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INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is made and entered into as of the 12th day of September, 2003, by and between SANITARY AND IMPROVEMENT DISTRICT NO. 479 OF DOUGLAS COUNTY, NEBRASKA (hereinafter referred to as "SID 479") and FIRST DATA RESOURCES INC., a Delaware corporation (hereinafter referred to as "First Data").

PRELIMINARY STATEMENT

WHEREAS, Double D Properties, L.L.C. ("Double D") is the owner of certain real property described in Exhibit "A" attached hereto which is being platted as Lots 1 through 6 and Outlot A of Double "D" Industrial Park, and which is generally located northeast of 87th Street and Sorenson Parkway in Douglas County, Nebraska (the "Double D Property");

WHEREAS, SID 479 was formed in order to provide for the installation of certain sanitary sewer and other public improvements, including certain improvements on the Double D Property, and certain easements were granted to the City of Omaha, Nebraska (the "City") and SID 479 pursuant to the Plat for the installation and maintenance of the sanitary sewer improvements (the "Easements");

WHEREAS, First Data is the owner of certain land known as Lots 1, 2 and 3 of Irvington Technology Park according to the plat thereof recorded in Book 2181, Page 511 of the Deed Records of Douglas County, Nebraska (the "First Data Property");

WHEREAS, First Data and the City executed that certain Subdivision Agreement, Irvington Technology Park dated May 23, 2001 (as amended, the "Subdivision Agreement") providing for certain public improvements, including the installation of sanitary sewer improvements to serve the First Data Property;

Blackwell Sanders Peper Martin 720 Olive Street Suite 2400 5t. Louis, MO. 63101 Attn: Rosemary E. Carson

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WHEREAS, the Subdivision Agreement specifically provides for the construction by First Data of sanitary sewer extension improvements and the installation of a sanitary sewer siphon (as modified or amended, the "First Data Improvements");

WHEREAS, it is in the best interest and would be mutually advantageous to City, SID 479 and First Data to have SID 479 install a siphon and outfall sewer on the Double D Property in the area set forth in the Easements and as shown on Exhibit "B" attached hereto (the "Siphon/Outfall Improvements") and for SID 479 to install an interior sanitary sewer in the area set forth in the Easements and as shown on <a href="Exhibit" C" attached hereto to serve both the Double D Property and the First Data Property (the "Interior Sanitary Sewer Improvements") (the Siphon/Outfall Improvements and the Interior Sanitary Sewer Improvements may be collectively referred to as the "Improvements"), and for the City, SID 479 and First Data to split the cost of the Improvements as set forth in this Agreement. The Improvements and costs therefor shall include the preparation of subgrade, construction and installation, grading and shaping and related improvements as described in the Plans (defined in Section 2 below) and as provided in the Construction Budget (defined in Section 6 below);

WHEREAS, the City and First Data have entered, or on or about this date will enter, an amendment to the Subdivision Agreement which provides that SID 479 shall install the Sanitary Sewer and Siphon described in this Agreement, and First Data shall not have the responsibility to install such Improvements;

WHEREAS, the City is requiring SID 479 to install an electric traffic signal ("Traffic Signal") at the intersection of 87th Street and Sorenson Parkway in accordance with the plans therefor attached hereto as Exhibit "D";

WHEREAS, in connection with the subdivision of the First Data Property, the City had required First Data to create an easement across Lot 2 of Irvington Technology Park in order to provide access to and from Lot 3 of Irvington Technology Park from and to the signalized intersection at Ida Street and Sorenson Parkway (the "Access Easement"); and

WHEREAS, the City has agreed that the Access Easement may be terminated in light of the installation of the Traffic Signal; and

WHEREAS, First Data has agreed to participate with SID 479 in the payment of the costs of installation of the Traffic Signal pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein set forth, the City, SID 479 and First Data do hereby agree and contract with each other as follows:

