

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “**Agreement**”) is entered into by and between the Town of Littleton, Massachusetts (the “**Town**”), acting by and through its Board of Selectmen (the “**Selectmen**”), and Littleton Commercial Investments, LLC (the “**Developer**”), a Massachusetts limited liability company having its principal office at c/o Sam Park & Company, Three Center Plaza, Suite 410, Boston, MA 02108. This Agreement represents the understanding between the Town and the Developer (the “**Parties**”) with respect to the commitments by the Developer in connection with the development of a mixed use commercial development project consisting of approximately 480,000 square feet plus a hotel (the “**Project**”) on approximately 90.27 acres of land comprising Lots 1-7 on the subdivision plan for Constitution Avenue in the Town of Littleton, situated in the northwest quadrant of the interchange at the intersection of Interstate 495 and Route 119/Great Road (the “**Site**”) and the agreements by the Town to support the Project. A map of the land included within the Site is attached hereto as **Exhibit A**.

RECITALS

WHEREAS, in order to proceed with the Project, the Developer has obtained certain permits and approvals from the Town, including but not necessarily limited to the following: an Aquifer and Water Resource District Use Special Permit for Lots 1-7 on Constitutional Avenue, dated February 2, 2012 (the “**AWRDU Special Permit**”); a Littleton Village Overlay District West – Beaver Brook Area Master Planned Overlay Development Special Permit Major Commercial Use Special Permits for each Lot, individually (Lots 1 through 7) on Constitutional Avenue, all dated February 2, 2012 (collectively, the “**MPOD Special Permits**”); and a Littleton Village Overlay District West – Beaver Brook Setback Special Permit Great Road, dated October 27, 2011, all of which are incorporated herein by reference;

WHEREAS, on February 2, 2012, the Littleton Planning Board granted the aforementioned AWRDU and MPOD Special Permits to the Developer allowing the construction of buildings and pedestrian-friendly streetscapes within the Littleton Village Overlay District West – Beaver Brook area as provided in Article XXV and the requirements of Article XVIII of the Zoning Code of the Town of Littleton and within aquifer and/or water resource protection areas as provided in Article XIV of the Zoning Code of the Town of Littleton;

WHEREAS, the MPOD Special Permit decisions contain certain provisions requiring the Developer to assist with costs related to roadway and signalization improvements on Route 119 (Great Road) and/or Russell Street;

WHEREAS, the Town has applied for and received a grant (the “**Grant**”) from the Massachusetts Executive Office of Housing and Development through the MassWorks Infrastructure Program in the amount of \$1.8 Million Dollars for the Route 119 (Great Road)/I-495 Interchange Safety and Capacity Improvement Project (the “**Roadway Improvements Project**”);

WHEREAS, scope of the Roadway Improvements Project is set out in **Exhibit B** attached hereto;

WHEREAS, the construction drawings describing the Roadway Improvements Project are styled as "The Commonwealth of Massachusetts Executive Office of Housing & Economic Development, MassWorks Grant In the Town of Littleton, Middlesex County, for Great Road (Route 119), Roadway and Traffic Signal Improvements, prepared by Bayside Engineering, Inc., 600 Unicorn Park Drive, Woburn, MA 01801, dated 3-30-2012 (94 sheets) (the **Bayside Engineering Drawings**)" and as "Littleton, Massachusetts Water Main Crossing Route 119 – Great Road", by Tata & Howard, Inc., dated March 2000 (a copy of which is attached at **Exhibit C**) (the "**Water Line Drawing**"), and, together, the "**Construction Drawings**", as the same may be amended from time to time by mutual consent of the Parties;

WHEREAS, the specifications accompanying the Construction Drawings are styled as "Town of Littleton, Specifications and Contract Documents for Great Road (Route 119) at Interstate 495, Roadway and Traffic Signal Improvements, Contract: 4/17/12-1, Town of Littleton, Highway Department, 39 Ayer Road, Littleton, MA 01460 (the "**Specifications**)", as the same may be amended from time to time by mutual consent of the Parties;

WHEREAS, the cost of the work shown on the Construction Drawings totals \$2,334,620.00 (the "**Cost of the Work**") comprised of the work to be undertaken by the successful bidder, Onyx Corporation, exclusive of the reimbursement of Littleton Electric Light Department for utility relocation costs;

WHEREAS, the Grant includes funds for relocating and extending utilities and the construction of a 12-inch diameter ductile iron water main to be extended from its present location proximate to the intersection of Great Road and Constitution Avenue to the western end of the overpass carrying Great Road over Route 495 (the "**West Water Main Work**") (collectively, such portion of the Roadway Improvements Project shall be referred to as the "**Utility Work**"), with the West Water Main Work to be capped pending the extension of water service from the intersection of the Great Road/I-495 northbound ramp to the water main installed in connection with the West Water Main Work via the utility bay of the Route 495 overpass (the "**East Water Main Work**");

WHEREAS, the Parties acknowledge that there may be additional costs associated with the Roadway Improvements Project that the Developer has agreed to defray; and

WHEREAS, the Parties wish to enter into this non-regulatory Agreement to memorialize their mutual understandings and undertakings with respect to the Roadway Improvements Project and certain permits to be considered for the Roadway Improvements Project, as well as other agreements between the Developer and the Town on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as set forth herein.

