

AGREEMENT FOR EXTENSION
OF
SEWER AND WATER SERVICES

THIS AGREEMENT, made and entered into this 24th day of October, 1977, by and between the CITY OF ELKHORN (hereinafter referred to as "The City"); the METROPOLITAN TECHNICAL COMMUNITY COLLEGE AREA (hereinafter referred to as "The College"); and certain landowners, to wit: SCHOOL DISTRICT NO. 10 of Douglas County, Nebraska (hereinafter referred to as "The District"); HARRY FARNHAM (hereinafter referred to as "Farnham"); and ROBERT GOTTSCH and CHARLES NYE (hereinafter referred to as "Gottsch-Nye"), and ROBERT GOTTSCH, individually, (hereinafter referred to as "Gottsch"), all of which landowners together with the College are sometimes hereinafter collectively referred to as "The Initial Users").

WITNESSETH:

WHEREAS, the College has entered into a Purchase Agreement for 71 acres of land at the northeast corner of the intersection of Dodge Street and Highway 31 (said tract hereinafter being referred to as "The College Tract") for the purpose of acquiring a site for a west campus, the closing of said purchase being on the condition, among other conditions, that the City of Elkhorn enter into a formal agreement to extend to said tract, at a cost acceptable to College, the City's sanitary sewer and water service, said 71 acre tract being that tract designated as the "College Tract" on Exhibit "A" hereto and legally described as thereon shown and designated as Tract No. 1 on Exhibits "B" and "C" hereto;

WHEREAS, Farnham owns several pieces of land on the east side of Highway 31 between the College Tract and the City's south corporate limits aggregating approximately 200 acres, (said 200 acres being hereinafter referred to as "The Farnham Tract"), said 200 acres being that tract designated as the "Farnham Tract" on Exhibit "A" hereto and legally described as thereon shown and designated as Tract No. 2 on Exhibit "B" hereto;

WHEREAS, the District has acquired a 40 acre tract of land to the north of the College Tract upon which it is contemplated it will build a new school building (said tract hereinafter being referred to as the "School Tract"), said 40 acre tract being that tract designated "School Tract" on Exhibit "A" hereto and legally described as thereon shown and designated Tract No. 3 on Exhibits "B" and "C" hereto;

WHEREAS, Gottsch-Nye own 30 acres of commercially zoned land on the northwest corner of Dodge Street and Highway 31, which tract needs sewer and water service (said tract being hereinafter referred to as the "30 acre Commercial Tract"), said 30 acre tract being that tract designated "30 acre Commercial Tract" on Exhibit "A" hereto and legally described as thereon shown and designated Tract No. 4 on Exhibits "B" and "C" hereto;

WHEREAS, Gottsch-Nye also own a 40 acre tract which adjoins the "30 acre Commercial Tract" on the north (said 40 acre tract being hereinafter referred to as the "Gottsch-Nye 40 acre Tract"); said 40 acre tract being that tract designated "Gottsch-Nye 40 acre Tract" on Exhibit "A" hereto and legally described as thereon shown and designated as Tract No. 5 on Exhibits "B" and "C" hereto,

and

WHEREAS, Gottsch also owns an 80 acre tract which adjoins the Gottsch-Nye 40 acre tract on the north (said 80 acre tract hereinafter being referred to as the "Gottsch 80 acre Tract"), said 80 acre tract being that tract designated as the "Gottsch 80 acre Tract" on Exhibit "A" hereto and legally described as thereon shown and designated as Tract No. 6 on Exhibit "B".

WHEREAS, the City's engineers have determined the location and estimated cost of an outfall sewer and water main extension necessary to serve all the aforementioned tracts with water service and all but the Gottsch 80 acre tract with sewer service in accordance with the future needs of said tracts and the needs of other properties that the City may in the future permit connection to said outfall sewer and water main, (so long as said service to any additional properties is of no detriment to the services of "the initial users"), and

WHEREAS, all of the aforementioned tracts will be permitted to connect to the water main and all tracts, except the Gottsch 80 acre tract will be permitted to connect to the outfall sewer;

WHEREAS, all tracts, including the Gottsch 80 acre tract, are hereinafter referred to as "The Initial User Tracts."

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

1. The City agrees to finance and construct the following improvements:

- A. A sanitary outfall sewer (sanitary sewer interceptor line) from City's existing sanitary sewer plant, along the general alignment shown on Exhibit "C" hereto, said outfall sewer to be combination of gravity flow sewer and force main and will consist of an adequate size flow sewer for the use of "the initial users," commencing at the east edge of the 30 acre Commercial Tract, thence east to a lift station on the east edge of the College Tract, thence north through a force main approximately to a point on the Farnham Tract west of the School Tract to a point where gravity flow can be utilized, thence generally northerly through the natural gravity flow to the City's existing 18-inch outfall sewer on the north side of Old Dodge Road, which feeds the City Treatment Plant as shown on Exhibit "C" hereto, said sewer hereinafter being referred to as the outfall sewer.

P. A twelve-inch water main from the existing south terminus of the primary water main in Highway 31 served by the City's north tower (said terminus being at approximately Douglas Street) to a point approximately 500 feet south of the north property line of the 30 acre Commercial Tract, together with appropriate borings and piping under Highway 31 so as to connect to those of the Initial User Tracts on the east side of Highway 31, the alignment and general location of said water main to be as shown on Exhibit "B" hereto.

2. City agrees to commence any necessary right-of-way acquisition and the construction of said outfall sewer and water main extension so as to assure completion thereof by the fall of 1978, the time that the 30 acre Commercial Tract will require both sewer and water services.

