

December 6, 2002

Misc. Contracts & Agreements  
No. 18818, Amendment 1

**COOPERATIVE IMPROVEMENT AGREEMENT**

CITY OF NEWBERG  
CITY RECORDER INDEX NO. 1790

**Amendment 1**

The STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT", and the CITY OF NEWBERG, hereinafter referred to as "City", entered into an Agreement on January 26, 2001. Said agreement covers the Brutscher Street to Main Street project.

It is now determined by ODOT and City that the Agreement referenced above, although remaining in full force and effect, shall be amended by this Amendment No. 1 to describe the parking lot property transfer.

**Add the following to CITY OBLIGATIONS as Item 26:**

26. Upon completion of the project, City shall accept the deeds to the real property acquired to replace the on-street parking. ODOT right-of-way files for this property are 6468-501 and 6468-502. Said real property is to be used for off-street parking for public use, free of parking fees.

**Add the following to ODOT OBLIGATIONS as Item 14:**

14. Upon completion of the project, ODOT shall transfer to City the real property acquired for the replacement of the on-street parking. ODOT right-of-way files for this property are 6468-501 and 6468-502. All costs associated with the acquisition of the real property are to be funded through Federal funds and City matching funds.


*SIGNATURE PAGE TO FOLLOW*

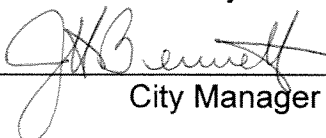
IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission on January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement.

On January 31, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Executive Deputy Director for Highways to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

CITY OF NEWBERG, by and through its designated City officials

By   
Mayor

By   
City Manager

Date 12-11-02

APPROVED AS TO LEGAL SUFFICIENCY

By NA  
City Legal Counsel

Date \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY

By   
Assistant Attorney General

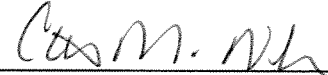
Date 12/26/02

STATE OF OREGON, by and through its Department of Transportation

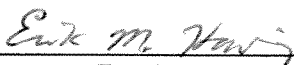
By   
Executive Deputy Director for Highways

Date 1-9-03

APPROVAL RECOMMENDED

By   
Technical Services Mgr./Chief Engineer

Date 1-8-03

By   
Region 2 Manager

Date 12-18-02

By   
State Traffic Engineer

Date 01/06/03

City copy to:  
City of Newberg Public Works Department  
PO Box 970  
Newberg, OR 97132



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Transportation Building

355 Capitol St. NE

Salem, Oregon 97301

FILE CODE:

AGR

January 14, 2003

City of Newberg Public Works Department  
PO Box 970  
Newberg, OR 97132

Enclosed for your records is a fully executed copy of Amendment number one of agreement number 18818. This amendment adds descriptive paragraphs regarding the parking lot property transfer.

We have retained a fully executed copy of this amendment for the Department of Transportation's files.

Trish Barker, Agreements Specialist  
Construction Contracts Unit  
Roadway Engineering Section

Enclosure

TB:plg



December 11, 2000

Misc. Contracts & Agreements No. 18818

CITY OF NEWBERG  
CITY RECORDER INDEX NO. 1790

## **COOPERATIVE IMPROVEMENT AGREEMENT**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and the CITY OF NEWBERG, acting by and through its elected officials, hereinafter referred to as "City".

### **RECITALS**

1. Pacific Highway West, also known as Highway 99W and First and Hancock Streets in the couplet section located within City, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Elliott Road, Meridian Street, Howard Street and Springbrook Street are parts of the city street system under the jurisdiction and control of City.
2. Pacific Highway West is designated as a Statewide Access Oregon Highway (AOH) in the 1991 Oregon Highway Plan, and is part of the National Highway System (NHS). The primary purpose of this type of highway is to move traffic safely and efficiently through and between geographic and major economic areas within Oregon, between Oregon and adjacent states, and to and through major metropolitan areas.
3. By the authority granted in ORS 366.770 and 366.775, ODOT may enter into cooperative agreements with the counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any person, firm, or corporation for the performance of work on any highway within the State. When said money is deposited, ODOT shall proceed with project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval. Traffic signal work on this project will conform to the current ODOT standards and specifications (metric).

6. This agreement supercedes Agreement #15876, which was fully executed on June 11, 1998.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

### **TERMS OF AGREEMENT**

1. For the purpose of preserving the function of Pacific Highway West as a Statewide Access Oregon Highway corridor, providing improved access, enhancing traffic flow, increasing safety, and upgrading the facility to approved AASHTO design standards, ODOT and City propose to improve Pacific Highway West from Brutscher Street to Main Street, hereinafter referred to as "project". The location of the project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

Currently this section of highway has no paved shoulders or bike lanes, and the sidewalks are discontinuous and do not meet ADA standards. The Springbrook Street and Villa Road intersections are experiencing congestion problems, and the highway alignment at River Road does not meet ODOT standards, causing turning at grade difficulties for trucks. The pavement condition is poor and the turning movements into the numerous accesses create conflicts with the heavy through traffic. The existing drainage system is inadequate.

The project proposes to upgrade and widen the pavement to create new shoulders and to add a third westbound travel lane from Villa Road to Main Street; construct new sidewalks and close or combine driveways; install a raised non-traversable median from Brutscher Street to Springbrook Street (except as designed for emergency access) and from Villa Road to River Street; realign the section of highway at River Street; interconnect all the traffic signals from Springbrook Street to Main Street; reconstruct the Springbrook Street, Elliott Road and Villa Road intersections; and install new traffic signals at Elliott Road, Meridian Street and Howard Street at both Hancock and First Streets.

2. The total estimated cost of the project is \$14,600,000, which is subject to change. The project will be funded with ODOT, Federal and City funds. The project costs are broken down as follows:

<u>Total Cost</u>	<u>Federal</u>	<u>State</u>	<u>City Obligation No. 15</u>
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Everest-Main	9,300,000	286,550	8,916,596	96,854
Brutscher-Everest	5,300,000	4,699,823	580,877	19,300

3. This agreement shall become effective upon execution of this agreement by all parties and shall remain in effect for the purpose of ongoing maintenance and power cost responsibilities for the useful life of the facilities constructed as part of the project or until ODOT and City have entered into a new agreement. ODOT and City reserve the right to renegotiate the terms of this agreement in the future if the designation of the highway changes due to the construction of the Newberg Bypass.

### **CITY OBLIGATIONS**

1. City hereby agrees to the protective access measures identified on sketch map Exhibit A. These protective measures include, but are not limited to, installation of raised, non-traversable medians between Brutscher Street and Springbrook Street and between Villa Road and River Street. The medians will limit access to driveways and require right-in and right-out movements only.
2. City shall support and work with ODOT to eliminate driveway accesses from Pacific Highway West when alternative access is developed and will implement the ODOT access management policies for urban (in-City) State Highways of statewide significance.
3. City shall require properties and property owners located adjacent to Pacific Highway West to: share driveways when new development or redevelopment occurs; allow circulation of motorists, pedestrians and cyclists to adjacent properties without re-entering the State highway; require new development or redevelopment to use city streets for access and, where alternative access is not available, limit new development and redevelopment to one access or shared access to Pacific Highway West; and, consult with ODOT's District 3 when determining the location of access to Pacific Highway West. All decisions regarding access to the highway shall be consistent with ODOT's and City's access management policy at the time the decision is made. Permitting of all approach roads to the State highway remains the responsibility of ODOT.
4. City shall consider granting variances regarding the use of joint access and the requirement of inter-parcel circulation to properties located adjacent to Pacific Highway West at the time that redevelopment occurs based on the City's Development Code provisions in effect at that time.

5. City shall assume permanent jurisdiction and all future maintenance of those existing parts of both River Street and Hancock Street that are bypassed by the planned realignment of Pacific Highway West in the vicinity of River Street.
6. City shall pay for the power costs for the new traffic signals at Elliott Road, Meridian Street and Howard Street at both the eastbound and westbound sections of the Pacific Highway West couplet (Hancock and First Streets).

City shall pay for the power costs for the upgraded signals at College Street and Main Street at both the eastbound and westbound sections of the Pacific Highway West couplet (Hancock and First Streets), for the upgraded signals at River Street and Pacific Highway West, for the upgraded signals at Villa Road and Pacific Highway West, and for the upgraded signals at Springbrook Street and Pacific Highway West. The power responsibility portions of the existing agreements--No. 4405 dated January 11, 1972; No. 4907 dated January 30, 1974; No. 8581 dated December 19, 1985; and No. 10858 dated March 19, 1992--between ODOT and City are hereby nullified.

City shall pay for the power costs for the temporary fire signal installed on the 2<sup>nd</sup> Street detour.