A. The Roadway Improvements Project:

1. The Parties acknowledge that the Grant constitutes the total amount of project funding that the Town has agreed to secure. Based on the previously agreed upon scope and budget, attached hereto as **Exhibit D** (as the same may be amended from time to time by mutual consent of the Parties), the Developer agrees to secure and fund any additional Project components that shall be required. Such funds shall be held in a gift account pending disbursement to pay such costs. The Parties may only expand the geographical or topical scope of the Roadway Improvements Project by mutual consent.
2. Specifically, the Developer agrees to secure and fund the following services and/or project components:
 - a. \$270,000 for design of the Roadway Improvements Project, which the Parties acknowledge has been completed and paid for prior to the date of this Agreement;
 - i. The Developer agrees to fund any additional cost above and beyond the amount recited in Paragraph 2.a., above, related to design and/or redesign work relative to the Roadway Improvements Project, so long the Work to be designed and/or redesigned is within the geographical or topical scope of the Roadway Improvements Project.
 - b. Any amount in excess of the \$1.8 Million of Grant funding that is required to complete construction of the Roadway Improvements Project, including associated water mains, utilities, utility relocation and ancillary construction, all as shown on the Construction Drawings and as described in the Specifications.
3. The Parties agree that, upon execution of this Agreement, the Parties shall enter into a tri-party agreement with Land Strategies, LLC, the Designer and Project Manager of the Roadway Improvements Project. Such Agreement shall include, at a minimum, the following provisions:
 - i. Mandatory insurance limits, as directed by the Town, naming the Town as additional insured, where appropriate;
 - ii. Requirements that the Developer and Land Strategies, LLC obtain input and approval from the Town for each component of the Roadway Improvements Project;

- iii. Requirements that Land Strategies, LLC owes certain duties of care to the Town, as are typically owed to an Owner in a similar project;
- iv. Requirements that Land Strategies, LLC provides certain grant administration services to the Town, including obtaining and filling out of all required grant documents;
- v. A requirement that the Developer be responsible for 100% of the cost associated with the agreement with Land Strategies, LLC;
- vi. Indemnification provisions from the Developer and Land Strategies, LLC, protecting the Town against any and all claims arising out of or in connection with the Roadway Improvements Project;
- vii. An obligation on the part of Land Strategies, LLC to participate in value engineering and refinement of scope and cost with the objective of minimizing contract overages, all subject to the review and approval of the Town and the Commonwealth; and
- viii. To the extent permitted by law, a right on the part of the Developer, subject to the Town's prior authorization and approval, to treat discrete elements of work as add-alt items that may be self-performed by Developer, all such work to be performed in conformance of all applicable laws, including, but not limited to, Massachusetts Prevailing Wage Law, *M.G.L. c. 149, §§26-27.*

4. In the event that construction costs associated with the Roadway Improvements Project exceed the \$1.8 Million obtained in Grant funding, the Developer shall make a payment to the Town in an amount sufficient to complete the work on the Roadway Improvement Project, including associated water mains, utilities, utility relocation and ancillary construction, all as shown in the Construction Drawings and as described in the Specifications, to be held in a gift account for the purpose of defraying the cost associated with the completion of such project.

5. In order to meet the construction funding schedule associated with the Grant, the Town agrees to authorize the initiation of certain activities to be undertaken by the contractor executing the Project so long as the committed funds do not exceed the funds available under the Grant, and so long as the Town has the right to terminate its contract in the event there are significant delays or changes in scope required by the Commonwealth or the Federal Highway Administration that would result in additional costs of the Project.

B. Other Costs Associated with the Roadway Improvements Project:

1. The Parties acknowledge that in addition to the activities described in Paragraph A, above, Developer shall contribute:
 - a. Up to \$18,000 to allow the Town to purchase transponders and other ancillary equipment for emergency vehicles on Route 119 (Great Road).
 - b. Up to \$37,010 to defray the costs associated with the Town's hiring of professional engineering services to provide peer review services in connection with and/or assistance in the Town's administration over the Roadway Improvements Project. The Town acknowledges the Developer's prior payment of \$8,940 for peer review of traffic studies and the Developer's agreement to fund up to an additional \$20,000, above and beyond the \$37,010 contribution, for additional and unexpected engineering peer review work that Developer and the Town mutually agree to be reasonable and necessary. The payment of such costs shall not be deemed to affect the right of the Planning Board or other Town permitting authorities under applicable law to set review fees in connection with applications filed by the Developer for the Project or any component thereof with respect to the fees that are not currently subject to reimbursement under this Agreement.
2. Additional Water Main Work: Following completion of the West Water Main Work, but no later than the date that the Developer receives a Certificate of Occupancy for buildings in the Constitution Avenue subdivision that draw more than 25,000 gallons per day of potable water as measured at the WWTP, the Developer shall, at its own expense, cause the East Water Main Work to be completed, as described in Exhibit C. The Parties agree that the Town will have no obligation to pay for the East Water Main Work. In accordance with the MPOD Special Permits, the Littleton Water Department agrees (i) that the Developer may apply any connection fees paid by the Developer toward the cost of the West Water Main Work or the East Water Main Work or (ii) that the fair value of any work undertaken by the Developer toward the West Water Main Work or the East Water Main Work will be credited against any connection fees owed by the Developer.
 - i. Any agreement between the Developer and a designer, engineer, contractor, project manager or other associated professional hired to perform such work shall contain the same provisions described in Paragraph A.3., above.
3. Electric Utilities: In the event that utility poles and associated wiring within the geographical and topical scope of the Roadway Improvements Project are required to be moved and/or electric wiring is required to be buried as a result of the Roadway Improvements

Project, the Developer shall pay to the Littleton Electric Light Department such costs of relocating such utility poles and associated wiring and/or burying such electric wire as are set forth and expended in accordance with a budget provided by the Littleton Electric Light Department.

4. The Long Store: The Parties acknowledge that a problem may arise in connection with the timing of the potential demolition and/or removal of a certain historic building known as the "Long Store", which is being relocated or demolished by an abutter to the Project as part of an independent but concurrent project. In the event that circumstances require the Long Store to be moved to another location prior to or in lieu of demolition so as not to interfere with the completion of the Roadway Improvements Project, the Developer agrees to move the Long Store out of the limits of work.

C. Russell Street Sidewalk:

1. The Parties acknowledge that the Town intends to construct a sidewalk servicing Russell Street. Once the Town obtains all necessary rights of way and permits to construct said sidewalk, the Board of Selectmen may send a written request to the Developer to contribute to the construction of the Russell Street Sidewalk. Upon receiving such a request, the Developer shall make a gift of \$65,000 to the Town of Littleton Sidewalk Fund for the purpose of defraying the cost of the Russell Street Sidewalk project.

D. Undertakings by the Town:

1. The Selectmen shall support the Roadway Improvement Project by applying for and administering the Grant and procuring and contracting with a contractor to perform the roadway improvements described in Exhibit B. Further, the Selectmen shall pursue any reasonable recommendation of the Commonwealth of Massachusetts or Land Strategies, LLC, subject to the recommendation of the Town's peer review engineer, that additional right of way easements or plan modifications are necessary in order to complete the Roadway Improvement Project, so long as any associated costs are reimbursed by the Developer.

