

INTERMUNICIPAL AGREEMENT BETWEEN THE
CITY OF APPLETON AND THE TOWN OF GRAND CHUTE
THE TOWN OF GRAND CHUTE SANITARY DISTRICT #1,
AND THE TOWN OF GRAND CHUTE SANITARY DISTRICT #2
TO PROVIDE FOR ORDERLY LAND DEVELOPMENT AND
SANITARY SEWER SERVICE WITHIN THE TOWN OF GRAND CHUTE

This agreement is made and entered into this 16th day of March, 1992, by and between the CITY OF APPLETON (hereinafter referred to as "CITY"), the TOWN OF GRAND CHUTE (hereinafter referred to as "TOWN"), the TOWN OF GRAND CHUTE SANITARY DISTRICT #1 and the TOWN OF GRAND CHUTE SANITARY DISTRICT #2 (hereinafter collectively referred to as "SANITARY DISTRICT"), to be effective upon the execution hereof by the above parties. The purpose of this Intermunicipal Agreement is to define the procedures to be utilized by CITY and TOWN which will eventually result in:

- A) Squaring off the boundaries of CITY and TOWN leading to more efficient operation of both units of government;
- B) The orderly development of the entire area encompassed by the two units of government; and,
- C) Defining and expanding the provision of governmental services including water and sewer services by establishing development areas.

This agreement establishes areas as indicated on Exhibit A, which is made a part of this agreement. The two areas are: CITY growth area and TOWN growth area.

This intermunicipal agreement has been executed by the respective municipalities pursuant to authority granted in Section 66.027 and 66.30 Wisconsin Statutes.

I.
TOWN AND CITY GROWTH

Area A - TOWN Growth Area. Area A shall include all land in TOWN west of Wisconsin State Highway "47", also known as Richmond Street. In addition, due to the present configuration of the existing TOWN and CITY border, the land is further described as all property south of County Trunk Highway "00" (Northland Avenue) and west of the Wisconsin Central Railroad tracks, or otherwise as follows the existing border between TOWN and CITY. The land in this area is deemed to be necessary for the long range growth of TOWN. No property within Area A shall be annexed to CITY. However, CITY does reserve the right to acquire and control land in Area A.

Area B - CITY Growth Area. Area B is substantially undeveloped land east of Wisconsin State Highway "47" which is in the immediate proximity of the boundaries of CITY, and is deemed necessary to provide for the long range, healthy and reasonably anticipated expansion of CITY. In addition, area B also includes property south of County Trunk Highway "00" (Northland Avenue) and east of the Wisconsin Central Railroad tracks, except as to conform to the presently existing municipal boundaries between CITY and TOWN. Therefore, it is intended that all properties within Area B annex to CITY prior to receipt of water and sewer service except as otherwise provided within this agreement.

With respect to the TOWN and CITY border south of County Trunk Highway "00" (Northland Avenue), it is the express intention of the parties that the existing boundaries of TOWN and CITY shall remain in its present configuration.

It is the intent of the parties that properties within Area B come into CITY whenever it is legally possible to annex said property and TOWN agrees that it will take no direct or indirect action, in any forum, to oppose or contest said annexations. TOWN further recognizes that any annexation in said areas will serve the parties purpose under this Agreement to square off and otherwise finalize their respective boundaries. Therefore, TOWN will not oppose or challenge any annexation upon the basis of the size, shape or configuration thereof. This shall include a commitment by TOWN that annexations shall not be challenged should said annexations result in the creation of a "town island"; it is acknowledged by the parties that the creation of "town islands" causes strict judicial scrutiny, and CITY shall make every attempt to avoid annexations which would result in the creation of "town islands". Nothing contained herein shall be construed to prohibit TOWN or its officers, agents or employees from meeting their fiduciary duty in advising parties whose land is the subject of CITY annexation of their rights under State Law, consistent with the terms and conditions of this intermunicipal agreement.

II.

CITY-TOWN PLANNING

For purposes of this intermunicipal agreement, SANITARY DISTRICT hereby designates the Town Board of Supervisors of TOWN as its agent.

CITY and TOWN hereby agree to meet periodically to discuss matters of mutual concern. The Mayor of CITY and the TOWN Chairperson may call such meetings as they mutually deem necessary.

