

File

Route I-70, St. Charles County
Woodlawn Avenue Overpass

AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highway and Transportation Commission, (hereinafter, "Commission") and the City of O'Fallon, a municipal corporation in the State of Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the City desires to construct an I-70 overpass at Woodlawn Avenue approximately 1/2 mile west of the Route K & M interchange; and

WHEREAS, the Commission is willing to cooperate with the city under the terms and conditions set out in this agreement; and

WHEREAS, the Woodlawn Overpass project will be designated as Job No. J6I1287; and

WHEREAS, the general location of the improvement is shown on the sketch marked Exhibit "A". Details of the overpass are shown on the mosaic marked Exhibit "B". Exhibits A and B are attached hereto and incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual promises, covenants, and representations contained herein, the parties agree as follows:

(1) CITY RESPONSIBILITIES: The City shall:

(A) Be responsible for preparing the detailed plans and specifications for the proposed overpass as shown on Exhibit "B" and in accordance with the Commission's standards and specifications. Said plans shall not be changed in concept or scope without prior approval of the Commission.

(B) Secure all right of way for the Woodlawn Overpass and convey the limited access right of way for the consideration of One Dollar and No/Cents (\$1.00), to the State of Missouri by instrument of conveyance in a form acceptable to the commission. All costs incurred by the City in acquiring said right of way, including, but not limited to appraisals, expert witness fees, attorney's fees and acquisition awards together with interest thereon, shall be considered right of way acquisition costs. The right of way acquisition cost shall be part of the total overpass project cost as provided in Paragraph No. 4.

(C) Maintain, as part of the city street system, all portions of Woodlawn Avenue outside the limited access interchange limits. The City will also be responsible for snow removal, striping, sweeping, and other routine maintenance within the limited access limits along Woodlawn Avenue including the I-70 overpass.

2. COMMISSION RESPONSIBILITIES: The Commission shall:

(A) Review the plans and specifications prepared by the City and, if acceptable, approve said plans and specifications.

(B) Secure any necessary approvals or permits from the Surface Transportation Board or the Public Service Commission of Missouri required to permit the construction and maintenance of the highway.

(C) Advertise the project(s), through its normal contract letting procedures, for bids and award the contract subject to prior concurrence of the City in the award of the contract.

(D) Administer the contract(s) including all construction and materials inspection services. The Commission's expenses incurred thereby shall be considered part of the costs of the overpass as provided in paragraph No. 4.

(E) Grant to the City the right of public access over I-70 and to its outer roads.

(3) INTERSTATE/DEFENSE HIGHWAY: It is expressly agreed and understood by the city, that Route I-70 is an Interstate and Defense highway and that the work contemplated by this agreement must comply with Federal Highway Administration requirements governing Interstate and Defense highways. The Commission will obtain the Federal Highway Administration's approval of the final plans and specifications prepared by the City for the overpass.

(4) COST: The parties recognize that the cost of said improvement is now estimated at six million nine hundred twelve thousand five hundred ninety-five dollars (\$6,912,595). The Commission agrees to be responsible for one hundred seventy-nine thousand dollars (\$179,000) of the construction cost of the overpass. The City agrees to be responsible for 100% of the costs over \$179,000 as is herein contemplated. The cost of the overpass shall include design costs, right of way acquisition costs, the cost of the work contemplated by the plans and specifications, costs incurred due to the relocation or adjustment of utility facilities and the Commission's expenses incurred in advertising and letting the contract and inspecting the proposed construction and materials.

