

ORDINANCE NO. 1999-04-021

AN ORDINANCE APPROVING A PERMANENT LICENSE AGREEMENT WITH
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS FOR THE
INSTALLATION OF UTILITIES ALONG MATHEWS AVENUE
(Chilled Water Lines)

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

Section 1. That a Permanent License Agreement Between the City of Urbana, Illinois and the Board of Trustees of the University of Illinois for the Installation of Utilities Along Mathews Avenue, in the form of a copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is 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 and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 3rd day of May, 1999


AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman

NAYS:

ABSTAINED:


Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 5th day of May, 1999


Tod Satterthwaite, Mayor

**PERMANENT LICENSE AGREEMENT BETWEEN
THE CITY OF URBANA, ILLINOIS AND
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS
FOR THE INSTALLATION OF UTILITIES ALONG MATHEWS AVENUE**

This Agreement by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, a body politic and corporate of the State of Illinois (hereinafter "University"), made and entered into in consideration of the mutual promises contained in this Agreement, and in a spirit of cooperation and goodwill pursuant to the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., which authorizes public agencies to cooperate in the performance of their powers, privileges, and authority by contract: WITNESSETH:

PROJECT SCOPE

In connection with the construction of utilities, including a chilled water system, process water line, electric conduit, telecommunications conduit and compressed air line to serve University facilities, the University of Illinois seeks a license for the following work (the "Project"): a non-exclusive permanent license for: a chilled water line, a chilled water return line, a process water line, a compressed air line, an electric conduit and a telecommunications conduit in the Mathews Avenue right-of-way from approximately 30 feet south of Clark Street to the northwest corner of Green Street, at which point the lines will head west along Green Street along University property, all as illustrated in the attached exhibit marked "EXHIBIT A" attached hereto and incorporated by reference, being plans for The North Campus Chilled Water Distribution System, dated February 11, 1999, prepared by GLHN Architects & Engineers, Inc. The City of Urbana and the University of Illinois acknowledge that the Project is being constructed by the University for the use of the University under plans approved by both the City and the University. References herein to University responsibilities shall be construed to apply to University responsibilities before, during and after the Project has been initially constructed.

Article 1. DEFINITIONS

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

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

(c) "University" shall mean The Board of Trustees of the University of Illinois, together with its subsidiary corporations and entities and their respective successors.

(d) "Utilities" shall be defined as all cables, fibers, conduit, pipe, ducts, tunnels, and other structures for the provision, transmission or conveyance of services such as electricity, communication signals, water, steam, compressed air, steam condensate, chilled water, chilled water return, gas, storm water and sanitary sewage, and all structures appurtenant thereto including manholes, handholes, nodes, vents, surface inlets, valves, valve boxes, lift stations, transformers and other structures and devices directly related to the provision, transmission or conveyance of the aforementioned services.

Article 2. BASIC LICENSE AGREEMENT

(a) License. The City of Urbana, Illinois ("City"), hereby grants to the Board of Trustees of the University of Illinois ("University") a nonexclusive permanent license to construct, maintain, inspect, protect, repair, operate, replace, retain, and use the Project in, under, upon, along, and across the Public Property owned by or under the control of the City subject to the rights of any public utility or other person or entity currently having rights, licenses, or easements in and about the Public Property or existing on the Public Property.

(b) License Term. This nonexclusive license shall extend for such period as the University continues to use and maintain the Project in good repair and use the Project for the express intended purposes, but shall lapse and terminate upon cessation of such use or as otherwise provided in this Agreement. In the event of such termination the University shall either remove the Project or, upon concurrence of the City, the Project may be abandoned by the University. If the Project is removed, the removal shall be at the 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.

(c) License Subordinate. 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 for purposes normally associated with public right-of-way; accordingly, if necessary to accommodate repair or construction of City utilities or improvements to the right-of-way, the University shall, at its sole cost, be obligated to relocate any portion of the Project installed in the public right-of-way, pursuant to this Agreement, if directed to do so by the City Engineer.

(d) Nonexclusive License. This nonexclusive license shall apply to the Project as defined in this Agreement.

