

**URBANA CITY COUNCIL
MEETING OF COMMITTEE OF THE WHOLE
AGENDA
(Laura Huth, Chair)**

DATE: Monday, March 26, 2001

TIME: 7:30 P.M.

LOCATION: Urbana City Council Chambers
400 South Vine Street

AGENDA:

1. Call to Order and Roll Call
2. Additions to the Agenda and Staff Report
3. Minutes of the Previous Meeting
4. Public Input
5. Ordinance No. 2001-03-026: An Ordinance Approving an Application for Site Approval of a Regional Pollution Control Facility (Siting of the Central Waste Transfer and Recycling Facility)
6. Ordinance No. 2001-03-027: An Ordinance Approving and Authorizing an Amendment to An Intergovernmental Agreement With the County of Champaign, Illinois (Funding for Construction of Part of North Lincoln Avenue)
7. Ordinance No. 2001-03-028: An Ordinance Approving and Authorizing an Amendment to An Agreement With University Construction, A Division of MACC of Illinois, Inc.
8. Ordinance No. 2001-03-029: An Ordinance Authorizing the Mayor to Execute an Agreement for Use of Right-Of-Way (Northwest Corner of Race Street and Windsor Road)
9. Discussion: Capital Improvement Plan Update
10. Ordinance No. 2001-03-030: An Ordinance Approving and Authorizing the Execution of an Amended and Restated Boundary Development Area Agreement (Metrozone)
11. Ordinance No. 2001-03-031: An Ordinance Approving and Authorizing the Execution of An Agreement With Champaign County, Illinois (Champaign County Courthouse Construction)
12. Adjournment

APPROVED MINUTES WILL BE AVAILABLE ON THE
CITY'S WEB SITE APPROXIMATELY 7 DAYS FROM THE
DATE OF APPROVAL.



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ENVIRONMENTAL MANAGEMENT DIVISION

MEMORANDUM

TO: Bruce Walden, Chief Administrative Officer
FROM: Bill Gray, Public Works Director
Rod Fletcher, Environmental Manager
DATE: March 20, 2001
RE: Site Location Approval Request of a Transfer/Recycling Facility,
Allied Waste Transportation, Inc. d/b/a Central Waste Services

Action Requested

Review and consideration of the record of proceedings to determine if the applicant has satisfied both statutory and Urbana's siting criteria with regard to their request to seek site location approval of the proposed waste transfer and recycling facility; and subsequent adoption of a site location approval ordinance.

Background

Central Waste Services filed their Application request on November 1, 2000. A public hearing was held under the auspices of the hearing officer, Harold Jensen, on February 6, 2001. The written public comment period ended on March 8, 2001. All of the statutory and local requirements regarding notification and the public hearing have been met.

Attached is the transmittal of the record of proceedings of the public hearing submitted by the hearing officer to the City Clerk made in compliance with Urbana's siting ordinance. Also pursuant to this ordinance, by way of this memorandum and attachments, the City Clerk is transmitting a certified copy of the record of the public hearing proceedings to council members for consideration.

City Council will, with the attached transmittal of the record, have received a complete record of the proceedings as outlined below. All documents stated in the report of the hearing officer are attached in the order listed in the transmittal, except as noted.

- The 1122 page Application has previously been submitted to council members. (Item #1)
- Notice of filing Application is contained in Exhibit X in the Application. (Item #2)
- Proof of service of required notices is contained in Exhibit X in the Application. (Item #3)
- Host City agreement is contained in Exhibit K in the Application. (Item #5)

- Two video tapes of hearing are on file with the City Clerk.

[Due to the quantity of the documents in the transmittal, only the Mayor and Council members will receive a full set. Other interested persons may review the documents which are on file at the City Clerk's office.]

Discussion

The Applicant has the burden to prove that all of the siting criteria has been satisfied. In making its decision on whether to grant site location approval, Council shall base its decision based solely upon the record of proceedings that has been generated to address and satisfy the nine (9) statutory criteria.

To assist Council in this decision process, the City engaged the services of Berns, Clancy and Associates to perform a Review for Compliance with Siting Criteria. This report was filed during the written comment period and is a part of the official record. *[It can be found in the transmittal, as the second document in the Written Comment section (yellow sheets)]*. This report reviews the statutory and Urbana's criteria and discusses the applicants responses and makes conclusions regarding each criteria. The summary of their findings can be found on the last page of their report and they state “ **We believe the materials submitted are sufficient and the conditions and requirements of the nine (9) statutory criteria, as well as Urbana's criteria, have been satisfied.**”

Based upon this, staff has generated a draft site location approval ordinance, copy attached.

Recommendation

Staff realizes that there is a lot of information to review. Council will likely have questions, and staff wishes to gather these questions and prepare responses based upon the record. Council is, however, required to either approve or disapprove the Applicant's request within 180 days of filing or a decision must be made by Monday, April 30. If no decision is made by this date, state law provides that the Applicant may deem the request approved.