- 1. <u>No Administrative Entity</u>. There shall be no separate legal or administrative entity created to administer this Agreement and, therefore, the City shall not establish a separate budget for such an entity.
- 2. <u>Plans and Design</u>. SID 479 has contracted with Kirkham Michael, registered engineers in the State of Nebraska, for the preparation of detailed plans and specifications for the construction of the Improvements and the Traffic Signal. A draft of the proposed plans and specifications for the Improvements and the Traffic Signal (the "**Plans**") shall be submitted to

SID 479 and First Data for review, comment and/or approval by such parties within five (5) days from the date of this Agreement. The parties hereto shall have ten (10) days in which to review the Plans and provide their written comments or approval to each of the parties hereto. Failure by SID 479 or First Data to provide a written response within such ten (10) day period shall be deemed to constitute approval of the Plans by such party. In the event that SID 479 or First Data timely provides written comments or suggested changes to the Plans, SID 479 and First Data shall schedule a meeting of all of the parties hereto and their respective engineers and/or consultants to review any suggested changes and finalize the Plans. In the event that the parties are unable to agree on revised Plans after such meeting, the parties shall submit such dispute to arbitration in accordance with Section 12 below. The Plans shall also be submitted to the City for its review and approval pursuant to the City rules and regulations. It shall be the obligation of SID 479 to obtain the approval of the City to the Plans.

- 3. <u>Construction Management and Supervision</u>. Construction management and construction supervision of the installation of the Improvements and Traffic Signal shall be performed by Kirkham Michael. The engineering design, construction administration, construction management and the bid letting fees and costs of Kirkham Michael for the Improvements and Traffic Signal shall be included in the total costs and paid as set forth in Section 6 of this Agreement. Notwithstanding the foregoing, First Data shall have the right to inspect, oversee and monitor the construction of the Improvements and Traffic Signal.
- 4. <u>Right-of-Way</u>. The costs of all right-of-way and easements which may be necessary for the construction of the Improvements and Traffic Signal shall be acquired and paid for by SID 479 and become part of the total costs of the Improvements and subject to the cost allocations set forth herein.
- Construction. SID 479 agrees to cause the Improvements to be constructed in accordance with the approved Plans and that such construction shall be completed on or before November 30, 2003 (the "Improvements Completion Date"). SID 479 agrees to cause the Traffic Signal to be constructed in accordance with the Plans and that such construction shall be completed on or before October 30, 2004 (the "Traffic Signal Completion Date"). During the course of the construction of the Improvements and Traffic Signal, First Data may at any time and from time to time inspect the progress of the work to ensure compliance with the approved Plans. In the event that First Data determines that the Improvements and/or Traffic Signal are being constructed in a manner which materially deviates from the approved Plans, First Data may provide written notice of such deviation to SID 479 describing in reasonable detail the manner in which the construction deviates from the Plans. SID 479 shall have three business (3) days in which to review such notice and alter the then current course of construction in order to comply with the Plans. In the event SID 479 fails to conform the construction of the Improvements to the Plans, First Data shall have no obligation to pay any amounts related to the Improvements to SID 479 hereunder, unless First Data elects to connect to and make use of the Improvements, in which case First Data shall be obligated to pay the amounts required hereunder as if the Improvements had been constructed in accordance with the Plans. In the event SID 479 fails to conform the construction of the Traffic Signal to the Plans in such a manner that the traffic signal does not adequately serve First Data, First Data shall have no obligation to make any payments related to the Traffic Signal to SID 479 hereunder.