3. The City and Initial Users agree that the Initial User Tracts will, as determined by City's engineers, be benefited by the construction of the outfall sewer and the water main in the following amounts:

A. Each of the Initial Tracts, except the Gottsch 80 acre Tract, will be specially benefited by the outfall sewer in the following amounts:

<u>Tract</u>	<u>Area Served</u>	<u>Benefit Per Acre</u>	<u>Benefit To Tract</u>
College Tract	70 acres	\$275.00	\$19,250.00
Farnham Tract	200 acres	275.00	55,000.00
School Tract	40 acres	275.00	11,000.00
30 acre Commercial Tract	30 acres	275.00	8,250.00
Gottsch-Nye 40 acre Tract	40 acres	275.00	11,000.00
Gottsch 80 acre Tract	none	-0-	-0-

B. Each of the Initial User Tracts will be specially benefited by the water main in the following amounts:

<u>Tract</u>	<u>North-South Frontage</u>	<u>Benefit Per Front Foot</u>	<u>Total Benefit To Tract</u>
College Tract	1,320	\$ 16.00	\$21,120.00
Farnham Tract	3,300	16.00	52,800.00
School Tract	660	16.00	10,560.00
30 acre Commercial Tract	1,320	16.00	21,120.00
Gottsch-Nye 40 acre Tract	1,320	16.00	21,120.00
Gottsch 80 acre Tract	2,640	16.00	42,240.00

4. All parties agree that the special benefits as set forth in Paragraph 3 hereof, must in respect to the College Tract be decreased by reason of special burden to that tract by reason of the hereinafter mentioned east-west sewer easement, the easement necessary to provide for future connection of the outfall sewer to certain areas south of Dodge Street and the easement for a lift station site, all of which easements are to be given by that tract to the City. Further, the College has provided a disproportionate share of the legal services in connection with the project and the formation of this Agreement. For the foregoing reasons, it is mutually agreed by all parties hereto, including the City, that notwithstanding the engineers' determination of a greater special benefit as set forth in Paragraph 3 hereof, that the absolute maximum amount the College Tract shall in the aggregate bear in respect to the construction and financing of the outfall sewer and water main is the sum of \$35,000.00.

Accordingly, the amount to be borne by each of the Initial User Tracts in respect to the construction of the outfall sewer and the water main shall be as follows:

<u>Tract</u>	<u>Services Provided</u>	<u>Total for Tract</u>
College Tract	Sewer and Water	\$ 35,000.00
Farnham Tract	Sewer and Water	107,800.00
School Tract	Sewer and Water	21,560.00
30 acre Commercial Tract	Sewer and Water	29,370.00
Gottsch-Nye 40 acre Tract	Sewer and Water	32,120.00
Gottsch 80 acre Tract	Water only	42,240.00

5. In addition, and not as a part of, the amount to be borne by the College Tract as set forth in Paragraph 4 above, said College Tract shall grant to the City the following easements:

- A. A 50-foot temporary construction easement for the purpose of constructing an adequately sized sanitary sewer and a 20-foot permanent easement for the purpose of cleaning, repairing and maintaining same as follows:
 - (a) The adequately sized sewer which is to run from the west edge of the College Tract to the east edge thereof as shown on Exhibit "C" hereto.
 - (b) The span of sewer necessary to connect the aforementioned sewer with the south edge of the right-of-way line of Dodge Street so as to permit possible future connections from the south of Dodge Street as shown on Exhibit "C" hereto.

- B. A 100' x 100' temporary construction easement for the purpose of constructing and a 20' x 20' permanent easement for the purpose of cleaning, repairing and maintaining a lift station at the east edge of the College Tract.

The exact location of the foregoing easements and the depth of the sewer main therein placed shall be such as not to interfere with the College's intended use of the College Tract, but shall in all events be sufficient for the intended purposes of said outfall sewer. The form of such easement shall be to the reasonable satisfaction of the City attorney. In designing, constructing and operating the lift station, the City shall take all reasonable measures necessary to avoid blockage and/or backup of sewerage into the aforementioned outfall sewer to be situated on the College Tract and/or into any service connection main serving the College Campus buildings.

6. In addition to the easements to be given by the College Tract pursuant to Paragraph 5, certain of the Initial User Tracts shall grant to the City the following easement for sanitary sewer purposes:

- A. The College Tract and Farnham Tract, and School Board Tract shall respectively grant a 50-foot temporary construction easement and a 20-foot permanent easement (commencing at the lift station site on the east edge of the College Tract) for the purpose of constructing, repairing and maintaining the combination force main and gravity flow sewer from the lift station site to the City's existing 18-inch outfall sewer on the north side of Old Dodge Road*. This easement shall also be used for any gravity flow sewer lines that are required to transport sewage from those portions of the Farnham and School Tracts which must flow south into the lift station and be lifted through the force main in order to be transported north to the treatment plant.

*as shown on Exhibit "C" hereto

7. The City shall recover the amounts to be borne by the Initial User Tracts as set forth in Paragraph 4 above through a charge to be made to and paid by each Initial User Tract in the amount so shown for each such Tract in Paragraph 4, which amount shall be a lien against the respective Initial User Tract in the amount shown therefor for each tract in Paragraph 4 and shall be collected in the same manner as taxes and special assessments. Said amount to be so paid by Initial User Tracts shall be due and payable upon the date the City shall have accepted the construction work for both the outfall sewer and the water main, or if contracted for pursuant to separate contracts, the latter date of the two acceptances. City's acceptance of either of the projects shall in no event precede the date same is connected to the City's existing water main or sewerage treatment plant, whichever is applicable. Said amount to be paid by each such Initial User Tract shall become delinquent in five installments as follows:

- A. One-fifth upon due date (date of acceptance as herein-before defined), provided no interest shall be charged if paid within ten days thereof.
- B. One-fifth plus accrued interest one year after due date.
- C. One-fifth plus accrued interest two years after due date.
- D. One-fifth plus accrued interest three years after due date.
- E. One-fifth plus accrued interest four years after due date.

The unpaid balance of the amount to be borne by each of the Initial User Tracts shall bear interest at the rate of eight (8%) percent per annum from and after due date until paid, said interest to be paid annually. Each such installment shall bear interest at the rate of nine (9%) percent per annum after the date it shall become delinquent.

8. If it elects to do so, City shall be entitled to file public record notice of its rights hereunder as to each of the individual Initial User Tracts. City shall release any specific portion of an Initial User Tract from the lien of or liability of payment for any amount assessed in respect to the construction of the improvements to be constructed pursuant hereto upon payment of a per acre release price which for each tract shall be computed by dividing the total amount to be borne by said tract by the number of acres therein. The per acre release price shall be proportionally reduced by one-fifth upon payment of each of the five annual installments, and said amounts paid on the annual installments shall not otherwise be credited for per acre release purposes. Payment in full of all delinquent principal payments and all delinquent interest together with a pro rata share of all non-delinquent accrued interest shall be a condition precedent of obtaining any partial release.