ORDINANCE NO. 2001-03-026

**AN ORDINANCE APPROVING AN APPLICATION FOR SITE APPROVAL
OF A REGIONAL POLLUTION CONTROL FACILITY**

(SITING OF THE CENTRAL WASTE TRANSFER AND RECYCLING FACILITY)

WHEREAS, Allied Waste Transportation, Inc. d/b/a Central Waste Services (hereinafter called Central Waste Services) has filed an application on November 1, 2000 for site approval for a waste transfer and recycling facility to be located at 921 W. Saline Court, Urbana, IL; and

WHEREAS, the proposed facility falls within the definition of a “regional pollution control facility” under the Illinois Environmental Protection Act and, as such, requires site location approval by the municipality in which the proposed facility will be located pursuant to 415 ILCS 5/39.2; and

WHEREAS, the City of Urbana is the municipality in which the proposed facility will be located if approved and the City of Urbana has adopted Ordinance No. 2000-02-022 as amended to govern the siting process; and

WHEREAS, notice of the filing of the application and notice of the public hearing held in this matter were given as required pursuant to Statute and Ordinance; and

WHEREAS, a public hearing on Central Waste Services’ application for siting was conducted on February 6, 2001 in accordance with the provisions of Section 39.2 of the Illinois Environmental Protection Act and Ordinance No. 2000-02-022 as amended of the City of Urbana; and

WHEREAS, the record for the siting proceeding has been prepared and which record conforms with Statutory requirements and the requirements of Ordinance No. 2000-02-022 as amended of the City of Urbana; and

WHEREAS, pursuant to the requirements of Ordinance No. 2000-02-022 as amended of the City of Urbana the certified record of the siting proceedings has been available to the Mayor and Urbana City Council since March 26, 2001; and

WHEREAS, the City Council, after having reviewed the record have determined that Central Waste Services has met its burden of proof to establish compliance with the nine statutory criteria set forth in Section 39.2 of the Environmental Protection Act and the additional requirements of Ordinance No. 2000-02-022 as amended of the City of Urbana and that the application for siting approval should be approved; and

WHEREAS, this Ordinance is intended to serve as the written decision of the City Council on the Central Waste Services siting application as required by Section 39.2 of the Environmental Protection Act and Ordinance No. 2000-02-022 as amended of the City of Urbana.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, AS FOLLOWS:

SECTION 1: Site approval is hereby granted for the Central Waste Services Transfer and Recycling Facility (a regional pollution control facility) for the 11.3 acre site commonly known as 921 W. Saline Drive, Urbana, IL. The legal description of the site being:

PART OF THE EAST ½ OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M., CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NE 1/4 OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M., THENCE N. 00°13'21" E., A BEARING BASED ON THE CITY OF URBANA HORIZONTAL CONTROL DATUM, ALONG THE EAST LINE OF THE NE 1/4 OF SAID SECTION 31, 330.51 FEET TO THE NORTH LINE OF THE SOUTH 330.50 FEET OF THE NE 1/4 OF SAID SECTION 31; THENCE S. 89°43'10" W., 366.01 FEET TO THE TRUE POINT OF BEGINNING; THENCE S. 00°13'21" W., 50.00 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG A CURVE TO THE LEFT, CONVEX TO THE WEST WITH A RADIUS OF 283.00 FEET, A DISTANCE OF 141.29 FEET; THENCE S. 61°37'00" W., 388.68 FEET; THENCE N. 49°00'00" W., 50.00 FEET; THENCE N. 69°00'00" W., 375.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL RAILROAD; THENCE N. 17°39'30" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE; 210.00 FEET TO THE AFORESAID NORTH LINE OF THE SOUTH 330.50 FEET OF THE NE 1/4 OF SAID SECTION 31; THENCE S. 89°43'10" W., ALONG SAID LINE AND EASTERLY RIGHT-OF-WAY LINE OF THE ILLINOIS CENTRAL RAILROAD, 296.36 FEET; THENCE N. 17°39'30" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 370.00 FEET; THENCE S. 89°46'39" E., 817.72 FEET; THENCE S. 00°13'21" W., 344.84 FEET TO THE POINT OF BEGINNING, CONTAINING 11.367 ACRES, MORE OR LESS AND ALL SITUATED WITHIN THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS.

SECTION 2: The City Council make the following findings of fact with respect to the application for siting approval filed by Central Waste Services:

(1) The facility is necessary to accommodate the waste needs of the area it is intended to serve.

There is no landfill capacity in the service area (and the number of landfills outside the service area is declining), and there are no transfer stations available for public use for waste disposal in this area. The proposed facility will enable waste transportation to be accomplished in the most economical and environmentally safe manner. Additionally, the proposed facility will help assure competitive disposal costs, provide an effective means for waste screening before ultimate disposal, recover recyclables, assist municipalities in meeting their waste diversion goals and is consistent with the City of Urbana's Solid Waste Management Planning Goals and Objectives.

(2) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

The facility is located in an area zoned industrial by the City of Urbana, which is compatible with the proposed operation. The limits of the site are outside the one thousand (1000) foot residential setback, as required under Section 22.14 of the Illinois Environmental Protection Act. The design of the facility meets or exceeds the requirements set forth in all applicable laws and regulations. The design includes, among other features, a stormwater management system, secondary containment system, leachate management and collection system, and site security measures.

There are no jurisdictional wetlands or waters of the United States within the proposed facility limits and there are no records of State listed threatened or endangered species, no dedicated nature preserves at the

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proposed site and the site is in compliance with the National Wild and Scenic Rivers Act. Additionally, no archaeological sites or artifacts were found during a Phase 1 Archaeological and Historic Survey.

