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CHAMPAIGN COUNTY
RECORDER

BARBARA A. FRASCA
REC FEE: 28.00

RHSPS Fee:

REV FEE:

PAGES 7

PIAT ACT: 0

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Recording Cover Sheet

ORDINANCE NO. 2001-06-062

"AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR USE OF RIGHT-OF-WAY (LIERMAN AVENUE BETWEEN UNIVERSITY AVENUE AND BUTZOW DRIVE)"

(COPY OF AGREEMENT ATTACHED)

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

6

Return to:

Phyllis D. Clark, City Clerk
City of Urbana
400 S. Vine Street
Urbana, IL 61801

ORDINANCE NO. 2001-06-062

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
AN AGREEMENT FOR USE OF RIGHT-OF-WAY**

(Lierman Avenue Between University Avenue and Butzow Drive)

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

Section 1. That the Agreement for Use of Right-of-Way (Lierman Avenue
Between University Avenue and Butzow Drive) between the City of Urbana and
the Flex-N-Gate Corporation, 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 2nd day of July,
2001.

AYES: Chynoweth, Hayes, Huth, Otto, Patt, Whelan

NAYS:

ABSTAINS:

APPROVED by the Mayor this 16th day of July,
2001.


Phyllis D. Clark
Phyllis D. Clark, City Clerk
Robert J. Satterthwaite
Robert J. Satterthwaite, Deputy Clerk
Tod Satterthwaite
Tod Satterthwaite, Mayor

FILED

JAN 29 2010

Mark Sheldon
CHIAMPAIN COUNTY CLERK

AGREEMENT FOR USE OF RIGHT-OF-WAY

[Lierman Avenue Between University Avenue and Butzow Drive]

THIS AGREEMENT, made and entered into this 16th day of July, 2001, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Flex-N-Gate Corporation (hereinafter "Corporation"),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Corporation do mutually covenant and agree as follows:

A. Lierman Avenue is a 60-foot dedicated right-of-way between the north right-of-way of University Avenue and the south right-of-way of Butzow Drive.

B. The Corporation is herein granted by the City a limited right to bury a fiber optic cable under such right-of-way. This limited right is wholly dependent upon the Corporation, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Corporation expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Corporation, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Corporation of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way.

C. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation and maintenance of a fiber optic cable, which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director"), this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

D. When so instructed by the Director, the Corporation will cause the fiber optic cable to be removed, as nearly as possible in conformance with the Director's request, within thirty {30} days after receipt of written notice from the Director. The Corporation is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration in-kind of the right-of-way.

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
[Between the City of Urbana and Flex-N-Gate Corporation]

E. In the event of an emergency, defined as imminent peril to person or property, or when the Corporation has inadequately complied with an order of the Director pursuant to Paragraph (D) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (D) impracticable under the circumstances present, the Corporation consents and agrees that the City or its duly authorized agent may remove the fiber optic cable, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Corporation. Should the Corporation fail in any way to make timely payment to the City for such costs and expenses, the Corporation agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

F. The Corporation agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the installation of the fiber optic cable, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Corporation shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

G. The Corporation acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the fiber optic cable.

H. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

* * *

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
[Between the City of Urbana and Flex-N-Gate Corporation]

CITY OF URBANA, ILLINOIS

By: Tod Satterthwaite
Tod Satterthwaite, Mayor

ATTEST:

Phyllis D. Clark
Phyllis Clark, City Clerk
by Robert J. Robert
Deputy Clerk

FLEX-N-GATE CORPORATION

By: Roger X. McAuliffe V.P. Finance & CFO
President

ATTEST:

Sam W. Gove III
Secretary

Prepared by and please return recorded copy to:

Jack Waaler, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801

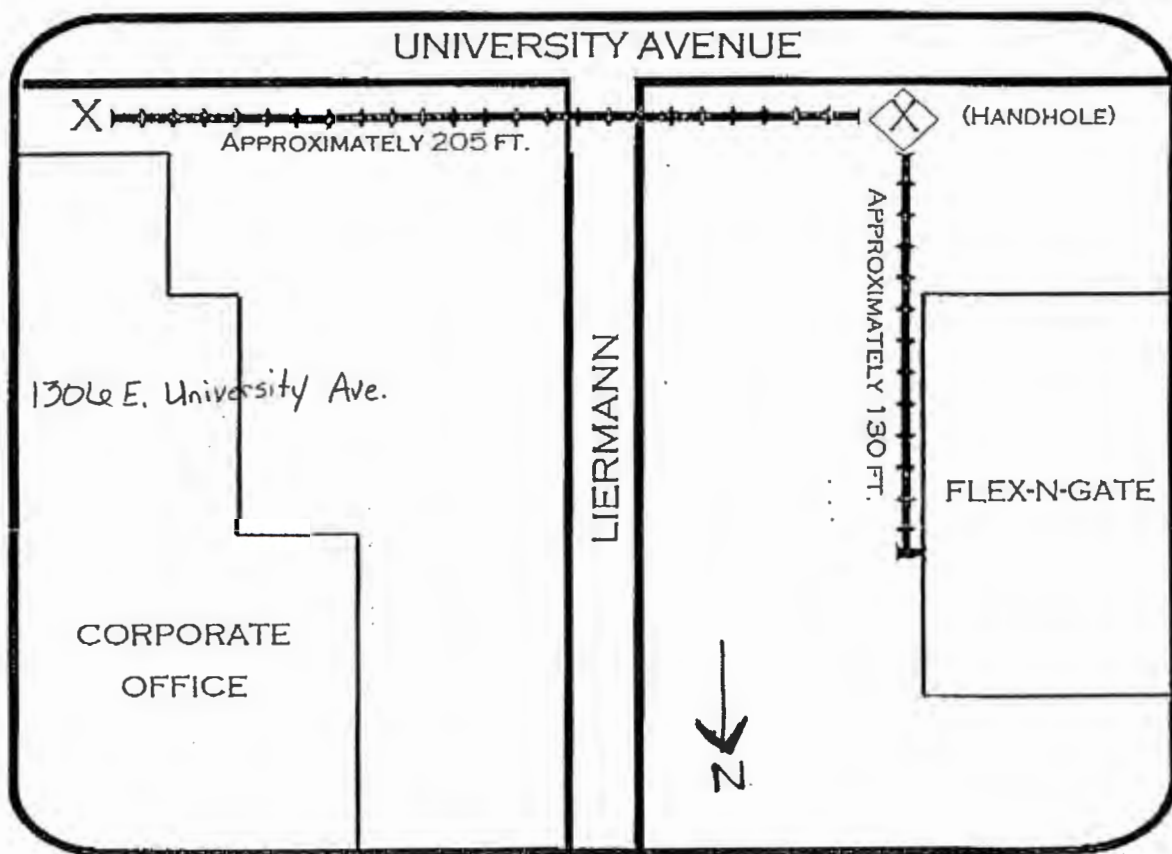
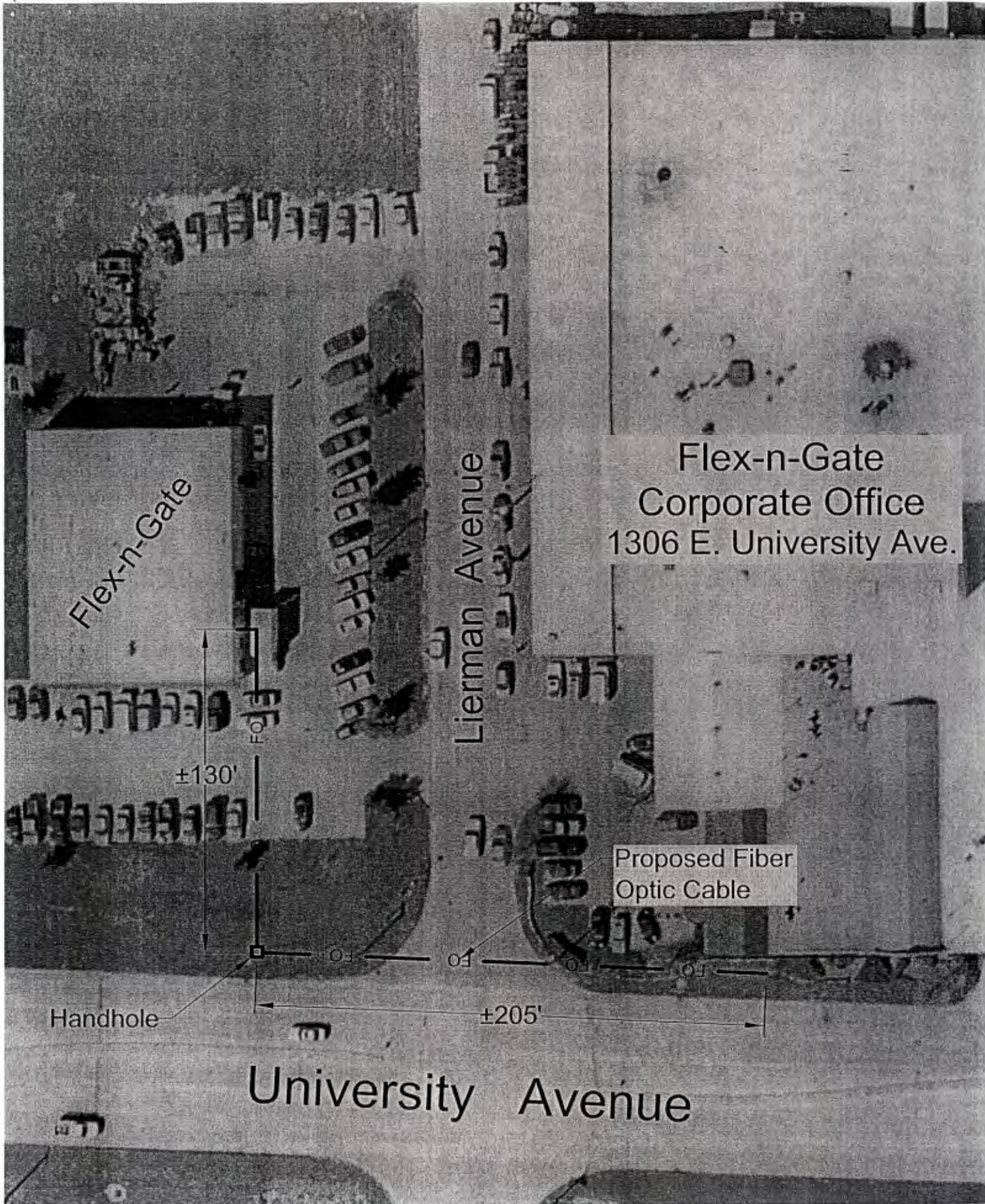


EXHIBIT A



Flex-n-Gate
Corporate Office
1306 E. University Ave.

Flex-n-Gate

Lierman Avenue

University Avenue

±130'

±205'

Proposed Fiber
Optic Cable

Handhole

FO

FO

FO

FO

FO

Proposed Fiber Optic Cable
Flex-n-Gate



City of Urbana
Public Works Department
Engineering Division

Date: 06/19/01 Drawn by: BWF