7. City shall, at its own expense, maintain the asphaltic concrete pavement surrounding the vehicle detector loops that are installed in city streets in a manner that provides adequate protection for the detector loops. ODOT retains the responsibility for maintenance and repair of the detector loops.
8. City, by execution of this agreement, does hereby give its consent as required by ORS 373.030(2) to any and all changes of grade within the city limits, if any, in connection with or arising out of the project covered by this agreement. ODOT shall make every effort through the design process to match the City grade.
9. City hereby gives ODOT the right to enter onto and occupy City street right-of-way for the purpose of constructing project, provided that ODOT shall repair any damage caused by construction of the project to the City street right-of-way and restore the right-of-way to as good or better condition than it was in prior to the start of the project. Detour and construction traffic will be permitted only on City streets that are deemed capable of supporting heavy trucks without damage and only with prior authorization by City.
10. City, its consultants or subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

11. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
12. City shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 13.13. City shall perform and pay for all required maintenance on the off-street parking spaces created to replace the on street parking in the Hancock Street corridor.
14. City shall design and construct or cause to be constructed, replacement of the existing storm drain line that runs from the west side of the Willamette Valley Railroad (Hancock Street) to the Chehalem Creek outfall, including the acquisition of all right-of-way and/or easements necessary for this work. This storm drain line shall be designed to handle a minimum ten-year storm event. The storm drain line shall be designed to pickup current railroad drainage and the Hancock outfall drainage. This new storm drain line shall be complete, ready for use by March 1, 2002.
15. City shall, upon receipt of a letter of request from ODOT, send an advance deposit by depositing money in the Local Government Investment Pool at the State Treasury and sending an Irrevocable Limited Power of Attorney to ODOT's Central Services Division in the amount of \$116,154 which is equal to 100 percent of the engineer's estimate for the following project work:
  - A. The match required for the federal funds used to pay for the acquisition and construction of the replacement parking spaces in the Hancock Street corridor. Engineer's Estimate \$32,797.
  - B. One half the total cost of all junction boxes needed for access to mainline conduit, plus the full cost of all additional junction boxes and 1.5" (41mm) flexible service conduit (including trenching), required for street lighting along the

south side of Hancock Street, from Main Street to Center Street. Engineer's Estimate \$14,057.

- C. Water valve and sanitary sewer manhole adjustments that are included in the ODOT contract plans and as needed during construction of this project. Engineer's Estimate \$19,300.
- D. Powder coating and ornamental base shoes for the traffic signal poles located at the intersections of River Street and Hancock Street, Meridian Street and Hancock Street, College Street and Hancock Street, Howard Street and Hancock Street, and Main Street and Hancock Street. Engineer's Estimate \$50,000.

The project contract will not be awarded until City has made said advance deposit. City shall make additional deposits, if any, as needed upon request from ODOT and acceptance by City. Requests from ODOT for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete project.

- 16. Upon completion of the project and receipt from ODOT of an itemized statement of 100 percent of the actual total costs of the specific work elements described in City Obligation 15, City shall pay any amount which, when added to City's prior deposits described in City Obligation 15, will equal 100 percent of the actual total costs for said work. Any portion of City's deposits which are in excess of the total ODOT costs will be refunded to City at the time that the specific project element's final costs are known and ODOT and the City agree on the costs, subject to the City's written request for repayment.
- 17. City shall extend or cause to be extended the proposed westbound right-turn lane along the northwest side of Springbrook Street and Pacific Highway West, to a minimum of 300 meters from the north side of the Pacific Highway West intersection. The extension of the right-turn lane shall be required upon building expansions or new development of any properties along the west side of Springbrook Street, between Pacific Highway West and Haworth Avenue.
- 18. City shall relocate or reconstruct, or cause to be relocated or reconstructed, all utilities on facilities impacted by the water line portion of the project. Utilities include all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is necessary in order to conform the utilities or facilities to the plans for the project. ODOT shall be responsible for the relocation or reconstruction of all utilities and facilities described in paragraph 2 of ODOT Obligations.

19. Upon completion of the project, City shall perform and pay for all required maintenance work on Elliott Road and Springbrook Street.
20. Upon completion of the project, City shall perform and pay for all required maintenance outside the curbs, including sidewalks.
21. Upon completion of the project, City shall perform and pay for all required maintenance of any crosswalks at non-signalized intersections.
22. Upon completion of the project, City shall perform and pay for street sweeping.
23. Upon completion of the project, City shall perform and pay for any landscape maintenance work, including landscaped medians and parking lots, on the project.
24. Upon completion of the project, City shall perform and pay for any maintenance, including cleaning, required on the in-lets, manholes, and trunk lines of the storm sewer system, along Pacific Highway West from Brutscher Street to River Street, on Hancock Street, and on 1st Street.
25. Upon completion of the project, City shall perform and pay for any maintenance work required, including landscaping, for the water quality and wetland mitigation sites located at the southeast quadrant of Springbrook Street and Pacific Highway West.

## **ODOT OBLIGATIONS**

1. ODOT shall, at its own expense, conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; obtain all required right-of-way; obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; advertise and award all contracts; pay all contractor costs; and provide project management services and other necessary functions for sole administration of the contract.
2. ODOT shall relocate or reconstruct, or cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature, where such relocation or reconstruction is necessary in order to conform the utilities or facilities to the plans for the project, except City shall be responsible for the relocation or reconstruction of all utilities on facilities impacted by the water line portion of the project. Reimbursement for utility relocation or reconstruction is made pursuant to ODOT policies and procedures and the provisions of 23 CFR 645A (Code of Federal Regulations).

3. ODOT shall, at its own expense, provide and pay for all emergency vehicle preemption devices to be installed on traffic lights as part of this project.
4. ODOT shall, at its own expense, perform all required signal maintenance and repairs on the new signals and upgraded signals installed as a part of this project. ODOT retains the responsibility for maintenance and repair of the detector loops. ODOT shall retain complete jurisdiction and control of the timing established for operation of the traffic signals. ODOT shall contact City if significant timing changes are proposed and will allow City the opportunity to review and comment on those changes. ODOT shall control the signals in temporary and emergency situations without consulting the City.
5. ODOT shall design and install landscaping for the raised median islands located between Villa Road and River Street on Pacific Highway West and the public parking lot located at N. Blaine Street and Hancock Street.
6. ODOT shall perform and pay for all required maintenance of any crosswalks at signalized intersections.
7. Prior to completion of the project, ODOT shall perform and pay for any roadway maintenance of city streets, that were designated as detour routes for this project, to a condition that equals or exceeds the current condition (ODOT's discretion) at the time the detour was implemented. These city streets include Lincoln Street (between 1<sup>st</sup> and 2<sup>nd</sup> Streets), 2<sup>nd</sup> Street (between Lincoln and River Streets), 3<sup>rd</sup> Street (between Pacific Highway West and Main Street), Main Street (between 3<sup>rd</sup> and Hancock Streets), River Street (between 1<sup>st</sup> and 2<sup>nd</sup> Streets), Grant Street (between 1<sup>st</sup> and Hancock Streets), Villa Road (between Pacific Highway West and Mountainview Drive) and Mountainview Drive (between Villa Road and College Street).
8. ODOT shall forward to City a letter requesting an advance deposit in the amount of \$116,154 which is equal to 100 percent of the engineer's estimate as stated in City Obligation No. 15 for the following project work:
  - A. The match required for the federal funds used to pay for the acquisition and construction of the replacement parking spaces in the Hancock Street corridor. Engineer's Estimate \$32,797.
  - B. One half the total cost of all junction boxes needed for access to mainline conduit, plus the full cost of all additional junction boxes and 1.5" (41mm) flexible service conduit (including trenching), required for street lighting along the south side of Hancock Street, from Main Street to Center Street. Engineer's Estimate \$14,057.

- C. Water valve and sanitary sewer manhole adjustments that are included into the ODOT contract plans and as needed during construction of this project. Engineer's Estimate \$19,300.
- D. Powder coating and ornamental base shoes for the traffic signal poles located at the intersections of River Street and Hancock Street, Meridian Street and Hancock Street, College Street and Hancock Street, Howard Street and Hancock Street, and Main Street and Hancock Street. Engineer's Estimate \$50,000.

The project contract will not be awarded until City has made said advance deposit. ODOT shall send to City requests for additional deposits, if any, as needed and accepted by City. Requests from ODOT for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete project.

- 9. Upon completion of the project, ODOT shall send to City a bill for the amount which, when added to City's earlier deposits, will equal 100 percent of the total costs for the specific work elements shown in City Obligations No. 15. Any portion of City's deposits which are in excess of the total ODOT costs will be refunded to City at the time that the specific project element's final costs are known and ODOT and the City agree on the costs, subject to the City's written request for repayment.
- 10. ODOT shall include all water valve and sanitary sewer manhole adjustments in the ODOT contract plans.
- 11. ODOT shall own and maintain the water treatment facility at Hess Creek.
- 12. ODOT shall work with S. P. Newsprint to develop a plan to maintain rail service to the mill as is required to serve the mill during the construction project.
- 13. ODOT shall install on the 2nd Street detour an emergency fire signal near City Fire Station No. 2 as determined by the State Traffic Engineer. This signal shall be turned off when the Hancock Street section between Main Street and River Street is open to through traffic, and the signal shall be removed prior to the completion of the project.