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Costs of the Improvements and Traffic Signal and Payment of the Costs of the 6. Improvements and Traffic Signal. SID 479 has entered into a construction contract (the "MBC Contract") with MBC Construction Co., Inc. ("MBC") to construct the Improvements (a copy of which has been separately provided to First Data and the City). SID intends to separately bid out the construction work for the Traffic Signal. SID 479 hereby agrees that First Data shall have no obligation under the MBC Contract or under the contract for the construction of the Traffic Signal. The total budget for the construction for the Improvements and Traffic Signal is based upon the bid of MBC and the Traffic Signal Contractor and is shown on Exhibit "E" attached hereto (the "Construction Budget"). The construction costs reflected on the Construction Budget may be modified from time to time only by change orders approved in writing by Kirkham Michael, SID 479 and First Data. First Data shall in writing approve, disapprove or provide comments to Kirkham Michael as to such change order within seven (7) business days of the date of receiving such change order and in the event First Data fails to respond in writing within such seven (7) business day period, then the change order shall be deemed to have been approved by First Data. First Data shall not unreasonably withhold approval of the proposed change order. In no event shall First Data be obligated to reimburse, pay, fund or in any way undertake responsibility for any costs not set forth on the Construction Budget, or otherwise approved by First Data pursuant to change orders in accordance with this Section 6.

SID 479 shall timely pay MBC, its subcontractors, materialmen and any other persons or entities supplying labor or materials in connection with the Improvements and/or Traffic Signal. Subject to the limitations and qualifications set forth in this Section, the City has agreed to reimburse SID 479 fifty percent (50%) of the total cost of the Siphon/Outfall Improvements and First Data shall reimburse SID 479 twenty five percent (25%) of the total costs of the Siphon/Outfall Improvements, all as shown on the Construction Budget and all approved change orders. Subject to the limitations and qualifications set forth in this Section, First Data shall also reimburse SID 479 twenty five percent (25%) of the total costs of the Interior Sanitary Sewer Improvements. Subject to the limitations and qualifications set forth in this Section, First Data shall also reimburse SID 479 thirty-three percent (33%) of the total costs of the Traffic Signal, not to exceed Thirty-Four Thousand Two Hundred and no/100 Dollars (\$34,200.00). Upon completion of each of the Siphon/Outfall Improvements, Interior Sanitary Sewer Improvements and/or Traffic Signal, SID 479 shall submit to First Data a certification that such Improvements and/or Traffic Signal have been completed and evidence that the City has approved the completion of such Improvements and/or Traffic Signal, along with lien waivers from such contractors and suppliers and invoices and other documentation reasonably requested by First Data for the actual costs of the Improvements and/or Traffic Signal paid by SID 479. First Data shall have thirty (30) days to inspect the Improvements and/or Traffic Signal for which reimbursement is sought in order to confirm that they comply with the Plans. Upon confirmation by First Data that the Improvements and/or Traffic Signal comply with the Plans, that the City has approved the Improvements and/or Traffic Signal and that all costs associated with the Improvements and/or Traffic Signal have been paid by SID 479, First Data shall reimburse SID 479 its share of the cost of such completed Improvements and/or Traffic Signal.

7. <u>Purpose of Agreement: Timing of Work</u>. The construction of the Improvements commenced in June of 2003. Accordingly, time is of the essence in this Agreement, and the parties hereby agree to cooperate with each other and make reasonable, good faith efforts to

perform their obligations hereunder in a timely manner so as to achieve completion of all of the Improvements by the Improvements Completion Date and completion of the Traffic Signal by the Traffic Signal Completion Date. Notwithstanding anything to the contrary contained in this Agreement, in the event SID 479 fails to complete the Improvements in accordance with the Plans by the Improvement Completion Date and Traffic Signal in accordance with the Plans on or before the Traffic Signal Completion Date, First Data shall have the option of not connecting into the Improvements (with respect to the Improvement Completion Date) and, if First Data does not connect to the Improvements, First Data shall not have any obligation to pay SID 479 any amount hereunder. However, in the event First Data connects into the Interior Sanitary Sewer Improvements or Siphon/Outfall Improvements, then First Data shall be obligated to pay its portion pursuant to this Agreement. In the event any act to be performed by either SID 479 or First Data is prevented or delayed due to any strike, lockout, labor dispute (whether legal or illegal), civil disorder, inability to procure materials, failure of power, government restrictions. riots, insurrections, war, fuel shortages, accidents, casualties, acts of God or any other cause beyond the reasonable control of such party, the responsible party shall be excused from performing such obligation for a period of time equal to any such delay.

