

ORDINANCE NO. 8889-75

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
(STEAM TUNNEL AND PIPING PROJECT)

WHEREAS, it is desirable and in the best interests of the City of Urbana, Illinois (the "City"), to enter into an agreement with the Board of Trustees of the University of Illinois; and

WHEREAS, a written copy of such agreement, entitled "License Agreement Between the City of Urbana, Illinois and the Board of Trustees of the University of Illinois", (the "Agreement"), has been presented to and is now before this meeting.

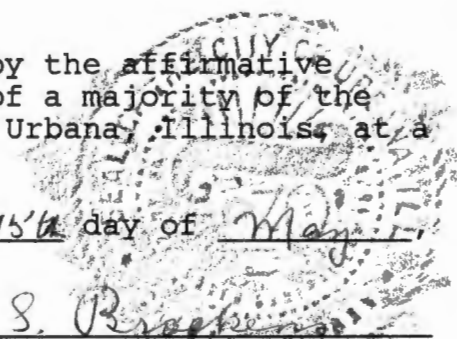
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, as follows:

Section 1. That the terms and provisions of the Agreement, in substantially the form thereof now before this meeting, be and the same are hereby approved.

Section 2. That the Mayor of the City be and the same is hereby authorized and empowered to execute and deliver the Agreement, and the City Clerk of the City be and the same is authorized and empowered to attest to such execution thereof, with such changes therein as are not inconsistent herewith and as may be approved by the officers of the City executing the same, their execution or acceptance thereof, as the case may be, to constitute conclusive evidence of such approval of any and all changes or revisions therein from the form of the Agreement now before this meeting.

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

PASSED by the City Council this 15th day of May,
1989.


Ruth S. Brookens
Ruth S. Brookens, City Clerk

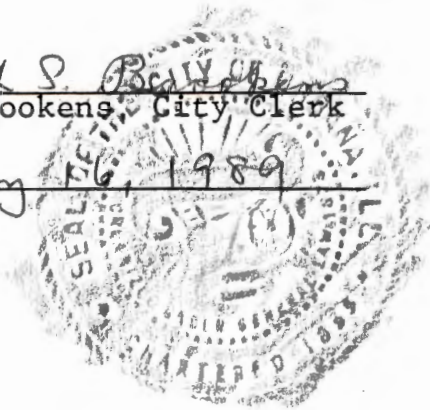
APPROVED by the Mayor this 16th day of May,
1989.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 8889-75 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens City Clerk

May 16, 1989
Date



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

RECITALS:

The State of Illinois Capital Development Board, for and on behalf of the University, proposes the construction of a project identified as "CDB - Project No. 830-010-145, Harker Hall to Engineering Research Laboratory Steam Line Replacement, University of Illinois, Urbana, Champaign County, Illinois," which is designed and proposed to be located on portions of the Mathews Avenue right-of-way along the west side of Mathews Avenue (west of the actual street) from the south side of Boneyard Creek running north to join into the new shallow tunnel between Western Avenue and Springfield Avenue (the "project").

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 the Project in, under, upon, along and across the Property owned or under the control of the City of Urbana, and at substantially the location as further identified in the Attachment hereto, which is hereby incorporated 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 Project, in good condition and repair and only for so long as the University shall continue to use the Project, and the same shall immediately lapse and terminate upon cessation of such use. 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 Project 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 Project or, upon the concurrence of the City, the Project may be abandoned by the University. If the Project is 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 Project.

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 commencing any construction work on the Project and prior to commencing all subsequent repairs or excavations 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. The Project laid in, under, upon, over, along, or across Public Property shall be laid in a workmanlike manner. The line 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 portion of the Project 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 them to the grade as approved. If the University fails to lay the Project to the approved grade, the University shall, if required by the City, relocate the Project and shall pay the entire cost of such relocation.

(iii) Interference with Traffic. The University shall cause the conduct of 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 completing any construction, repair or excavation work in the Public Property, shall cause the surface to be left 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 calendar (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 calendar (5) days if such repair or restoration cannot reasonably be completed within five calendar (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) DAMAGE TO TREES. The University acknowledges that two trees located on Public Property may be subject to temporary or permanent damage as a result of the location and nature of the Project and the construction of the Project heretofore undertaken. 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 judgment 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 this Agreement. 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. Any determination made by the Arborist pursuant to this section shall not be arbitrary or capricious.