E. Agreement Subject to Funding:

1. This Agreement and all obligations of the Town contained herein are subject to the Town's receipt of funding from: (a) the Grant; and (b) the Developer, as provided in this Agreement.

2. The parties agree and acknowledge that Developer's funds shall be utilized only after any available funds from the Grant have first been utilized.

F. Miscellaneous:

1. All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Board of Selectmen
Town of Littleton
Littleton Town Hall
37 Shattuck Street
Littleton, MA 01460

with a copy to:

Thomas J. Harrington, Esq.
Miyares and Harrington LLP
50 Leonard Street
Belmont, MA 02478

If to the Developer to:

Littleton Commercial Investments, LLC
c/o Sam Park
Three Center Plaza, Suite 410
Boston, MA 02108

with a copy to:

Daniel P. Holmes, Esq.
Lerner & Holmes, PC
Two Center Plaza, Suite 415
Boston, MA 02108.

Each of the Parties shall have the right by notice to the other to designate additional Parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

2. Failure by the Developer to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless

and until the Developer fails to commence to cure, correct or remedy such failure within fifteen (15) days of the receipt of written notice of such failure from the Town to the Developer and thereafter fails to complete such cure, correction or remedy within thirty (30) days of receipt of such written notice.

3. This Agreement shall be binding upon the Parties and their successors and assigns, and shall run with the land.
4. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
5. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Selectmen and the Developer. The Parties do not intend for any third party to be benefited hereby.


Exhibit A Map of Land
Exhibit B Scope of Roadway Improvement Project
Exhibit C Plan Showing Extension of Water Main Over Route 495
Exhibit D Budget for Roadway Improvements Project

Executed under seal.

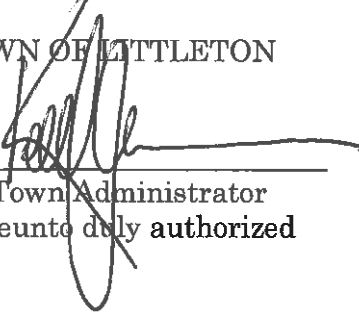
LITTLETON COMMERCIAL INVESTMENTS, LLC,
a Delaware limited liability company