8. <u>Subdivision Agreement and First Data Extension</u>. The parties acknowledge that First Data has or will commence installation of the First Data Improvements and that it is the intent of the parties to facilitate the connection of the First Data Improvements to the Interior Sewer Improvements described herein at a point in 87th Street north of Sorenson Parkway as shown on the Plans. If First Data desires that the sewer be brought to the south side of Sorenson Parkway, then SID 479 and First Data shall enter into an amendment to this Agreement, whereby SID 479 agrees to extend the sanitary sewer line under Sorenson Parkway and First Data shall then pay for the cost of extending the line under Sorenson Parkway. First Data and SID 479 agree to coordinate the design, construction and installation of the First Data Improvements and Interior Sewer Improvements, respectively, to facilitate the connection of the First Data Improvements with the Interior Sewer Improvements.

9. Post-Completion Actions.

(a) Maintenance of the Improvements by SID 479. Upon completion of the respective Improvements and/or Traffic Signal, SID 479 shall own, operate, and at its cost, maintain the Improvements and Traffic Signal in a good working condition until such time as the City accepts dedication of the Improvements and Traffic Signal as described in subparagraph (c) below. In the event that SID 479 fails to perform its maintenance obligations as described in the immediately preceding sentence, upon five (5) days prior written notice, First Data shall have the right, but not the obligation to perform such maintenance at SID 479's sole cost and expense. SID 479 shall reimburse First Data for any such maintenance costs incurred by First Data within ten (10) days of its receipt of an invoice from First Data detailing such costs.

In order to facilitate First Data's performance of any maintenance or repair of the Improvements, SID 479 hereby assigns, grants and sets over unto First Data a non-exclusive easement to use the Easements for all of the purposes which SID 479 and/or the City could use the Easements pursuant to the terms of the Plat (the "First Data Easement"). The parties hereby agree that the term of the First Data Easement shall

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expire upon dedication and acceptance of the Improvements by the City. First Data shall have the right to record this Agreement at its sole cost and expense.

- (b) <u>Dedication and Acceptance of the Improvements and/or Traffic Signal by the City</u>. Upon completion of the Improvements and/or Traffic Signal, SID 479 shall own, maintain and improve the Improvements and/or Traffic Signal until they are taken over or annexed by the City. SID 479 and the City agree to cooperate during the construction of the Improvements and Traffic Signal to ensure that the Improvements and Traffic Signal meet City standards.
- (c) <u>As Built Drawings</u>. Promptly upon substantial completion of the Improvements and Traffic Signal, SID 479 shall provide the City and First Data with "asbuilt" drawings of the Improvements and Traffic Signal.
- 10. <u>Records</u>. SID 479 shall maintain records of all construction and other costs incurred in connection with the Improvements and Traffic Signal and First Data shall have the right to audit and review such records at any time to assure that such records are accurate.
- 11. <u>Duration</u>. This Agreement shall continue until such time as the Improvements to be performed by SID 479 pursuant to this Agreement have been completed and dedicated to the City and accepted by the City, unless this Agreement is terminated in writing by all of the parties hereto.
- Insurance. SID 479 shall make sure that the contractors performing work related 12. to this Agreement, shall, at such contractors' sole cost and expense, maintain comprehensive general liability insurance, automobile liability insurance and property liability insurance with liability limits of not less than \$2,000,000.00 for injury to or death of one or more persons in any one occurrence and \$2,000,000.00 for damage or destruction to property in any one occurrence. SID 479, Kirkham Michael and First Data shall be named as insureds or as additional insureds on all such policies. SID 479 shall also make sure that the contractors shall carry worker's compensation insurance on its employees as required by applicable law in the state of Nebraska. The contractors shall procure and pay for renewals or replacements of such insurance from time to time before the expiration thereof, and SID 479 shall obtain from the contractors and deliver to First Data such renewal or replacement policies or binders or other reasonably satisfactory evidence of such insurance within five (5) days of the date of this Agreement, and thirty (30) days before the expiration of any existing policy. All such policies shall be issued by companies licensed to do business in the state of Nebraska and shall contain a provision whereby the same cannot be canceled or modified unless SID 479 and First Data are given at least thirty (30) days prior written notice by certified or registered mail of such cancellation or modification.
- 13. <u>Indemnification</u>. SID 479 shall indemnify, protect, defend and hold First Data and its officers, directors, shareholders, agents, employees and representatives (the "**Indemnified Parties**") harmless from and against any and all losses, damages, actions, demands, claims, liens, liabilities, judgments, costs and expenses (including attorneys' fees and court costs) (collectively, "**Obligations**") including but not limited to Obligations occasioned by actions, claims or demands for payment made by any contractor, supplier or any other party in connection with the construction, installation, repair or maintenance of the Improvements and Traffic Signal or