The Mayor of CITY and the TOWN Chairperson are responsible for the development and implementation of policy with respect to this agreement and amendments thereto.

III.

PROVISION OF SEWER SERVICE TO TOWN

CITY and TOWN acknowledge the effect and impact of an Outagamie County Circuit Court ruling known as the "Taco Bell" decision, designated as Outagamie County Case No. 87 CV 1358. The effect and impact of this decision is that certain areas of TOWN may obtain sanitary sewer service from CITY without the precondition of annexation.

Attached hereto, identified as Exhibit B, are defined boundaries of TOWN which will receive sanitary sewer service from City without the precondition of annexation pursuant to this Intermunicipal Agreement. This includes single lot depth properties immediately adjacent to and abutting the sanitary sewer which shall be installed by CITY in conjunction with TOWN, or by TOWN in conjunction with CITY. This includes properties along the following roads: Melody Lane, Memory Lane, Ballard Road south of County Highway "JJ", and north of the existing CITY limits, County Highway "JJ" west of Ballard Road to Apple Creek Road, and Apple Creek Road between County Highway "JJ" and Meade Street.

The parties shall proportionally share the cost of installing this sanitary sewer loop along the configuration detailed on Exhibit B. In addition, TOWN agrees to execute any and all easements and street occupancy permits necessary for CITY to install a sanitary sewer loop in the configuration detailed in Exhibit C attached hereto. It is anticipated that CITY shall install water mains at the same time as the sanitary sewer mains shall be installed. All costs associated with the installation of water mains shall be borne by CITY alone. This is due to the fact that the "Taco Bell" decision related solely to the provision of sewer service to areas of TOWN. All costs associated with the installation of the sanitary sewer loop in the configuration detailed in Exhibit C shall be borne by City alone.

IV.

AGREEMENTS TO ANNEX

Any property owner who requests water services within Area B shall be required to annex his/her/their property to CITY as a condition of receiving said service(s). However, if the property to be served within the sole opinion of CITY is incapable of being annexed thereto, then the petition for said services shall not be acted upon until a recordable agreement, drafted by the CITY attorney, running with the land, providing for annexation of

said property to CITY as soon as annexation is legally possible, is executed by the landowner and filed with the CITY Clerk along with an appropriate recording fee. All agreements to annex shall be sent by the approving authority to the CITY Clerk, who shall have the duty of recording said documents with the Register of Deeds.

It is not the intent of the parties that this section is to apply to properties currently located in TOWN which, in the sole opinion of CITY, would not be capable of annexation upon any basis, be it financial (cost effective) or any other reasonable basis as determined by CITY.

The parties agree that the growth areas of each have been delineated and neither party will seek or allow through any annexation or detachment process any change in boundaries which would be contrary to this agreement, unless through mutual consent of the parties.

Water services shall not be provided in Area B to properties which are not contiguous to City boundaries until the CITY Attorney and TOWN Attorney approve in writing, the forms and procedures thereto relevant as being in compliance with this agreement.

The TOWN Clerk shall have the duty of administering under the terms of this agreement and processing all requests for water service in Area B which affect land and properties within TOWN.

If the parcel of property for which sanitary sewer and/or water service is petitioned cannot be immediately annexed to CITY, TOWN shall pass a resolution authorizing special assessments to be levied against said parcel of property by TOWN and the payment therefor to be paid to CITY. TOWN will pass and collect said special assessments and pay the entire amount of principle and interest, if any, to CITY. TOWN has the obligation of affirmatively collecting unpaid special assessments, but is not liable to pay CITY for special assessment until collection. TOWN may add a one percent (1%) per annum administrative fee to the CITY determined interest rate to cover its cost of collecting special assessments payable on an installment basis. Billing methods shall be consistent with past procedures established by the Town of Grand Chute Sanitary District No. 1 and CITY.

V.
SANITARY SEWER SERVICE

CITY and TOWN agree that land located in any Area may be provided with sanitary sewer service by either CITY or TOWN sewer systems depending upon the service area in which the property is located and in accordance with all other conditions of this agreement and facility plans approved by the East Central

Wisconsin Regional Planning Commission and the Department of Natural Resources. Request for sanitary sewer service and plans for extensions of sanitary sewer mains made by TOWN and CITY shall be approved by the registered engineers representing the Department of Natural Resources.