9. Each of the Initial Users, severally, in respect to his or its particular tract, does absolutely and unconditionally guarantee payment in full of the entire principal amount to be borne by his or its respective tract, together with all interest accrued thereon. This guarantee of payment shall remain in full force and effect notwithstanding transfer of title to all or a portion of an Initial User Tract and shall be binding upon the heirs, personal representatives and assigns of the Initial Users who are individuals and upon the successors and assigns of each of the individual users which are public bodies.

10. The agreements of the Initial Users made in respect to the Initial User Tracts as contained in this instrument shall constitute an irrevocable contract and promise running with the land as to each of the Initial User Tracts, the intent hereof being to burden the Initial User Tracts with the cost of the completed improvements to be constructed pursuant to this Agreement to the extent provided for in Paragraph 4, supra, as to each such tract.

11. There is reserved to the City the right to charge its normal sewer and water hook-on fees in respect to individual buildings hooking onto the outfall sewer and/or water main or onto the sewer lines/mains and onto the water lines/mains constructed within the Initial User Tracts. Said building hook-on fees shall be at the same rate as whatever legal standard charges City may at the time be charging other properties outside the corporate limits of the City; provided however, in no event shall such charges or fees in respect to the Initial User Tracts exceed twice what the City would charge for the same connection inside the corporate limits of the City.

12. In respect to sewer use fees, the City's treatment of sewerage emanating from the Initial User Tracts, City shall be entitled to charge the same rate as whatever legal standard charges City may at the time be charging other properties outside the corporate limits of the city; provided however, in no event shall such sewer use fee exceed twice what the City would charge for the same service to a property within the corporate limits of the city.

13. None of the Initial User Tracts shall be charged more than the applicable amount allocated to it in Paragraph 4. City shall in its own determination and at its own discretion:

- A. Allocate the foregoing amounts to be borne by each Initial User Tract to water and sewer costs as it deems appropriate and as per this agreement.
- B. Make such modification in design and exact location as may be determined necessary by the City engineers in the design phase; provided however, no such modification shall have the effect of denying to any of the Initial User Tracts the types of service or services to be provided to each such tract as set forth in Paragraph 4, supra, nor shall any such modification reduce capacity below that necessary to adequately serve any such Initial User Tract for its intended purposes, or result in greater cost to Initial Users for their intended use.

14. City may from time to time establish and collect charges from properties other than the Initial User Tracts as may, with the consent of City, be connected, directly or indirectly, to the sanitary outfall sewer and/or the water main, in such amounts as City shall determine. The charges may be on a basis inconsistent with the charges to be charged pursuant hereto to the Initial User Tracts. The Initial User Tracts shall be entitled to no rebate or refund notwithstanding the fact that the total of the special assessments and connection charges to be potentially collected by the City in respect to the financing and construction of the outfall sewer and water main may in the aggregate exceed the City's cost of financing and constructing such facilities.

15. In consideration of City's agreement to construct the facilities herein provided for, the Initial Users warrant, covenant and agree as follows:

- A. That when viewed in relation to the total area that may eventually be served by the outfall sewer and the water main that the Initial User Tracts may in the aggregate and separately be bearing more than their ultimate proportionate share of the total cost of outfall sewer and water main, and that the determination of amounts so allocated to the Initial User Tracts is done so as a matter of contract in order to induce the City to finance and construct said facilities at this time.
- B. That the City need not prove special benefit to the extent of the amounts to be so allocated to each of the Initial User Tracts as a condition of recovery of said amounts from the Initial User Tracts.
- C. That the Initial User Tracts do hereby consent to the creation of any sewer district, water main district or other extension district through which City may in its discretion decide to construct improvements and do waive any and all requirements applicable to the City in creating said districts and in letting any contracts for the improvements described herein, including any requirements for advertising for bids and for publishing notices or serving notices upon interested parties prior to the letting of said contracts. The Initial User Tracts further waive any right to question the legality or regularity of any assessments levied against the Initial User Tracts to pay the cost of said improvements, provided that in respect to each such Initial User Tract the amount of special assessments together with any connection fees designed to recover the cost of said improvements, does not exceed in the aggregate the amount shown for each said Initial User Tract in Paragraph 4 above.

16. The outfall sewer and water main shall be exclusively owned by the City and under its exclusive control. The operation and maintenance of the facilities, including any lift station and force main

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shall be the responsibility of City. City agrees to take all such steps as are reasonably necessary to assure adequate capacity of its sewerage treatment facilities to timely handle sewerage emanating from the Initial User Tracts. THIS COVENANT ON THE PART OF THE CITY BEING OF THE VERY ESSENCE OF THIS AGREEMENT. Initial users acknowledge that City is subject to rules and regulations of government agencies. City shall not permit connections of properties other than the Initial User Tracts to the water main if the water usage anticipated therefrom would result in a loss of water pressure or flow to any of the Initial User Tracts below that of a 90 minute sustained flow of 1200 g.p.m., or such greater volume as may at the time be required for buildings on any such tract by the National and State Fire Codes.

17. The Initial Users acknowledge and agree that in the event City, at the request of landowners, shall in the future construct internal sanitary sewers or an internal water distribution system within any of the Initial User Tracts, or if a sanitary and improvement district shall do so, that any special assessments levied in respect to said internal improvements shall be in addition to any connection fees (or special assessments) that may be levied in respect to the outfall sewer and water main herein provided for.

18. It is initially contemplated that the portion of the water main situated south of the north property line of the Gottsch 80 acre Tract will be constructed on the west side of Highway 31 and within the right-of-way line at no right-of-way cost to City. In the event said said right-of-way is not so available to City for such purpose, or if the City determines it is not feasible to construct therein, Gottsch and Gottsch-Nye agree to grant to City, at no cost to the City and at no reduction in the amount to be paid to City pursuant to Paragraph 4 above, a 50-foot temporary and a 20-foot permanent easement for the purpose of constructing, repairing and maintaining said water main, and said easement shall be located as close to the west right-of way line of Highway 31 as City's engineers shall reasonably determine to be feasible, but in no event further than 100 feet west of said highway west right-of-way line. The form of such easement shall be to the reasonable satisfaction of the City attorney.

19. None of the easements to be given to the City by the Initial User Tracts as herein provided for, except those easements to be given by the College Tract pursuant to paragraph 5 hereof, shall qualify for or result in any reduction in the amount to be paid by any such Initial User Tract. All such easements shall be provided at no cost to the City.

