

*Amended by Dec.  
No. 1202 of 5/3/94.*

*(SM)*

**MIXED USE DISTRICT DEVELOPMENT AGREEMENT**

THIS MIXED USE DISTRICT DEVELOPMENT AGREEMENT, hereinafter referred to as "AGREEMENT" made and entered into as of the dates indicated below, pursuant to Chapter 55, Omaha Municipal Code, by and between the City of Omaha, a Municipal Corporation of the State of Nebraska, hereinafter referred to as "CITY" and Prairie Systems, Inc., incorporated in the State of Nebraska, hereinafter referred to as "PSI," and, MCI Telecommunications Corporation, incorporated in the State of Delaware, hereinafter referred to as "MCI."

**WITNESSETH:**

Whereas, PSI, as subdivider/developer, is, or will be, the legal owner of the real estate described on the plat of World Communications Park, hereinafter referred to as "WCPARK," a copy of which is attached as Exhibit "A-1" and is incorporated by this reference, and desires to establish and develop such property according to the provisions of Chapter 55 of the Omaha Municipal Code for the construction of telecommunications facilities, offices and commercial uses as set forth in this AGREEMENT; and,

Whereas, in accord with the requirements of Article XX, Sections 55-563 and 55-884, Omaha Municipal Code, PSI has presented a development plan to CITY; and,

Whereas, CITY, in the interest of maintaining the public health, safety and welfare, desires to ensure that such project is developed substantially in accord with the development plan and, therefore, considers this AGREEMENT to be in the best interests of CITY; and,

Whereas, PSI with MCI as codeveloper are willing to commit to the development of a project substantially in accord with the development plan and desire to have a reasonable amount of flexibility to carry out the development and consider this AGREEMENT to be in their best interest; and,

Whereas, PSI and MCI propose to build public improvements on the site with MCI assuming the financial responsibilities therefor as detailed herein; and,

Whereas, CITY, PSI and MCI desire to set forth in this AGREEMENT the respective understandings and agreements with regard to WCPARK.

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

I. Definitions.

For the purposes of this AGREEMENT, the following words and phrases shall have the following meanings:

A. The "Cost" or "Entire Cost" of a public improvement shall be deemed to include all right-of-way or easement acquisition, construction costs, engineering costs, attorneys' fees, testing expenses, publication costs, financing costs and any other miscellaneous costs.

B. "Site Improvement" shall mean any building, parking, landscaping, signage, fencing or other regulated structures or appurtenances constructed on or as part of the development of WCPARK.

## II. Development Plan.

A. Except as otherwise permitted in this AGREEMENT the project shall be developed in accord with the development plan a/k/a site plan, which is attached as Exhibit "A-1" and by this reference incorporated herein, and shall comprise the plat of existing private and public property in WCPARK.

B. It is intended that this development plan be a general schematic of the development. All parties recognize that from time to time for good and sufficient reasons it may be necessary for PSI or MCI to alter the size or location of the buildings or other site improvements. PSI and MCI reserve the right to modify the development plan provided such modification conforms to the provisions of Section 55-884(1), Omaha Municipal Code and obtains approval from CITY, in accord with Section 55-884, for such modifications. This provision shall not abrogate any legal remedies available to CITY. If any provision of this AGREEMENT is held invalid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained therein.

## III. Improvements.

The parties agree that the Entire Cost of all public improvements shall be defrayed as follows:

A. CITY hereby acknowledges that it has given PSI and MCI the right to connect to the sanitary sewer system subject to obtaining proper permits and paying the regular permit fees. The public sanitary sewer, to be known as "Sewer District 1572," shall be constructed in the public right-of-way comprising World Communications Drive and 75th Street and across private property in WCPARK north to the outfall sewer. The Entire Cost of the standard 8" public sewer line to service WCPARK shall be borne by MCI as detailed herein. Since the properties comprising WCPARK shall be subject to special assessments for sanitary sewer installation, the properties shall not be subject to front footage connection charges payable in accord with Section 49-696, Omaha Municipal Code. In addition, none of the lots comprising WCPARK shall be subject to Interceptor Sewer Connection Fees. The initial alignment and location of the proposed public sewer is identified on Exhibit "A-2." The prorata cost of "oversizing" (larger than

8") the sanitary sewer to service adjacent development areas shall be the responsibility of CITY.

CITY shall be responsible for all Costs of installing the sanitary outfall sewer including land acquisition, eminent domain and construction associated costs, to be known as "Sanitary Outfall Sewer 5234," to service the development area as shown on Exhibit "A-2." The cost of easement acquisition for this sewer shall be borne by CITY as well as all Costs associated with the construction thereof as detailed in the following, Subsection J. If appropriate, CITY shall utilize its power of eminent domain to acquire any right-of-way or easements necessary for the construction of this sewer.