Extensions of sanitary sewer mains are subject to applicable approvals of the East Central Wisconsin Regional Planning Commission and the Wisconsin Department of Natural Resources. CITY and TOWN shall cooperate in making joint presentations to the East Central Wisconsin Regional Planning Commission in obtaining its approval of sanitary sewer main extensions. It is acknowledged by the parties that, except where otherwise provided in this agreement, sanitary sewer main infrastructure east of State Highway "47" will be paid for by CITY, and sanitary sewer main infrastructure west of Wisconsin State Highway "47" shall be paid for by TOWN. The parties agree that the transportation of wastewater from the site itself shall be directed to the wastewater treatment plant which is most cost effective, as determined by the engineers of the parties. The parties further agree to negotiate such intermunicipal agreements in the future in furtherance of the agreements set forth herein as may be necessary.

It is further understood that TOWN will pay all rates, charges, assessments or other costs for sanitary sewer services as in accordance with other existing intermunicipal agreements between the parties to the extent that such rates, charges, assessments or other charges apply to the users of sanitary sewer services within CITY. It is the intent of the parties that no monetary advantage will be gained from receiving service from either municipality; the ultimate goal is to effectively combat environmental concerns of ground water pollution regardless of municipal affiliation.

This intermunicipal agreement shall supersede any previous intermunicipal agreements providing for the provision of sewer service by CITY to TOWN for properties directly adjacent to Highway 47 and Ballard Road.

VI. WATER INTERCONNECT

The parties to this intermunicipal agreement currently have in force and effect an agreement whereby CITY sells water to TOWN. Pursuant to said agreement, there are provided two (2) interconnects between the CITY water system infrastructure and the TOWN water system infrastructure.

Pursuant to this intermunicipal agreement, it is agreed that a third interconnection will be allowed between the CITY infrastructure and the TOWN infrastructure. All costs associated

with this third interconnection will be at the sole cost of TOWN. Actual location of said third interconnect shall be made at a location mutually acceptable to the engineers representing both CITY and TOWN at a site which will be of mutual benefit to the parties. No surcharge for provision of water from CITY to TOWN shall be required.

The parties further agree to restructure the existing agreement for the sale of water into an intermunicipal agreement in such form as is provided by statute. It is acknowledged that the existing agreement must be restructured due to the fact that the existing agreement does not contemplate three (3) interconnects between the CITY water system infrastructure and the TOWN water system infrastructure. The parties shall submit any restructured document to the Wisconsin Public Service Commission for its review and approval.

VII. INCORPORATION

It is acknowledged by the parties that TOWN may reinitiate an incorporation proceeding as has been attempted in the past. TOWN agrees that any such incorporation proceedings will not include properties located in TOWN which are East of State Highway "47", also known as Richmond Street, north of County Trunk Highway "00" and east of the Wisconsin Central Railroad tracks. Properties east of Richmond Street would not be part of such incorporation proceedings as being contrary to prudent urban planning principals. This would include properties located in the development commonly known as "Oneida Heights". Any successor to TOWN which has statutory annexation powers shall not exercise such annexation powers in the areas described in this section of this Intermunicipal Agreement.

CITY agrees to not oppose any incorporation petition submitted by TOWN. Any municipal entity which is a successor in interest to TOWN shall also be bound by this intermunicipal agreement. It is the intention of CITY to seek ratification of this intermunicipal agreement with any municipal successor to TOWN.

CITY and TOWN agree to review future irregular boundaries for possible modification of said boundaries, and that any adjustments to such boundaries shall be mutually agreed upon and acceptable to CITY and TOWN.

VIII. AGREEMENT AMENDMENTS - PROCEDURE

The parties hereto may, upon thirty (30) days advance written notice to the other, propose that this agreement, or the

exhibits hereof, be amended. This agreement may be amended by mutual consent, as often as the parties hereto deem necessary.

IX.
NOTICES PROCEDURE

All notices relative to this agreement shall be submitted by personal service or by certified mail. Notices to CITY shall be directed to the CITY Clerk. Notices to TOWN shall be directed to the TOWN Clerk.

