

ORDINANCE NO. 8788-76

AN ORDINANCE  
APPROVING AND AUTHORIZING THE EXECUTION  
OF A LICENSE AGREEMENT BETWEEN THE CITY OF URBANA, ILLINOIS  
AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS  
INCLUDING AN ADDENDUM ATTACHED THERETO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA,  
ILLINOIS, as follows:

Section 1. That a License Agreement between the City of Urbana, Illinois, and the Board of Trustees of the University of Illinois, including an Addendum attached thereto, in substantially the form of the copy of said Agreement and attached Addendum which are attached hereto and hereby incorporated by reference, be and the same are hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver such documents and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to such execution thereof, all as so authorized and approved for and on behalf of the City of Urbana, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this 20th day of June,  
1988.


By Ruth S. Brookens  
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 27<sup>th</sup> day of June,  
1988.

By Jeffrey T. Markland  
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN  
ORDINANCE NO. 8788-76 AND IS INCORPORATED  
THEREIN BY REFERENCE.

Ruth S. Brookens  
Ruth S. Brookens, City Clerk  
June 23, 1988  
Date



LICENSE AGREEMENT BETWEEN  
THE CITY OF URBANA, ILLINOIS AND  
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS

SECTION I. BASIC GRANT; TERM.

The City of Urbana, Illinois, hereby grants to The Board of Trustees of the University of Illinois a non-exclusive license to construct, maintain, inspect, protect, repair, replace, retain and use utility lines in, under, upon, along and across the Property owned or under the control of the City of Urbana, and at substantially the location as identified in Attachment A, which is attached hereto and is hereby incorporated herein by reference, subject to the following: (i) the regulatory powers of the City of Urbana, Illinois, (ii) the terms and conditions hereinafter set forth, (iii) the rights of any public utility or other person or entity currently having rights, licenses or easements in and about the Property.

This license shall extend for such period as the University continues to use and maintain the utility lines in good condition and repair and only for so long as the University shall use the utility lines for the intended purpose as stated herein, and the same shall immediately lapse and terminate upon cessation of such use at each such location. Notwithstanding any of the foregoing, this license shall automatically terminate if, as a result of the City's proper use of the Property, the City determines that the removal of the utility lines shall be necessary in connection with such a proper public purpose for the use of said Property. In the event of such termination the University shall either remove the utility lines or, upon the concurrence of the City, the utility lines may be abandoned by the University. If the utility lines are removed, the removal shall be at University's sole cost and expense and shall be done in a timely manner as nearly as practicable in accordance with the City's request for such removal. Upon any such removal or abandonment the University shall restore the Public Property to the condition it was prior to the installation of the utility lines.

SECTION 2. DEFINITIONS.

(a) "City" shall mean the City of Urbana, Illinois.

(b) "University" shall mean The Board of Trustees of the University of Illinois.

(c) "Public Property" or "Property" shall mean public rights-of-way owned by or under the control of the City of Urbana and any improvement thereon and therein, including, but not limited to, paved streets, alleys, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, and any other improvement or equipment located thereon.

### SECTION 3. PERMITS, CONSTRUCTION AND COSTS.

(a) PERMITS. The University shall obtain all permits required by the codes and ordinances of the City prior to commencement of construction, repair or excavation in the Public Property or within one business day of the commencement of emergency construction, repair or excavation in the Public Property. The University shall not be charged the fee required by the City's codes and ordinances for any such permit, but such permit by the City may include such additional requirements for scheduling directions, traffic control and any other matters relating to the same as the City, in its sole discretion, may from time to time require. If the University fails to obtain the required permits within the time required, it shall pay two times the required permit fee. The University shall pay such fee within twenty-eight days of written notification by the City.

#### (b) CONSTRUCTION.

(i) General. Any utility lines laid in, under, upon, over, along, or across Public Property shall be laid in a workmanlike manner. The utility lines shall be so located, relocated, maintained and installed so as to not injure any Public Property of the City, any equipment or other improvements of other utilities or property of another, but should any Public Property of the City, equipment or other improvements of another utility or property of another be injured by such location, relocation, maintenance or installation, the University shall, at its own expense, forthwith repair or cause repair to the Public Property or other property damaged.

(ii) Grade. Prior to installing any utility lines in, under, over, along, across or upon Public Property, the University shall obtain the approval of the grade from the City Engineer and shall install the utility lines to the grade as approved. If the University fails to lay the utility lines to the approved grade, the University shall, if required by the City, relocate the utility lines and shall pay the entire cost of such relocation.