otherwise, and Obligations occasioned by any personal injury, property damage, or environmental claims arising out of, resulting from, or attributable to the activities of SID 479, its employees, agents, contractors and/or invitees in connection with the construction, installation, operation, repair or maintenance of the Improvements and Traffic Signal.

- 14. <u>Arbitration of Disputes</u>. In the event that the parties hereto are unable, after good faith negotiations, to resolve any dispute arising under the terms of this Agreement, including but not limited to disputes regarding the Plans (described in Section 2 above) or disputes regarding the course of construction (described in Section 5 above), the parties agree to submit such dispute to binding arbitration in accordance with the terms and procedures set forth in this paragraph.
 - (a) Selection of Arbitrators. In the event of a dispute hereunder, after good faith negotiations, any party hereto may elect, upon written notice to the others, to refer the dispute to arbitration. Upon receipt of a notice of arbitration pursuant to the immediately preceding sentence, each party shall promptly select its own disinterested construction manager employed in the Omaha, Nebraska area with at least ten (10) years experience, and all construction managers shall examine and assess the facts surrounding such dispute, under the standards set forth in this Agreement and shall, within thirty (30) days of their selection, agree upon an equitable resolution of such dispute (each party to pay the cost of its respective construction manager). If the construction managers cannot within such thirty (30) day period agree on a resolution of the dispute under this Agreement, then they shall promptly mutually agree on a third, disinterested construction manager to examine and assess the dispute (the cost of said third construction manager to be split evenly between the parties). Such third construction manager's findings shall be delivered within thirty (30) days and shall be conclusive on the parties.
- 15. <u>Appointment of Administrators</u>. Kirkham Michael shall administer this contract on behalf of SID 479. First Data shall appoint a person to administer the contract on behalf of First Data.
- 16. <u>Notices</u>. All notices, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or courier service, postage prepaid, to the parties at the following addresses (or at such other addresses as shall be given in writing by any party to the others pursuant to this Section) and shall be deemed complete upon deposit in such form with such courier:

If to First Data:

First Data Resources Inc. 7305 Pacific Street Omaha, NE 68114 Attention: Russ McFarland With a copy to:

First Data Properties

12500 East Belford Ave., Suite M-16S

Englewood, Colorado 80112 Attention: Contract Administrator

And with a copy to:

David A. Linenbroker

Blackwell Sanders Peper Martin LLP

720 Olive Street, Suite 2400 St. Louis, Missouri 63101

If to SID 479:

Sanitary and Improvement District No. 479

of Douglas County, Nebraska Attention: David Doll, Chairman

11306 Davenport Street Omaha, Nebraska 68154

With a copy to:

James E. Lang

Laughlin, Peterson & Lang 11906 Davenport Street

Omaha, Nebraska 68154-2630

- 17. <u>Entire Agreement</u>. This Agreement contains the entire agreement of the parties and shall be binding upon the successors and assigns of the respective parties. No amendments, deletions, or additions shall be made to the Agreement except in writing signed by all parties.
- 18. <u>Counterparts</u>. This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original, but all of which shall be deemed one and the same document. This Agreement shall be deemed fully executed and effective upon separate execution by both parties, whether or not such execution is made to the same page.

