceed 120% of the estimated cost, except by a fully-executed amendment to this Agreement.

13. STATE AUDITS

Under Minnesota Statutes Section 16.C.05, subd. 5, the Company's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years after an appropriate State official certifies the Company's completion of the construction required under this Agreement.

14. NONDISCRIMINATION

If the Company enters into a contract with a contractor, to perform all or any portion of the Company's work set forth in this Agreement, the Company for itself, its assigns and successors in interest, agrees that it will not discriminate in its choice of contractors and will include all of the nondiscrimination provisions in this Agreement and as set forth in "Appendix A" attached hereto and made a part hereof.

15. DISADVANTAGED BUSINESS ENTERPRISE

The disadvantaged business enterprise requirements of 49 CFR 26, apply to this Agreement. The Company will insure that disadvantaged business enterprises as defined in 49 CFR 26, have the maximum opportunity to participate in the performance of contracts, financed in whole or in part with federal funds. In this regard, the Company will take all necessary and reasonable steps in accordance with 49 CFR 26, to insure that disadvantaged business enterprises have the maximum opportunity to compete for and perform any contracts awarded under this Agreement. The Company shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts under this Agreement. Failure to carry out the above requirements constitutes breach of this Agreement, and may result in termination of the Agreement by the State, and possible debarment from performing other contractual services with the Federal Department of Transportation.

16. AMENDMENTS, WAIVER, MERGER, AND COUNTERPARTS

Any amendments to this Agreement must be in writing and executed by the same parties who executed the original Agreement, or their successors in office. Failure of a party to enforce any provision of this Agreement will not constitute or be construed as, a waiver of such provision or of the right to enforce such provision. This Agreement contains all prior negotiations and agreements between the Company and the State. No other understandings, whether written or oral, regarding the subject matter of this Agreement will be deemed to exist or to bind either or both of the parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

APPENDIX A

Non-Discrimination Provisions of Title VI of the Civil Rights Act of 1964

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

(1) **Compliance with Regulations:** The Contractor will comply with Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Federal Highway Administration (Title 49, Code of Federal Regulation, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A", "B" and "C".

(3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligation under this contract and the Regulations relative to discrimination on the ground of race, color or national origin.

(4) **Information and Reports:** The contractor will provide all information and reports required by the Regulations, 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 the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for noncompliance:** In the event of contractor's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