By: NEW HARBOR-BP INVESTORS, L.L.C.,
a Delaware limited liability company

By: NEW HARBOR INVESTMENTS, LLC, its manager

By: 
Name: Samuel E. Park
Title: Operating Manager

TOWN OF LITTLETON

By: 
Its Town Administrator
Hereunto duly authorized


By: 
Town Counsel as to Form

Exhibit A
 Map of Land

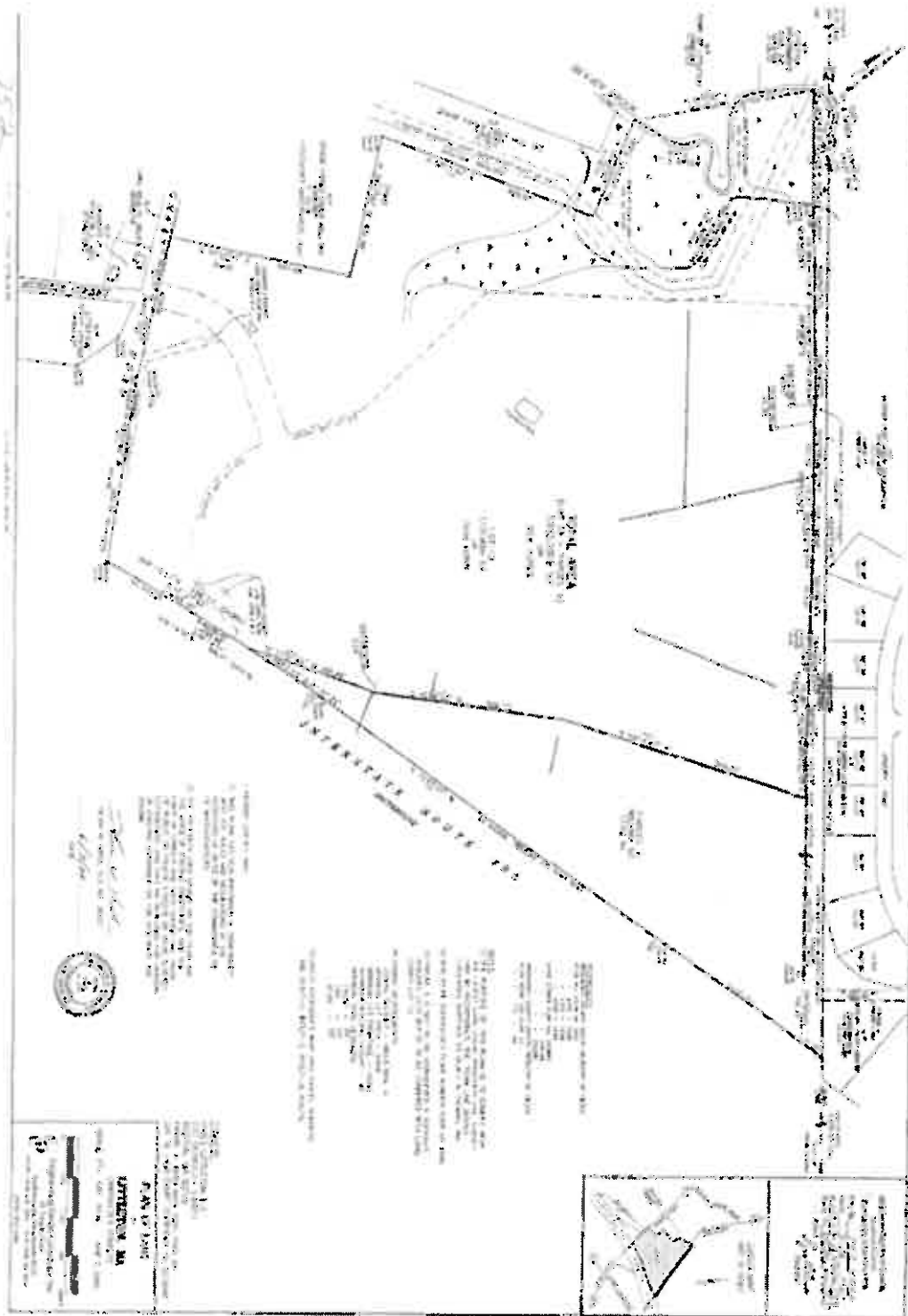


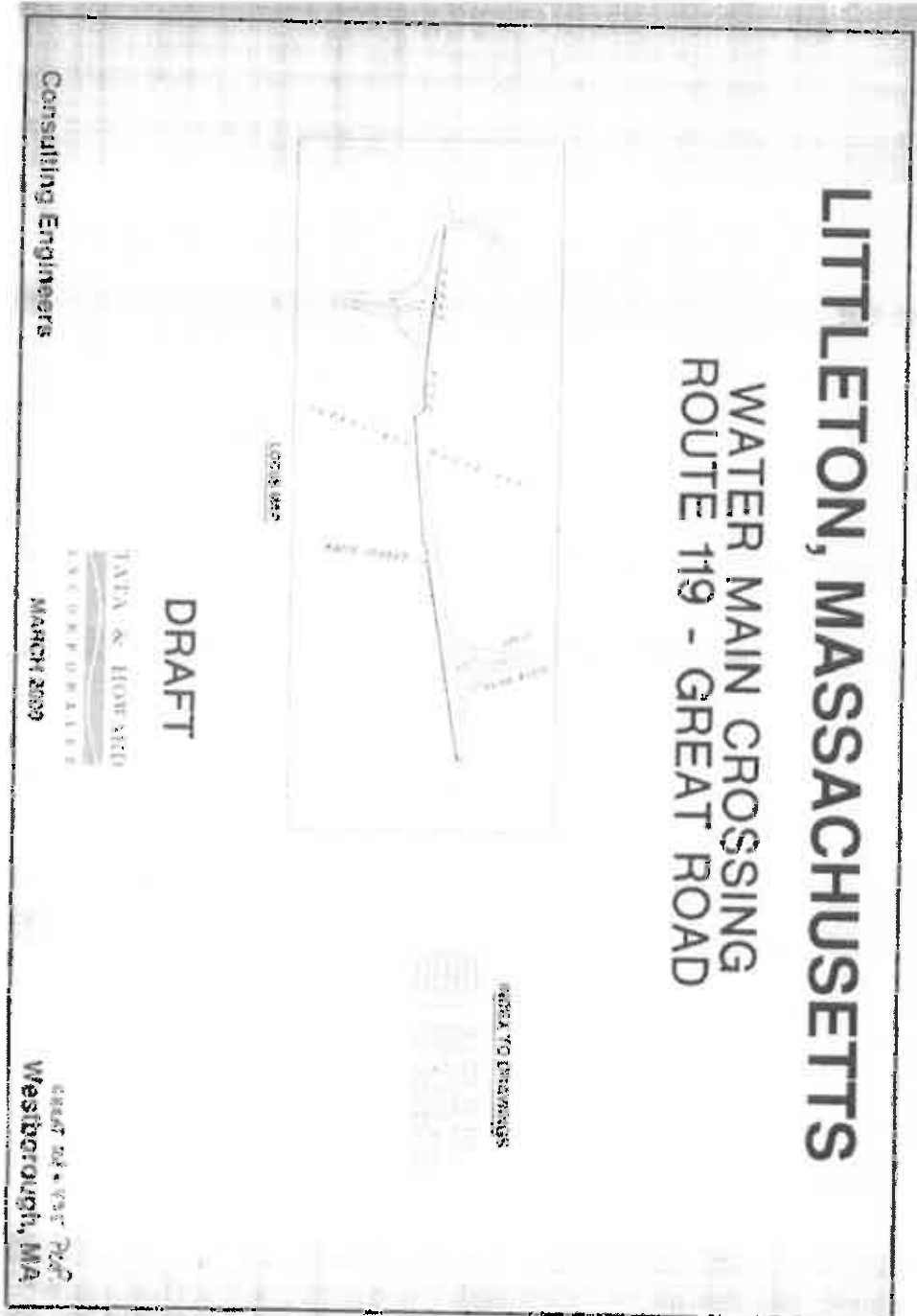
Exhibit B

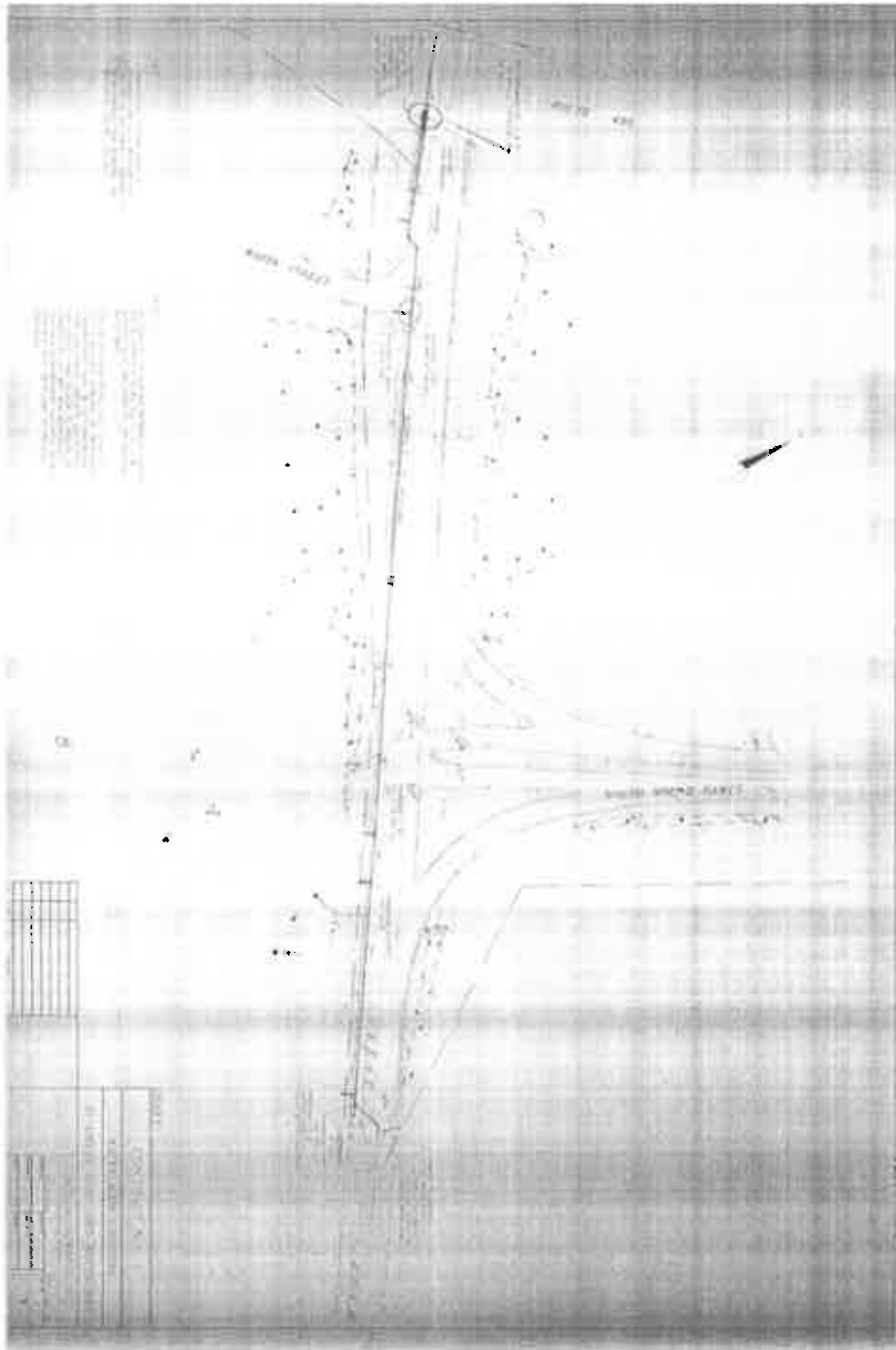
Scope of Roadway Improvements Project

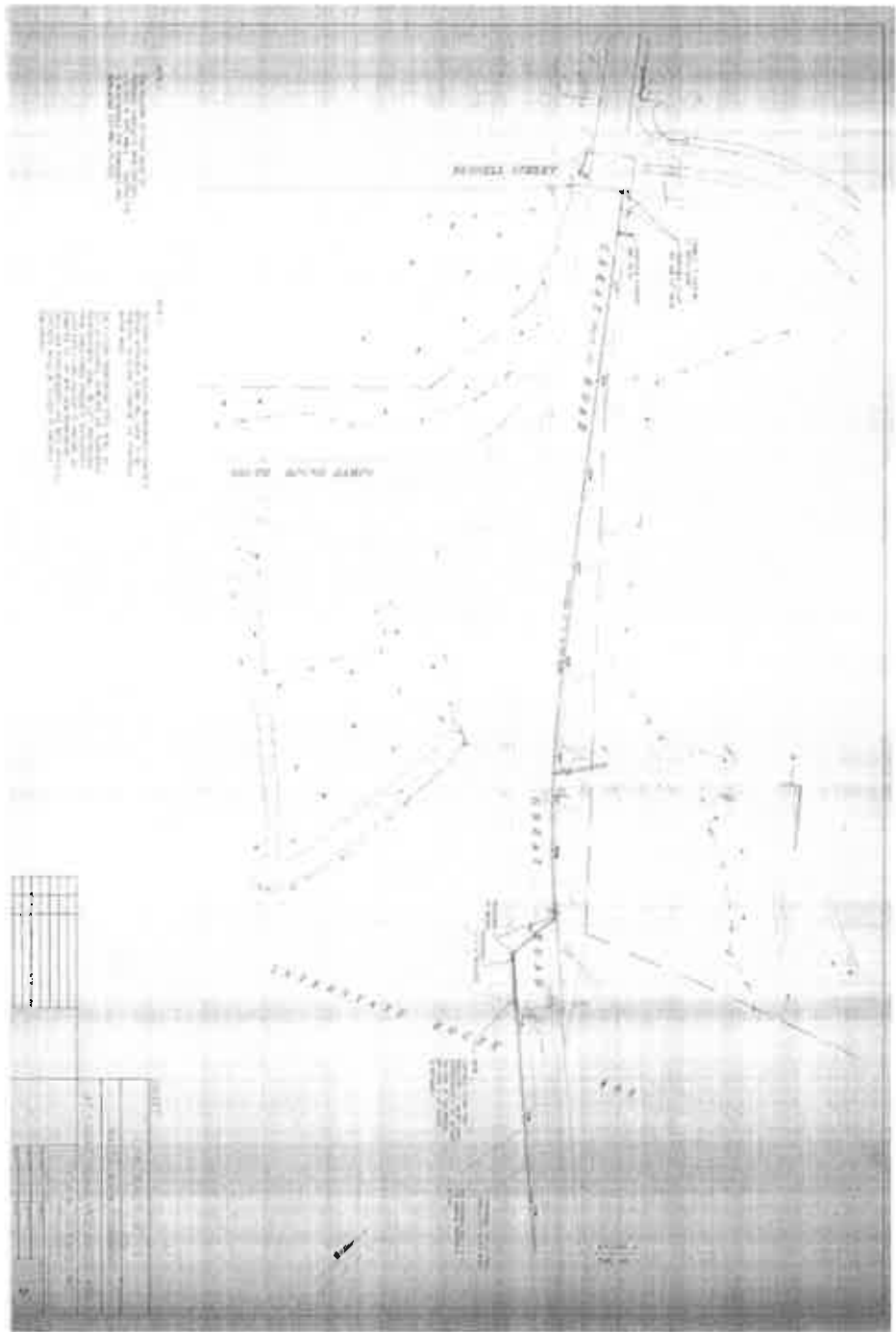
In general, roadway and traffic signal improvements entail the roadway and traffic signal improvements of Great Road (Route 119) at Route I-495 from 700 feet west of Russell Street to 350 feet west of King Street within the Town of Littleton. The work entails furnishing and installing new traffic signal equipment at three locations, full depth roadway box widening reconstruction; furnish and install 900 feet of new water main, hydrants and other related work; milling and overlaying; minor horizontal and vertical roadway realignment; open and closed drainage system improvements; construction of a new water quality drainage swale and detention facilities; excavation and removal of unsuitable road sub-base material; furnishing and installing hot mix asphalt paving; furnishing and installing granite curbing and granite edging; furnishing and installing new AAB/ADA compliant hot mix asphalt sidewalks; and cement concrete handicap ramps; adjustment of existing drainage and utility structures to finished grade; furnishing and installing new steel highway guardrail; furnishing and installing approximately 150 linear feet of gabion retaining walls; furnishing and installing compost filter tubes; or hay bales and silt fence where required; new signs and pavement markings; providing traffic management; and other incidental work.