20. The Farnham Tract and College Tract share a 40-foot access right to Highway 31 and College and Farnham agree in respect thereto as follows:

- A. That Farnham and College each grant to the other a mutual and reciprocal easement for the construction, maintenance, repair of an earthen embankment and common access road thereon from the point of the 40-foot access on a perpendicular line to the Highway east to a point where the elevation of the common property line of the two tracts is of the same

elevation as the highway (at the point of access) and such further distance east as shall be necessary to permit connection to the separate roads systems internal to each of the two Tracts, said common access road to the extent reasonably possible to be consistent with the separate traffic flow and design requirements of each tract; provided however, in all events, said common access road shall be situated within the following which shall constitute the area included within the mutual and reciprocal easement:

- 1) the west 300 feet of the south 30 feet of the Farnham Tract.
- 2) the west 300 feet of the north 30 feet of the College Tract.

B. The earthen embankment shall be constructed:

- 1) Across the existing north-south draw immediately east of Highway 31 and will be of sufficient width and composition for construction thereon of a paved and curbed 8" reinforced concrete roadway 32 feet in width (or such greater width upon which the parties may agree) for the common use of both tracts together with appropriate street lighting and together with a five (5) foot wide walkway or sidewalk on the south side thereof for the College's purposes.
- 2) So as not to constitute a dam or other water impounding mass in respect to natural drainage from that portion of the Farnham Tract that naturally flows through the draw and to this end a culvert shall be constructed through the embankment so as to permit natural storm drainage or storm sewer to pass therethrough. College shall handle the drainage south of the embankment as it sees fit.
- 3) So as to have sodded side slopings of no greater than 30°. If such sloping at the bottom thereof shall extend to within ten (10) feet of the reciprocal easement line or beyond, then in such event, said reciprocal easement line shall be widened to the extent necessary to include the entire embankment plus a maintenance area extending ten (10) feet out from the base of the embankment. The temporary construction easement shall extend out twenty (20) feet from the base of the embankment.
- 4) To include a 6-inch sanitary sewer pipe to permit the necessary transportation of sewage from the

portion of the Farnham Tract which has a natural south gravity flow through the draw to flow through the embankment, and in furtherance of this purpose College grants to the City and to the Farnham Tract a 30-foot temporary construction easement and a permanent 15-foot sanitary sewer easement from the north line of the College Tract south to the outfall sewer on the College Tract, the exact location of the easement and the depth of the sewer line therein placed shall be such as not to interfere with the College's intended uses of the College Tract, but shall in all events be sufficient for the intended purpose of the sewer line. The approximate location of the sewer line is shown on Exhibit "C" hereto. Farnham shall pay the cost of constructing said sewer line. After completion of construction, the portion of the sewer line situated on the College Tract shall become part of the outfall sewer and shall be under the exclusive ownership and control of the City which shall repair and maintain same at City's cost as a part of the outfall sewer.

- C. The Farnham and College Tracts shall share equally the cost of constructing (including construction design) repairing and maintaining the embankment and common access road, street lighting, including all fill dirt required therefor, and culvert and other appurtenances thereof. College shall pay the cost of constructing the sidewalk or other hard surfacing of the pedestrian walkway if it elects to construct same. Each party's construction shall be paid in time to timely meet progress payments under the construction contract. The two parties shall share equally the cost of constructing any reasonable deceleration lane or turning lane on Highway 31 for the common access and which is required by the State.
- D. Farnham guarantees full performance of the reciprocal easement agreement and the provisions of this paragraph 20 to be performed by the Farnham Tract. Upon creation of a sanitary and improvement district having jurisdiction over that portion of the Farnham Tract benefited by the access road, then, upon Farnham's assignment of his interest in the reciprocal easement agreement to said district and said district's proper assumption of Farnham's and the Farnham Tract's construction and maintenance obligations under this paragraph 20, then said district shall succeed to the obligations of Farnham under this paragraph 20 whereupon Farnham individually shall have no further obligation or liability to the College or the College Tract in respect to the construction of the sewer line and the construction, repair or maintenance of the embankment, access road or any of the appurtenances thereof. Farnham shall provide College with evidence of the aforementioned assignment to and assumption of liability by the District.

- E. College shall have the responsibility for the obtaining of the necessary curb-cut (access construction permit) from the Nebraska Department of Roads, preparation of preliminary plans and design and letting the construction contract for the embankment, the common access road and appurtenances thereof, which construction contract shall be let in time for completion of improvements by December 31, 1978. Before proceeding to construction design phase College shall submit the preliminary plans for the improvements to Farnham for his approval, which approval will not be unreasonably withheld or delayed. Farnham shall have completed construction of the sewer line to flow through the embankment by August 1, 1978 in order to permit timely construction of the embankment and access road. Should Farnham fail to timely construct the sewer line, College may, at Farnham's cost, cause that part thereof to be situated below the embankment to be constructed as a part of the access road construction contract.
- F. If either College or Farnham shall fail to take such steps as are required of them to assure completion of the improvements by December 31, 1978, including performing the design work therefor or reasonably granting approval thereof, then the other party may alone proceed to construct the improvements in such a manner as to reasonably serve the needs of both tracts and shall be entitled to recover from the other party one-half of the cost thereof plus interest at 9% per annum. It is agreed that a traffic design of the general alignment shown on Exhibit "D" hereto will serve the needs of both parties in the absence of agreement as to a better one. Similarly, in the event of either party's refusal or failure to agree to the making of reasonably needed repairs or maintenance or failure to pay his or its share of the cost thereof, the other party may alone proceed to make repairs and do such maintenance and shall have the same recovery rights as in the case of original construction.

Farnham and College agree that any rezoning of the Farnham Tract to Commercial shall not, without the consent of College, include any portion of the Farnham Tract situated within 300 feet of the north property line of the College Tract. College shall not object to any request for rezoning for normal and reasonable commercial use of the Farnham Tract which is located at a greater distance than 300 feet from the College Tract's north property line. No industrial use of the Farnham Tract is contemplated.