## **GENERAL PROVISIONS**

- 1. ODOT and City agree that a mutual review of the construction plans will be conducted prior to advertisement for construction bid proposals.
- 2. ODOT and City understand and agree that the safe, efficient function of Pacific Highway West is of paramount importance to both the state transportation system and

to City and will discourage direct access to the facility in areas of potential development or redevelopment.

3. ODOT and City agree that no new driveways or public roads will be permitted in locations where the proximity of adjacent pre-existing driveways or streets would violate the current ODOT access spacing standards for this type of facility, as stated in the most recent Oregon Highway Plan, unless an exception to the access spacing standards is granted by the ODOT Region Access Management Coordinator or Access Variance Committee.
4. ODOT and City agree to consider the installation of additional raised, non-traversable medians in the section between Springbrook Street and Villa Road if the accident rate in this section rises above the statewide average for highways of this type or if proposed new development on adjacent properties creates traffic flow or accident hazards.
5. ODOT and City agree that no new signals will be installed at Sitka Street or Deborah Street in the foreseeable future. ODOT and City agree that there is a possibility of installing new signals at First Street and Washington Street and at Hancock Street and Washington Street some time in the future. ODOT and City agree that all signals will be synchronized and timed to provide the best possible progression for traffic on Pacific Highway West.
6. ODOT and City agree to the removal of approximately 55 on-street parking spaces from the north side of Hancock Street and replace with a comparable number of off-street parking spaces in the Hancock Street corridor for public use, free of parking fees. Acquisition and construction of replacement parking is to be paid with federal funds available to ODOT and matched by City funds.
7. This agreement may be terminated by mutual written consent of both parties.

ODOT may terminate this agreement effective upon delivery of written notice to City or at such later date as may be established by ODOT under any of the following conditions.

- a) If City fails to provide services called for by this agreement within the time specified herein or any extension thereof.
- b) If City fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.

- c) If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
- d) If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

- 8. As Federal funds are involved in this agreement, Exhibits B and C are attached hereto and by this reference made a part of this agreement, and are hereby certified to by City representative.
- 9. City, as recipient of grant funds, pursuant to this agreement with ODOT, shall assume sole liability for City's breach of the conditions of the grant, and shall, upon City's breach of grant conditions that requires ODOT to return funds to the Federal Highway Administration, the grantor, hold harmless and indemnify ODOT for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of City, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this agreement.
- 10. City may terminate this agreement effective upon delivery of written notice to ODOT, if ODOT fails to perform any of the provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City fails to correct such failures within 10 days or such longer period as City may authorize.
- 11. If City or ODOT fails to maintain facilities in accordance with the terms of this agreement, ODOT or City, at its option, may maintain the facility and bill City or ODOT, seek an injunction to enforce the duties and obligations of this agreement or take any other action allowed by law.
- 12. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have

*Agreement No. 18818  
City of Newberg / ODOT  
12/11/00*

*Page 12*

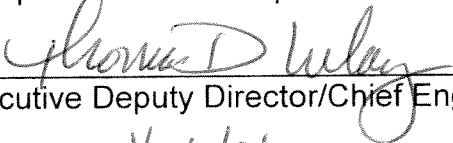
been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision.

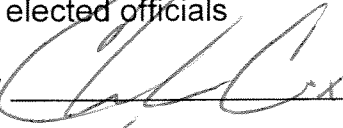

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.


*SIGNATURE PAGE TO FOLLOW*

This project is a combination of two projects that were approved by the Oregon Transportation Commission on October 13, 1999 as part of the 2000-2003 Statewide Transportation Improvement Program listed on page 95. On September 6, 2000, under STIP amendment 00-03-12A, the project were combined into Key No. 07339.


The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order 2, in which the Director grants authority to the Executive Deputy Director/Chief Engineer to approve and execute agreements for work over \$75,000 included in the Statewide Transportation Improvement Program.

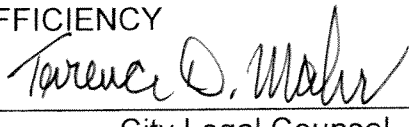
STATE OF OREGON, by and through  
its Department of Transportation  
By   
Executive Deputy Director/Chief Engineer  
Date 1/26/01

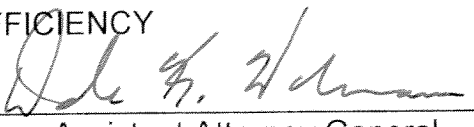
CITY OF NEWBERG, by and through  
its elected officials  
By   
Title Mayor  
By 

APPROVAL RECOMMENDED  
By   
Region Manager  
Date 1-5-01

Title City Manager  
Date Jan. 4, 2001

By   
State Traffic Engineer  
Date 1/18/01

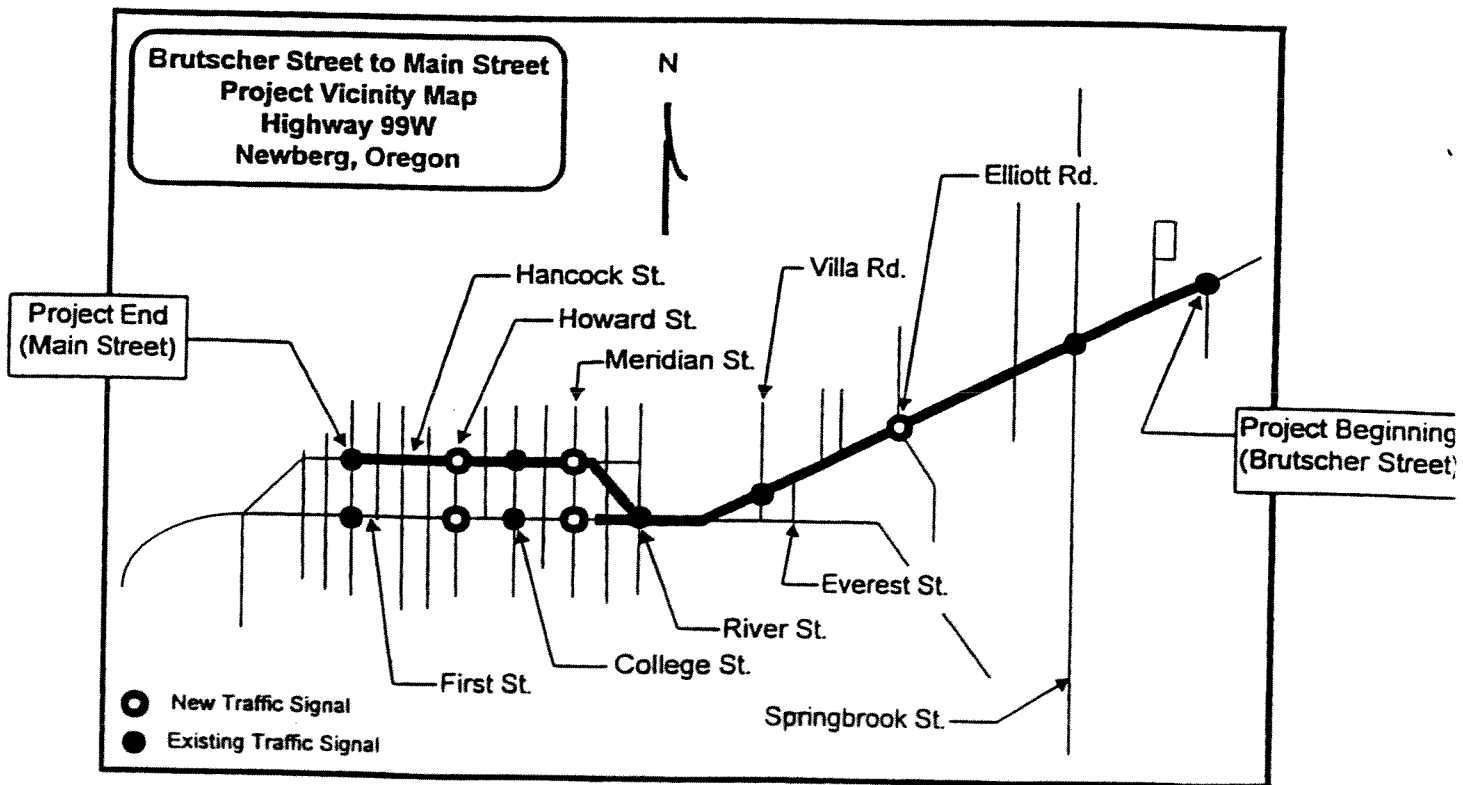
APPROVED AS TO LEGAL  
SUFFICIENCY  
By   
City Legal Counsel  
Date Jan 4, 2001

APPROVED AS TO LEGAL  
SUFFICIENCY  
By   
Assistant Attorney General  
Date 1/23/01