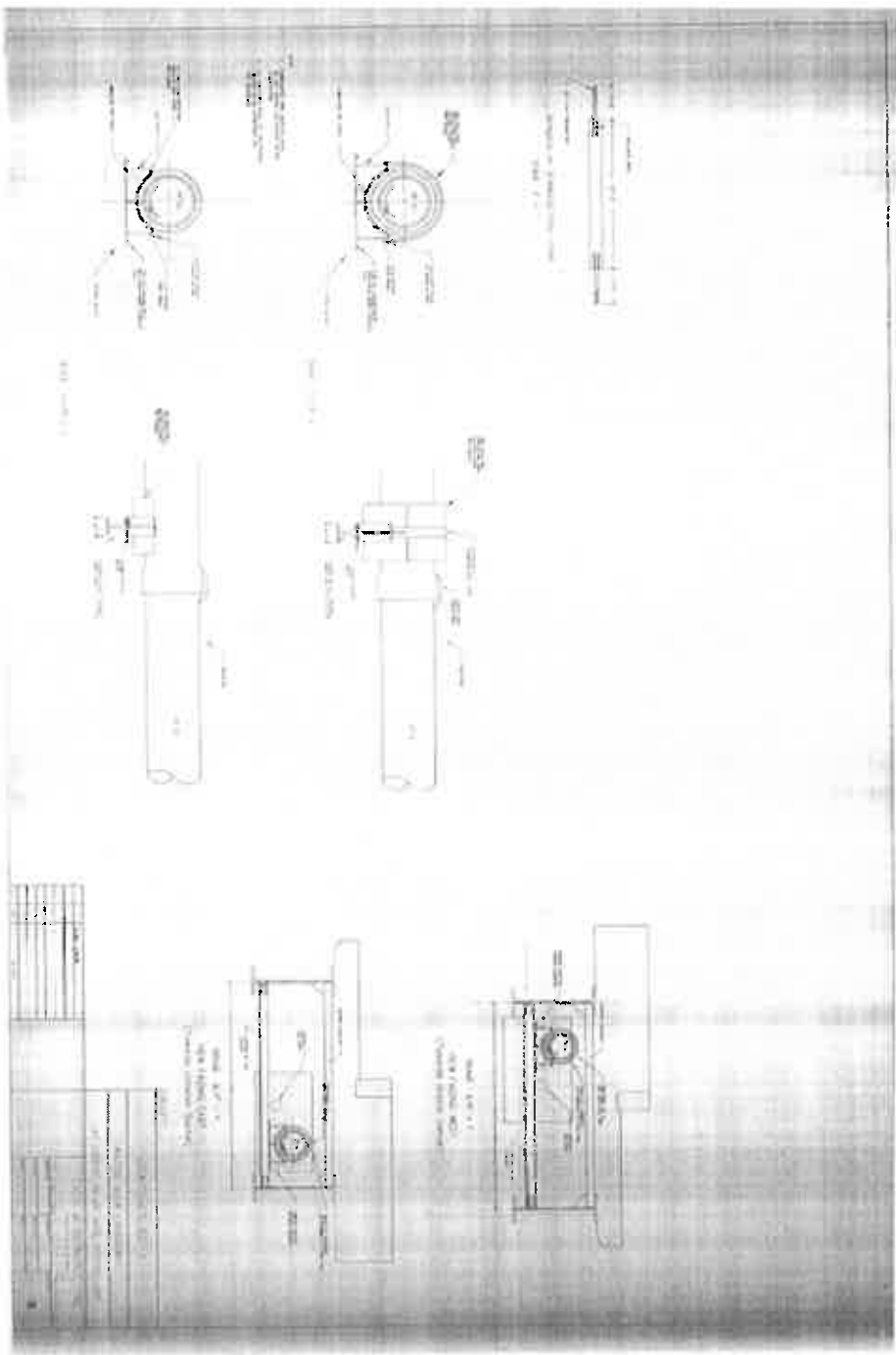
Exhibit C

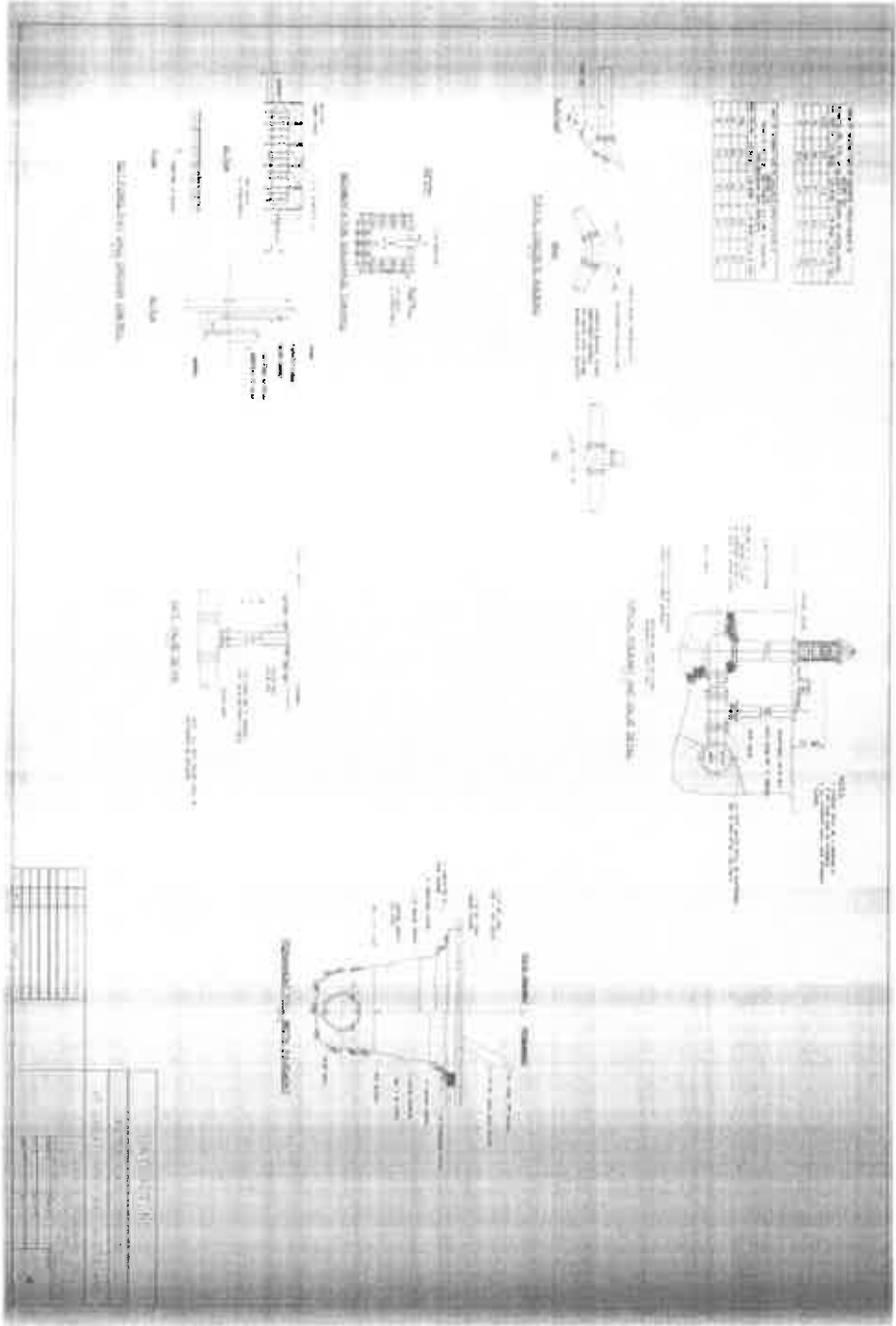
Plan Showing Extension of Water Main Over Route 495