The plan of operations for the facility includes specific procedures, training and equipment so that the public health, safety and welfare will be protected. Specific measures will be implemented by Central Waste Services to control dust, odors, vectors and litter at the site. Strict screening procedures, encompassed in a load checking program, will be in place to ensure that hazardous wastes and other prohibited materials are not processed through the transfer station and a Contingency Plan has been delineated to address any potential issues with fire, hazardous material control, or potential operational accidents. The proposed facility has been designed with numerous control measures to minimize any potential danger to the public and those using the facility.

(3) The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

The area surrounding the site is generally zoned industrial and primarily consists of industrial uses. The adjacent parcel to the south of the proposed facility site is operated by University Asphalt Company as an asphalt plant site. The contiguous property to the south and west of the site is owned by University Asphalt Company, and functions presently as a concrete recycling site. To the north and east of the proposed facility site is agricultural land and the Illinois Central Gulf Railroad tracks provide a boundary on the west of the site, with uses west of the Railroad site being industrial in nature, including Clifford Jacobs Foundry and Apollo Industrial Subdivision. The nearest parcel with a dwelling is located greater than 1000 feet from the site, as required by the Environmental Protection Act, upon ground zoned I-2 Heavy Industrial, and there are only five residences within a 2500 foot radius from this site.

The appreciation of property values in the proposed area will not differ from other areas of Urbana or neighboring communities if the facility is sited. The proposed facility is in keeping with the industrial character of the surrounding area and the location of this facility will not impact adversely on property values.

(4) The facility is located outside the boundary of the 100-year floodplain or the site is floodproofed. The proposed facility is located outside the boundary of the 100-year floodplain.

(5) The plan of operation for the facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

The Plan of Operations and Contingency Plan for the proposed facility which will assist facility personnel in managing daily activities and will provide an organized course of action to be taken in responding to contingencies which might arise during the operation of the facility. A waste screening program will be employed to ensure that unacceptable waste is not improperly disposed of. In addition to providing an affidavit stating that the proposed facility will not treat, store or dispose of hazardous waste, the Applicant has a comprehensive load checking program and plan of operations to address the Applicant's plan to exclude acceptance of unauthorized waste.

A Contingency Plan will be implemented in the unlikely event that an emergency situation would develop which could endanger the public health and safety or the environment. Those potential situations, which are specifically addressed in the Contingency Plan, include fire, spills, hazardous materials, equipment malfunction and medical attention. The Contingency Plan also contains an emergency equipment list, plan for evacuation

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and post emergency follow-up procedures. All facility personnel will be trained in emergency procedures and the facility's operations manager will be responsible for overseeing and implementing the Contingency Plan and training personnel.

(6) The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

Facility peak hours do not conflict with the existing or proposed adjacent street system peak hours. Capacity of Lincoln Avenue (with additional structural improvements north of Somer Drive and structural improvements From Wilbur Road to Somer Drive) and the proposed re-aligned Lincoln Avenue is judged adequate to accommodate the additional facility traffic.

Facility traffic is estimated to be less than or approximately a one percent increase in traffic at the Lincoln Avenue and I-74 interchange, with negligible effect on the frontage road signalized intersections. The facility entrance location on a minor cul-de-sac street is designed in accordance with the required IDOT setback offset distance for major regional arterials. There is more than adequate sight distance at the intersection of the proposed minor street intersection with the adjacent arterial of North Lincoln Avenue.

(7) If the facility will be treating, storing or disposing of hazardous wastes, an emergency response plan for the facility.

The facility will not knowingly treat, store or dispose of hazardous waste. It is, however, perhaps inevitable, that during the course of operation hazardous wastes will be encountered at the facility. A contingency plan to respond to such situations shall be implemented to mitigate the situation.

(8) The facility is consistent with the Champaign County Solid Waste Management Plan.

Confirmed by a letter written by Champaign County stating that the proposed Central Waste Transfer and Recycling Facility is consistent with that plan.

(9) If the facility will be located within a regulated recharge area, proof that any and all applicable requirements specified by the Illinois Pollution Control Board for such area have been met.

The proposed Central Waste Transfer and Recycling Facility is not located in a regulated recharge area.

SECTION 3: The City of Urbana reserves the right to make periodic inspections of the facility to assure operation is being conducted in compliance with the Siting Application documents, Article III, of Chapter 10, and other applicable Sections of the Urbana Municipal Code, and any Illinois Environmental Protection Agency operating permit(s).

SECTION 4: The City Clerk is hereby authorized to transmit this Ordinance to the Illinois Environmental Protection Agency along with any other forms required by the Agency to certify siting approval.

SECTION 5: This Ordinance shall be in effect from its passage and approval.

PASSED by the Urbana City Council this _____ day of April, 2001

Phyllis D. Clark
City Clerk

AYES: _____

NAYS: _____

ABSTAINS: _____

APPROVED by the Mayor this _____ day of April, 2001.