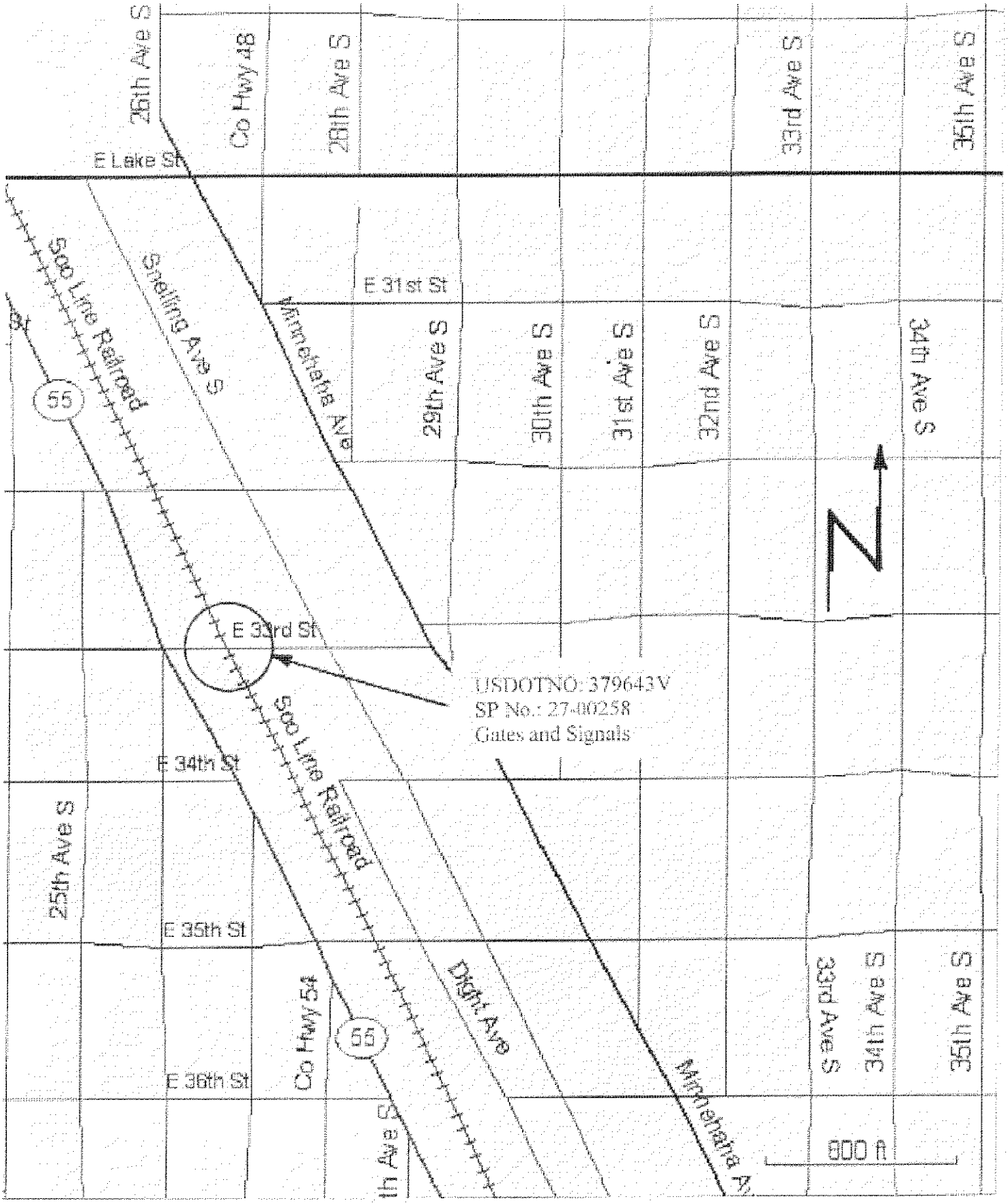

EXHIBIT 'B'

Corporation 1995-1999

Minnesota Commercial Railway
33rd St Hiawatha

IITEM DESCRIPTION	UNIT	QTY		COST
Safetran Material			$	88,566.36
Safetran Shop Labor			$	8,360.00
Safetran Engineering			$	4,120.00
Freight			$	3,219.00
Container Usage			$	750.00
Total Material & Freight			**$**	**105,015.36**
CMO Signals	76	35	$	2,660.00
Signal Mgr	65.75	80	$	5,260.00
Signal Maintainer	45	80	$	3,600.00
Signal Construction Supvr	80	80	$	6,400.00
Backhoe Operator	42.5	30	$	1,275.00
B & B Laborer	45	40	$	1,800.00
Accounting Labor			$	-
Total Labor			**$**	**20,995.00**
Employers Liability Ins		18.15%	$	3,810.59
Equipment Rental			$	2,100.00
Directional Boring	8	400	$	3,200.00
Vehicle Usage	3	120	$	360.00
			$	-
Total Equip Rental & Ins			$	9,470.59
Total Above Accounts			$	135,480.95
Contingencies		10.00%	$	13,548.10
Total Estimated Cost			**$**	**149,029.05**

EXHIBIT "C"

PROJECT ESTIMATE SUMMARY

USDOTNO	379643V
Agreement #:	80253
Signal Project	INSTALL GATES
Surface Project	
State Crossing	27-13-343
State Project No	27-00258
MN Project No.	STPX 2704(120)
Road Designation	MSAS 0245
Location	33RD ST E
City	MINNEAPOLIS
Railroad Name	MINNESOTA COMMERCIAL RAILWAY COMPANY
Road Authority	CITY OF MINNEAPOLIS
File Number	F1830
Safety Code	5F
Federal Auth Date	

Project Cost Breakdown	Federal Funds	Other Funds	Total Project Cost
Signal Work (90 % Federal)	$134,126.15	$14,902.91	$149,029.05
Surface Work (0 % Federal)	$0.00	$0.00	$0.00
Subtotal	**$134,126.15**	**$14,902.91**	**$149,029.05**
Construction Engineering	$0.00	$0.00	$0.00
Total	**$134,126.15**	**$14,902.91**	**$149,029.05**

* Note: Source of other funding:
Signals - 10% CITY OF MPLS
Surface -

State Project:	27-00258
MN Project:	STPX 2704(120)
Agree No:	80253
Safety Code:	5F
Railroad:	MNNR
Location:	33RD ST E
City:	MINNEAPOLIS
Date: 06/28/04	Exhibit : D