(iii) Interference with Traffic. The University shall conduct its construction, reconstruction, repair, relocation or maintenance work in the Public Property in such a manner that such work will cause as little interference as possible with the pedestrian and vehicular traffic, and shall abide by the scheduling directions, if any, given by the City Engineer.

#### SECTION 4. MAINTENANCE.

(a) GENERAL. The University, after doing any construction, repair or excavation in the Public Property, shall leave the surface in a neatly graded condition. All Public Property disturbed by the University shall be expeditiously restored by it to a condition as good as before the University disturbed it. Vegetation disturbed by construction, repair or excavation shall be replaced, and grass shall be replaced with sod. In the event that any Public Property shall become uneven, unsettled or otherwise require repair or replacement because of the disturbance by the University, the City shall give written notice of such condition; provided, however, that verbal notice shall suffice in the event of an emergency. The University shall, within five (5) days of receipt of notice from the City and entirely at its own cost, cause such Public Property to be repaired or restored to a condition as good as before said Public Property were disturbed by the University, or the University shall commence the repair or restoration within five (5) days if such repair or restoration cannot reasonably be completed within five (5) days. The University shall keep all structures and equipment which it shall construct in the Public Property in reasonably safe condition at all times.

(b) FAILURE TO COMPLY; REMEDY. If the University fails to comply with the provisions of subsection (a) of this Section, the City may, without election, repair or restore, or cause to be repaired or restored, the Public Property or improvement to a condition as good as the property was prior to the disturbance by the University. The University shall pay the costs and charges to the City within thirty (30) days after receipt of the City's billing.

#### SECTION 5. SITE SAFETY.

The University shall maintain such barriers and danger signals during construction, relocation, repair or renewal work performed on Public Property or adjacent thereto as will reasonably avoid damage to life, limb and property and as

called for in the State of Illinois Uniform Manual of Traffic Control Devices, the Illinois Department of Transportation Traffic Control Plans for Construction and Maintenance Projects, or as otherwise required by the City.

#### SECTION 6. SUBORDINATE USE, RELOCATION.

It is expressly understood and agreed that the license herein granted is, and shall be at all times subordinate to the City's use of the Public Property, and if the City for reasonable cause shall require the relocation, the lowering or raising of the grade or any underground construction of any utility lines, the University shall do so forthwith. The University shall pay the entire cost of the relocation or lowering or raising of the grade of such utility lines.

#### SECTION 7. WORK BY CITY AND OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS.

(a) The City reserves the right to lay, and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any Public Property occupied by the University, and to change any curb or sidewalk or the grade of any street. In performing or permitting such work to be done, the City shall not be liable to the University for any damage so caused, nor shall the City be liable to the University for any damages arising out of the performance by the City of its contractors or subcontractors, not willfully occasioned; provided, however, nothing herein shall relieve any other person or corporation from liability for damage to the utility lines of the University.

(b) In the event that the governing body of the City subsequently authorized abutting landowners to occupy space under the surface of any Public Property, such grant to an abutting landowner shall be subject to the rights herein granted to the University.

#### SECTION 8. PLANS AND COORDINATION.

(a) CONSTRUCTION AND EXPANSION PLANS. Sixty (60) days or more before construction, the University shall provide the City with a plan and schedule for construction in the Public Property which shall be used by the City only for the purpose of planning and organizing the growth and development of the City.



(b) The University shall adjust to grade all appurtenances related to its utility lines at the time any street rehabilitation, repair or reconstruction is made by or on behalf of the City, to the utility lines located on Public Property.

(c) AS BUILT PLANS. The University shall furnish to the City a copy of all plans for all construction, reconstruction, repair, relocation or other work as built by the University related to the utility lines located on Public Property.

#### SECTION 9. MAPS, RECORDS, REPORTS AND DOCUMENTS.

(a) MAINTENANCE OF RECORDS. The University shall keep complete and accurate maps in connection with this License Agreement.

(b) EXAMINATION AND AUDIT OF RECORDS. The City shall have the right, at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the maps and plans of the University pertaining to this License.

#### SECTION 10. LIABILITY AND INDEMNIFICATION.

(a) To the extent allowed by law, the University shall, at its own expense defend all suits that may be brought against the City on account of or in connection with the alleged violation by the University of any of the obligations hereby imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of existence, construction, repair, inspection or disrepair of these utility lines under its ownership or control; or from the construction, repair, inspection or disrepair of Public Property in connection with these utility lines under its ownership or control; or from the negligence or malfeasance of the employees, officers or agents of the University or from their control of others in connection with the Agreement. To the extent allowed by law, the University shall also save and keep harmless the City, its employees, officers and agents from any and all injury, damages, claim, demand, suit, judgments, costs and expenses of every kind, including reasonable attorneys' fees, that may arise by reason thereof; whether such acts or omissions are those of the University or whether or not any such act or omission is authorized, allowed or prohibited by this Agreement, provided that notice in writing shall be given to University of any claim or suit against the City which, by the terms hereof,

the University shall be obligated to defend; and provided, further, that the City shall furnish to the University all information in its possession relating to said claim or suit and cooperate with said University in the defense of said claim or suit. The City may, if it so desires, assist in defending any such claim or suit and the University shall not be required to reimburse the City for expenses incurred by it in case of the election to so assist. If, however, the University refuses to defend the City when it is so obligated, the University shall bear any costs incurred by the City in such defense.