Tod Satterthwaite, Mayor



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ADMINISTRATION

MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer

FROM: William R. Gray, P. E., Public Works Director

DATE: March 22, 2001

**RE: Revised North Lincoln Avenue Intergovernmental Agreement
(City/County)**

INTRODUCTION

Since the City Council approved the North Lincoln Avenue Agreement last October 16, 2000, there have been two changes to that agreement that the Committee needs to consider. Since October 16, there have been several County Highway and Transportation Committee meetings to discuss the agreement and to receive public input, especially from those residents that live in Somer Township. As a result of those meetings, the County Highway and Transportation Committee is recommending two additions to the agreement language.

The first has to do with resurfacing 1300 feet of existing north Lincoln Avenue between Station 7 + 650 and Station 8 + 100 (*see Exhibit "A"*). This will give the pavement additional strength to perform well with the additional truck traffic that will be occurring if the Central Waste Services Transfer Facility and Recycling Center is opened. Note that the limits of improvement on Exhibit "A" have gone further south to Station 7 + 650, which is just north of Wilbur Road. The northern terminus does not change. This additional roadwork is estimated to cost \$40,000. It is recommended that this cost be shared between the developer (University Construction), Champaign County, and the City (*see Section 1 and 2 in the agreement*).

A second matter that was important to the County Highway and Transportation Committee was including language that states the City and the County both support a new Olympian Drive. There is a new Section 11 that provides language that the County Highway and Transportation Committee supports.

The Champaign County Board, at their meeting on Tuesday, March 20, deferred taking action on the attached agreement until their April meeting.

FISCAL IMPACT

The previous City's financial commitment was \$200,000. With the additional work suggested, the new upper limit is \$215,000.

RECOMMENDATION

It is recommended that the Mayor and Clerk be authorized to sign "AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF CHAMPAIGN, ILLINOIS" for the "Funding for Construction of Part of North Lincoln Avenue."

WRG:klf
Attachments

ORDINANCE NO. 2001-03-027

AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN
INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF CHAMPAIGN,
ILLINOIS

(Funding for Construction of Part of North Lincoln Avenue)

WHEREAS, in Ordinance No. 2000-10-118, passed by the Urbana City Council on October 16, 2000, an agreement providing for certain roadway improvements was approved; and

WHEREAS, subsequently, the County has requested certain revisions to the said agreement, which revisions are acceptable to the City,

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

Section 1. That an Intergovernmental Agreement Between the City of Urbana and the County of Champaign Concerning the Funding for Construction of Part of North Lincoln Avenue, 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 _____ day of _____,
_____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor

**An Intergovernmental Agreement
Between the City of Urbana and the County
of Champaign Concerning the Funding for Construction
of Part of North Lincoln Avenue**

This Agreement is entered into between the City of Urbana, Illinois (“City”) and the County of Champaign, Illinois (“County”), on this _____ day of _____, 2001, in consideration of the following premises and terms.

WHEREAS, Article VII Section 10 of the 1970 Constitution of the State of Illinois authorizes the City and the County to contract to perform and share services in any manner not prohibited by law; and

WHEREAS, 65 ILCS 5/11-91.2-1 and 605 ILCS 5/5-102, 5-105, 5-106, 5-408, 5-410, 5-410.1, 7-101, and 9-101, all provide statutory authority for the City and the County to enter into this cooperative agreement with respect to the construction, jurisdiction, and maintenance of roads and streets; and

WHEREAS, the responsibility to provide for a highway transportation system rests with the City, the County, and the State; and

WHEREAS, the City and County desire to perform this function as efficiently and effectively as possible thereby reducing costs to taxpayers; and

WHEREAS, the City recognizes its responsibility to maintain the infrastructure in the territory which it annexes; and

WHEREAS, University Construction, a division of MACC of Illinois, Inc., (hereinafter, “University Construction”) has entered into a Development Agreement with the City to construct 1000 meters of Lincoln Avenue, including a bridge over the Saline Branch Drainage Ditch; and

WHEREAS, the Development Agreement between University Construction and the City provides that University Construction will pay for seven hundred sixty five thousand dollars (\$765,000) of the estimated one million one hundred forty five thousand dollars (\$1,145,000) total cost of construction; and

WHEREAS, the Development Agreement between University Construction and the City is contingent upon the City and the County entering a separate agreement wherein each agrees to pay for half of the cost of construction exceeding the \$765,000 to be contributed by University Construction; and

WHEREAS, the maximum contribution required of the City and the County is two hundred fifteen thousand dollars (\$215,000) each.

NOW, THEREFORE, the City and the County, in consideration of the mutual promises and covenants contained herein, agree as follows:

Section 1. Definition.

“Project” means design engineering, construction engineering, utility relocation, right-of-way acquisition and construction required to complete a two-lane roadway on North Lincoln Avenue, starting at Station 7+650, and ending at Station 8+650 (1000 meters in length). The portion between station 7+650 and Station 8+100 (450 meters in length) will consist of a three inch asphalt overlay of the existing pavement, construction of three foot wide aggregate shoulders, and construction modifications to the radii of Somer Drive at its intersection with Lincoln Avenue to facilitate truck turning movements. The portion between Station 8+100 and Station 8+650 (550 meters in length) will consist of complete pavement construction including required bridge access across the Saline Branch Drainage Ditch at approximate Station 8+340. The project will be done in accordance with the Development Agreement between University Construction and the City of Urbana governing said construction, dated _____, 2000. (“Development Agreement”)

Section 2. Project Funding.