21. City's engineers are knowledgeable as to the existence and location of the transcontinental telephone cable in the vicinity of the east edge of the College Tract. City and its contractors shall take all measures and procedures necessary to avoid damage thereo and

and shall indemnify and save harmless the College Tract, the College and the other initial users and Initial User Tracts from any and all liability, claims or loss in respect thereto arising out of the construction, operation and maintenance of the outfall sewer or the lift station, or any other appurtenance thereof and which is caused by the act or omission of the City, its agents, contractors or subcontractors.

22. If in the judgment of the City, it is more feasible to construct or reconstruct that portion of the outfall sewer between the east edge of the College Tract and the City's treatment plant by way of a gravity flow sewer through properties east of the College, School and Farnham Tracts, the City may elect to do so in lieu of constructing the force main. Should the City so elect:

- A. The amounts to be born by the Initial User Tracts as set forth in Paragraph 4 shall in no event be increased and in no event shall any Initial User Tract suffer damage by reason of said change or suffer a loss of any rights or privileges under this agreement.
- B. The City shall at the same time construct, at no additional cost to the Farnham and School Tracts, the gravity flow sewer on the Farnham and School Tracts as located and shown on Exhibit "C" hereto, together with appropriate connection thereof to the treatment plant.
- C. The easement rights provided for herein for the lift station site shall be deemed to be surrendered, released and of no further force or effect but the 20-foot permanent easement for that portion of the force main situated on the College Tract (as shown on Exhibit "C") shall remain in effect for the benefit of the Farnham Tract for its construction of a sanitary sewer therein to the lift station site for connection to the substituted gravity flow outfall sewer.

23. If, pursuant to this Agreement, a lift station is constructed on the College Tract, the College shall, for the purpose of enabling the City to monitor, maintain and repair such lift station, permit City light vehicular travel over College's internal road system as may be necessary therefor. If such road system as eventually constructed, or as from time to time relocated, does not afford the requisite access to the lift station, the College Tract shall from time to time designate a routing to said lift station site which may be used by City for said purposes. The rights herein provided for are in the nature of a limited special purpose permit and no prescriptive rights shall be acquired by the reason of the granting of same or by reason of the use thereof. Should the City reconstruct the outfall sewer so as to utilize a gravity flow bypass of the lift station or otherwise cease to operate the lift station, then in such event the permit, together with the easement for the lift station site shall be automatically extinguished and released and of no further force or effect.

24. All parties expressly reserve to themselves and to each Tract (including any sanitary and improvement district now or hereafter

created which includes all or a portion of a Tract) all powers of eminent domain that same may possess, and any such powers may be exercised jointly or separately in order to assure the full implementation of this Agreement.

25. The College's execution of this Agreement, the liability of the College hereunder and the obligations herein placed upon the College Tract are all subject to the College's Board of Governors' determination that all conditions of its Purchase Agreement with the present owners of the College Tract have been met to the satisfaction of said Board and to the actual closing of such purchase.

THIS AGREEMENT executed at Elkhorn, Nebraska, the year and date first above written.

ATTEST:

CITY OF ELKHORN, a municipal corporation,

Donna J. Klebe
City Clerk

By Wm. Kohlhaase
Mayor

METROPOLITAN TECHNICAL COMMUNITY COLLEGE AREA

By Robert A. Chinita

*26. Any City modification allowed per this agreement, or otherwise, shall not interfere with "Initial Users" use, or increase the cost of "Initial Users" intended use of "Initial Users' Tracts.

SCHOOL DISTRICT NO. 10 of Douglas County, Nebraska

By John L. McAuley, Pres.
Harry Farnham
Harry Farnham

ROBERT GOTTSCH and CHARLES A. NYE

Robert Gottsch
Robert Gottsch
(by Charles A. Nye as Attorney-in-Fact)
Charles A. Nye
Charles A. Nye

Robert Gottsch
Robert Gottsch
(Individually)
(by Charles A. Nye as Attorney-in-Fact)

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

On this 22 day of October, 1977, before me the under-
signed, a Notary Public in and for said County, personally came
Wm. Kohlhasse, Mayor of the City of Elkhorn, Nebraska, a municipal
corporation, to me personally known to be such officer and the
identical person whose name is affixed to the foregoing Agreement
for Extension of Sewer and Water Services, and acknowledged the
execution thereof to be his voluntary act and deed and the volun-
tary act and deed of said City of Elkhorn.

Witness my hand and notarial seal at Elkhorn in said county
the day and year last above written.



D. M. MURPHY
General Notary-State of Nebr.
My Commission Expires
November 22, 1978

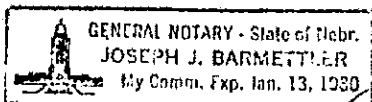
D. M. Murphy
Notary Public

My commission expires Nov. 22-1978

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

On this 25 day of October, 1977, before me the under-
signed, a Notary Public in and for said County, personally came Robert
H. Christie, Chairman of the Board of Governors of the Metropolitan
Technical Community College Area, to me personally known to be such
officer and the identical person whose name is affixed to the fore-
going AGREEMENT for Extension of Sewer and Water Services, and ack-
nowledged the execution thereof to be his voluntary act and deed and
the voluntary act and deed of said Metropolitan Technical Community
College Area.

Witness my hand and notarial seal at Omaha in said County
the day and year last above written.



GENERAL NOTARY - State of Nebr.
JOSEPH J. BARMETTLER
My Comm. Exp. Jan. 13, 1980

Joseph J. Barmettler
Notary Public

My commission expires Jan 13, 1980

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

On this ¹²~~27~~ day of December, 1977, before me the under-
signed, a Notary Public in and for said County, personally came
Robert McCardle, Chairman of School Board of School District No. 10
Douglas County, Nebraska, to me personally known to be such officer
and the identical person whose name is affixed to the foregoing
Agreement for Extension of Sewer and Water Services, and acknowledged
the execution thereof to be his voluntary act and deed and the volun-
tary act and deed of said School District No. 10.

Witness my hand and notarial seal at Omaha in said county
the day and year last above written.



D. M. MURPHY
General Notary-State of Nebr.
My Commission Expires
November 22, 1978

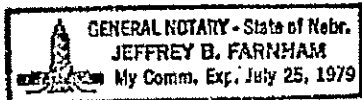
D. M. Murphy
Notary Public

My commission expires Nov 22-1978

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

On this 24th day of October, 1977, before me the under-
signed, a Notary Public in and for said County, personally came
Harry Farnham, to me known to be the identical person whose name is
affixed to the foregoing AGREEMENT for Extension of Sewer and Water
Services, and acknowledged the execution thereof to be his voluntary
act and deed.