(b) To the extent allowed by law, the University shall pay, and by its acceptance of this Agreement, shall be deemed to have specifically agreed that it will pay all expenses incurred by the City in defending itself with regard to all claims mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any services rendered by any employee of the City.

(c) The University will require that the City be indemnified and held harmless by any general contractor employed for work on the property covered by this agreement. Further, the University will require that certification of insurance, naming the City as an additional insured, shall be furnished to the City by any such contractor.

(d) The University will provide a certificate of coverage in the amount of \$1,000,000 to the City under the University's self-insurance program. If at some future time the University replaces the self-insurance program, the University will provide, at its expense, equivalent coverage.

#### SECTION 11. LICENSE FEE.

(a) The University shall pay no fee to the City.

#### SECTION 12. VIOLATIONS OF AGREEMENT.

(a) Under evidence being received by the City that violations of this License Agreement or ordinances or regulations relating to the use of the Public Property for the purposes defined in this Agreement are occurring, or have occurred, the City may cause an investigation to be made. If the City finds that such a violation exists or has occurred, the City will notify the University and request compliance with the terms of this Agreement.



(b) The City shall notify the University that violations of this License Agreement or ordinances or regulations of the City relating to the use of Public Property have occurred, and the University shall respond in writing, unless a shorter time is provided for herein, within fourteen (14) days after receipt of such notice.

(c) If the University fails to respond in writing as set forth in subsection 12(b) or fails within a reasonable time after City's notification of violations of Sections 3, 4, 5, 6, 7, 8 or 9 to correct such violations, the University shall pay to the City, in addition to the cost, if any, that the City incurred in remedying the violations, the sum of \$25.00 per day the violation continues or remains unremedied, provided that the City may, but is not under a duty to, correct or mitigate the violation by the University. Such amount shall be paid by the University within twenty-eight (28) days of notification by the City Engineer.

#### SECTION 13. BREACH.

If the University fails or neglects to comply with any or all of the provisions of this Agreement (unless by valid order of a court of competent jurisdiction the University is otherwise directed, or unless the compliance by the University with such provision is prohibited or adjudged unlawful by a valid order of a court of competent jurisdiction), the City may apply to a court of competent jurisdiction to seek University compliance with any term or provision of this license and/or any damages caused by the University's noncompliance with any term or provision of this license. In addition, if the University fails to pay the City any amount due for any reason, including specifically the availability of funds as provided in Section 14 hereof, in violation of this agreement and continues in noncompliance after notification in accordance with Section 12 of this agreement, the City may terminate this agreement forthwith.

#### SECTION 14. AVAILABILITY OF FUNDS AND CONSTITUTIONAL AND STATUTORY LIMITATIONS.

(a) All commitments by the University are subject to the availability of funds which may be lawfully applied thereto.

(b) All commitments by the University under this Agreement are subject to constitutional and statutory limitations and restrictions binding on the University.

(c) Neither this Agreement, nor any obligation hereunder shall create any debt, indebtedness, liability or obligation of the State of Illinois within the meaning of any applicable statutory or constitutional restriction or limitation pertaining to debts or other evidence of indebtedness, and the State shall not be liable hereon nor shall this agreement, or any obligation of the University hereunder, create any liability or indebtedness of the University under any such statutory or constitutional restriction or limitation prior to the time when any payment hereunder, or any renewal hereof, becomes actually due and payable, and then only for an amount which is not in excess of funds in the hands of the University at the time when any such payment becomes actually due and payable, and which may under any such statutory or constitutional restriction or limitation be specifically and properly applied to the payment of the same.

#### SECTION 15. ASSIGNMENT.

This Agreement shall not be assignable without the express consent of the City Council of the City; such consent to be evidenced by an ordinance or resolution that fully recites the terms and conditions, if any, upon which such consent is given.

#### SECTION 16. VACATION OF STREETS AND ALLEYS.

So long as this Agreement remains in effect, the City will not, by ordinance or otherwise, vacate any portion of street, alley or public way in which the University has its utility lines installed without reserving such rights as necessary to comply with the terms of this Agreement.