The estimated total cost of the Project is \$1,145,000. University Construction has agreed to contribute \$765,000 towards that cost as set forth in the Development Agreement. The City and the County agree to split equally the cost of the Project that exceeds the \$765,000. The City and the County will not be required to contribute more than \$215,000 each toward the Project cost.

Section 3. Invoices and Payments.

Per the Development Agreement, University Construction will be responsible for the Project and shall invoice the City for both the City’s and County’s share of the Project costs. The City shall in turn invoice the County in accordance with cost shares and payment limits described in Section 2. The County shall pay invoices within thirty (30) days of receipt. The City shall provide reasonable documentation to the County regarding the actual cost of the work as costs are incurred.

Section 4. Further Actions.

The City and the County hereby agree to take any official action necessary to accomplish their respective obligations as set forth in this Agreement, including the passage of legally sufficient resolutions or ordinances, the appropriation or budgeting of money, and any and all other undertakings set forth in this Agreement. The Chair of the County

Board and the Mayor of the City are hereby authorized by the approval of this Agreement by the respective governing bodies of the County and the City to execute any such documents necessary to carry out the terms of this Agreement.

Section 5. Effective Date of the Agreement.

This Agreement shall be effective on the date of the last of the County Board or City Council to approve this Agreement.

Section 6. Condition Precedent.

This Agreement shall only be effective if the City and University Construction approve and execute the Development Agreement and if the Development Agreement provides that University Construction will pay \$765,000 of the total cost of the Project. If University Construction and the City do not execute such an agreement *prior to* the execution of this Agreement, this Agreement shall be null and void.

Section 7. Termination.

The parties agree that if the Project has not begun by June 30, 2003, this Agreement shall terminate without further action by the parties.

Section 8. Amendment.

No amendment to this Agreement shall be effective unless it is in writing and signed by the parties hereto.

Section 9. Notices.

Notice with respect to any matter contained herein shall be sent first class and mailed to:

CITY:

Mayor
City of Urbana
400 South Vine Street
Urbana, Illinois 61801

Director of Public Works
City of Urbana
706 South Glover Avenue
Urbana, Illinois 61802

COUNTY:

County Board Chair
County of Champaign
1776 East Washington Street
Urbana, Illinois 61802

County Engineer
County of Champaign
1905 East Main Street
Urbana, Illinois 61802

Section 10. Time is of the Essence.

Time is of the essence in this Agreement.

Section 11. Olympian Drive

- (a) The City and County acknowledge that an improved or new road designated as Olympian Drive, which crossed the CN (former ICG) Railroad right-of-way along an approved alignment, would promote economic development of the area and represent good transportation planning.
- (b) There has been progress to date completing a location study of Olympian Drive. Further progress in obtaining funding and proceeding with a design and construction schedule is necessary. Both the County and the City agree to put funding of their portions of the Olympian Drive Project in their Capital Improvement Plans, and to include the railroad crossing section (Market Drive to Lincoln Avenue) of Olympian Drive in the CUUATS priority process. Urbana agrees to proceed in a timely way with improvements to Lincoln Avenue in anticipation of the Olympian Drive Project. The County, in cooperation with the City of Champaign, agrees to proceed in a timely way with planning and construction of the west section of Olympian Drive.
- (c) Irrespective of the timetable for the construction of the rail crossing, both the City and the County shall plan and promote development in the area in accordance with the completed location studies for both Olympian Drive and Lincoln Avenue.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF URBANA, ILLINOIS

COUNTY OF CHAMPAIGN

By: _____
Mayor

By: _____
County Board Chair

ATTEST: _____
City Clerk

ATTEST: _____
County Clerk

APPROVED AS TO FORM:

Date of County Board Approval:

_____ Date: _____
City Attorney

Date of City Council approval:

Date: _____

MEMORANDUM

TO: Bruce Walden, Chief Administrative Officer

FROM: William R. Gray, P. E., Public Works Director

DATE: March 22, 2001

RE: **Revised North Lincoln Avenue Development Agreement
(City/University Construction)**

INTRODUCTION

On October 2, 2000, the City Council approved a Development Agreement with University Construction for the north Lincoln Avenue improvements. Since that time, Champaign County Highway and Transportation Committee has requested additional improvements along north Lincoln Avenue that causes revisions to the current Development Agreement that has been executed by both parties.

The revisions to the Development Agreement primarily involve the addition of 450 meters of additional roadway resurfacing as shown on Exhibit A of the agreement. This additional work is estimated to cost \$40,000. See Section 3.1.1, Section 4.1.1, Section 4.1.2, Section 6.2, and Section 6.16 for language revisions.

A second addition to the Development Agreement that does not have a material impact on the outcome of the agreement is that Central Waste Services may opt to lease rather than purchase the land from University Construction. See Section 4.1.2.b for language revisions.

University Construction is supportive of the proposed changes in the revised Development Agreement.

FISCAL IMPACTS

The City's contribution for the expanded north Lincoln Avenue improvements is now \$215,000. If costs exceed this amount, City Council approval would be necessary.

RECOMMENDATION

It is recommended that the Mayor and Clerk be authorized to sign "AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH UNIVERSITY CONSTRUCTION, A DIVISION OF MACC OF ILLINOIS, INC."