X.
ADMINISTRATION OF AGREEMENT

This agreement shall be administered on behalf of CITY by the Mayor or his/her designee(s). On behalf of TOWN, this agreement shall be administered by the TOWN Board Chairperson or by his/her designee(s). Designees shall not have authority under this agreement unless their appointments are in writing and the other parties to this agreement are notified thereof. The administration of this agreement shall include the implementation of policies and procedures which will effectuate the purpose and spirit hereof.

XI.
ENFORCEMENT OF AGREEMENT

This agreement shall be enforceable through the courts, although the parties may, but are not obligated to, consent to any issue being resolved by arbitration.

XII.
SEVERABLE PROVISIONS

The provisions of this agreement and the parts of each such provision shall be severable. In the event that any provision of this agreement or any part of any such agreement is held by a court of competent jurisdiction to be invalid or ineffective, the balance of this agreement shall survive.

XIII.
COMPLETE AGREEMENT

This agreement is the complete agreement of the parties with respect to the matters covered by this agreement and it shall supersede all prior agreements to the contrary. No agreements, promises or representations made during or in connection with the negotiations for or approval of this agreement shall be binding or effective unless they are included herein.

XIV.
TERMS OF AGREEMENT

This agreement does not supersede previous agreements and contracts, relative to water and sanitary sewers between CITY and TOWN. All other intermunicipal agreements between the parties remain in full force and effect.

The life of this agreement shall be indefinite, except that it may be terminated as follows:

A) By mutual agreement of CITY and TOWN;

B) At the option of CITY or TOWN for any breach of this agreement. This agreement may not be terminated by any party for reason of breach thereof without the party claiming the breach first giving written notice thereof to the other parties and providing the breaching parties with sixty (60) days in which to remedy the breach. If the breach is remedied in a timely manner, this agreement may not be terminated for reason of said breach.

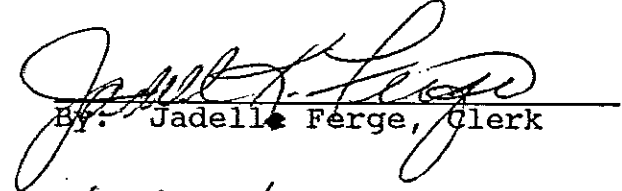
Dated this 12th day of March, 1992.

Approved as to form and content this 12th day of March, 1992.

CITY OF APPLETON

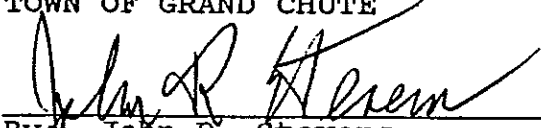

Greg J. Carman
Appleton City Attorney

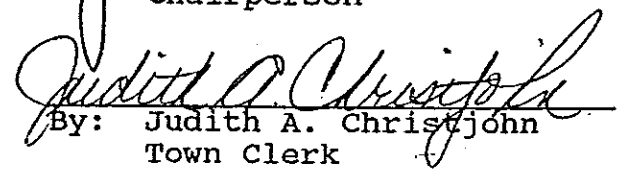

By: Dorothy Johnson, Mayor


By: Jadelle Ferge, Clerk

Dated this 16th day of March, 1992.

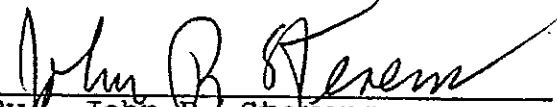
TOWN OF GRAND CHUTE

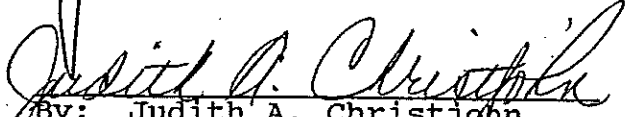

By: John R. Stevens
Chairperson


By: Judith A. Christjohn
Town Clerk

Dated this 16th day of March, 1992.