#### SECTION 17. DELIVERY OF NOTICES.

Any notices required or permitted hereunder shall be in writing and shall be delivered via certified mail, addressed to the parties as follows, unless otherwise indicated in the future.

If to Licensor: Mayor  
City of Urbana  
400 South Vine  
Urbana, Illinois 61801

If to Licensee: The Board of Trustees  
University of Illinois  
354 Administration Building  
506 South Wright Street  
Urbana, Illinois 61801

Provided, however, that in the case of an emergency,  
notices may be given verbally to any agent of the above-  
named.

Notice shall be deemed given three days after date of  
mailing.

In witness to their Agreement, the parties have executed  
this document this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

CITY OF URBANA

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ILLINOIS

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_  
Comptroller

ATTEST:

ATTEST:

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Secretary

APPROVED:

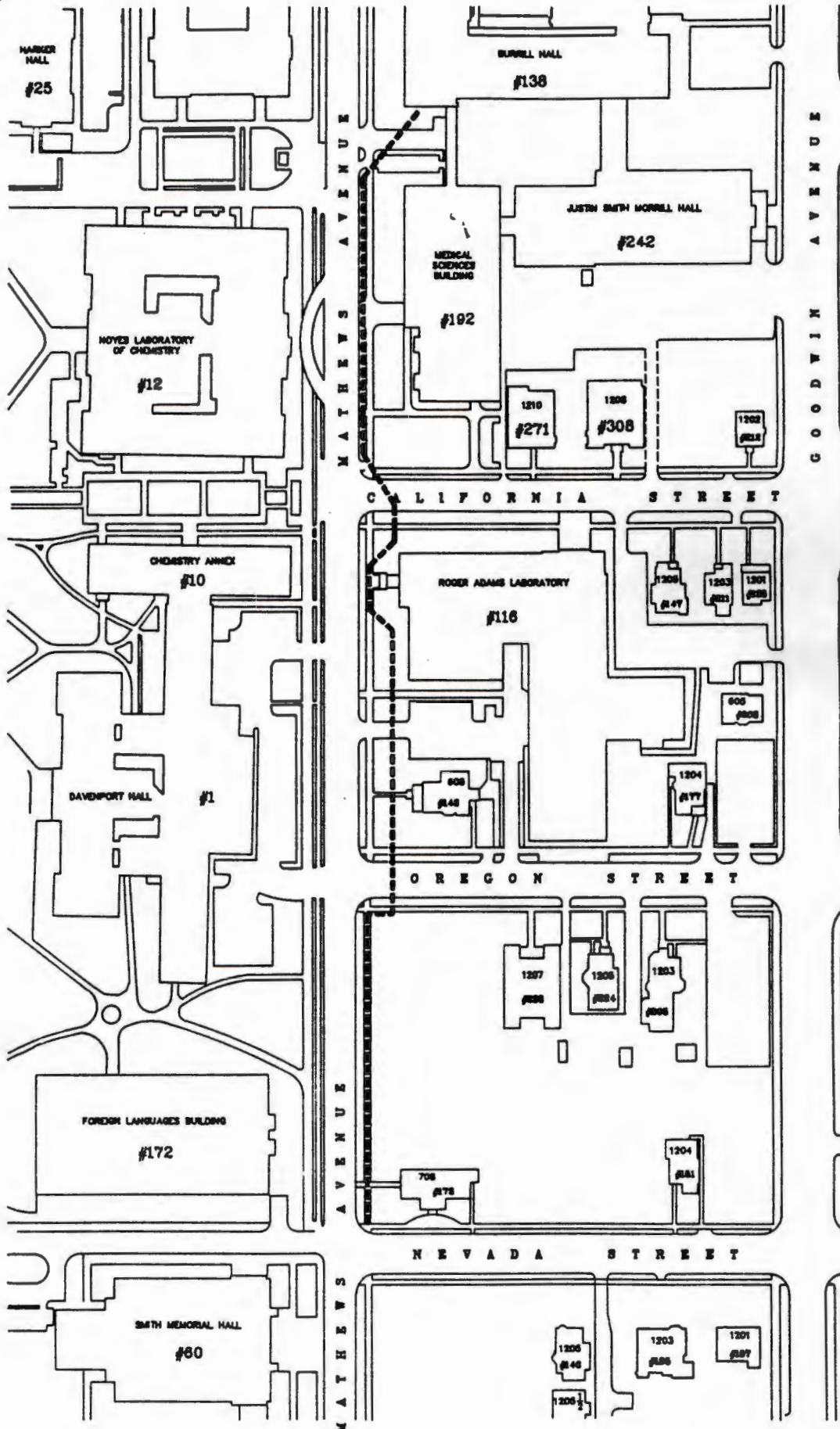
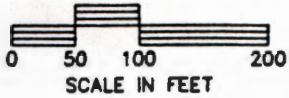
By \_\_\_\_\_  
Legal Counsel