WRG:klf
Attachments

ORDINANCE NO. 2001-03-028

AN ORDINANCE APPROVING AND AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH UNIVERSITY CONSTRUCTION, A DIVISION OF MACC OF ILLINOIS, INC.

WHEREAS, in Ordinance No. 2000-09-111, passed by the City Council on October 2, 2000, an agreement providing for certain roadway improvements was approved; and

WHEREAS, subsequently, because the County requested certain revisions to a separate agreement relating to the same roadway improvements, it is necessary that this agreement also be revised, which revisions are acceptable to University Construction and Land Trust #131-1223,

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

Section 1. That an Agreement by and between the City of Urbana and University Construction, a division of MACC of Ill., Inc., and Land Trust No. 131-1223 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 _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (including attachments and exhibits, and hereinafter referred to as the "Agreement") dated as of the _____ day of _____, 2001, by and between the City of Urbana, an Illinois home-rule municipality, in Champaign County, Illinois (hereinafter referred to as the "City" or "Corporate Authorities"), and MACC of ILL., Inc., (hereinafter referred to as University Construction) and Land Trust No. 131-1223 (hereinafter L/T 1223). The effective date of this agreement is that written above.

RECITALS

WHEREAS, in accordance with and pursuant to the authority granted to units of government in Article VII of the Illinois Constitution of 1970, the City is authorized to enter into agreements which foster economic development;

WHEREAS, to minimize disruption and proceed in an orderly fashion for the benefit of the community, University Construction is prepared to redevelop a large land area in north Urbana; and

WHEREAS, the City of Urbana has conducted a transportation study entitled "The North Lincoln Avenue Location Study" and is proposing the reconstruction and realignment of north Lincoln Avenue to better serve the community and to potentially connect to Olympian Drive; and

WHEREAS, the realignment of north Lincoln Avenue affects property owned by L/ T 1223, whose beneficial owners are affiliated with University Construction and are affected by the development; and

WHEREAS, the City of Urbana, University Construction, and L/T 1223 agree that the extension and realignment of north Lincoln Avenue in conformance with the North Lincoln Avenue Location Study is in the best interests of all parties; and

WHEREAS, it is also in the interests of all parties to define associated costs and responsibilities for the construction of north Lincoln Avenue; and

WHEREAS, after due and proper review, the Urbana City Council has determined that this agreement is in the best interests of the City of Urbana.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the City and University Construction and L/T1223 agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement will have the meaning provided from place to place herein, including as follows:

"City" means the City Council of the City of Urbana, Illinois or its agents, employees and representatives.

"Corporate Authorities" mean the City Council of the City of Urbana, Illinois.

"Development Area" means, collectively, the real estate owned by L/T 1223 on north Lincoln Avenue as illustrated in Exhibit "A; and

"Parties" mean, collectively, the City, University Construction, and L/T 1223.

Section 1.2 Construction. This Agreement, except where the context by clear implication will otherwise require, will be construed and applied as follows:

- (a) definitions include both singular and plural;
- (b) pronouns include both singular and plural and cover all genders;

and

(c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and will not affect the meaning, construction or effect hereof.

(d) all exhibits attached to this Agreement will be and are operative provisions of this Agreement and will be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City hereby makes certain representations and warranties to University Construction and L/T 1223, as follows:

Section 2.1.1 Organization and Standing. The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

Section 2.1.2 Power and Authority. The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

Section 2.1.3 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, yet such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 2.1.4. No Violation. Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any terms, conditions, or provisions of any agreement, rule, regulations, statute, ordinance, judgment, decree, or other law by which the City may be bound.

Section 2.1.5. Governmental Consents and Approvals. No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

Section 2.2 Representations and Warranties of University Construction. University Construction makes the following representations and warranties to the City:

Section 2.2.1 Organization. University Construction is a division of MACC of ILL., Inc., which is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois.

Section 2.2.2 Power and Authority. University Construction has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings.

Section 2.2.3 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of University Construction. This Agreement is a legal, valid and binding agreement, obligation and undertaking of University Construction, enforceable against University Construction in accordance with its terms, except to the extent that such enforceability may be limited by law, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 2.2.4 No Violation. Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which University Construction is a party, or by which University Construction or any of its assets may be bound.

Section 2.2.5 Consents. No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by University Construction of this Agreement or the performance thereof by University Construction with the exception of the Illinois Department of Transportation; the U.S. Army Corps of Engineers; the Illinois Department of Natural Resources (Division of Water Resources), and the Illinois Environmental Protection Agency where applicable.

Section 2.2.6 No Proceedings or Judgments. There is no claim, action or proceeding now pending or to the best of its knowledge, threatened before any court, administrative or regulatory body, or governmental agency (a) to which University Construction is a party and (b) which will, or could, prevent University Construction's performance of its obligations under this Agreement.

Section 2.3 Representations and Warranties of Land Trust No. 1223.

L/T1223 makes the following representations and warranties to the City:

Section 2.3.1 Organization. L /T1223 is a Land Trust duly organized, validly existing and in good standing under the laws of the State of Illinois. It was established on December 30, 1983 under the name "First of America Bank Trust No. 1223" and the present Successor Trustee is Chicago Title Land Trust Company located at 171 North Clark Street, Chicago, IL 60601-3294, as Trustee of Land Trust No. 131-1223 (formerly L/T 1223).