Article 3. INFORMATION REQUIREMENTS

The University shall cooperate with regard to proposed actions that may reasonably be expected to affect the property, operations, or facilities of the City. The University will provide information to the City for review and comment as to proposed plans for construction or development. Such information shall be provided to the City within sufficient time such that the City may provide meaningful comment prior to the time of implementation.

Article 4. CONSTRUCTION AND MAINTENANCE ON PUBLIC PROPERTY

(a) Permits, Construction and Costs.

- 1) 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 as soon as practicable but in any event not longer than three business days of the commencement of emergency construction, repair or excavation in the Public Property and for all subsequent repairs and emergency construction the University hereby agrees to give notification to the City. 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 reasonable 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.

2) Construction.

- (a) General. The Project laid in, under, upon, over, along, or across Public Property shall be laid in a workmanlike manner. The 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 to the satisfaction of the City Engineer, in accordance with usual City practices and standards.
- (b) 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 or any lawful use of the right-of-way, and shall abide by the scheduling directions, if any, given by the City Engineer.

(b) Submission of Plans: Plans and Specifications. Prior to the commencement of the Project, the University shall submit complete plans and specifications to the City for timely review. Such plans shall include a traffic control plan if traffic will be impacted temporarily, and shall comply

with generally accepted engineering practice. The University shall use as guidelines the following documents: the Standard Specifications for Road and Bridge Construction, Standard Specifications for Traffic Control Items, Standard Specifications for Water and Sewer Main Construction in Illinois, statutes and ordinances of general applicability to such work in effect within the City, and UIUC Building Standards of Construction for New Construction and Remodeling on Campus, as amended from time to time.

(c) Approval of Plans. The approval of such plans shall not be denied unless written notice of the reasons are provided to the University and shall not be unreasonably denied. The review may be based on reasonable requirements with respect to scheduling, traffic control, or construction means, methods, or materials as the City Engineer may require in accordance with usual City practices and standards.

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

(e) Notice of Construction. The University shall notify the City of the planned date of construction and shall commence such construction in as timely a manner as practicable.

(f) Quality of Work: Damage to Others Property. The Project constructed in, under, over, adjacent to or upon Public Property shall be constructed in a workmanlike manner. The Project shall be so located, relocated, maintained, and operated so as to not injure or interfere with the Public Property, any equipment or other improvements of other utilities, or the property of another. Should the Public Property, any equipment or other improvements of other utilities, or the property of another be injured by such location, relocation, maintenance, or operation, the University shall repair or cause repair to the Public Property or other property damaged.

(g) Scheduling. The University shall conduct its construction, reconstruction, repair and maintenance work involving the property of the City in such a manner so as to minimize the interference with pedestrians and traffic caused by such work.

(h) Restoration of Site. 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 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 or seed as the City shall approve. 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 ten (10) business 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 was disturbed by the University. The University shall keep all structures and equipment which it shall construct in the Public Property in reasonably safe condition at all times.

(i) Parking Revenue. The University agrees to reimburse the City for each of the City's metered parking spaces(s) taken out of service temporarily for the period of construction at an amount of \$5 per day for any day the metered space is out of service.

(j) Failure to Comply: Remedy. If the University or contractors engaged by the University fails to comply with the provisions of subsection (h) of this section, the City may 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 at the University's expense.

(k) 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 shall use as guidelines: 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 in accordance with the City's usual practices.

(l) Physical Inspection. The University shall permit the inspection of the Project to determine compliance with law or the provisions of this Agreement. Except in case of an emergency, any such inspection shall be conducted during normal business hours, with the verbal concurrence by the appropriate construction representative of the University. Any such inspection shall be conducted through any person acting under the direct supervision and responsibility of a professional engineer, or other qualified professional.

(m) As-Built Drawings. The University shall furnish to the City, as-built drawings of the Project as constructed on the Public Property in accordance with this Agreement.

(n) Adjustment of Grade. The University shall adjust to the proper elevation all appurtenances related to the Project at any time any street rehabilitation, repair or reconstruction is made or on behalf of the City.