# EXHIBIT A

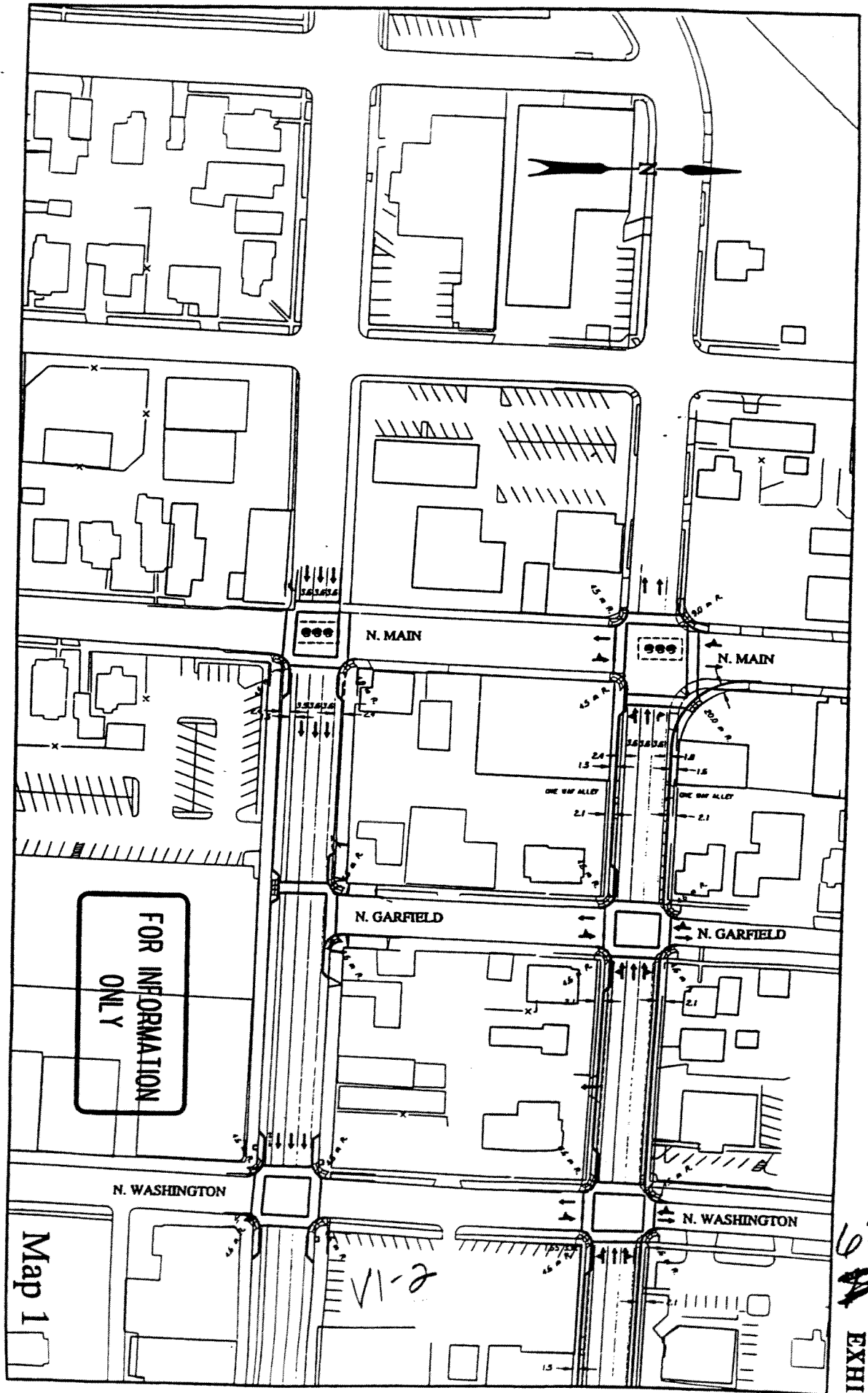
## BRUTSCHER STREET TO MAIN STREET

MAY 1998



VI-2

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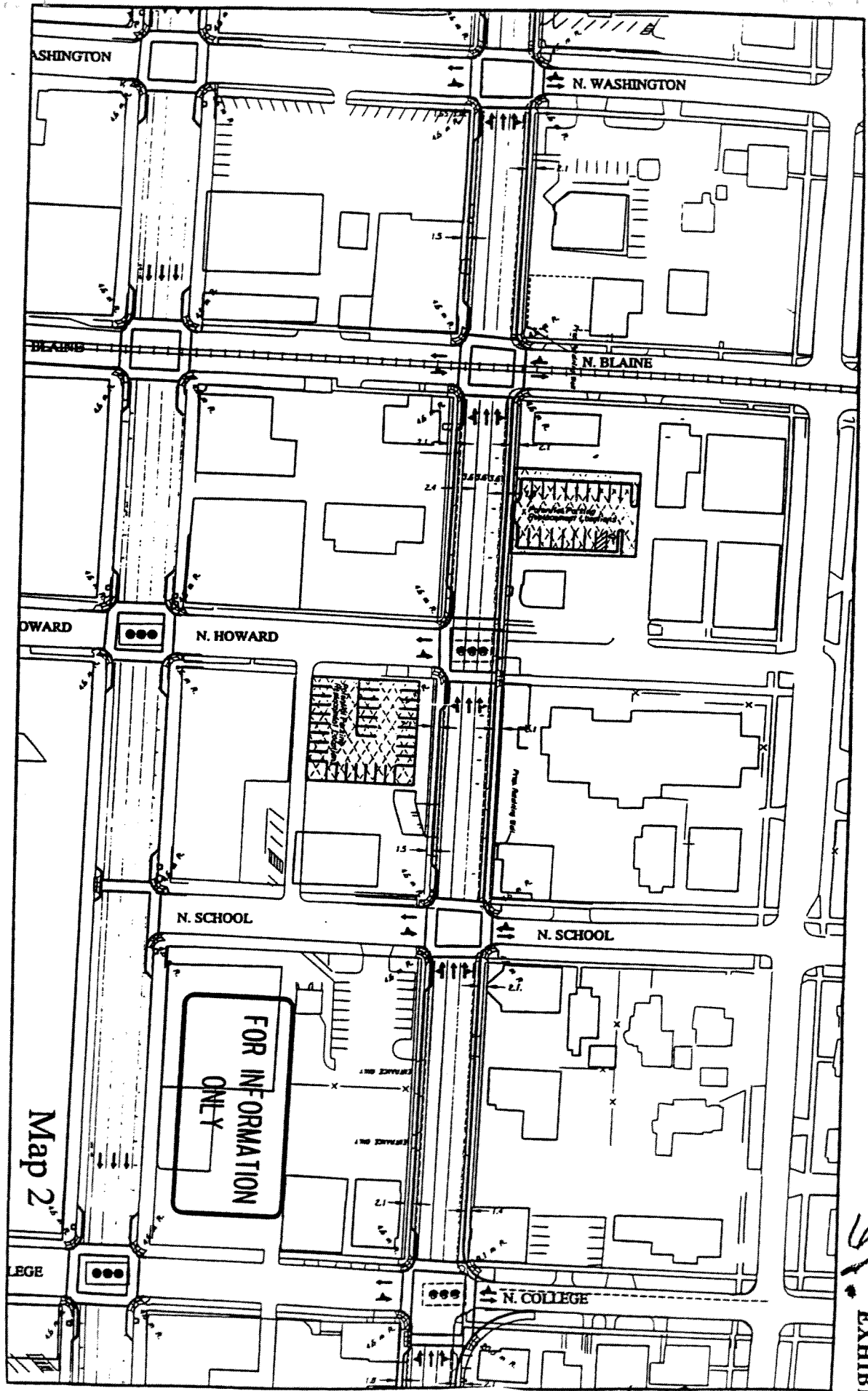