B. Water and gas distribution mains located within dedicated street right-of-way shall be installed according to the terms of a contract executed between PSI and Metropolitan Utilities District (MUD).

C. Street lighting for public streets shall be installed according to the terms of a contract executed between MCI and Omaha Public Power District (OPPD).

D. Underground electrical service to each lot, site or building in the development area shall be installed according to the terms of contracts between MCI and OPPD and PSI and OPPD.

E. PSI and MCI shall have installed all internal sidewalks and/or trails, as shown on Exhibit "A-3," to service the site improvements on any developed lot at the time a certificate of occupancy for the building is sought. The requirement for sidewalk installation on all public rights-of-way shall be complied with within three calendar years of the date of approval of the plat for WCPARK. This requirement shall apply to PSI and MCI, any future subdividers, successors, or assigns who waive the right to protest said sidewalk improvements; this waiver runs with the land - World Communications Park. At the end of the three-year period should sidewalks not have been installed to service the properties, CITY will establish a "Sidewalk District" to provide the construction thereof and the owners of the benefited properties shall not protest the formation of said district and the properties shall be assessed the cost of such sidewalk construction.

CITY will be responsible for the installation and Costs of constructing sidewalks on the north side of State Street and the west side of 72nd Street adjacent to WCPARK.

F. PSI and MCI shall grade the property and install at their expense all erosion and sediment control improvements in accord with the Soil Erosion and Sediment Control Manual. PSI shall install a dry cell detention basin for storm drainage control purposes. Should PSI later determine it appropriate to modify the detention basin to a wet cell, an agreement between CITY and PSI shall be executed to establish terms and responsibilities of both parties. PSI shall provide all easements necessary to install, gain access to and to maintain the detention basin to CITY on the plat.

G. PSI, and MCI if necessary, shall provide not less than a fifty foot wide dedication, and also additional dedication adequate to allow turning lanes as identified necessary in the traffic study for WCPARK, to the public for street purposes of rights-of-way to be known as "World Communications Drive" and "75th Street" - said dedication to be granted in the platting of WCPARK. PSI and MCI shall provide all temporary construction easements necessary for the construction of the public improvements, drainage of and access to the site at no cost. The location of these rights-of-way shall be as shown on Exhibit "A-3."

MCI shall be responsible for the installation of paving improvements on the streets identified herein, to be known as "Street Improvement District 6847." The Entire Cost of such paving improvements for interior streets shall initially be borne by MCI - the Cost of constructing intersections of the public streets and extra width pavement at the entrance to WCPARK off of 72nd Street and the right turn deceleration, "decel." lane on the west side of 72nd Street from the north, as shown on Exhibit "A-3," shall be an expense of CITY. In addition, traffic signalization improvements at several potential intersection locations may be determined necessary at some future date; the Entire Cost of the installation of the first intersection meeting warrants for such signalization improvements shall be borne by CITY. It is understood by PSI, MCI and CITY that, as WCPARK and future development of the properties in all directions occurs, additional traffic signalization at other of these intersections may need to be installed. The parties reserve the right to enter into such agreement(s) as may be necessary to cause such traffic signalization improvements to be installed.

PSI and MCI each waives it's respective right of protest against the formation of this Street Improvement District and further each waives it's right to damages as a result of changes in grade occurring with this paving improvement.

H. CITY shall be responsible for the installation of storm sewers necessary to drain public rights-of-way, to be known as Storm Sewer 5235." This Cost shall be payable as detailed in Subsection J. Storm drainage improvements or associated grading of the properties to afford improved developability shall be the responsibility of PSI and MCI.

I. Design and construction engineering services for the public improvements identified herein shall be undertaken for PSI and MCI, on behalf of CITY, by a registered professional engineer, hereinafter referred to as "ENGINEER." Plans and specifications for such public improvements shall be subject to review and approval of the Public Works Department. ENGINEER shall be responsible to undertake competitive bidding of the public improvements and shall provide detailed bid tabulations to CITY through the Department for review and concurrence in the award of contract(s) for such public improvements.

Design engineering service fees shall be compensated at a rate of 6.5% of actual construction costs; construction engineering service fees shall be compensated at the rate

of 7.5% of actual construction costs. The Cost of such engineering shall be initially borne by MCI. The Cost of "testing" services necessary in constructing these improvements shall be initially borne by MCI.

J. CITY will reimburse MCI for Costs incurred for design and construction engineering services, testing expenses and the actual costs of constructing all the public improvements identified above upon acceptance of the same and receipt of certification of compliance with the plans and specifications issued by ENGINEER. Within thirty (30) days of receipt of such certification, CITY will reimburse MCI for expenses incurred in constructing the public improvements detailed herein. CITY shall assess thereafter the benefited properties in WCPARK the Costs of interior sanitary sewer constructed as Sewer District 1572 (less any cost for pipe oversizing) and paving improvements (less the cost of designated intersection areas, decel lane and extra-width pavement sections identified on Exhibit A-3). The assessment of the benefited properties shall be levied on a front footage basis as requested and having been determined most fair and equitable by PSI and MCI. CITY reimbursement shall result in CITY paying the Entire Cost of constructing the sanitary outfall and storm sewers, intersection improvements, 72nd Street deceleration lane and extra width pavement on World Communications Drive at the entrance to WCPARK from 72nd Street.