# UTILITIES LICENSE AGREEMENT – ATTACHMENT "A"

CHILLED WATER LINES

JUNE 1988



## ADDENDUM

THIS AMENDMENT TO LICENSE AGREEMENT BETWEEN THE CITY OF URBANA, ILLINOIS AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS (the "License Agreement") is made and entered contemporaneously therewith and sets forth certain additional rights and obligations of the parties with respect thereto:

### RECITALS:

This Addendum is made with reference to the following facts and objectives:

1. The State of Illinois Capital Development Board, for and on behalf of the University, has commenced construction of a project identified as "CDB - Project No. 830-010-148, Chilled Water Interconnection Between The Student/Staff And The Library Air Conditioning Centers, University of Illinois, Urbana, Champaign County, Illinois," which is designed and proposed to be located on portions of the Mathews Avenue and other intersecting rights-of-way between a point approximately 350' north of the California Street right-of-way to the north and the Nevada Street right-of-way to the south (the "Project").

2. The University has caused such construction of the Project to stop pending the due execution and delivery of the License Agreement and this Addendum thereto, which together completely set forth the respective rights and obligations of the parties in connection with the location of the Project on the rights-of-way of the City identified in the License Agreement and this Addendum.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in the License Agreement and the mutual covenants and agreements hereinafter set forth, it is further mutually agreed and covenanted as follows:

### Section 1.A Definitions.

All words and terms in this Addendum shall have the same meanings respectively ascribed to them in the License Agreement, except as herein otherwise expressly provided in this Addendum or unless the context otherwise requires. Unless the context clearly indicates otherwise, the words, terms and phrases above defined and the words, terms and phrases otherwise later defined in this Addendum shall have the same meanings in this Addendum and the License Agreement, including as follows:

"utility lines" shall mean and shall be specifically limited to such facilities as are specifically identified in the "Project Manual" for the Project as dated March 18, 1988.

Section 2.A Damage to Trees.

That pursuant to "Section 4. Maintenance" of the License Agreement, the University acknowledges that certain trees located on Public Property are subject to temporary or permanent damage as a result of the location and nature of the Project. The University accordingly agrees to reimburse the City for any and all reasonable costs or expenses that the City may incur in connection with the non-routine maintenance of any such affected tree or trees, including, but not limited to, extraordinary trimming, fertilization, and watering of any such tree or trees as required in the judgement of the Arborist or other designated Agent of the City (the "Arborist") for a period of five (5) years from and after the date of any excavation in connection with the Project pursuant to the License Agreement and this Addendum. The University further agrees that in the event any such affected tree or trees is determined by the Arborist during any such five (5) year period to be irrevocably damaged, the University shall pay for or reimburse the City for any and all reasonable costs or expenses that the City may incur in connection with the removal of such affected tree or trees as well as the replacement of any such affected tree or trees so removed. Such replacement of any tree or trees so removed shall be made with such new tree or trees as may be determined by the Arborist which such tree or trees, in the aggregate, shall not exceed the same caliper inches as any tree or trees so removed. The University's payment or reimbursement to the City pursuant to this Addendum shall be made pursuant to paragraph (b) of Section A of the License Agreement.

Section 3.A. Authorized University Representative. The University shall, prior to commencing any further construction of the Project, designate a person to act on behalf of the University as a designated Authorized University Representative in connection with all duties and obligations of the University pursuant to the License Agreement and this Addendum. Wherever under the provisions of the License Agreement, this Addendum or other permits related to the Project the University is required to take some action at the request of the City, or otherwise, such request shall be provided by the City to the person so designated by the University as the Authorized University Representative.

Section 4.A. Opinion of Counsel. The grant and other obligations of the City under the License Agreement and this Addendum shall be subject to the receipt by the City of a written opinion from Legal Counsel to the University that the License Agreement and this Addendum have been duly authorized, executed and delivered by the University, and are in full force and effect, and that such License Agreement and this Addendum constitute the valid, binding and enforceable obligations and representations of the University according to their terms.



In witness to their Agreement, the parties have executed  
this addendum this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

CITY OF URBANA

THE BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ILLINOIS

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Comptroller

ATTEST:

ATTEST:

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Secretary

APPROVED:

By \_\_\_\_\_  
Legal Counsel