

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF AN AGREEMENT WITH THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF ILLINOIS**

**(Installation of Certain Utilities Along Goodwin Avenue, Nevada Street,
Mathews Avenue, Maryland Drive, and Oregon Street)**

NOW, THEREFORE, 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 Certain University Utilities Along Goodwin Avenue, Nevada
Street, Mathews Avenue, Maryland Drive, and Oregon Street, in the form of the
copy of said Agreement attached hereto and hereby incorporated by reference,
be and the same is hereby authorized and approved.

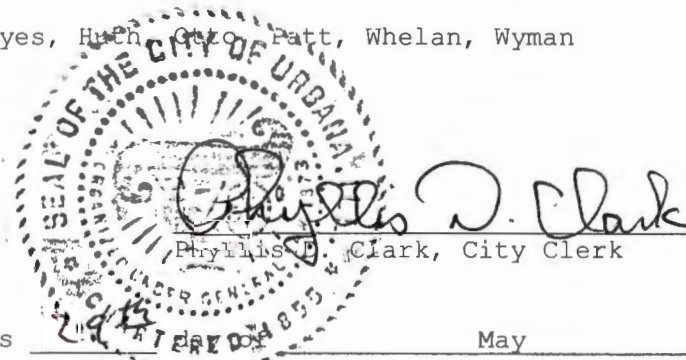
Section 2. That the Mayor of the City of Urbana, Illinois, be and the
same is hereby authorized to execute and deliver and the City Clerk of the
City of Urbana, Illinois, be and the same is authorized to attest to said
execution of said Agreement as so authorized and approved for and on behalf
of the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

PASSED by the City Council this 20th day of May,
2002 .

AYES: Chynoweth, Hayes, Hutch, ~~Orzo~~, Patt, Whelan, Wyman

NAYS:

ABSTAINS:



Phyllis D. Clark
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 20th day of May,
2002 .

Tod Satterthwaite
Tod Satterthwaite, Mayor

This document prepared by
and after recording return to:

UNIVERSITY OF ILLINOIS
258 Henry Administration Building
506 South Wright Street
Urbana, Illinois 61801
Attn: Steven Veazie

Permanent Index
Numbers: See Exhibit 1

**PERMANENT LICENSE AGREEMENT BETWEEN
THE CITY OF URBANA, ILLINOIS AND
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS
FOR THE INSTALLATION OF CERTAIN UNIVERSITY UTILITIES
ALONG GOODWIN AVENUE, NEVADA STREET, MATHEWS AVENUE,
OREGON STREET AND MARYLAND DRIVE**

This Agreement (“Agreement”) by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter “City”), and the THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, a body politic and corporate of the State of Illinois (hereinafter “University”; City and University collectively the “Parties”), 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 the following utilities, the locations of which are depicted on Exhibit 2: a chilled water line and chilled water return line for a Chilled Water System, a potable water line for potable water service, a telecommunications and electrical conduit and compressed air line to service University facilities (the “Project”) a steam tunnel with pipe for steam service and an electrical duct bank and wire installation, the University seeks a non-exclusive permanent license in the License Area as illustrated on Exhibit 1. The City and the University 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 within the License Area.
- 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 including, but not limited to: electricity, communication signals, water, steam, compressed air, steam condensate, chilled water, chilled water return, gas, storm water and sanitary sewerage, 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. The broad definition of utilities is not intended to increase the limitations set forth in the “Project Scope”.

Article 2. BASIC LICENSE AGREEMENT

- a) License. The City hereby grants to the University a nonexclusive permanent license to construct, maintain, inspect, protect, repair, operate, replace, retain, and use that portion of the public right-of-way (or other public property owned by or under the control of the City) as specified herein for those purposes set forth in the “Project Scope”, 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 (the “Term”) as the University continues to use and maintain the Project or any part thereof in good repair and use the Project for the express intended purposes, but shall lapse and terminate upon a default by the University under this Agreement, after written notice from the City specifying the default, and failure of the University to cure the default within a reasonable period of time, 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 any part thereof or the Project, or any part thereof, may be abandoned by the University upon concurrence of the City. If the Project or any part thereof is removed, the removal shall be at the University’s sole cost and expense and shall be done in a timely manner and substantially in accordance with the City’s request for such removal. Upon any such removal or abandonment, the University shall restore

the Public Property to substantially the condition it was immediately after the completion 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 and Public'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, as 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 in writing to do so by the City Engineer, or, as otherwise agreed to by the City and the University. For example, if it would be less expensive for the University to pay increased incremental costs of the City to locate City utilities in a different location, the City and the University shall consider such alternatives in good faith. This agreement does not affect the City's right to vacate the street right-of-way affected by the license except that if said vacation is not to the University, the University's rights hereunder shall be preserved and made superior.
- d) Nonexclusive License. This nonexclusive license shall apply to the License Area 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 Public Property, the 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 of the Project. 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.