K. Should the property development necessitate the construction and installation of a sanitary lift station and force main to pump sanitary wastes from the PSI buildings to the gravity sewer, such installation Cost, as well as ongoing operation and maintenance expenses, shall be borne by PSI.

L. The driveway connection to World Communications Drive west of 72nd Street shall be converted to a right in - right out only point of ingress/egress as soon as PSI completes parking improvements for it's second building to be located on lot 2 or lot 3.

IV. PSI and MCI agree to commence the timely and orderly installation of the private improvements following execution of this AGREEMENT pursuant to appropriate provisions of the Omaha Municipal Code. The installation of such improvements shall be completed before a certificate of occupancy will be issued for the project.

V. PSI has filed an application for and received approval of a special use permit for WCPARK and specific site plan approval for property development on lots 1, 2, 3 and 4. Any development by PSI or MCI on lots 5, 6, 7 and 8 will be subject to submittal of an amendment to the special use permit under the provisions of Section 55-884, Omaha Municipal Code.

VI. Parking for the project shall be provided by PSI and MCI in accord with the "parking plan" included on Exhibit "A-4" attached hereto and made a part hereof. The parking plan shall meet the minimum requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XIV, "Off Street Parking and Loading" and shall be

subject to the site plan review and approval as provided by Section 55-884, O. M. C. for lots 5, 6, 7 and 8.

VII. Landscaping for the project shall be installed by PSI and MCI in accord with the "landscape plan" included on Exhibit "A-5" attached hereto and made a part hereof. The landscaping plan shall meet the minimum requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XIII, "Landscaping and Screening" and shall be installed by PSI and MCI so as to accommodate the installation of public sidewalks required in Subsection E, above. All landscape improvements on lots 5, 6, 7 and 8 shall be subject to site plan review and approval as provided by Section 55-884, O. M. C.

VIII. Parabolic antennas and other telecommunication towers which may be installed by PSI or MCI shall meet the requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XVI, "Supplemental Site Development Regulations."

IX. Signage for the project may be installed in accord with the "signing plan" included on Exhibit "A-6" attached hereto and made a part hereof. The signage shall meet the minimum requirements of the provisions of the Omaha Municipal Code, Chapter 55, Article XVIII, "Signs and Street Graphics" and Chapter 53 - Signs. Easements for entry signage shall be granted by the property owners. All sign improvements on lots 5, 6, 7 and 8 shall be subject to site plan review and approval as provided by Section 55-884, O. M. C.

X. Site development regulations mean those gross building areas, floor area ratios, building coverage percentages and impervious coverage percentages applicable to particular lots in WCPARK, all defined in this AGREEMENT. Definitions of these terms follow:

A. "Building coverage" means the area of the site covered by buildings or roofed areas excluding allowed projecting eaves, balconies and similar features.

B. "Gross floor area" means the total enclosed area of all floors of a building, measured to the inside surfaces of the exterior walls. This definition excludes the areas of basements, elevator shafts, airspaces above atriums and enclosed off-street parking and loading areas serving a principal use.

C. "Floor area ratio" means the quotient of gross floor area divided by gross site area.

D. "Impervious coverage" means the total horizontal area of all buildings, roofed or covered spaces, paved surface areas, walkways and driveways, and any other site improvements that decrease the ability of the surface of the site to absorb water, expressed as a percentage of the site area. The surface water area of pools is excluded from this definition.

E. Except as otherwise permitted in this AGREEMENT or the zoning ordinances of CITY, the project shall be developed in accordance with the site plan, as detailed in Section II of this AGREEMENT and Section 55.561, "Mixed Use District," with PSI and MCI agreeing to limit the permissible uses to the following:

Permissible uses in WCPARK Mixed Use District

Postal facilities	Financial services
Business support services	General offices
Cocktail lounge	Medical offices
Communication services	Consumer convenience services
Consumer repair services	Food sales (convenience)
General retail sales	Hotel / motel
Indoor entertainment	Indoor sports and recreation
Liquor sales	Outdoor sports and recreation
Personal improvement services	Personal services
Research services	
Restaurant (limited)	Restaurant (general)
Parking structure	Parking surface
Custom manufacturing	Light industry

As long as the site development regulations are not violated: PSI or MCI may alter the location, physical shape or exterior dimensions of any structure shown on the site plan, within the boundaries of any platted lot; may reduce or increase the number of buildings or lots as shown on the site plan by adjusting lot lines, combining or replatting lots (CITY, may, by administrative subdivision, grant any such lot replats, adjustments or combinations as are necessary to carry out the plan. If because of the requirements of law, it is necessary to replat all or any portion of WCPARK, CITY agrees to accommodate such replatting as expeditiously as possible.). PSI or MCI may alter, subject to approval of Planning Director, the location and design of any off-street parking areas shown on lots 1, 2, 3, 4 within the site plan so long as such alteration does not increase or decrease the impervious coverage requirement of any lot as set forth in the site development regulations.