FOR INFORMATION ONLY

Map 1

2-11

EXHIBIT 65



Map 2

FOR INFORMATION ONLY

91  
EXHIBIT A

VI-2

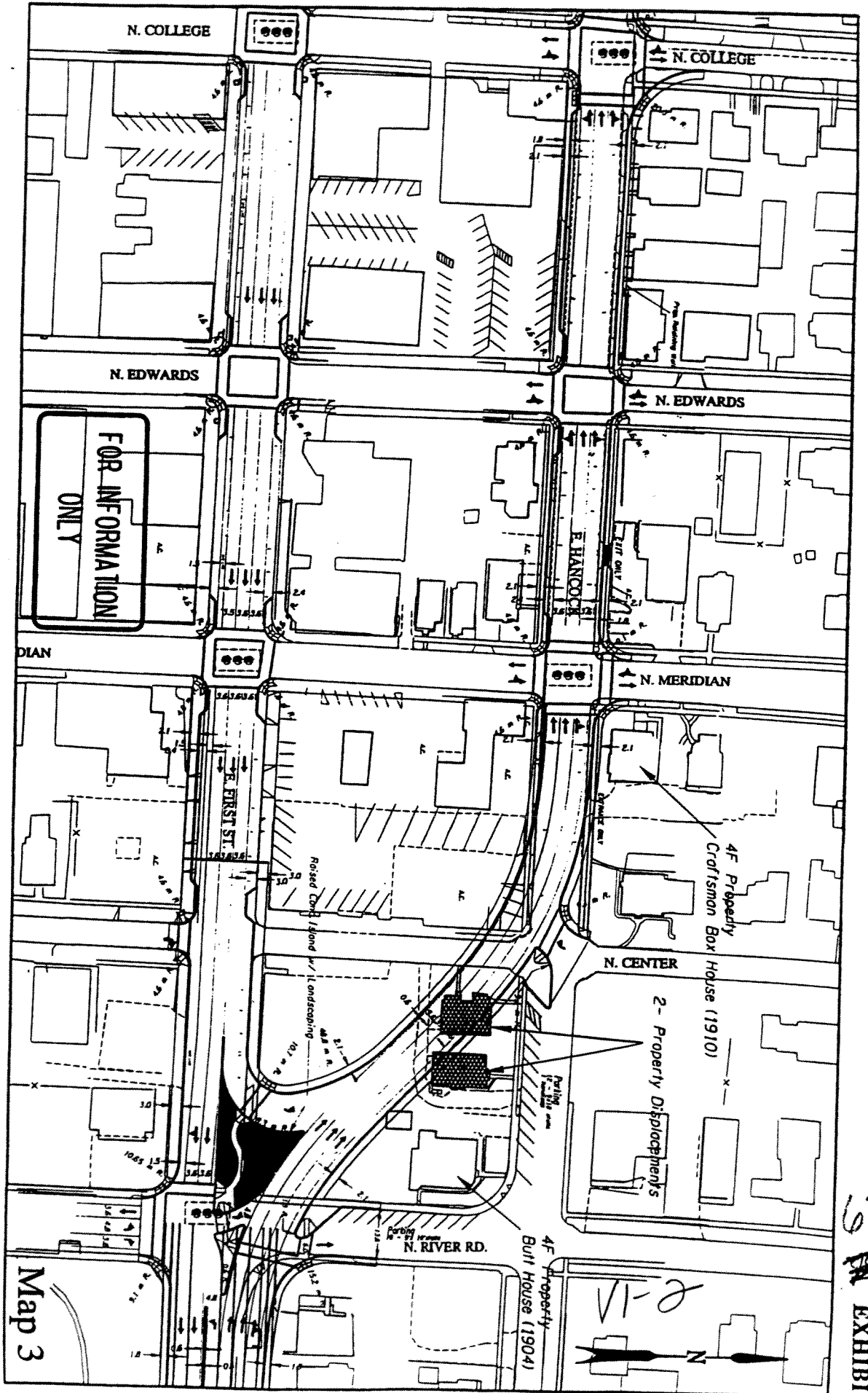
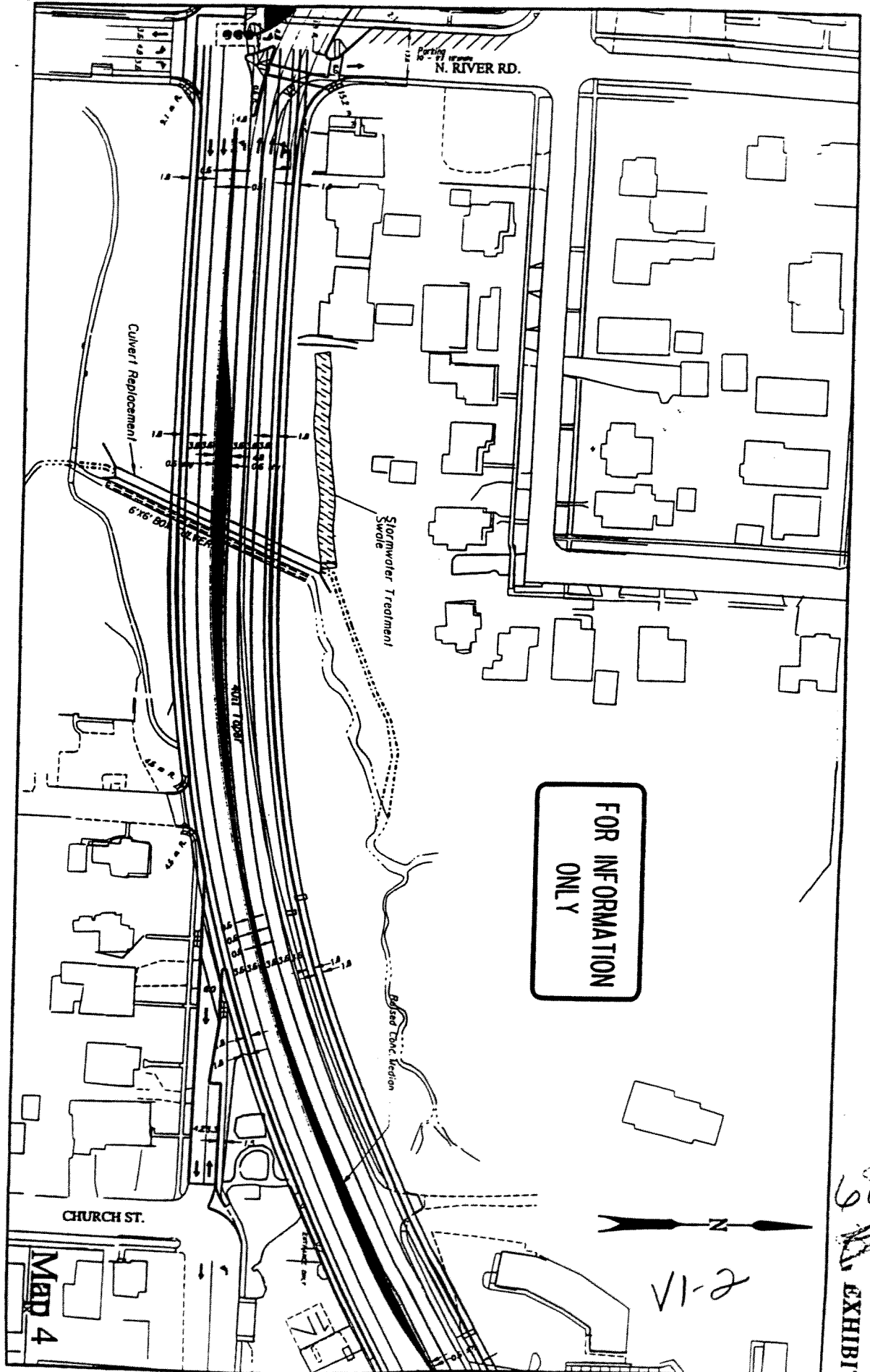