Whenever this agreement provides that the City may request the University to perform some act or actions, although the City retains the absolute right to control its public property, if the University disputes the reasonableness of the request then, at the request of the Chancellor of the University, the Chief Administrative Officer, or designee, shall meet with the Chancellor, or designee, in an effort to resolve the matter.

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 ("Permits") prior to commencing any construction work on the Project and prior to commencing all subsequent repairs or excavations in the Public Property or soon as practicable after the commencement of repairs, but in any event not longer than three business days after the commencement of emergency construction, repair or excavation in the Public Property. For all

repairs and emergency construction the University hereby agrees to give notification to the City. The University shall not be charged any fee required by the City's codes and ordinances for the Permits, whether for construction or subsequent repairs, but the permits may include such reasonable additional requirements for scheduling, directions, traffic control and any other matters relating to the same, as the City, in its discretion, may from time to time require.

2) Construction.

- a) General. The Project shall be constructed in a workmanlike manner. The lines shall be so located, relocated, maintained and installed so as to not unduly injure the Public Property of the City, any equipment or other improvements of other utilities, or property of another, but should the 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, substantially in accordance with usual City practices and standards in effect at the time of such injury.
 - 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 reasonably 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, requested 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 include a traffic control plan if traffic will be impacted temporarily, and shall substantially comply with generally accepted engineering practice. The University shall use as guidelines the following documents: the Illinois Department of Transportation 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 Facility 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. The plans shall be deemed to be approved unless the City delivers a written notice of disapproval within forty-five (45) days after receipt of the plans.
- (d) Approval of Utility and Pavement Grades. Prior to installing the Project, in, under, over, along, across or upon Public Property, the University shall obtain the approval of the utility and pavement grades from the City and shall install the Project to the grades substantially as reviewed. If the University fails to lay a utility or pavement substantially to the approved grade, the University shall, if required by the City, remove and relocate the Project or any part thereof 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 substantially in accordance with the plans approved by the City. The Project shall be so relocated, maintained, and operated so as to not unduly 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 relocation, maintenance, or operation, the University shall repair or cause repair to the Public Property or other property damaged provided that such damage is caused by the negligent or intentional actions of the University and/or its agents or employees.
- (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. Closing of any segments of any City streets or alleys shall strictly follow the schedule in the approved construction plans to the extent that weather or other elements outside of the University or contractors' control allows. Failure to adhere to said schedule will result in a new contractor being employed or such other action as the University deems appropriate to complete the work.
- (h) Restoration of Site. The University, upon completion of construction, repair, or excavation in the Public Property, shall repair the surface to a neatly graded condition. All Public Property disturbed by the University shall, to the extent practicable, be expeditiously restored to a condition substantially the same as before the University disturbed it. Vegetation disturbed by construction, repair, or

excavation shall be replaced, to the extent practicable, 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 as provided above. The University shall keep all structures which it shall construct and equipment on the Public Property in 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 \$7 per day for any day the metered space is out of service. The reimbursement shall be for only those days the meters are in effect.
- (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 after written notice and expiration of the cure period provided in (h) above, the City may, repair or restore or cause to be repaired or restored, the Public Property or improvement as provided above, 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~~ Manual of Uniform 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 by the City 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. Within 60 days following completion of the Project, 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 the Project. The University accordingly agrees to reimburse the City for any and all costs or expenses that it may incur in connection with the repair 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 City 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 City 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 reasonably and mutually determined by the University Supervisor of Grounds and the City Arborist. Any determination made by the City Arborist and 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 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 if the condition of the Public Way is the sole cause of such loss or damage (which condition has not been caused by the University), and 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 the City, at the University's 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 City as an additional insured, shall be furnished to the City by any such contractor.

(q) The University agrees to make its best efforts to maintain contractors on the Project and to work toward its timely completion, barring inclement weather or other situations beyond the University's control.

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 or its contractors or subcontractors, except for damages that arise out of performance by the City or its contractors or subcontractors that willfully or negligently damage any portion of the Project; 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 REPRESENTATION

The University designates the Vice Chancellor for Administrative Affairs and Human Resources or his/her designee 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 shall provide written notice thereof to the University and the University shall have a reasonable period of time to commence and diligently cure the default. If the University fails to cure the default, 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, excluding consequential damages. 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; provided that the University shall have a reasonable time to commence and diligently cure the default if a cure cannot reasonably be completed within the 15 business day period.