(o) Damage to Trees. It is acknowledged that trees located on Public Property may be subject to temporary or permanent damage as a result of the location and nature of a project. The University accordingly agrees to reimburse the City for any and all reasonable costs or expenses that it 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 jointly determined by the Arborist or other designated Agent of the City (The "Arborist") and the Supervisor of Grounds or other designated agent of the University 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 Parties further agree that in the event any such affected tree or trees is jointly determined by the Arborist and Supervisor of Grounds 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 determined by the University Supervisor of Grounds or the Arborist. Any determination made by the Arborist or Supervisor of Grounds pursuant to this section shall not be arbitrary or capricious. The University may replace such tree or trees rather than reimbursing the City for any and all reasonable costs or expenses the City may incur in connection with the removal of such affected tree or trees.

The University and the City agree to replace each tree greater than 5" in diameter with a new caliper tree of greater to or equal to 4" in diameter. The University will replace the trees rather than reimbursing the City for any and all reasonable costs or expenses the City may incur in connection with the removal of such affected tree or trees.

(p) Liability and Indemnification.

(1) To the extent permitted by law, the University agrees 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 attorney's 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 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 willful 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 to the University 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.

(2) The University hereby represents and covenants that it may lawfully provide insurance coverage to the City in connection with the obligations as set forth in subsection (1) of this section 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 July 1, 1992, 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.

(3) 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 a certification of insurance, naming the other City as an additional insured, shall be furnished to the City by any such contractor.

Article 5. WORK BY CITY OR ABUTTING OWNERS

- (a) Reservation/Non-Exclusive Rights. The City reserves the right to lay, and permit to be laid, Utilities, 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 bodies 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 nor negligently occasioned; provided, however, nothing herein shall relieve any other person or corporation from liability for damage to the Project of the University. Prior to commencement of work permitted by this Section, the City shall provide notice to the University, including the details of the proposed work, and give the University an opportunity to respond, in order to avoid damages to the Project in the proposed work area.
- (b) Abutting Owners. In the event that the governing body of the City authorizes abutting landowners to occupy space under the surface of its Public Property, such grant to the abutting landowner shall be subject to the rights herein granted to the University.

Article 6. LICENSE FEE

The University shall pay no fee to the City for the license herein granted.

Article 7. AUTHORIZED UNIVERSITY REPRESENTATIVE

The University designates the Chief Facilities Officer to act on behalf of the University as the designated Authorized University Representative in connection with all duties and obligations of the University pursuant to this Agreement. Whenever under the provisions of this Agreement, the University is required to take some action at the request of the City, such request shall be provided by the City to the authorized representative.

Article 8. VIOLATION OF AGREEMENT

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's 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, in violation of this Agreement and continues in noncompliance after notification in accordance with Article 9 of this Agreement, the City may terminate this Agreement immediately.

Article 9. NOTIFICATION OF VIOLATION

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 15 business days after receipt of such notice.

Article 10. 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 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, 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 contained herein 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.

(e) Sovereign Immunity. The University has voluntarily entered into this Agreement. The University, as an instrumentality of the State of Illinois, maintains its position that it has sovereign immunity and is not subject to the jurisdiction of the Circuit Court or to the City's processes, rules, regulations, and ordinances. The City disputes the University's assertion of sovereign immunity. This Agreement shall not be deemed nor construed as a waiver by either Party of its position on the issues of sovereign immunity and jurisdiction.

Article 11. 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.

Article 12. 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.

Article 13. 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.

Mayor
City of Urbana
400 South Vine
Urbana, IL 61801

The Board of Trustees of the
University of Illinois
354 Henry Administration Building
506 South Wright Street
Urbana, IL 61801

AND

Chief Facilities Officer
University of Illinois
807 S. Wright Street, Suite 300
Champaign, Illinois 61820

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.

Article 14. AMENDMENT

This Agreement shall be subject to amendment by the mutual written agreement of the Parties. Any article or separate agreement incorporated herein by reference that contains a provision providing for termination of the provisions of such article or separate agreement may be terminated in accordance with the terms of such provisions.

In witness to their Agreement, the Parties have executed this document
this 3rd day of May, 1999.