[signature and notary pages follow]

Executed by SID 479 thisday of	September	, 2003.
ATTEST:	SANITARY AND IMPRO DISTRICT NO. 479 OF D COUNTY ₃ NEBRASKA	VEMENT
Clerk M Tooley	By: Chairman	<u> </u>
STATE OF Nobsenter) COUNTY OF Douglar)		
The foregoing instrument was acknowledge 2003 by <u>Paul F. Pell</u> , as IMPROVEMENT DISTRICT NO. 479 OF DO	UGLAS COUNTY, NEBRAS	, NITARY AND SKA a Nebraska
GENERAL NOTARY-State of Nebraska JAMES E. LANG My Comm. Exp. Sept. 23, 2004 My commission expires 5-01-23, 2004	otary Public	
STATE OF Nohrales) ss. COUNTY OF Designs)		
The foregoing instrument was acknowledge 2003 by Arthur Market , for purpos instrument on behalf of SANITARY AND I DOUGLAS COUNTY, NEBRASKA, a Nebraska of said district.	ses of ATTESTING to the e	execution of the NO. 479 OF
JAMES E. LANG No No No	otary Public	
My commission expires Sept 23, 2004		

. Executed by First Data Resources Inc	this 244day of May	, 2004.
ATTEST:	FIRST DATA RESOURCES INC., Delaware corporation	a
Lick Stone, attorney	By: Assistant Secretary	<u>—</u>
STATE OF <u>Colorado</u>) ss. county of <u>Douglas</u>)		
The foregoing instrument was acknown 2004 by Leff Zallands, a RESOURCES INC. a Delaware corporation,	wledged before me on Mul OH as Assistant Secretary of FIRST, on behalf of said corporation. Notary Public	DATA
My commission expires 1/5/6005	TOY FEATING TARY	
STATE OF <u>Colorado</u>) ss.	My Commission Expires 11/5/2005	
The foregoing instrument was acknown 2004 by REEN STONE, for puinstrument on behalf of FIRST DATA RESONAL corporation.	wledged before me on May O4 urposes of ATTESTING to the execution URCES INC., a Delaware corporation, on be Notary Public	of the chalf of
My commission expires <u>11/5/2005</u>	OTAR LICOS COLORED	
STLD01-982482-7	10 My Commission Expires 11/5/2005	