Article 10. AVAILABILTY 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 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 NOTICES

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 the License Area without written notice to the University and 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 Street
Urbana, IL 61801

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

AND

Vice Chancellor for Administration and Human Resources
University of Illinois
517 Swanlund Administration Building
601 E. John Street
Champaign, IL 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 7th
day of August, 2002.

CITY OF URBANA

By: Tal Satterthwaite
Mayor

ATTEST:

By: Phyllis D. Clark
City Clerk

**THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS**

By: Stephen K. Dugan
Comptroller

ATTEST:

By: Michele M. Thompson 9/17/02
Secretary, Board of Trustees

By: Charles C. Albert
Vice Chancellor for Administration
and Human Resources

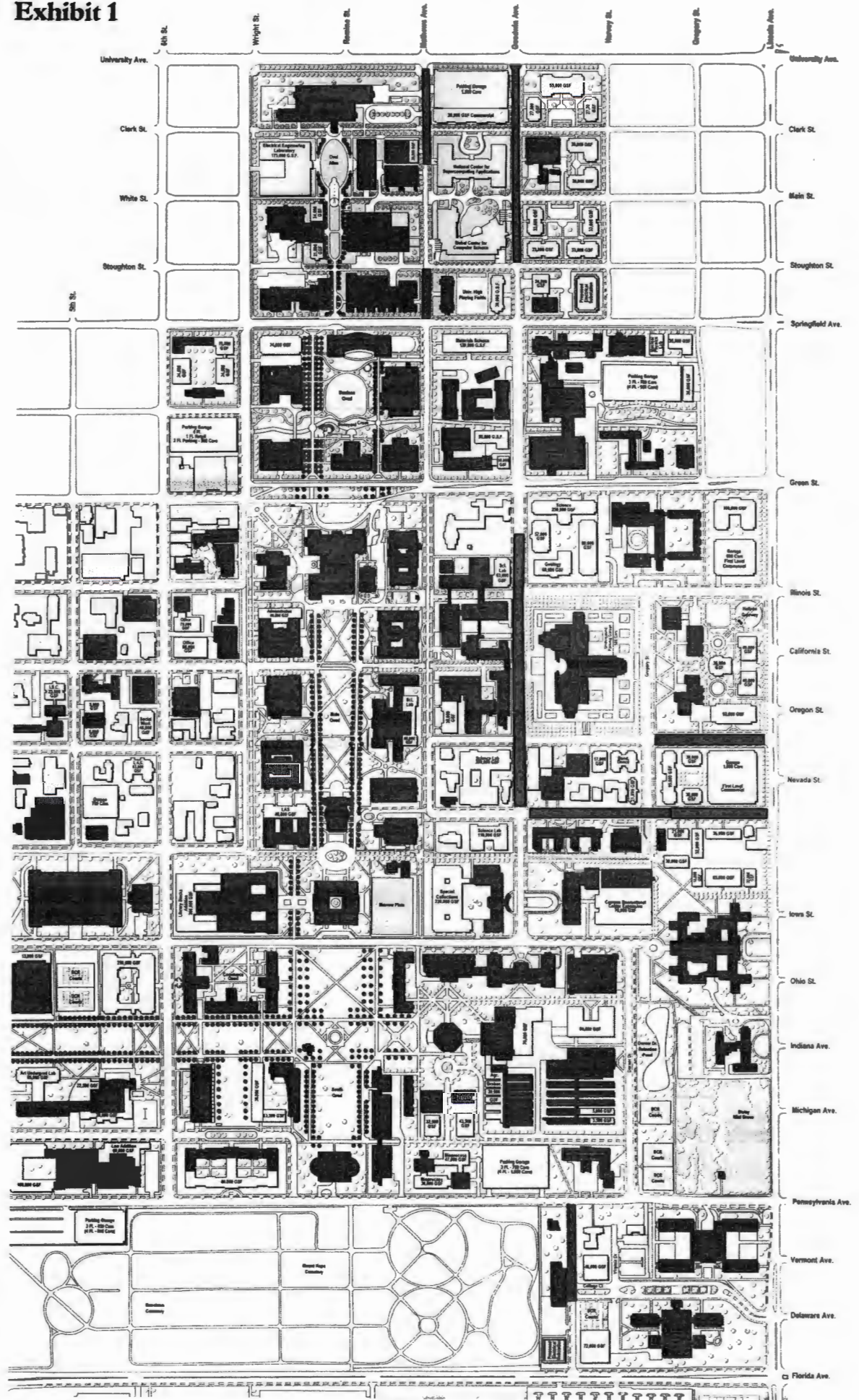
APPROVED:

By: Steffo
Legal Counsel
Assistant City Atty.

