

005221
FILED NO. _____
BOOK 2001 PAGE 5221
2001 NOV 19 PM 3:48

REC \$ 30⁰⁰
AUD \$ _____
R.M.F. \$ 1⁰⁰

✓ AFTER RECORDING RETURN TO:

City of Earlham
City Hall
140 South Chestnut Avenue
Earlham, Iowa 50072

Prepared by: Snyder & Associates, Inc.
For the City of Earlham

COMPUTER ✓
RECORDED ✓
COMPARED ✓

MICKI UTSLER
RECORDER
MADISON COUNTY, IOWA

(4)

W.O. #100.0610

**PERMANENT SANITARY SEWER EASEMENT AND
TEMPORARY CONSTRUCTION EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that EDWIN R. SMITH and MARJORIE SMITH, husband and wife; and THE RALPH B. HUNTER TRUST; (collectively hereinafter called "Grantor"), in consideration of the sum of One Dollar (\$1.00) to be paid when such grant has been accepted and approved by the Earlham City Council, and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, does hereby convey unto the CITY OF EARLHAM, IOWA, a municipal corporation, (hereinafter called "Grantee"), a perpetual easement and right-of-way under, over, on, through, across and within the real estate described as the Permanent Utility Easement Description on Exhibit A attached hereto (hereinafter called "Permanent Easement Area"), and a temporary easement and right-of-way under, over, on, through, across and within the real estate described as the Temporary Construction Easement Description on Exhibit B attached hereto (hereinafter called "Temporary Easement Area"), for the purpose of the Grantee constructing, repairing, replacing, inspecting and maintaining a 15" diameter PVC public sanitary sewer, together with all necessary structures and appurtenances thereto as described in the plans and specifications for the Earlham Wastewater Treatment Improvements Project 2001-2002 on file at City Hall, Earlham, Iowa, under, over, on, through, across and within the Permanent and Temporary Easement Areas (hereinafter sometimes collectively referred to as the "Easement Areas").

These Easements shall be subject to the following terms and conditions:

1. Erection and Placement of Structures, Obstructions, Plantings or Material Prohibited. From and after the date of this easement, Grantor shall not erect any fence or other structure under, over, on, through, across or within the Permanent Easement Area, or the Temporary Easement Area (during Temporary Easement Term), without obtaining the prior consent of the Grantee. From and after the date of this easement, Grantor shall not cause or permit any obstruction, planting or material to be placed under, over, on, through, across or within the Permanent Easement Area, or the Temporary Easement

Area (during the Temporary Easement Term), without obtaining the prior consent of the Grantee. The Grantee shall have the right to remove any fence, structure, obstruction, planting or material placed after the date of this easement under, over, on, through, across or within the Permanent Easement Area or the Temporary Easement Area (during the Temporary Easement Term) without the Grantor's prior consent. The Grantee shall not be liable for damages for such removal. The Grantee shall remain liable for damage to any fence, structure, obstruction, planting or material placed under, over, on, through, across or within the Easement Areas prior to the date of this easement.

2. Change of Grade Prohibited. Grantor shall not change the grade, elevation or contour of any part of the Permanent Easement Area or the Temporary Easement Area (during the Temporary Easement Term), without obtaining the prior consent of the Grantee. Grantee shall have the right to restore any changes in grade, elevation or contour made without prior consent. Consent to change the grade will not unreasonably be withheld.
3. Restoration. Subject to the rights granted herein, Grantee shall timely restore the Easement Area, including landscaping, to grade following construction and shall seed any grass areas and maintain until returned to pre-construction condition.
4. Right of Access. Grantee shall have the right of access to the Temporary Easement Area (during the Temporary Easement Term) and to the Permanent Easement Area reasonably necessary for the use and enjoyment of the Easement Areas as herein described, including but not limited to, constructing, repairing, replacing, inspecting, and maintaining the public sanitary sewer. All right of access shall be exercised on and over the Temporary Easement Area (during the Temporary Easement Term) and on and over the Permanent Easement Area.
5. Use of Easements. Subject to the rights granted herein, Grantee hereby agrees to repair or pay for any damage which may be caused to the property of Grantor from Grantee's use of the Easement Areas and from the construction, maintenance, or operation of the proposed public sanitary sewer.
6. Easements Run With Land. These Easements shall be deemed to run with the land and shall be binding on Grantor and on Grantor's heirs, successors and assigns, and shall inure to the benefit of Grantee, and Grantee's successors and assigns.
7. Approval by City Council. The permanent and temporary easements granted herein shall not be binding until final approval and acceptance by the Earlham City Council by Resolution which approval and acceptance shall be noted on this document by the City Clerk.
8. Time Frame of Temporary Easement Term. The timeframe of the sewer construction is 90-days from the start of construction. Seeding is to be allowed in time period specified in contract documents

9. Future Development Purpose. This agreement shall not keep Grantor from using the Easement Areas to develop streets for future development purposes.
10. Vacation of Existing Easement. A portion of the existing sanitary sewer easement along the east boundary of the Grantor's property shall be vacated as mutually agreed upon by Grantor and Grantee.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 9th day of November, 2001.