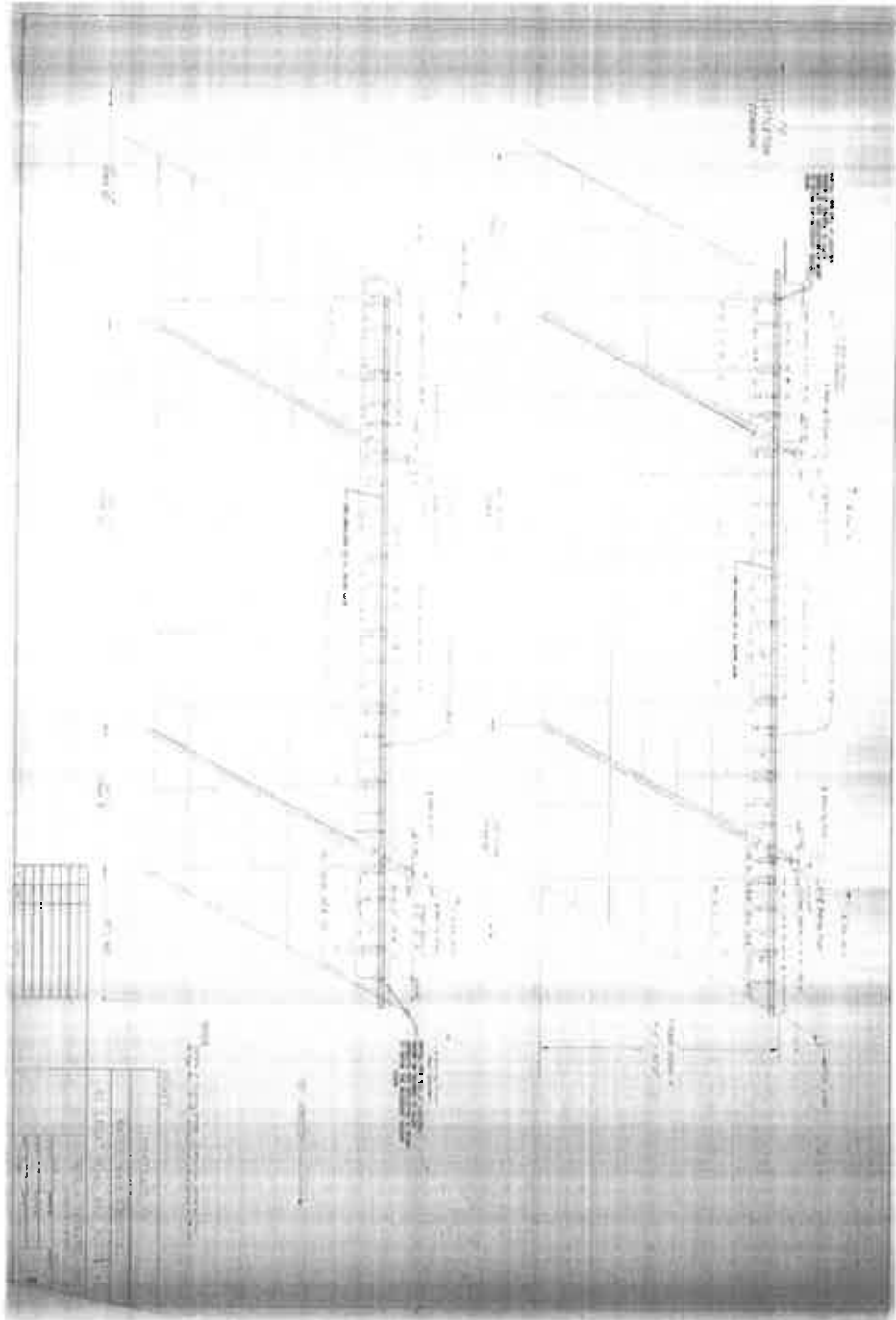


Exhibit D

Budget for Roadway Improvements Project

ONYX

Fixed Price Budj \$ 2,334,620.00

Unit Prices

Item #	Unit Price	Quantity	Item #	Unit Price	Quantity	Item #	Unit Price	Quantity
101	\$ 13,000.00	0.2	302.08	\$ 80.00	20	767.6	\$ 50.00	10
102.51	\$ 700.00	1	302.1	\$ 90.00	45	767.8	\$ 25.00	150
103	\$ 600.00	22	302.12	\$ 100.00	900	768	\$ 200.00	40
104	\$ 1,200.00	1	309	\$ 5.00	1500	769	\$ 8.00	2500
120.1	\$ 30.00	6370	350.06	\$ 2,500.00	2	801.22	\$ 18.00	700
129	\$ 5.00	9500	350.08	\$ 2,800.00	1	801.621	\$ 24.00	400
141	\$ 60.00	1925	350.1	\$ 3,000.00	1	801.641	\$ 36.00	50
141.1	\$ 40.00	50	350.12	\$ 3,500.00	2	801.661	\$ 48.00	600
142	\$ 70.00	165	357.08	\$ 240.00	1	804.3	\$ 17.00	1500
144	\$ 200.00	50	358	\$ 190.00	1	804.41	\$ 22.00	480
146	\$ 800.00	5	358.1	\$ 200.00	1	804.421	\$ 32.00	315
146.1	\$ 12.00	200	376	\$ 6,000.00	3	806.2	\$ 27.00	95
150	\$ 38.00	3000	376.3	\$ 1,500.00	1	806.4	\$ 42.00	80
151.04	\$ 40.00	4300	402	\$ 48.00	765	806.6	\$ 87.00	220
152.7	\$ 39.00	90	443	\$ 200.00	165	811.01	\$ 8,000.00	1
154.5	\$ 36.00	450	450.9	\$ 5.00	5000	811.33	\$ 800.00	1
156	\$ 37.00	55	455.23	\$ 150.00	2260	815.1	\$ 146,329.00	1
156.41	\$ 43.00	18	455.31	\$ 150.00	775	815.2	\$ 110,812.00	1
156.42	\$ 49.00	125	455.32	\$ 150.00	220	815.3	\$ 105,829.00	1
157.3	\$ 51.00	5	455.42	\$ 150.00	1365	815.98	\$ 500.00	10
157.31	\$ 40.00	1	464	\$ 7.50	1600	816.11	\$ 12,553.00	1
170	\$ 10.00	8500	464.5	\$ 1.75	14500	819.541	\$ 25,531.00	1
180.1	\$ 1,000.00	1	472	\$ 200.00	110	827.21	\$ 240.00	4
180.2	\$ 90.00	24	482.3	\$ 6.00	7500	829.01	\$ 200.00	7
180.3	\$ 100.00	24	506	\$ 49.00	1950	832	\$ 20.00	220
187.3	\$ 70.00	40	506.1	\$ 60.00	420	833.5	\$ 20.00	70
187.31	\$ 9.00	1000	509	\$ 69.00	200	841.1	\$ 1,800.00	2
191	\$ 60.00	50	509.1	\$ 75.00	100	841.2	\$ 1,600.00	5
191.1	\$ 60.00	20	511.1	\$ 35.00	2640	847.1	\$ 150.00	47
191.11	\$ 60.00	10	512.1	\$ 43.00	65	851	\$ 1,800.00	100
193	\$ 3,600.00	1	514	\$ 350.00	10	852	\$ 25.00	500
201.1	\$ 3,800.00	14	515	\$ 400.00	1	853.1	\$ 600.00	4
202	\$ 3,800.00	2	590	\$ 8.00	1600	853.2	\$ 30.00	100
203	\$ 3,000.00	2	593	\$ 10.00	3100	853.21	\$ 20.00	100
203	\$ 1,800.00	4	620.1	\$ 25.00	1700	853.42	\$ 9,000.00	2
220	\$ 900.00	1	620.3	\$ 30.00	520	853.421	\$ 2,500.00	2
220.2	\$ 500.00	10	627.1	\$ 80.00	1	854.016	\$ 1.20	2000
220.3	\$ 1,500.00	6	627.8	\$ 3,000.00	4	854.036	\$ 3.00	2000
220.5	\$ 1,500.00	1	627.9	\$ 2,500.00	3	854.2	\$ 2.00	3000
221	\$ 690.00	11	657.1	\$ 12.00	450	856	\$ 20.00	200
222.1	\$ 800.00	15	670	\$ 25.00	425	856.12	\$ 36.00	200
223.1	\$ 200.00	6	693	\$ 160.00	100	859	\$ 0.60	24000
230.212	\$ 70.00	50	697	\$ 19.00	360	864.04	\$ 7.00	750
230.712	\$ 500.00	6	698.4	\$ 8.00	1700	866.06	\$ 1.40	10000
230.912	\$ 1,600.00	1	701	\$ 135.00	5	866.12	\$ 2.00	860
241.12	\$ 50.00	245	701.2	\$ 150.00	150	867.04	\$ 1.30	2000
241.15	\$ 70.00	25	702	\$ 200.00	110	867.06	\$ 1.50	9200
241.48	\$ 100.00	135	703	\$ 200.00	120	869	\$ 2.00	550
250.012	\$ 45.00	220	715	\$ 90.00	3	874	\$ 150.00	2
252.912	\$ 16,000.00	1	751	\$ 45.00	840	874.2	\$ 150.00	13
252.918	\$ 18,000.00	1	756	\$ 1,500.00	1	877.41	\$ 80.00	6
258	\$ 90.00	75	760	\$ 40.00	35	903	\$ 390.00	221
272.12	\$ 20.00		765	\$ 10.00	4880	984.6	\$ 69.00	1735
302.06	\$ 70.00	40	765.2	\$ 30.00	35	999	\$ 45.00	3744
			765.3	\$ 39.00	10			
			766	\$ 4.00	6100			
			767.12	\$ 10.00	2700			
			767.2	\$ 5.00	3200			