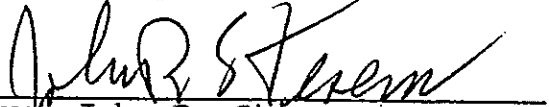
TOWN OF GRAND CHUTE SANITARY
DISTRICT #1

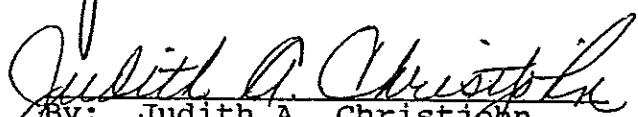

By: John R. Stevens
President


By: Judith A. Christjohn
Secretary

Dated this 16th day of March, 1992.

TOWN OF GRAND CHUTE SANITARY
DISTRICT #2

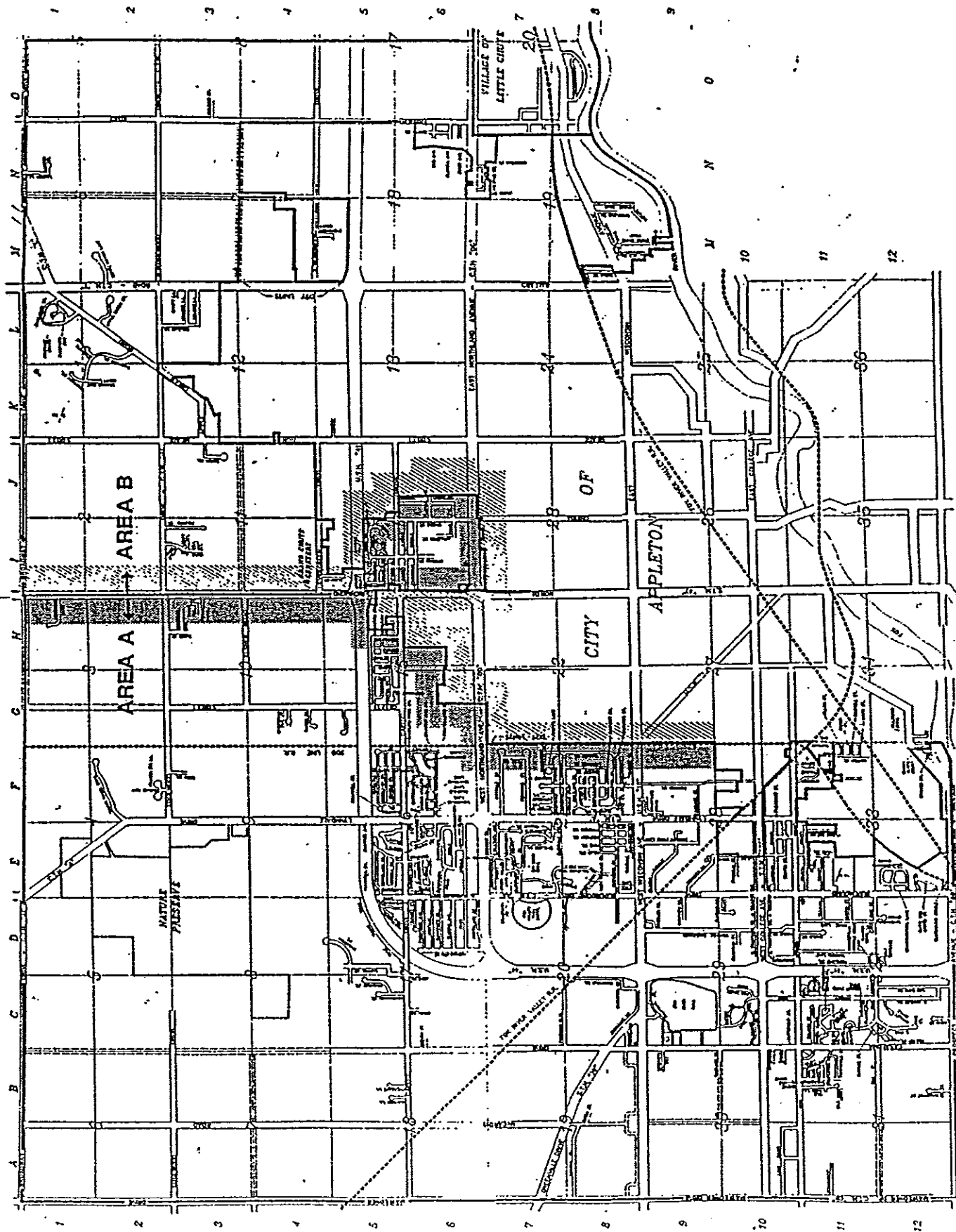

By: John R. Stevens
President


By: Judith A. Christjohn
Secretary

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EXHIBIT "A"