GRANTORS

Edwin R. Smith
Edwin R. Smith

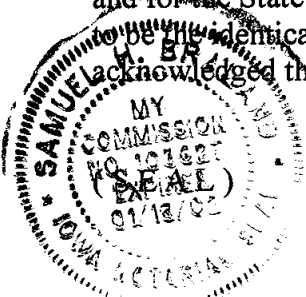
Marjorie Smith
Marjorie Smith

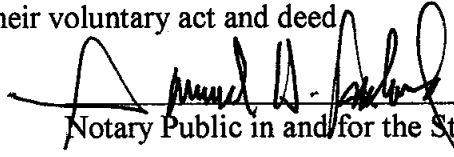
Ralph B. Hunter Trust

William W. Hunter
By: William W. Hunter, Trustee

STATE OF IOWA)
) §
COUNTY OF MADISON)

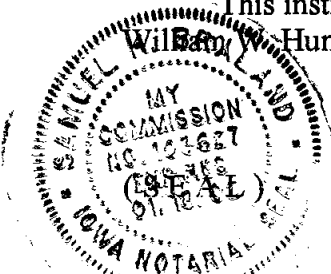
On this 12th day of November, 2001, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Edwin R. Smith and Marjorie Smith, to me known to be the identical persons named in and who executed the foregoing instrument and I acknowledge that they executed the same as their voluntary act and deed.

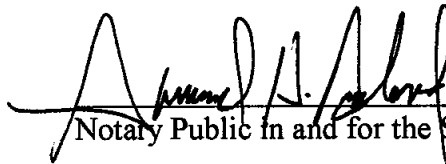



Notary Public in and for the State of Iowa

STATE OF IOWA :
 : SS
COUNTY OF MADISON :

This instrument was acknowledged before me on November 9th, 2001, by Wilham Hunter as Trustee of the Ralph B. Hunter Trust.




Notary Public in and for the State of Iowa.

I, Marilyn Sesker, City Clerk of the City of Earlham, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Earlham by Resolution No. 01-27, and Roll Call No. 6 passed on the 13 day of November, 2001, and this certificate is made pursuant to authority contained in said Resolution.

Signed this 13 day of November, 2001.

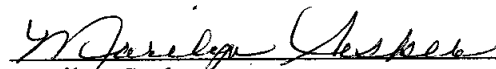

Marilyn Sesker,
City Clerk of the City of Earlham, Iowa

EXHIBIT "A"

A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 28 WEST OF THE 5TH P.M., MADISON COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 6, THENCE NORTH 0°04'13" EAST ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHEAST 1/4, 40.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF N.E. 6TH STREET AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°04'13" EAST ALONG SAID WEST LINE, 413.27 FEET; THENCE NORTH 26°24'13" EAST ALONG AN EXISTING SANITARY SEWER EASEMENT, 355.87 FEET; THENCE NORTH 88°00'13" EAST CONTINUING ALONG SAID EXISTING EASEMENT, 166.01 FEET; THENCE SOUTH 1°36'37" WEST ALONG WEST PROPERTY LINE OF CITY OF EARLHAM PROPERTY, 13.58 FEET; THENCE SOUTH 89°14'39" WEST, 130.14 FEET; THENCE SOUTH 29°34'32" WEST, 363.54 FEET; THENCE SOUTH 1°51'14" WEST, 406.56 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE OF N.E. 6TH STREET; THENCE NORTH 89°40'27" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 1.55 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.33 ACRES (14,291 S.F.) MORE OR LESS.

EXHIBIT "B"

A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 28 WEST OF THE 5TH P.M., MADISON COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 6, THENCE NORTH 0°04'13" EAST ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHEAST 1/4, 40.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF N.E. 6TH STREET AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°04'13" EAST ALONG SAID WEST LINE, 472.63 FEET; THENCE NORTH 29°34'32" EAST, 338.66 FEET; THENCE NORTH 89°14'39" EAST, 156.31 FEET; THENCE SOUTH 0°17'45" EAST, 80.00 FEET; THENCE SOUTH 89°14'39" WEST, 109.79 FEET; THENCE SOUTH 29°34'32" WEST, 334.83 FEET, THENCE SOUTH 1°51'14" WEST, 165.41 FEET; NORTH 89°40'36" WEST, 18.77 FEET; THENCE SOUTH 0°04'13" WEST, 181.31 FEET; THENCE SOUTH 15°45'52" WEST, 52.07 FEET TO SAID NORTH RIGHT-OF-WAY LINE OF N.E. 6TH STREET, THENCE NORTH 89°40'36" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 10.92 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.39 ACRES (60,713 S.F.) MORE OR LESS.