(c) FAILURE TO COMPLY; REMEDY. If the University or contractors engaged by the University or the Capital Development Board 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 or cause to be maintained 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 the Project, 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 line.

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 Project of the University.

(b) In the event that the governing body of the City subsequently authorizes abutting landowners to occupy space under the surface of the 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) The University shall adjust to grade as required, all appurtenances related to the Project at the time any street rehabilitation, repair or reconstruction is made by or on behalf of the City.

(b) 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 Project 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) Subject to the availability of funds which may be lawfully applied thereto, the University agrees at its sole cost and expense to protect, indemnify, hold and save harmless and defend the City, its officers and employees, against any and all losses, claims, demands, costs, causes, expenses and fees, including reasonable attorneys fees and the reasonable value of any services rendered by any employee of the City, incurred by reason of any suit or any other claim or demand for injury or damages arising in favor of any person, including the University or any contractors, agents or employees of the University, on account of or in connection with any breach or other violation by the University of any of the obligations or other terms and conditions imposed upon or assumed by the University pursuant to this Agreement or by reason of or in connection with any loss, injury, personal injury or death, or damage to property, including the Project, occurring, growing out of, incident to, or resulting directly or indirectly from the rights granted to the University under this Agreement, whether or not such loss, damage, injury or liability is contributed to by the condition of the Public Ways or other property, improvement of facilities thereon, whether latent or patent, or from any other cause whatsoever, except the sole negligence or willfull and wanton conduct of the City or any of its officers, employees, agents or contractors. The City shall provide written notice of any claim or suit against the City pertaining to the license granted by the Agreement, and shall provide such other information and cooperation in accordance with the terms of the liability self-insurance plan of the University.

(b) The University hereby represents and covenants that it may lawfully provide insurance coverage to the City in connection with the obligations of the University as set forth in subsection (a) of this

section above without such obligations being subject to the availability of funds which may be lawfully applied thereto. The University accordingly agrees to provide to the City, upon execution of this Agreement, a certificate of such coverage under the liability self-insurance plan of the University dated March 21, 1985, insuring the City as a "Contracting Party" with coverage having a maximum limitation of \$1,000,000.00. If such liability self-insurance plan shall ever be modified or replaced by the University, the University agrees to provide to the City, at its own expense, coverage under any such modified or replaced plan as is equivalent to that provided in such existing liability self-insurance plan.

(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.

SECTION 11. LICENSE FEE.

The University shall pay no fee to the City.

SECTION 12. AUTHORIZED UNIVERSITY REPRESENTATIVE.

The University designates the Director of the Operation and Maintenance Division of the Urbana-Champaign Campus 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 this Agreement. Wherever under the provisions of this Agreement, 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 Authorized University Representative.

SECTION 13. 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 calendar (14) days after receipt of such notice.

(c) If the University fails to respond in writing as set forth in subsection 13(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 calendar (28) days of notification by the City Engineer.

SECTION 14. 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 Agreement and/or any damages caused by the University's noncompliance with any term or provision of this Agreement. 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 15 hereof, in violation of this Agreement and continues in noncompliance after notification in accordance with Section 13 of this Agreement, the City may terminate this Agreement forthwith.

SECTION 15. AVAILABILITY OF FUNDS, CONSTITUTIONAL AND STATUTORY LIMITATIONS AND REPRESENTATIONS

(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.

(d) Each of the parties hereby, as applicable to each, hereby represents and covenants that each has the power and authority to enter into this Agreement, has duly authorized the execution and delivery of this Agreement, and that neither this Agreement nor anything herein contained contravenes or constitutes a default under any other agreement, instrument or indenture or any other requirement of law as the same respectively concern each such party.

SECTION 16. 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 17. 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 the Project installed without reserving such rights as necessary to comply with the terms of this agreement.

SECTION 18. 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 Henry Administration Building
506 South Wright Street
Urbana, Illinois 61801

Provided, however, that in the case of any 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 _____, 1989.

CITY OF URBANA

By _____
Mayor

ATTEST:

By _____
City Clerk

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS

By _____
Comptroller

ATTEST:

Secretary

APPROVED:

By _____
Legal Counsel

HARKER HALL STEAM LINE EXTENSION