The site development shall be subject to the following regulations:

<u>Regulator</u>	<u>Requirement</u>
Lot Area:	5,000 square feet minimum
Lot Width:	50 feet minimum
Floor Area Ratio:	2.0 maximum

Regulator

Requirement

Front Yard:

The greater of 15 feet from the front property line or 50 feet from the centerline of the fronting street GI

Street Side Yard:

The greater of 15 feet from the side property line or 50 feet from the centerline of the duly dedicated public fronting street GI

Interior Side Yard:

Five feet minimum to 40 feet height of building; two additional feet for each additional 10 feet in height

Rear Yard:

15 feet minimum LI

Height:

100 feet maximum LI

Building Coverage:

70 % maximum GI

Impervious Coverage

90 % maximum GI

XI. Miscellaneous Provisions.

A. The Planning Director of the City of Omaha shall have the authority to administer this AGREEMENT on behalf of CITY and to exercise discretion with respect to those matters contained herein so long as the development proceeds in general accord with the development plan and with regard to those matters not fully determined at the date of this AGREEMENT. The Planning Director shall have no authority to otherwise amend this AGREEMENT unless requested by PSI or MCI only. The provisions of this AGREEMENT shall run with the land in favor of and for the benefit of CITY and shall be binding upon present and all successor owners of the real estate described in Exhibit "A-1."

B. Neither CITY nor PSI nor MCI shall, in the performance of this AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions or affiliations, national origin or disability.

C. Parties to this AGREEMENT shall conform with all existing and applicable ordinances, resolutions, state or federal laws and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance of this AGREEMENT.



D. Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of CITY shall have a financial interest, direct or indirect, in any City agreement. A violation of that Section with the knowledge of PSI or MCI, in addition to constituting employee malfeasance, shall render the agreement voidable by CITY and unilaterally terminated.

E. No changes may be made to this AGREEMENT or any attachments thereto except in writing and agreed to by PSI and MCI.

F. CITY, PSI and MCI agree to do all things necessary or appropriate to carry out the terms of this AGREEMENT and to aid and assist each other in carrying out its terms including, but not limited to enactment, by CITY of such resolutions or ordinances in taking of such action as may be necessary to enable CITY and PSI to comply with the terms thereof.

G. CITY agrees that no revised site plan, plat, revised development plan or related documents shall be arbitrarily or unreasonably rejected or disapproved by CITY staff. CITY agrees to issue each building permit as expeditiously as possible and to grant individual occupancy permits on the project on a building by building or unit basis, but no such permit shall be issued unless work on portions of such buildings has advanced to a point that the individuals using the portions of the buildings for which their certificate of occupancy is to be issued will not be endangered by construction in progress and the building is safe for those to be occupied.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the parties as of the dates indicated below.

Executed by PRAIRIE SYSTEMS, INC. this 2nd day of May, 1994.

Witness:

By:

Dean Hisselmann, CFO

J. Hisselmann President  
Name/Title

Executed by MCI TELECOMMUNICATIONS CORPORATION this 29th day of April, 1994.

Witness:

By:

Edward G. Freitag

Edward G. Freitag  
Assistant Secretary

A. R. Roberts

Name/Title A. R. Roberts  
Vice President,  
Facilities Management





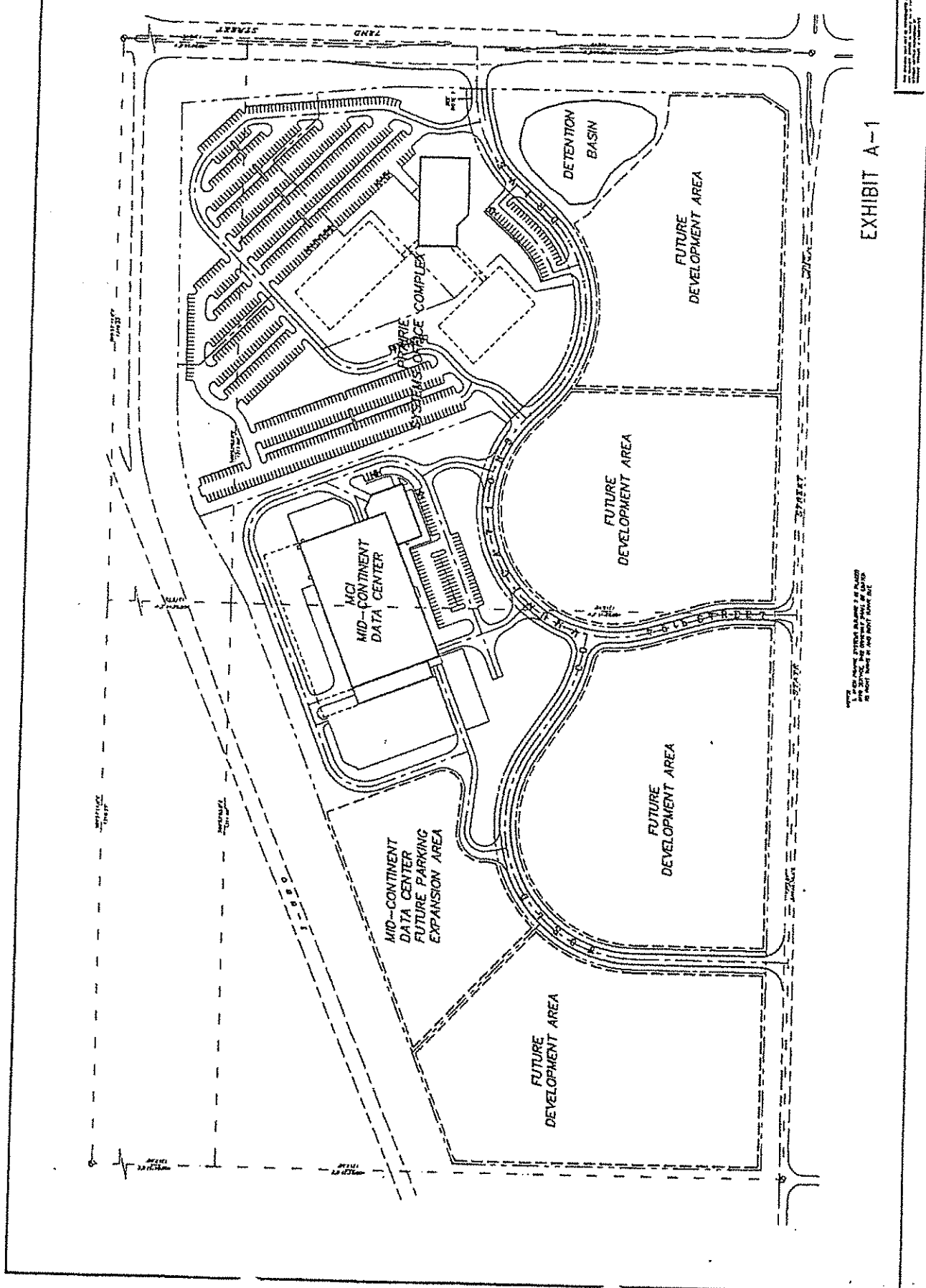


EXHIBIT A-1

ALL OF THESE FUTURE AREAS ARE PLANNED  
 IN ACCORDANCE WITH THE MASTER PLAN FOR THE  
 SITE.