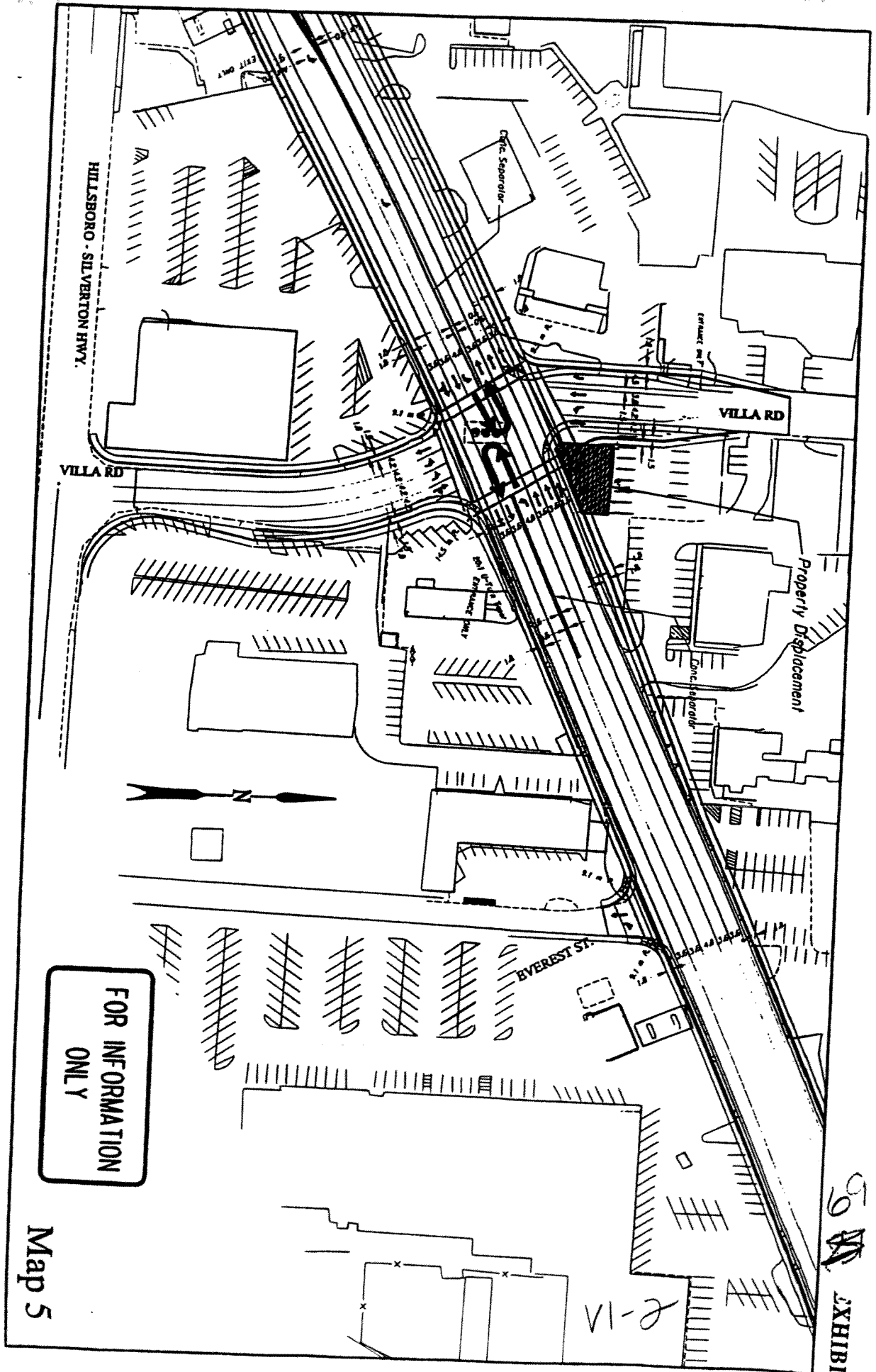
EXHIBIT A



68  
EXHIBIT A

VI-2

Map 4

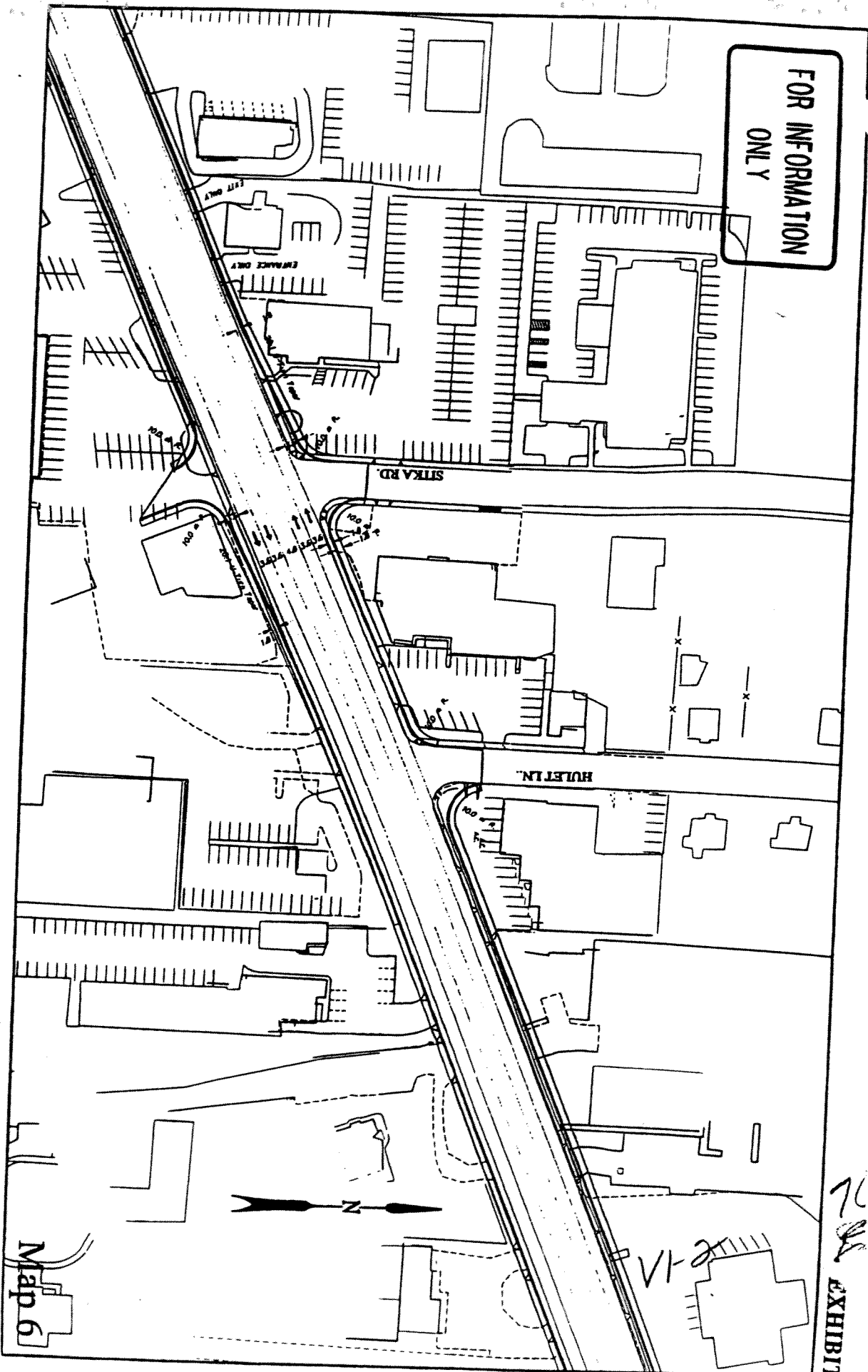


FOR INFORMATION  
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Map 5

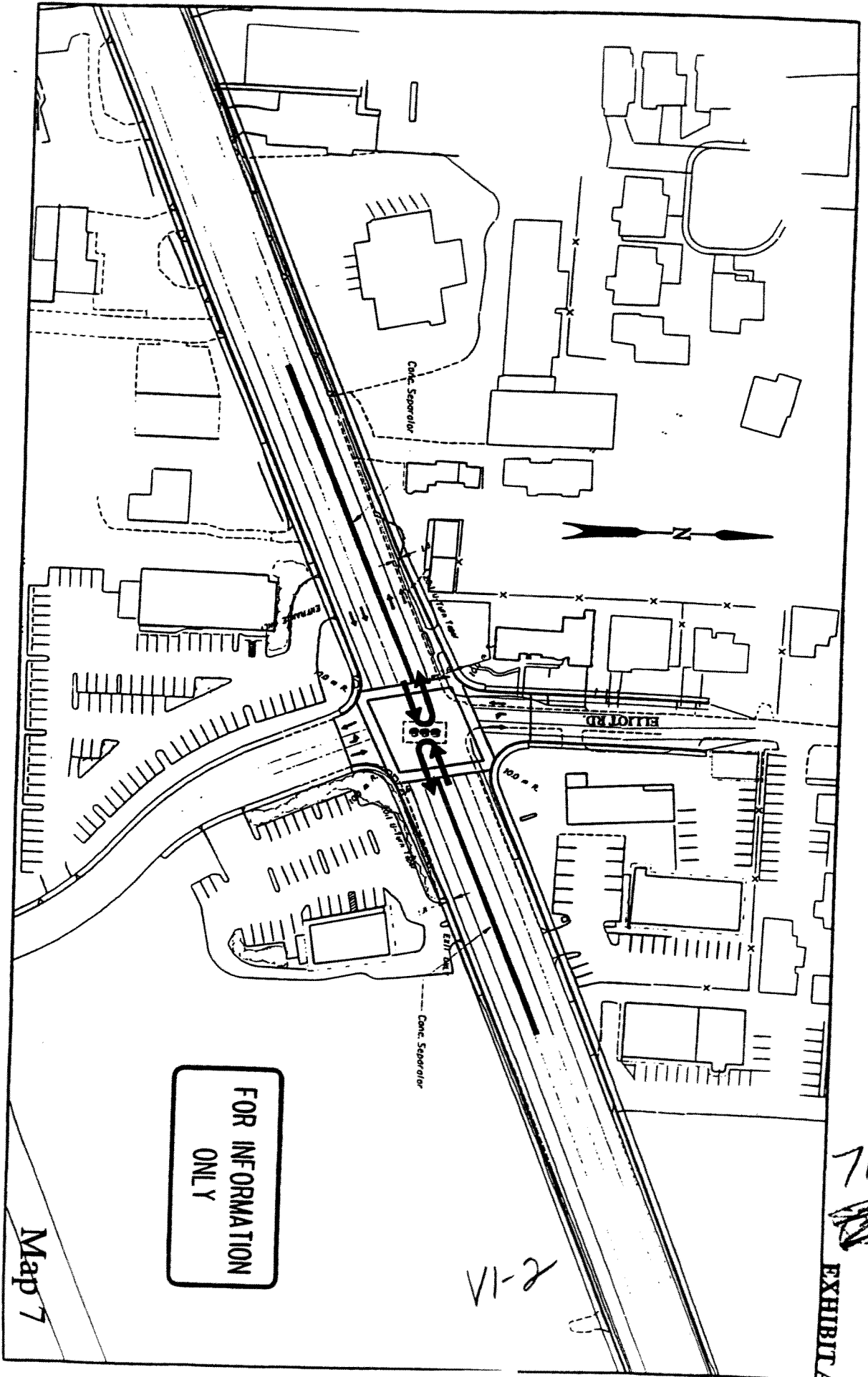
59 EXHIBIT 1

FOR INFORMATION ONLY



Map 6

EXHIBIT A

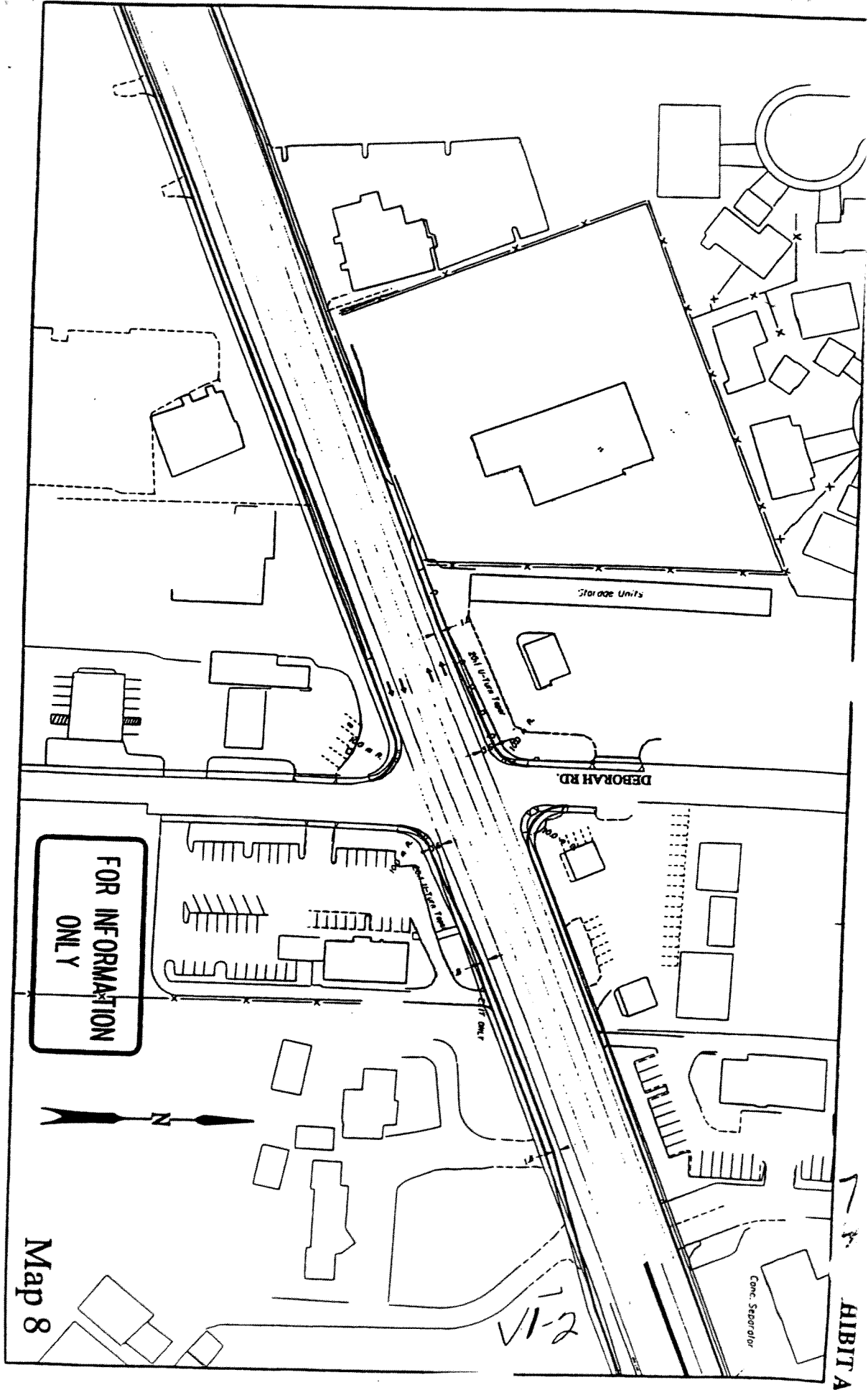


FOR INFORMATION ONLY

Map 7

VI-2

EXHIBIT A



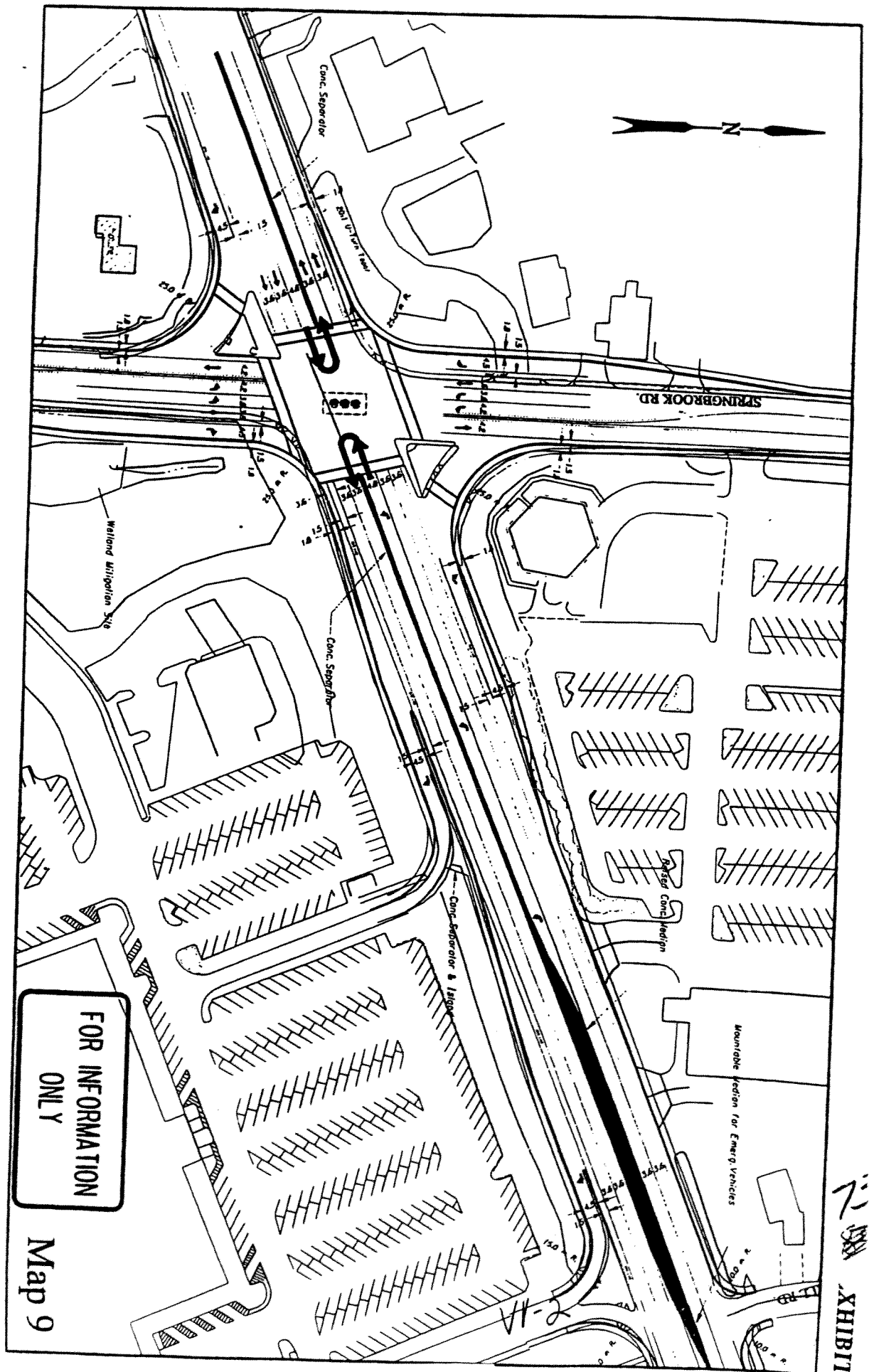
FOR INFORMATION ONLY

Map 8

1-12

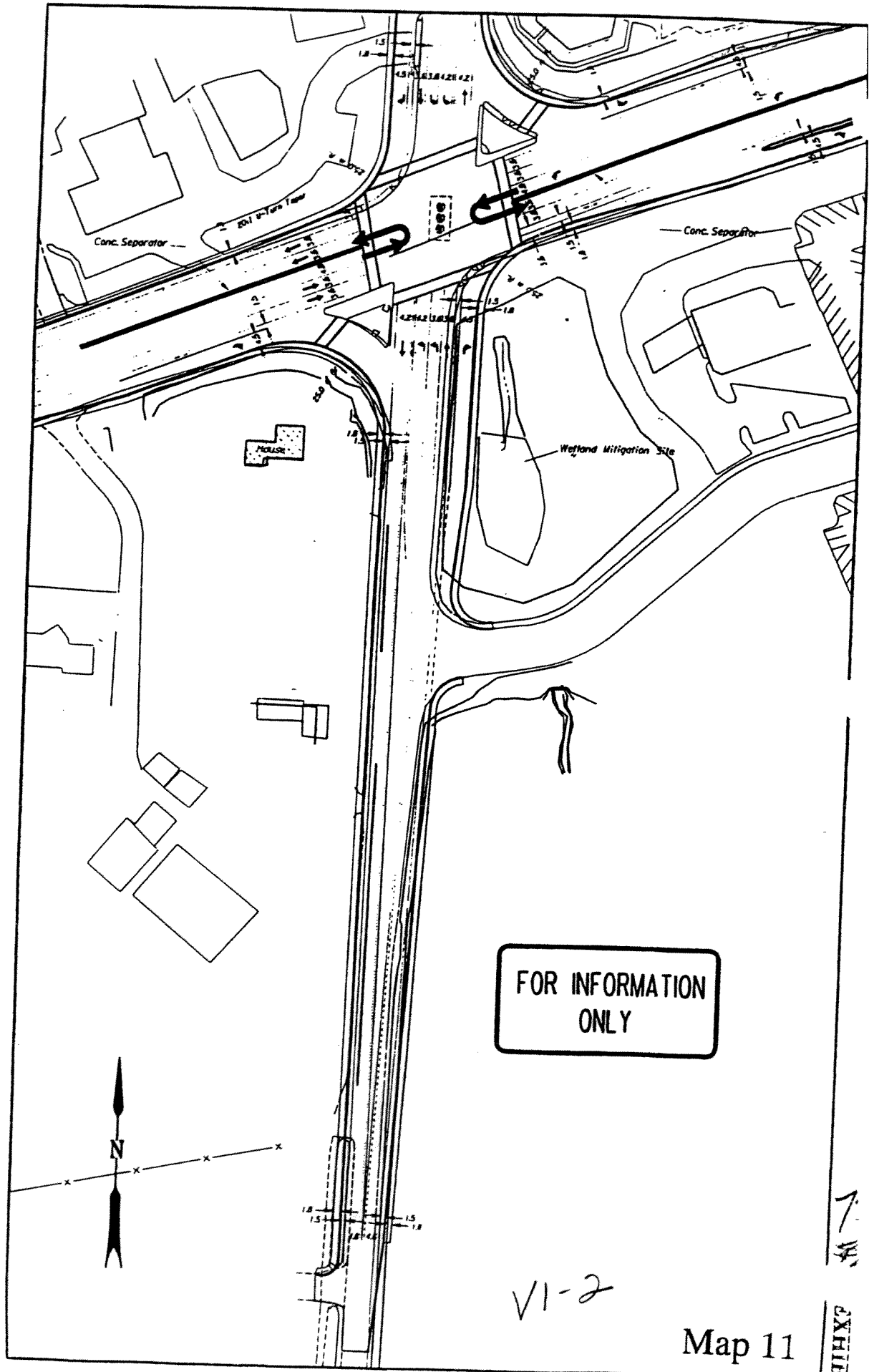
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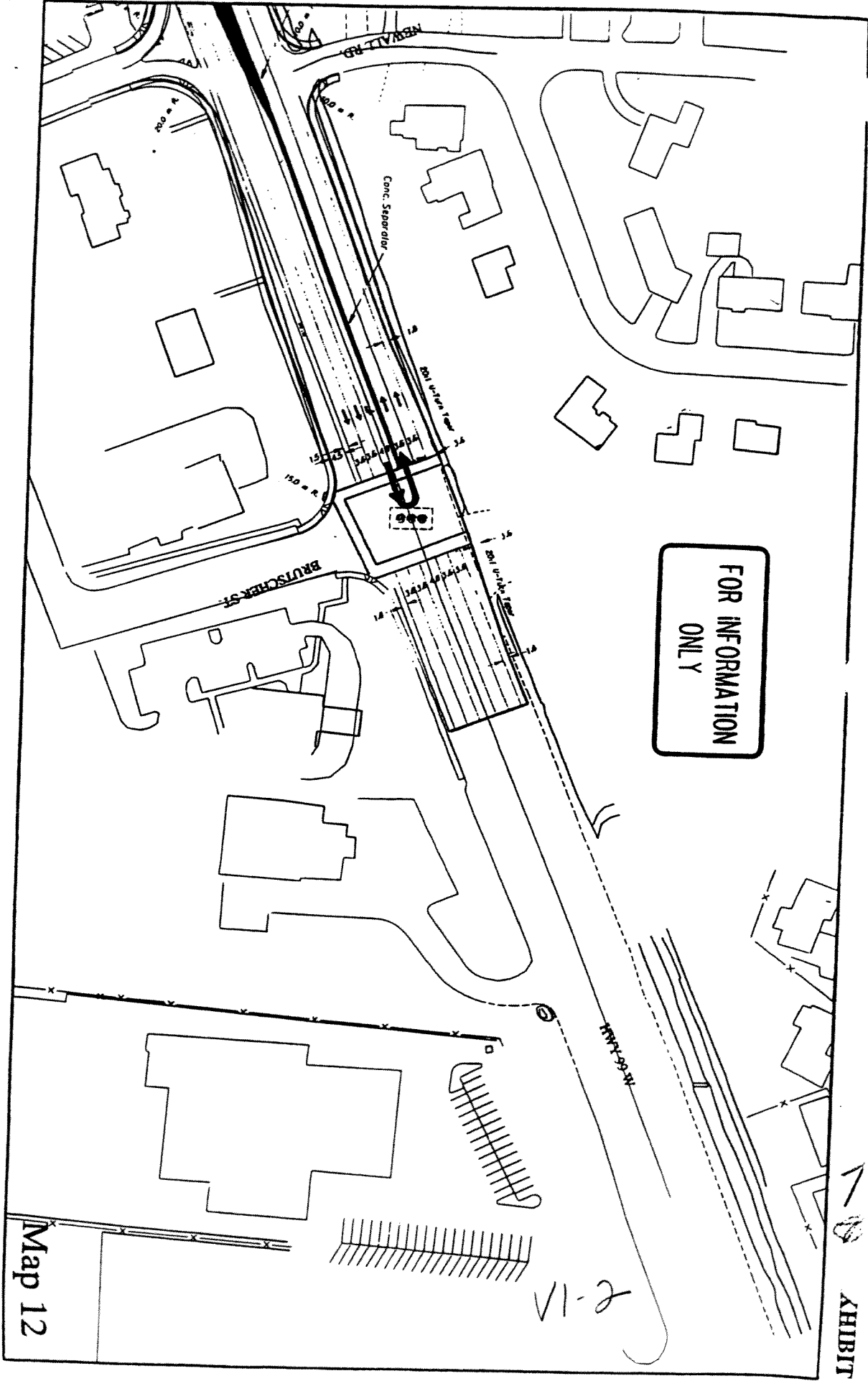
AIBIT A



11-2  
EXHIBIT







FOR INFORMATION ONLY

EXHIBIT A

Map 12

11-2

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**AGENCY OFFICIAL CERTIFICATION (ODOT)**