NORTH



SCALE
1" = 1/4 MILE

LEGEND

- EXISTING STREETS
- FUTURE STREETS
- CITY LIMITS
- PARKS
- SCHOOLS



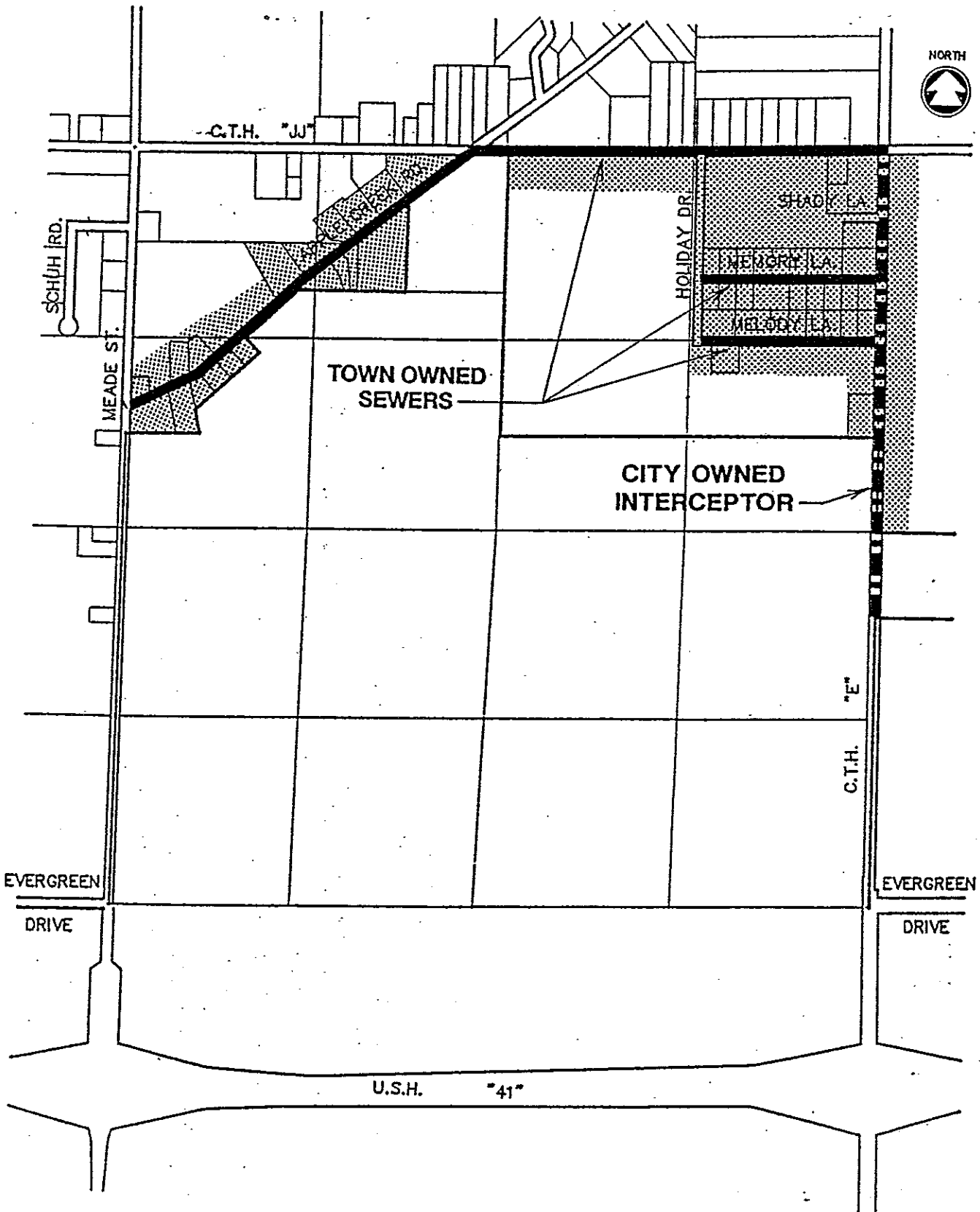


EXHIBIT "B"