Witness my hand and notarial seal at Omaha in said county
the day and year last above written.



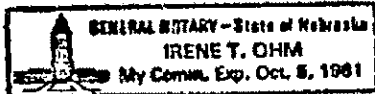
GENERAL NOTARY - State of Nebr.
JEFFREY B. FARNHAM
My Comm. Exp. July 25, 1979

Jeffrey B. Farnham
Notary Public

My commission expires _____

STATE OF NEBRASKA)
) SS:
 COUNTY OF DOUGLAS)

On this 24 day of October, 1977, before me the under-
 signed, a Notary Public in and for said County, personally came
 Charles A. Nye, to me personally known to be the identical person
 whose name is affixed to the foregoing Agreement for Extension of
 Sewer and Water Services, and acknowledged the execution thereof
 as his own voluntary act and deed and the voluntary act and deed
 of Gottsch-Nye.

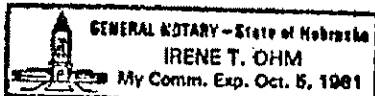


Irene T. Ohm
 Notary Public

My commission expires 10-5-81.

STATE OF NEBRASKA)
) SS:
 COUNTY OF DOUGLAS)

On this 24 day of October, 1977, before me the under-
 signed, a Notary Public in and for said County, personally came
 Charles A. Nye, Attorney-in-Fact for Robert Gottsch, to me known to
 be the identical person whose name is affixed to the foregoing
 Agreement for Extension of Sewer and Water Services, and acknowledged
 the execution thereof to be his voluntary act and deed as Attorney-
 in-Fact for Robert Gottsch, and the voluntary act and deed of Robert
 Gottsch both as an individual and as a principal in Gottsch-Nye.



Irene T. Ohm
 Notary Public

My commission expires 10-5-81.

EXHIBIT "A" BOOK 677 PAGE 548
TO
AGREEMENT FOR EXTENSION
OF
SEWER AND WATER SERVICES

The tracts referred to in the foregoing Agreement are legally described as follows:

1. That tract to be acquired by the Metropolitan Technical Community College Area referred to in the Agreement as the "College Tract" is legally described as follows:

The South One-Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Eleven (11) East of the 6th P.M., in Douglas County, Nebraska, except the portions taken thereof for road and state highway purposes and further excepting the following portions thereof:

(a) Beginning at a point where the North line of U.S. Highway No. 30 intersects the East line of the South One-Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 18, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, thence North 8 rods, thence West 20 rods, thence South 8 rods to the North line of U.S. Highway No. 30, thence East along the North line of said highway to the point of beginning, said highway running along the South line of said South One-Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 18.

(b) That part of the Southwest Quarter (SW 1/4) of Section 18, Township 15 North, Range 11, East of the 6th P.M., Douglas County, Nebraska, described as beginning at a point North 0°00'25" West, 182.0 feet from the Southeast corner of the Southwest Quarter (SW 1/4) of said Section 18; thence North 0°00'25" West, 59.11 feet; thence North 38°18'45" West, 89.71 feet; thence North 43°22'15" West, 89.19 feet; thence North 9°11'15" East, 72.37 feet; thence North 62°43'55" West, 42.87 feet; thence South 25°08'45" West, 112.46 feet; thence South 0°37'40" East, 183.61 feet; thence due East 189.20 feet to the point of beginning, (South line of Southwest Quarter (SW 1/4) of Section 18 assumed East-West in direction).

(c) A tract of land in the Southwest Quarter (SW 1/4) of Section 18, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, described as beginning at a point 50.0 feet North of the South line and 330.0 feet West of the East line of said Southwest Quarter (SW 1/4) (South line of S.W. 1/4 of said Section 18 assumed East-West in direction); thence North 0°00'25" West, 132.0 feet; thence East 140.8 feet along a line 182.0 feet North of and parallel with the South line of said Southwest Quarter (SW 1/4) thence North 0°37'40" West 40.0 feet; thence West 140.38 feet along a line 222.0 feet North of and parallel with the South line of said Southwest Quarter (SW 1/4); thence South 74°28'35" West 107.24 feet; thence South 89°02'15" West, 112.39 feet; thence South

41°27'15" West, 97.96 feet; thence South 3°43' West, 68.12 feet to a point, being 50.0 feet North of the South line of said Southwest Quarter (SW 1/4); thence East 285.0 feet along a line 50.0 feet North of and parallel with the South line of said Southwest Quarter (SW 1/4) to the point of beginning; containing 1.04 acres, more or less.

2. That tract owned by Farnham and referred to in the Agreement as the "Farnham Tract" is legally described as follows:

Tax Lot One (1), Tax Lot Two (2), Tax Lot Three (3) except for the East 38.261 acres thereof, and the North Half of the Southwest Quarter (N 1/2 SW 1/4), all in Section 18, Township Fifteen (15) North, Range Eleven (11) East of the 6th P.M., Douglas County, Nebraska.

3. That tract owned by School District No. 10 of Douglas County and referred to in the Agreement as the "School Tract" is legally described as follows:

That part of Tax Lots 2 and 3 in the Northwest Quarter (NW 1/4) of Section 18, Township Fifteen (15) North, Range Eleven (11) East of the 6th P.M., Douglas County, Nebraska, described as follows: Beginning at the Southeast corner of said Tax Lot 3, thence South 89°14'11" West on the South line of said Tax Lot 3, 1440.00 feet, thence North 00°42'15" West on a line 1440.00 feet West of and parallel to the East line of said Tax Lots 2 and 3, 1157.25 feet, thence North 89°13'33" East, 1440.00 feet to a point on the East line of said Tax Lot 2, thence South 00°42'15" East on the East line of said Lots 2 and 3, 1157.72 feet to the point of beginning, containing 38.261 acres.

4. The 30 acre commercial tract owned by Gottsch-Nye and referred to in the Agreement as the "Commercial Tract" is legally described as follows:

The Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 13, Township Fifteen (15) North, Range Ten (10) East of the 6th P.M., less portion thereof taken for highway purposes.