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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**EXHIBIT C**

Federal Provisions  
Oregon Department of Transportation

**I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTIONS**

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall 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 B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

#### **DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action

#### **VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY**

steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL**   0   %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

**VII. LOBBYING**

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction

was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING ODOT'S DBE PROGRAM REQUIREMENT CONTACT OFFICE OF CIVIL RIGHTS AT (503)986-4354.



# Oregon

John A. Kitzhaber, M.D., Governor

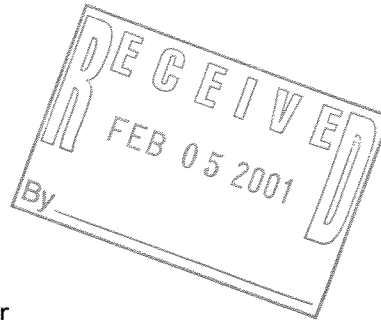
Department of Transportation  
Transportation Building  
355 Capitol St. NE  
Salem Oregon 97301

*Becky Brown  
reads complete  
1/27/01*

FILE CODE: AGR Feb. 5, 2001

*Becky Brown  
Made to be  
in agreement  
file*

January 31, 2001



City of Newberg  
Attention: Duane Cole, City Manager  
414 E First St  
Newberg, OR 97132

Enclosed for your records is a fully executed copy of Cooperative Improvement Agreement number 18818. This agreement covers the Brutscher Street to Main Street Project.

We have retained a fully executed copy of this agreement for the Department of Transportation's files.

Rob Heyman, Agreement Specialist  
Construction Contracts Unit  
Roadway Engineering Section

Enclosure

RH:ws