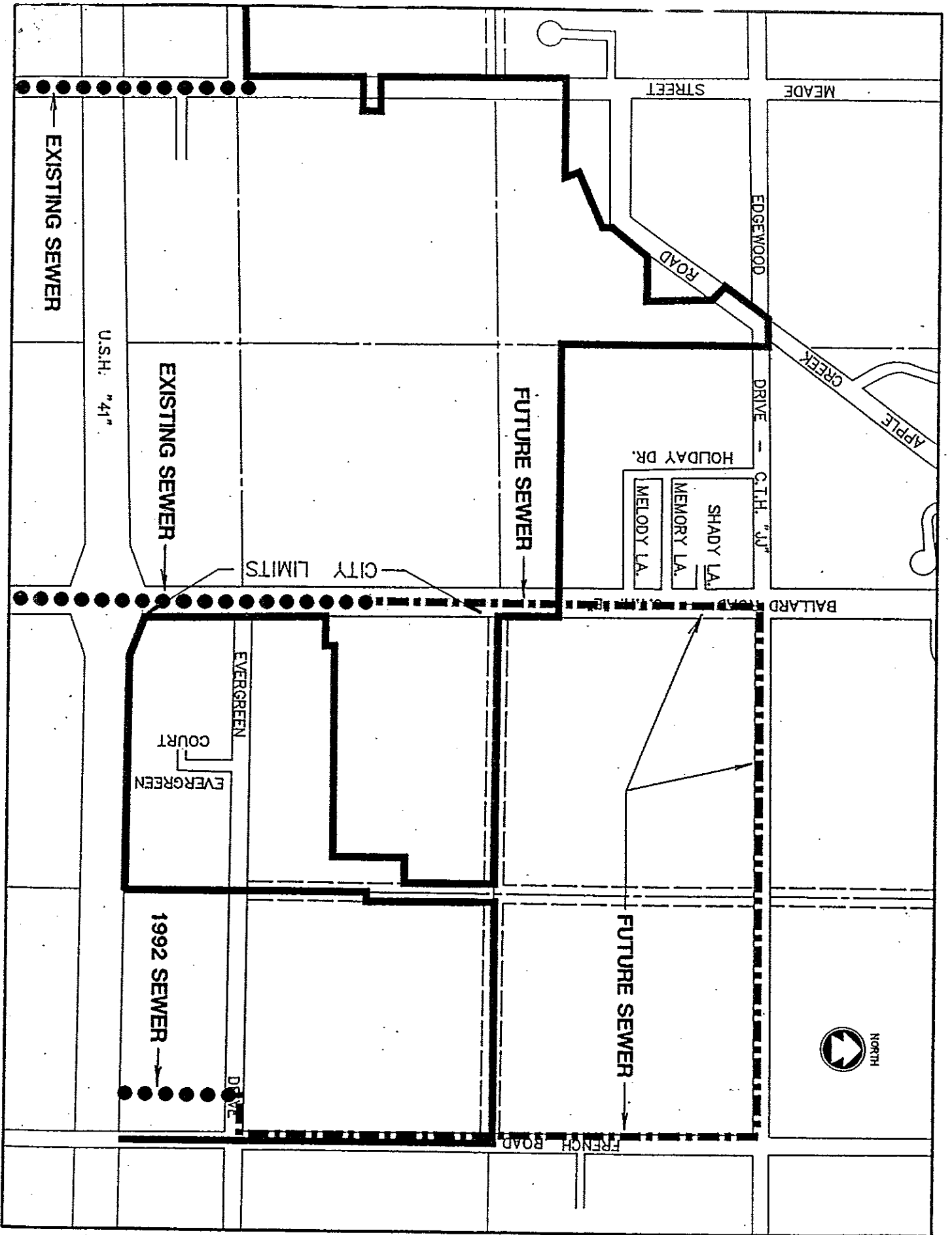


EXHIBIT "C"