APPROVED (as to form):

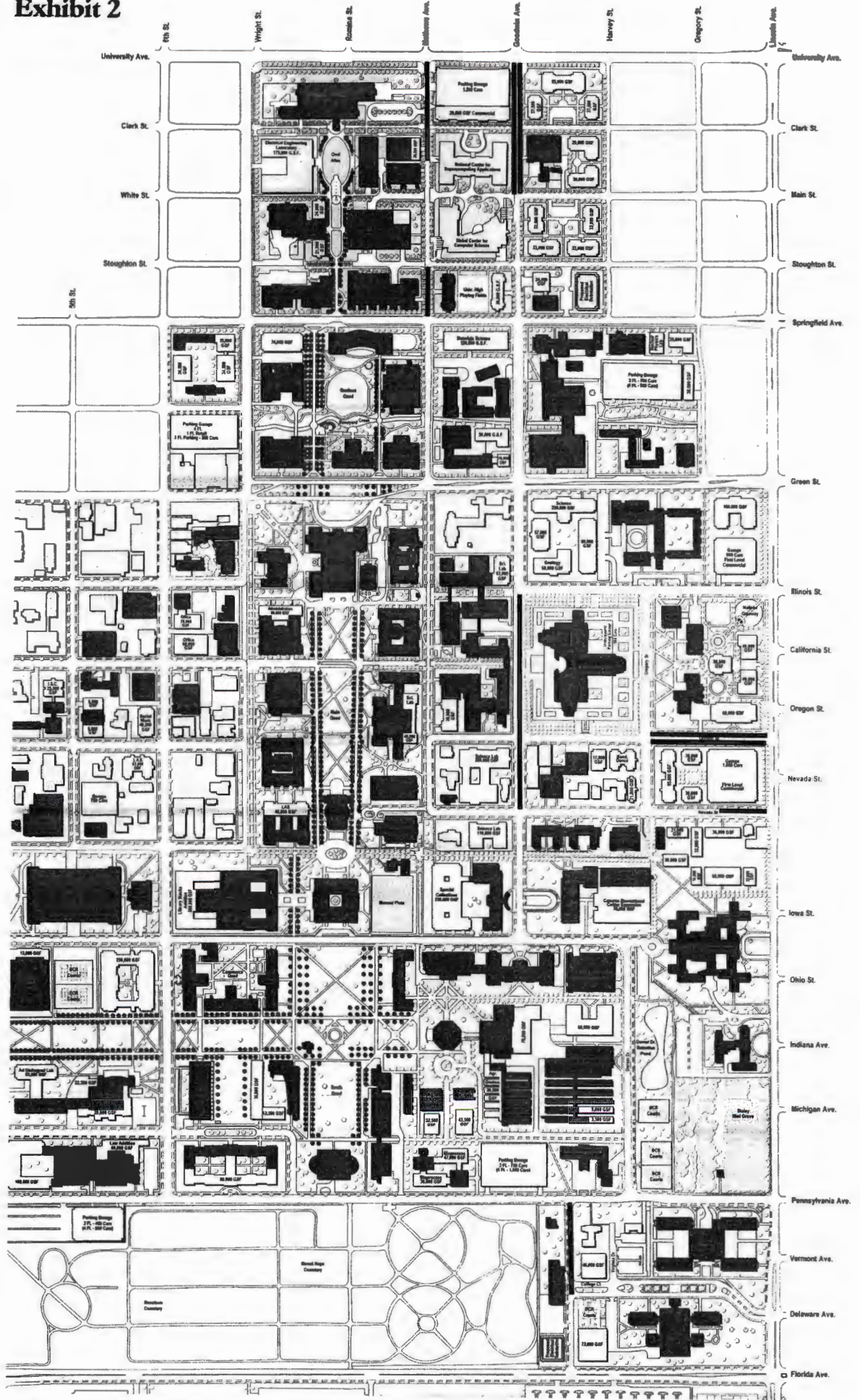
By: Margaret H. Lawler
Legal Counsel

Exhibit 1



License area subject to 5/02 agreement
 License area granted under previous agreement

Exhibit 2



New Chilled Water
 New Electricity
 New Telecommunications
 New Steam