Section 2.3.2 Power and Authority. Upon authorization by the trust beneficiaries, Chicago Title Land Trust Company, as such Trustee, will be authorized to execute and deliver this Agreement, but solely in its capacity as Land Trustee and subject to the disclaimer contained on the signature page of this Agreement.

Section 2.3.3 Consents. No consent or approval by any governmental authority is required in connection with the execution and delivery by the Trustee of this Agreement, except the required consent of the beneficiaries of the Land Trust, which consents will have been received by the time this Agreement is executed by such Trustee.

Section 2.3.4 No Proceedings or Judgments. So far as the Trustee knows there is no claim, action or proceeding now pending or to the best of its knowledge threatened before any court, administrative or regulatory body or governmental agency which will or could prevent the Trustee from performance of its obligations under this Agreement.

Section 2.4 Disclaimer of Warranties. The City, L/T 1223, and University Construction acknowledge that neither has made any warranties to the other, except as set forth in this Agreement.

ARTICLE III

UNIVERSITY CONSTRUCTION'S AND L/T 1223'S COVENANTS AND AGREEMENTS

Section 3.1. University Construction's Obligations. University Construction hereby covenants and agrees with the Corporate Authorities as follows:

Section 3.1.1 Agreement to Construct the north Lincoln Avenue Improvements. University Construction covenants and agrees to install and construct, or cause to be installed and constructed, the portion of north

Lincoln Avenue alignment from Station 7 + 650 to Station 8 + 650 (1,000 meters in length) as recommended in the North Lincoln Avenue Location Study and shown on Exhibit A), including the required bridge access across the Saline Branch Drainage Ditch and the new and reconstructed public street improvements at the times, in the manner and with the effect set forth in this Agreement, substantially in accordance with such site or construction plans as may be subsequently approved by the City's Director of Public Works and the Champaign County Highway Engineer in writing and as provided for in **Article III** of this Agreement. The parties mutually agree that University Construction shall not be obliged to spend more than seven hundred sixty five thousand dollars (\$765,000.00) for said improvements, including the acquisition of land for right-of-way including related incidental costs such as reasonable legal expenses and title costs, and permits. University Construction and L/T 1223 agree to dedicate right-of-way along the proposed north Lincoln Avenue alignment as shown on Exhibit A, that University Construction and/or L/T 1223 owns at no cost to the City. Costs above and beyond seven hundred sixty five thousand dollars (\$765,000.00) shall be shared between the City of Urbana and Champaign County as is provided in a contract between the City of Urbana and Champaign County.

It is understood that the proposed north Lincoln Avenue improvement, between Station 8 + 100 to Station 8 + 650, consists of complete pavement construction including a bridge across the Saline Branch Drainage Ditch and a two-lane width 24 feet edge to edge with curbs and gutters, storm sewers, inlets and grates, and sidewalks. The improvements between Station 7 + 650 and Station 8 + 100 shall be a three-inch asphalt overlay with three-foot wide stone shoulders and construction modifications to the radii of Somer Drive at its intersection with Lincoln Avenue to facilitate truck turning movements. All pavement is to be constructed in accordance with IDOT Standard Specifications for Road and Bridge Construction dated July 1, 1997 from the present paved northerly terminus Station 7 + 650 in the general direction as indicated on the attached Exhibit A hereby incorporated by reference for a total of 1,000 meters.

Section 3.1.2 Acquisition and Dedication of Right-of-Way. University Construction shall use its best efforts to acquire the required right-of-way outside of its ownership as described in the North Lincoln Avenue Location Study. University Construction shall provide legal descriptions and right-

of-way plats for the proposed north Lincoln Avenue improvements. All street construction described herein will be done in substantial conformance with the requirements of Chapter 21 of the Urbana Code of Ordinances entitled "Subdivision and Land Development Code" and in conformance with properly engineered construction plans. Nothing in this Agreement will excuse University Construction from providing construction and maintenance bonds for said street constructions, per the requirements of Chapter 21 of the Urbana Code of Ordinances entitled "Subdivision and Land Development Code." The Corporate Authorities agree to accept the dedication of said streets or right-of-way upon the City's Director of Public Works approval and acceptance of the quality of work, upon receipt of maintenance bonds, and upon receipt of University Construction's registered Illinois professional engineer's certification that construction was completed in compliance with previously approved construction plans. The City shall insure that its contract with Champaign County includes the obligation on Champaign County to acquire any right-of-way that is needed to implement this project which is not acquired by University Construction.

Section 3.1.3 Timing of Improvements. University Construction agrees that said design of improvements will commence upon the execution of a sales contract or other agreement that unconditionally commits Allied Waste Transportation, Inc., d/b/a Central Waste Services. to the relocation of Central Waste's facilities to the L/T 1223 site as shown on Exhibit B attached. Provided the additional required right-of-way has been acquired, University Construction agrees that, the construction of said improvements will commence after all appeals of the siting for the Central Waste Transfer and Recycling facility have been exhausted, and within thirty (30) working days of the City's Director of Public Works approval of said plans. The improvements shall be completed within one hundred eighty (180) working days as defined by the Illinois Department of Transportation Standard Specifications.