(5) DEPOSIT: At least thirty (30) days prior to advertising the project(s) for construction bids, the City shall deposit with the Commission a check or an irrevocable letter of credit equal to the amount estimated to be the construction costs. The Commission will not advertise this project for bids without such deposit by the City. If such deposit is made by a draft, it will be made payable to the Missouri Highway and Transportation Commission-Local Fund. The city agrees that all funds deposited with the commission may be commingled with other similar monies deposited from other sources. Any deposits may be invested at the discretion of the Commission in such investments allowed for other highway funds. All interest income shall be payable to the fund and credited to City based on its pro-rata share of the investment. If the amount deposited with the Commission shall be less than the actual obligation of the City, any interest credited to the City shall be used by the Commission towards fulfillment of the City's obligation. A tabulation of bids received will be furnished to the City. Award of the contract is subject to concurrence by the City.

(6) FINAL AUDIT: Upon completion and acceptance of the project(s), a final audit will be performed by the Commission of all costs incurred. If after final calculation of the obligation of the City, it is determined that the funds are inadequate to satisfy the City's obligation, the City shall, within 30 days, supplement the funds as necessary to provide the amount necessary to pay the balance due the Commission. Any funds in excess of the City's share of costs shall be returned to the City within 30 days of the determination.

(7) IMPROVEMENTS: It is understood by the City and the Commission that any improvements placed on the Commission's right of way become the property of the Commission. Effective upon completion of the construction of the overpass, the Commission shall keep control, maintain as part of the State Highway System that portion of the overpass lying within state-owned limited access right of way limits, and the City shall have no further obligations or responsibility with respect to said improvements other than those responsibilities specified in Paragraph (1)(C).

(8) NONDISCRIMINATION: The City for themselves, their representatives, successors, in interest and assigns, as part of the consideration hereof, do hereby covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, sex, or age shall be denied by them the benefits of, or otherwise be subjected to them, to discrimination in the construction or use of the overpass contemplated herein.

The City shall comply with all provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The City shall also comply with all state and federal statutes applicable to City relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*).

(9) TRAFFIC: The Commission, through the contract documents, will require its contractor to assume all responsibility for directing traffic during construction, including but not limited to, signalization, lighting, signing, and striping.

(10) CHANGE ORDER: The Commission will have the right to make changes necessary through the established change order procedure except that no change in scope or concept shall be made unless it has first been approved, in writing, by the City.

(11) POLICE POWERS: It is the intent of the parties to this Agreement that the City shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated. However, City will enact, keep in force, and enforce only such ordinances relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(12) PARKING ORDINANCES: Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right of way, the City shall enact and enforce such ordinances as are necessary to prevent parking

upon the highway or any part of the area of the highway right of way within the limits of the overpass.

(13) BILLBOARDS: No billboards or other advertising signs or devices or vending or sale or merchandise will be permitted, other than those previously agreed upon, within the right of way limits of the project and the City will enact such ordinances as are necessary to enforce this paragraph.

(14) FHWA APPROVAL: This Agreement is entered into subject to approval by the Federal Highway Administration.

(15) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the City and Commission.

(16) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as Commission's representative for the purpose of administering the provisions of this contract.

(17) ASSIGNMENT: The City shall not assign, transfer, or delegate any interest in this Agreement without the prior written consent of the Commission.

(18) LAW OF MISSOURI: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(19) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(20) AUDIT OF RECORDS: The City must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three years from the date of final payment made under this Agreement.

(21) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City, and the Commission will then refund to the City any funds not expended to that date.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by City this ~~30th~~ day of April, 1998

Executed by the Commission this 6th day of May, 1998

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

CITY OF O'FALLON

By J.P. Farnell
Title Deputy Chief Engineer

By Paul A. Renaul
Title Mayor

Attest:

Marion Winters
Secretary

Attest:

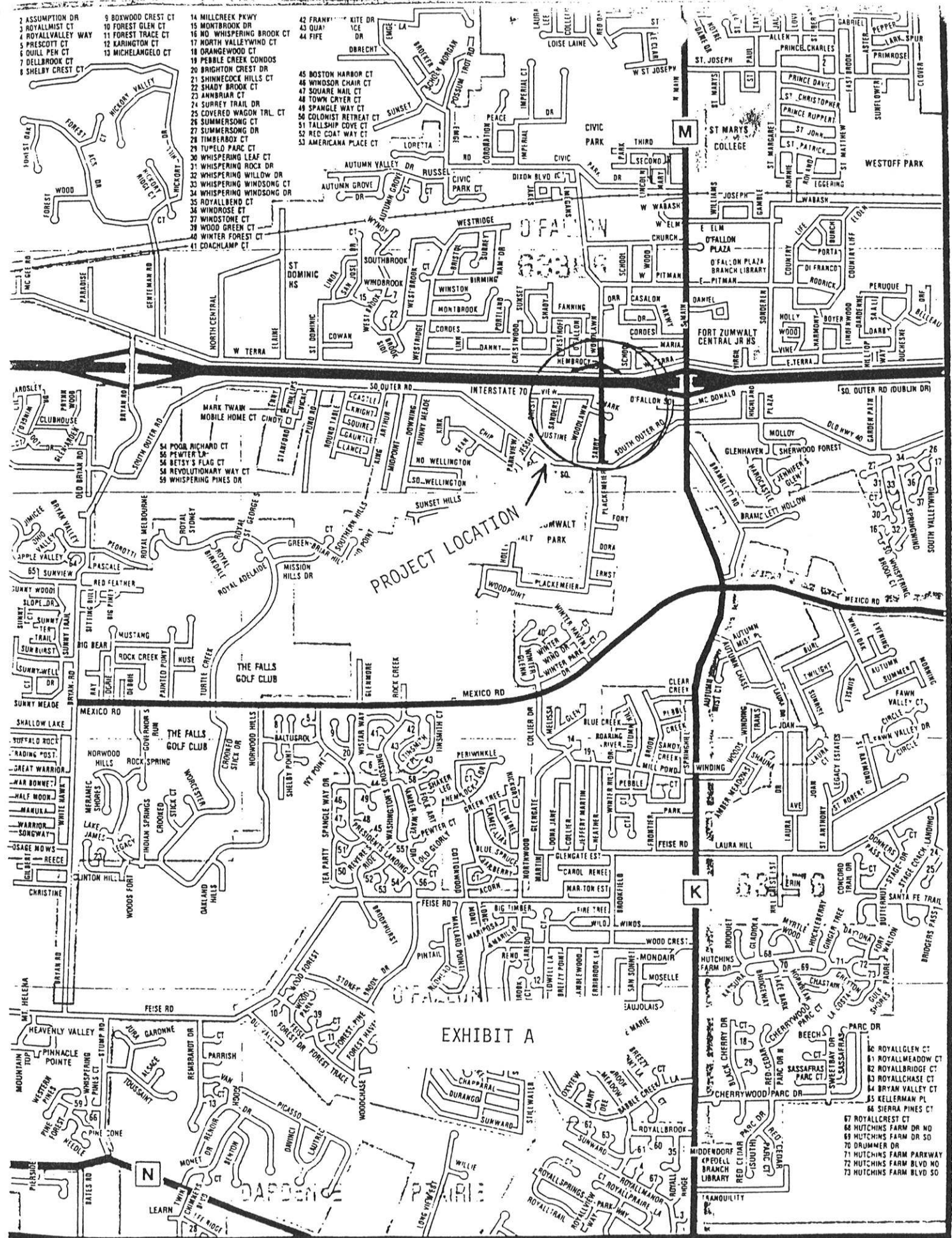
By Jandra Stedman
Title City Clerk

Approved as to Form:

Raye D. Samboli
Commission Counsel

Approved as to Form:

Robert Wood
Title City Attorney



PROJECT LOCATION

EXHIBIT A

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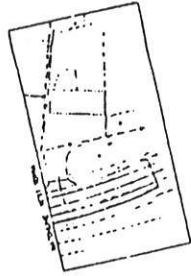
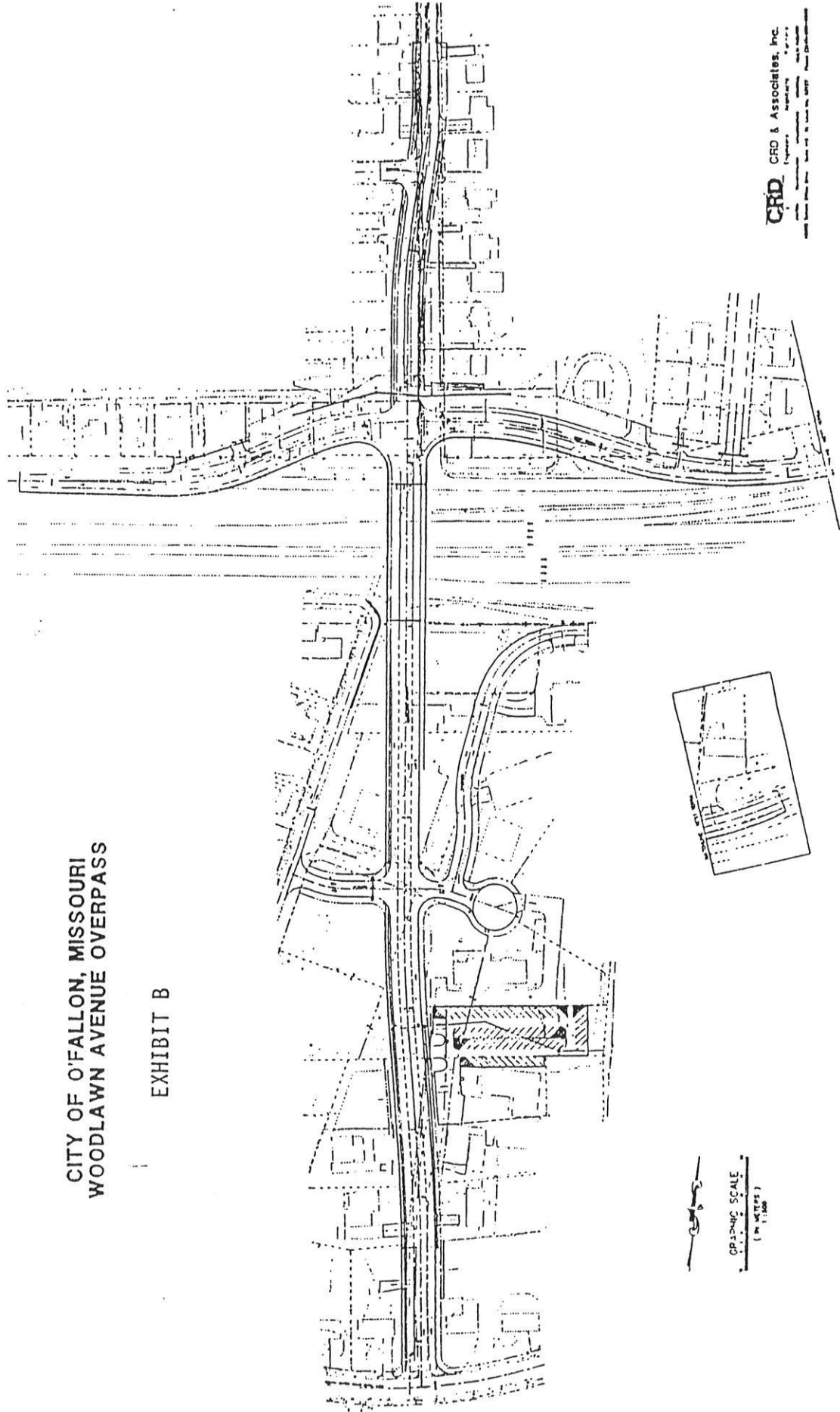
Joins

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CITY OF O'FALLON, MISSOURI
WOODLAWN AVENUE OVERPASS

EXHIBIT B



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