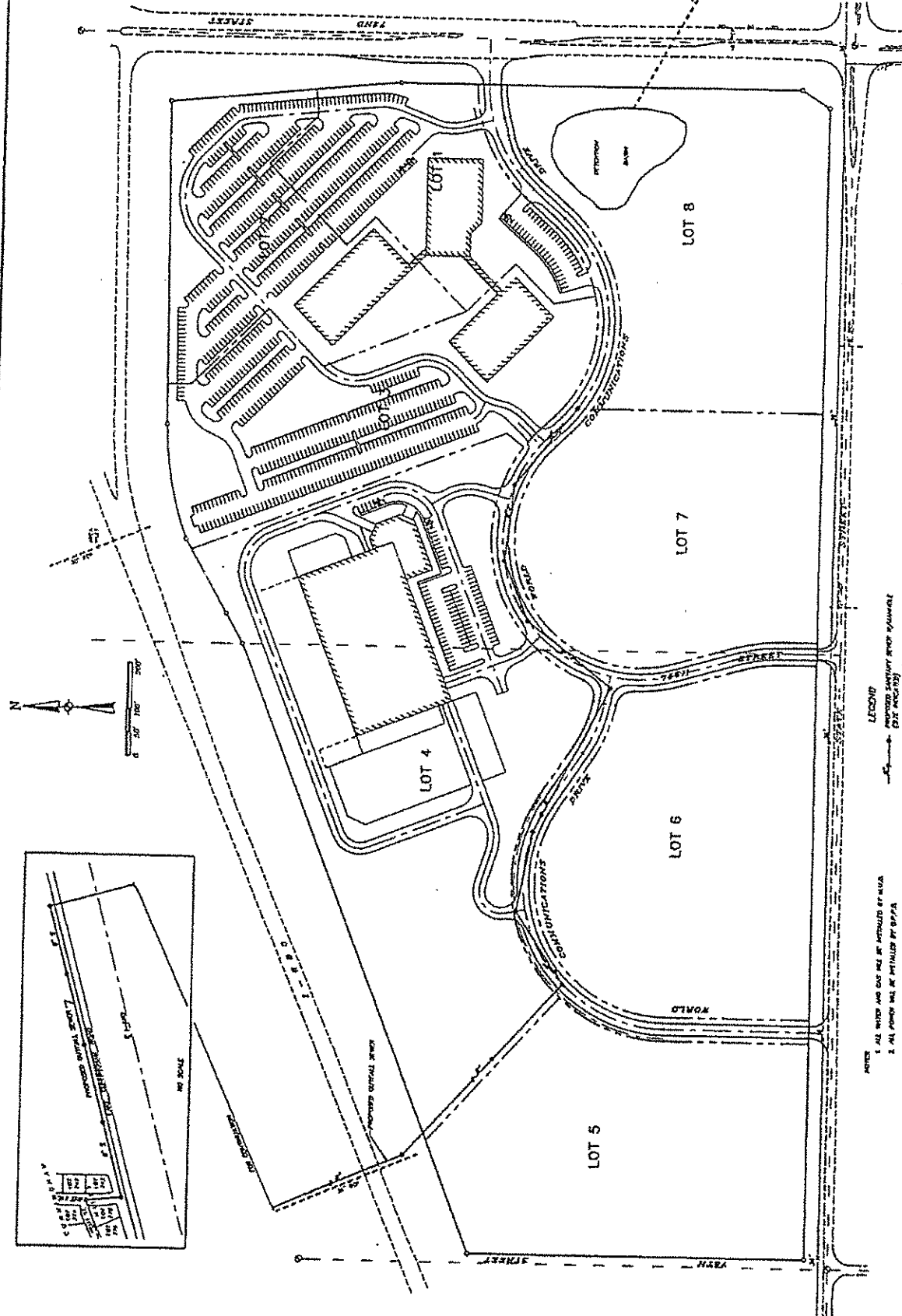


EXHIBIT A-2

NOTES:  
 1. ALL WIDTH AND DIST. ARE AS SHOWN BY THIS PLAN.  
 2. ALL WORK SHALL BE PERFORMED BY EPA.  
 LEGEND:  
 PROPOSED SANITARY SEWER MAINLINE  
 PROPOSED SANITARY SEWER MANHOLE  
 EXISTING UTILITY