CITY OF URBANA

By: Tal Satterthwaite
Mayor

ATTEST:

By: Shirley D. Clark
City Clerk



By: Jack Wasker
Legal Counsel

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS

By: Craig Bazzani
Comptroller

ATTEST:

By: Michele M. Thompson
Secretary, Board of Trustees

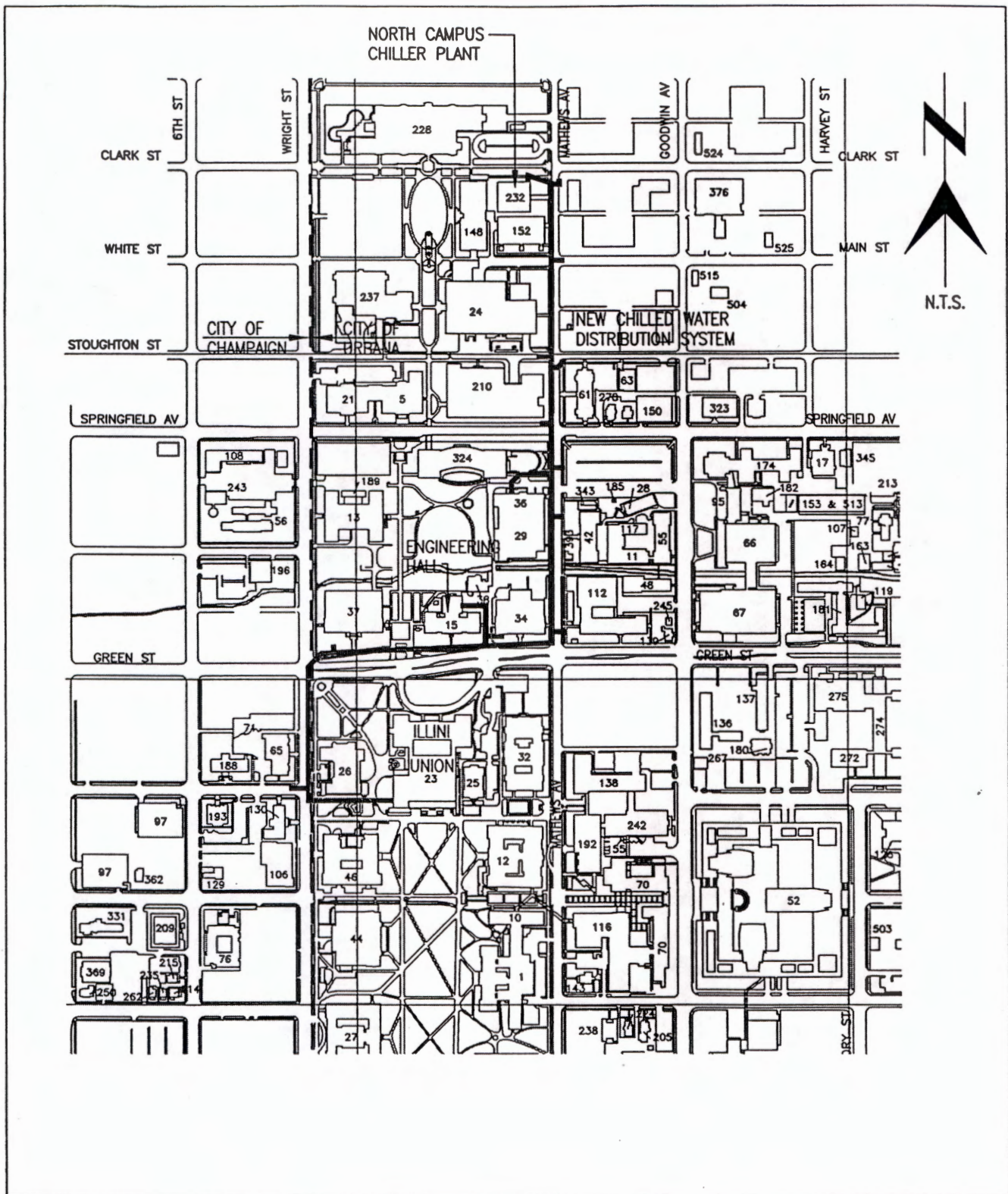
By: Charles C. Colbert
Vice Chancellor for Administrative
Affairs and Human Resources

By: John R. [Signature]
Chief Facilities Officer

Approved as to form:

By: Margaret J. [Signature]
Legal Counsel

EXHIBIT A



UNIVERSITY OF ILLINOIS AT URBANA - CHAMPAIGN NORTH CAMPUS CHILLED WATER DISTRIBUTION SYSTEM