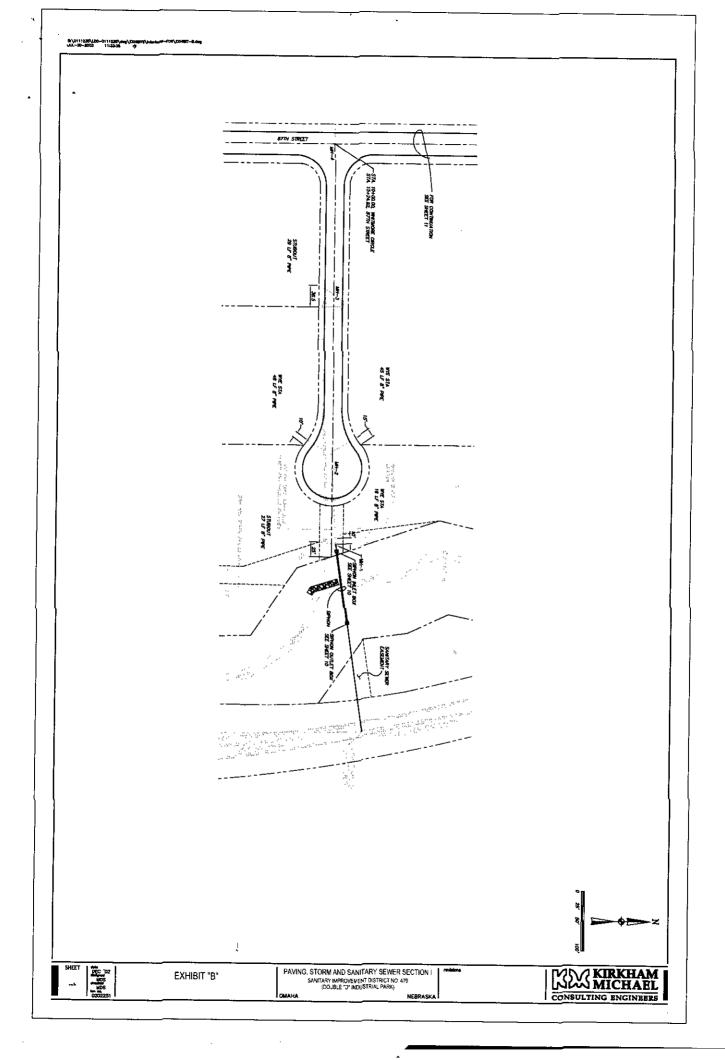
DOUBLE "D" INDUSTRIAL PARK

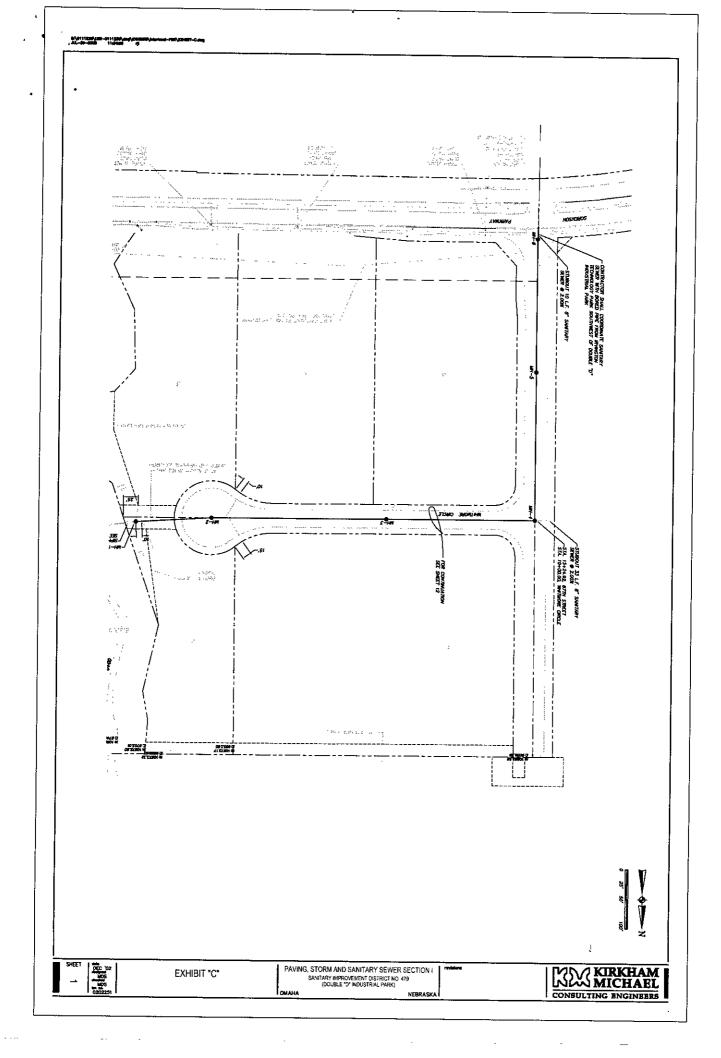
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PART OF THE SE 1/4, SECTION 27 AND PART OF THE NE 1/4, SECTION 34, ALL IN T16N, R12E, OF 6TH P.M.