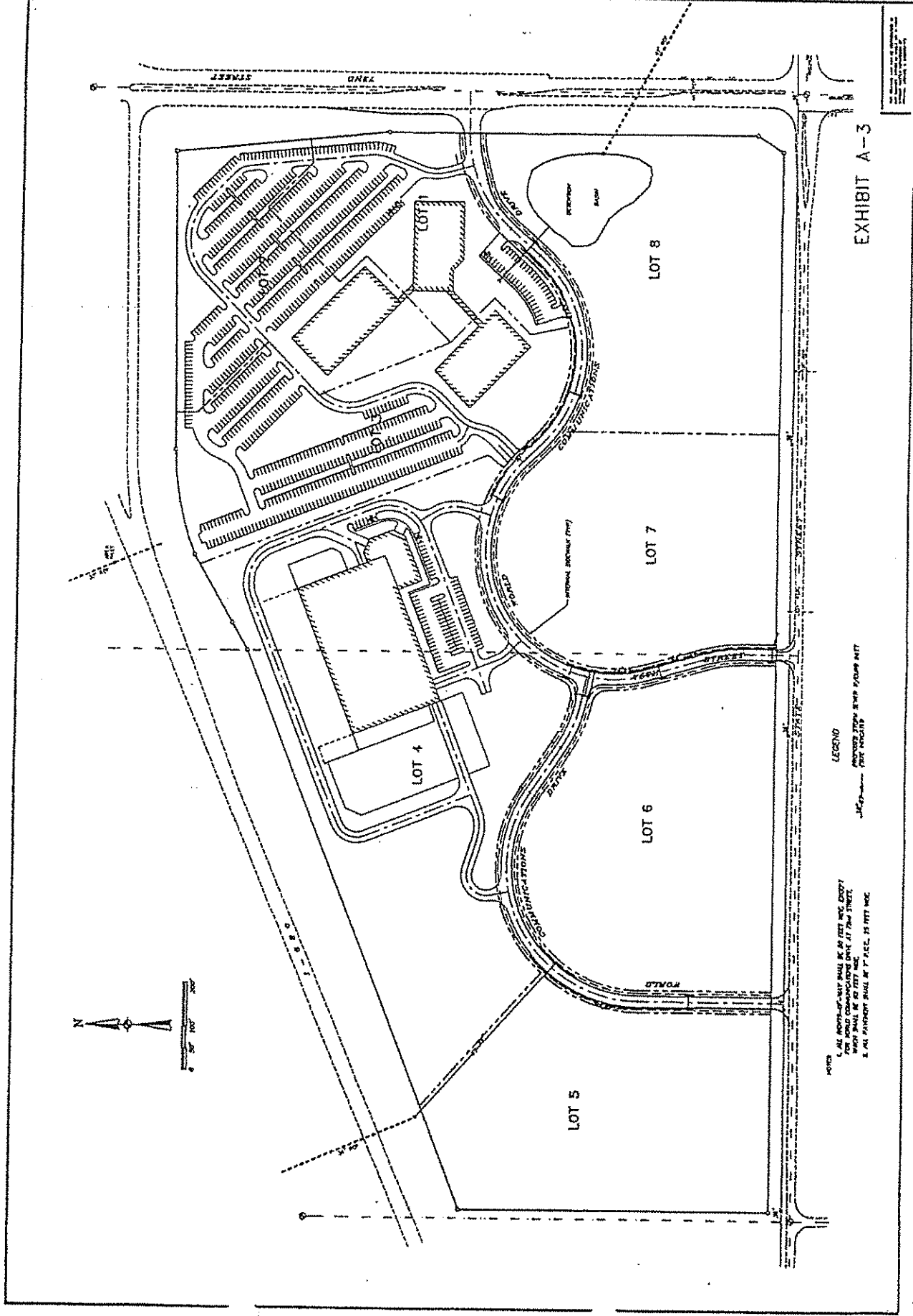


EXHIBIT A-3

LEGEND

--- PROPOSED STORM SEWER

--- PROPOSED DRIVE

--- EXISTING DRIVE

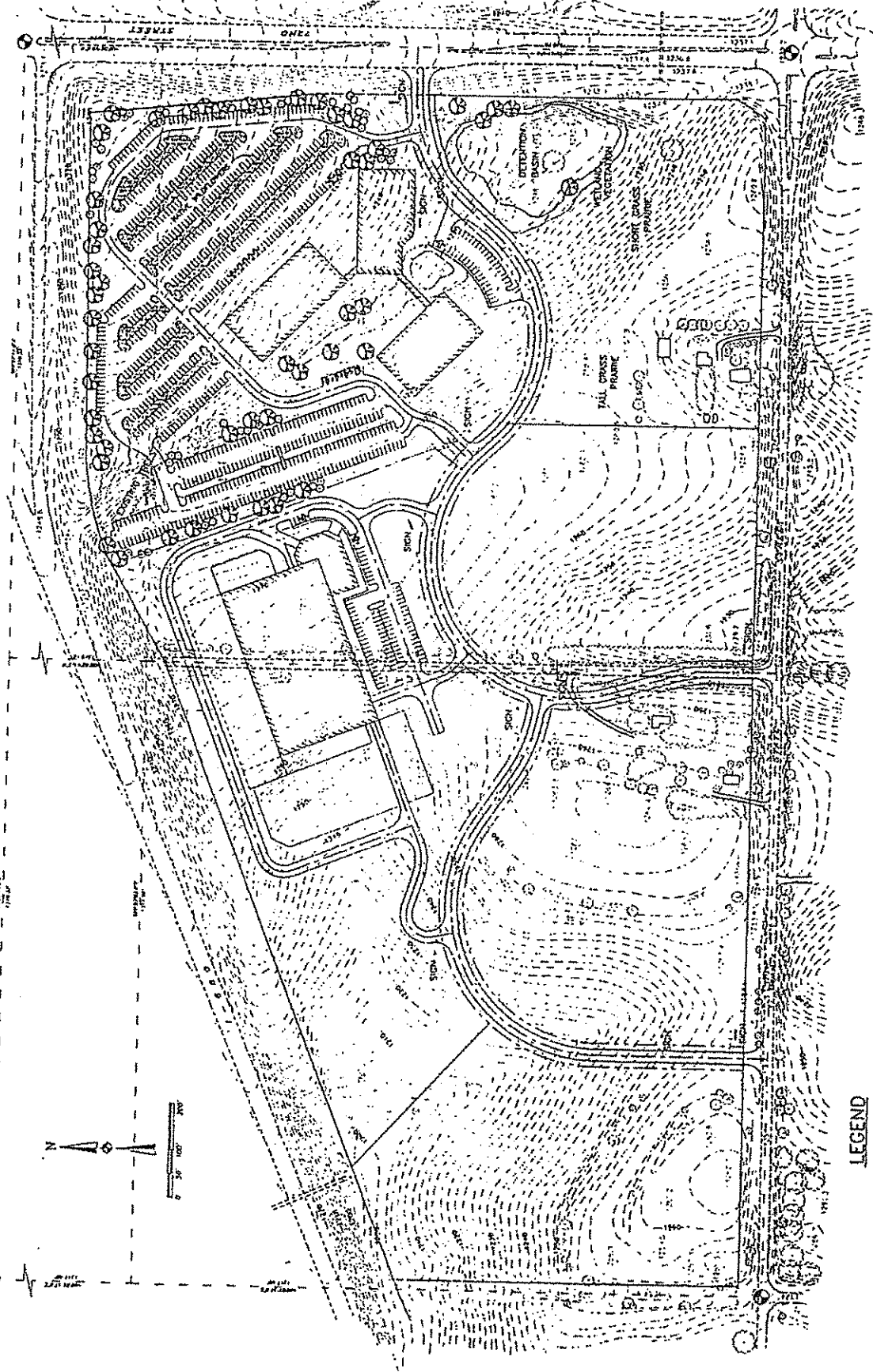
NOTES

1. ALL IMPROVEMENTS SHALL BE AS SHOWN ON THIS PLAN.

2. FOR WORLD COMMUNITIES DRIVE AT 27TH STREET, IMPROVEMENTS SHALL BE AS SHOWN ON PLAN 17 0223.

3. ALL DRIVEWAYS SHALL BE 12' WIDE, 14' HIGH.





LEGEND

- ⊗ DECIDUOUS TREE
- EVERGREEN TREE
- ORNAMENTAL TREE





*Amended By Doc.  
No. 102 of 5/3/94.*

ORDINANCE NO. 3.3255

(SM)

AN ORDINANCE creating Street Improvement District 6847 and Sewer District 1572, in the City of Omaha, for the purpose of improving World Communications Drive from 72nd Street to State Street and 75th Street from World Communications Drive to State Street by grading, curbing, and paving and installing sanitary, sanitary outfall, and storm sewers; fixing and defining the boundaries of said districts; directing that bids and proposals be received for the grading, paving, and curbing and installation of sanitary, sanitary outfall, and storm sewer improvements; authorizing the acquisition of necessary rights-of-way or easements for the construction of the paving and any public sewer improvements; providing for a waiver of the determination and assessment of damages occasioned by reason of change of grade; providing for approval of the Mixed Use District Development Agreement between Prairie Systems Inc., MCI Telecommunications Corporation, and the City of Omaha, which agreement provides for the public improvements to be installed to service the properties in World Communications Park; and, providing the effective date hereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That Street Improvement District 6847 and Sewer District 1572 are hereby created in the City of Omaha for the improvement of World Communications Drive from 72nd Street to State Street and 75th Street from World Communications Drive to State Street.

Section 2. That Street Improvement District 6847 and Sewer District 1572 shall comprise the paving and sanitary sewer improvements to service private property adjacent to the public rights-of-way to be created on the property, and existing public rights-of-way in the City, the property being