5. The 40 acre tract owned by Gottsch-Nye and referred to in the Agreement as the "Gottsch-Nye 40 acre Tract" is legally described as follows:

The Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4) of Section 13, Township Fifteen (15) North, Range Ten (10) East of the 6th P.M.

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6. The 80 acre tract owned by Gottsch and referred to in the Agreement as the "Gottsch 80 acre Tract" is legally described as follows:

The East One-Half of the Northeast Quarter (E 1/2 NE 1/4) of Section 13, Township Fifteen (15) North, Range Ten (10) East of the 6th P.M.

The foregoing tracts are referred to in the Agreement as tracts of somewhat varying number of acres from the actual acres contained therein.

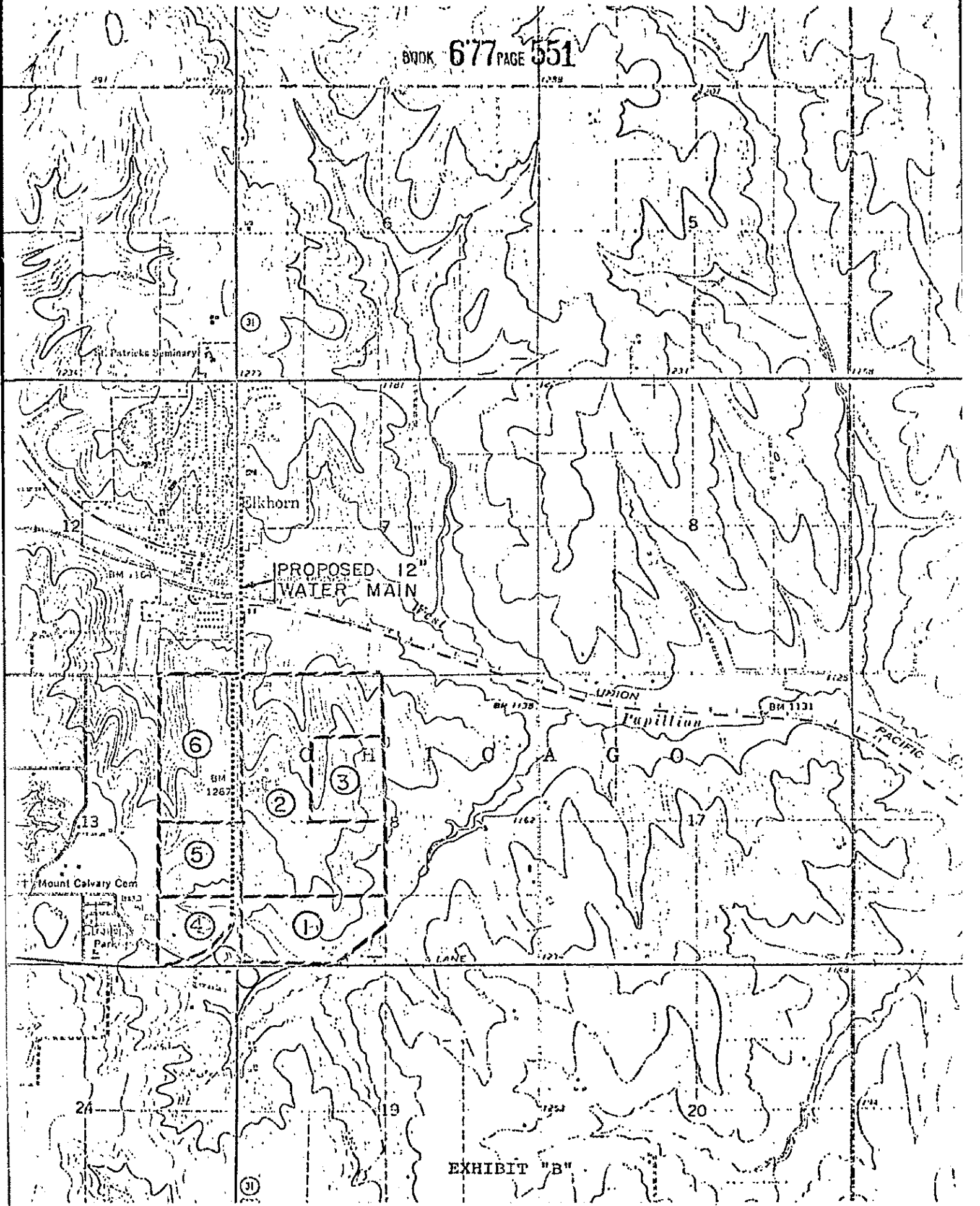


EXHIBIT "B"