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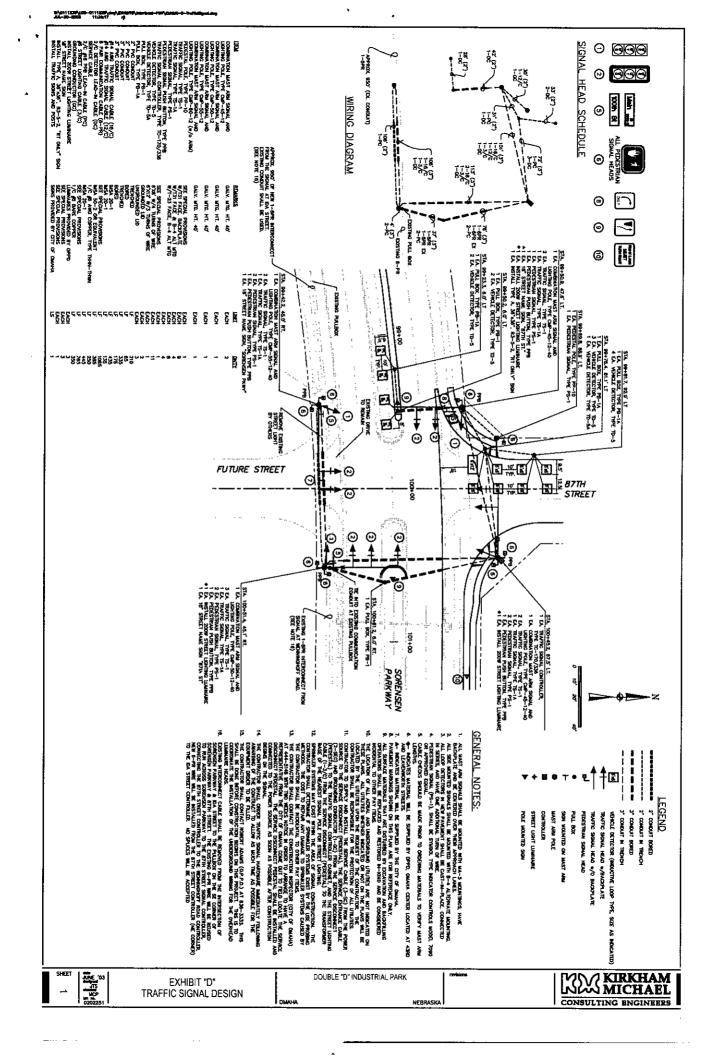


EXHIBIT E

Construction Budget

Siphon/Outfall

Bid Item	<u>Description</u>	Quantity	<u>Unit</u>	<u>Price</u>	Amount
6.	Inverted Siphon	1	LS	\$26,755	\$26,755.00
7.	Make Connection	1	EA	\$370.00	\$ 370.00
0 (() 1)	To Existing Manhole	100		*	
2. (partial)	10" Sanitary Sewer Pipe	188	LF	\$13.81	<u>\$ 2,596.28</u>
				Construction	
				Subtotal	\$29,721.28
Estimated design, Construction Observation,					
	Management, Legal and Administrative Costs (45%)				
Tr. 4-1 St1/O (C 11 P. 1 / O /					# 42 100 00
Total Siphon/Outfall Project Cost				\$43,100.00	

Interior Sanitary Sewer

Bid Item	Description	Quantity	<u>Unit</u>	Price	Amount
1.	8" Sanitary Sewer Pipe	1225	LF	\$12.1 6	\$14,896.00
2. (partial)	10" Sanitary Sewer Pipe	140	LF	\$13.81	\$ 1,933.40
3.	8" x 8" Wye Connection	3	EA	\$95.00	\$ 285.00
4.	8" Diameter Stubout	4	EA	\$49.00	\$ 196.00
5.	54" Sanitary Sewer	66	VF	\$122.00	
	Manhole				\$ 8,052.00
				Construction	
				Subtotal	\$25,362.40
Estimated Design, Construction Observation,					
	Management, Legal and Administrative Costs (45%)				
	Total Interior Sanitary Sewer				
		Project Cos	st		\$36,800.00

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