currently an unplatted 67-acre parcel which is being platted into World Communications Park, Lots 1 through 8. The outer boundary of said districts shall be the outer boundary of the lots to be platted and hereinabove set forth.

Section 3. That bids shall be required on the grading, curbing, and paving improvements, as well as storm, sanitary outfall, and sanitary sewer installations with said bids to be made under and in accordance with the plans and specifications to be prepared for and on file in the office of the City Engineer, or a designated consulting engineering firm, and the Public Works Director is hereby directed to prepare an estimate of the cost of such improvements.

Section 4. That the Public Works Department be and hereby is authorized and directed to acquire any right-of-way needed for the construction and maintenance of the paving and any of the various sewer improvements to be constructed in said improvements districts, and specifically, this authorization allows for the acquisition of right-of-way necessary for the installation of Sanitary Outfall Sewer 5234.

Section 5. That the design of the paving and sewer improvements districts will be undertaken to permit the development of the adjacent private property, and the property owners have waived the right to determination and appraisal of damages required under Section 26-38 of the Omaha Municipal Code, as might result from the grade established; therefore, the requirement to determine and assess damages occasioned by reason of said change of grade is hereby waived.



Section 6. That the Mixed Use District Development Agreement between Prairie Systems Inc., MCI Telecommunications Corporation, and the City of Omaha, a copy of which is attached and by this reference made a part hereof, which provides for the installation of the public improvements to service World Communications Park is approved.

Section 7. That this Ordinance shall take effect and be in full force fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

[Signature]

APPROVED BY:

[Signature] 5/3/94  
MAYOR OF THE CITY OF OMAHA DATE

PASSED MAY -3 1994 *As Amended 7-0*

ATTEST:

[Signature]  
CITY CLERK OF THE CITY OF OMAHA

APPROVED AS TO FORM:

[Signature]  
CITY ATTORNEY

2998x

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

[Signature]  
BY CITY CLERK