POOR INSTRUMENT FILED

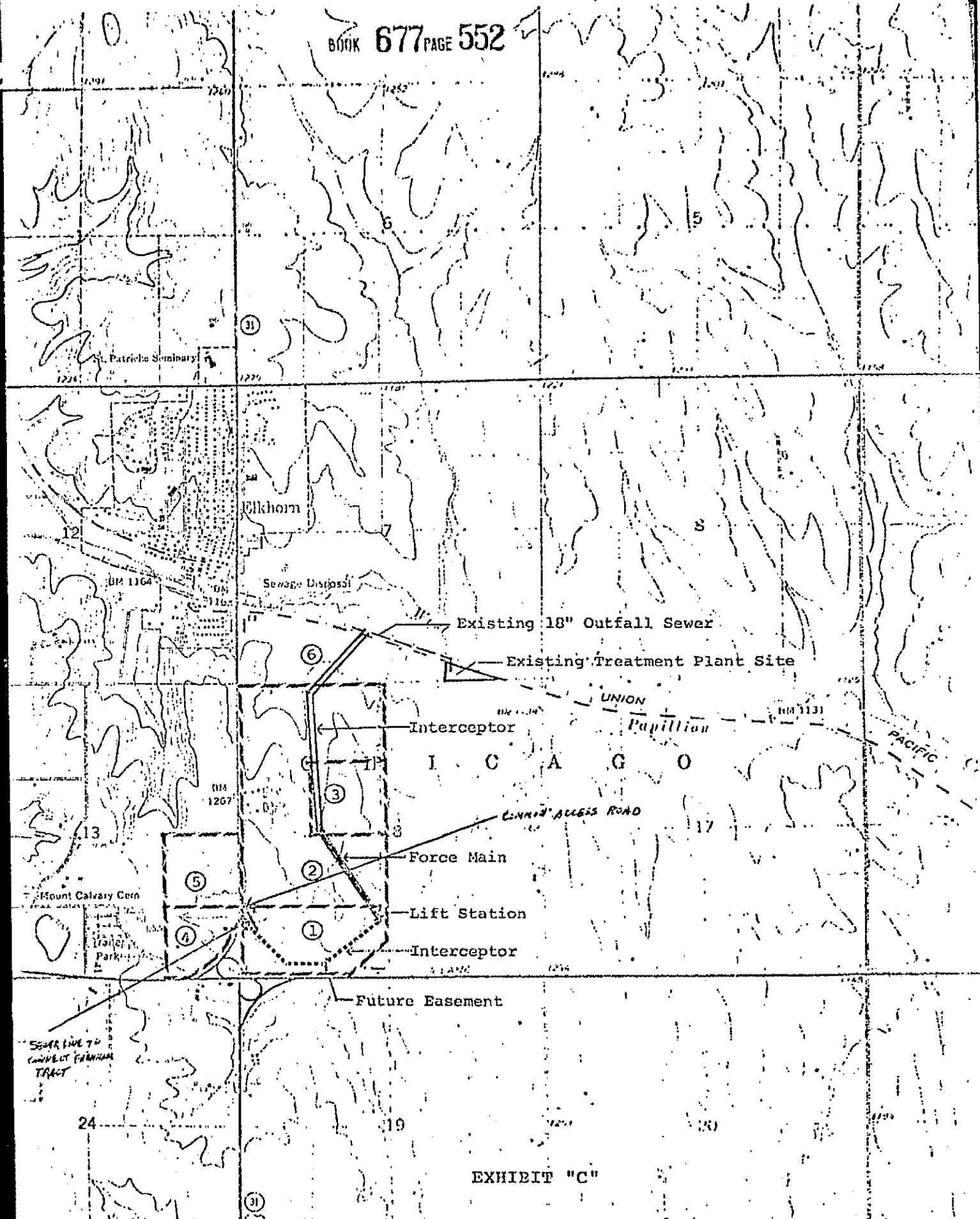
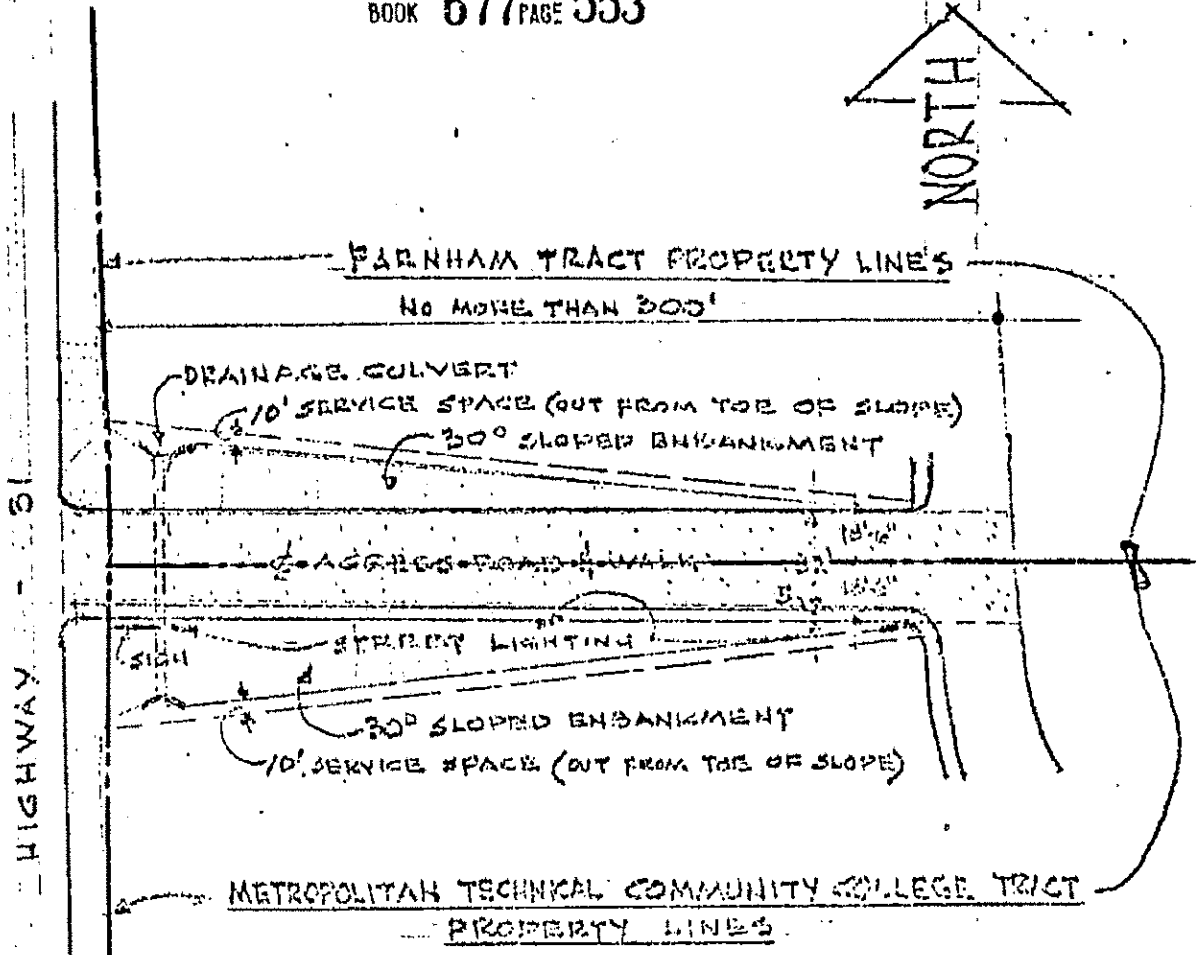


EXHIBIT "C"

POOR INSTRUMENT FILED



SCALE: 1" = 60'

EXHIBIT "D"

15/1/82

RECEIVED
1982 SEP 27 PM 12:14

C. HANCOCK
REGISTER OF DEEDS
DOUGLAS COUNTY, N.C.

BOOK 677
PAGE 531
NO. 111

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INDEX 13-15-10
13-15-10
13-15-10

POOR INSTRUMENT FILED