Section 3.2 Invoices and Change Orders. University Construction shall make all payments to the construction contractor, engineer, and their respective subcontractors and subconsultants, material suppliers, etc. Said payments may also be made to property owners for any land acquisition made by University Construction and payments may also be made to third parties for incidental costs related to the land acquisition. University Construction

shall invoice the City in accordance with the cost shares and payment limits described in Section 3.1.1 and Section 4.1.1. Upon commencement of the work, a payment equal to five percent of the construction contract amount, shall be paid to University Construction by the City. Additional payments shall be made to University Construction within thirty (30) days after the invoices are received by the City for its share of the cost. University Construction shall provide reasonable documentation to the City regarding the actual cost of the work as costs are incurred and submit invoices based upon percentage of completion, less a five percent retainage pending final completion. Any change orders for work other than that approved per Section 3.1.1 shall first be approved by the City's Director of Public Works. Failure to do so may result in no compensation by the City for work performed.

Section 3.3 Indemnity. University Construction 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 construction of the private development, 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, University Construction 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.

Section 3.4 Disconnection from Champaign School District Unit #4. L/T 1223 agrees to petition for the disconnection of L/T 1223 property from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute. The parties agree that the City of Urbana will reimburse the beneficiaries of L/T 1223 for the costs related to such effort in an amount not to exceed two thousand dollars (\$2,000.00).

Section 3.5 Support of Tax Increment Financing District. University Construction agrees to support the City of Urbana's efforts in establishing a Tax Increment Financing (TIF) district in north Urbana that would include University Construction and L/T 1223 property. Such support shall include letters or information needed from such parties to defend said TIF.

Section 3.6 Access Drive Locations. Access drives shall be restricted to a local industrial street in general conformance with the North Lincoln Avenue Location Study recommendations and subject to the City's Director of Public Works approval.

ARTICLE IV

THE CORPORATE AUTHORITIES' OBLIGATIONS

Section 4.1 City's Obligations. The Corporate Authorities of the City hereby covenant and agree with University Construction as follows:

Section 4.1.1 Participation in North Lincoln Avenue Improvements. The City of Urbana agrees, subject to the conditions precedent in Section 4.1.2 and the payment schedule in Section 3.2, to pay University Construction for all costs in excess of \$765,000 which are estimated to be four-hundred thirty thousand dollars (\$430,000) for expenses incurred by University Construction in constructing the improvements of north Lincoln Avenue in compliance with this agreement.

Section 4.1.2 Conditions Precedent. This agreement shall only be effective if the following occurs:

a. The City and Champaign County approve and execute an intergovernmental agreement confirming their joint participation in the cost of construction of the north Lincoln Avenue improvement such that the Champaign County will pay an amount not to exceed two hundred fifteen thousand dollars (\$215,000) to the City. Said intergovernmental agreement must be approved and executed within sixty (60) days of the execution and approval of this Agreement; and

b. L/T 1223 enters into a non-cancelable land sale or other agreement with Central Waste for the sale or lease of approximately 11.5 acres as shown on Exhibit B by January 1, 2002; and the closing of the sale or lease takes place by March 1, 2002, and

c. Central Waste enters into a non-cancelable development agreement with University Construction by January 1, 2002, wherein Central Waste agrees to pay University Construction \$765,000 for the cost for improving Lincoln Avenue as shown on Exhibit A attached, which payment does not include the construction cost for the public access street (Saline Court) shown on Exhibit A.

If any of the above conditions precedent fail to occur within the time frames noted herein, this agreement shall be null and void.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.1 Defaults - Rights to Cure. Failure or delay by either party to timely perform any term or provision of this Agreement will constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default will give written notice of the alleged default to the party alleged to be in default specifying the default complained of. Except as required to protect against immediate, irreparable harm, the party asserting a default may not institute proceedings against the other party until thirty (30) days after having given such notice. If the defaulting party commences to cure said default, such thirty (30) day period will be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default will be deemed not to constitute a breach of this Agreement. However, a default not cured as provided above will constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach will not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

Section 5.2 Remedies. The sole remedy of either party in the event of a default by the other party under any of the terms and provisions of this Agreement will be to institute legal action against the other party for specific performance or other appropriate equitable relief.

Section 5.3 Legal Expense. In the event a default occurs, the non-defaulting party shall be entitled to reasonable attorney's fees and court costs against the defaulting party.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Entire Contract and Amendments. This Agreement (together with the Exhibits A and B, inclusive, attached hereto) is the entire contract between the City, University Construction, and L/T 1223 relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and University Construction, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 6.2 Construction Design and Estimates. University Construction agrees to prepare final design documents and construction drawings for the project. The City will pay University Construction per Section 3.2 for said design documents and construction drawings costs incurred for a sum not to exceed \$87,000 which is included as part of the estimated \$430,000 limit for City out of pocket expenses. When the design work is complete and approved by the City, University Construction will submit a final price to build the north Lincoln Avenue improvement along the proposed alignment as shown in Exhibit A. If University Construction's final price is \$1,190,000 or less, including the design fee, the City is required to complete the project and to pay to University Construction the cost in excess of \$765,000. If the final bid price, including the design fee, is greater than \$1,190,000, the City of Urbana, at its option can either agree to pay the final price and additionally pay University Construction the cost in excess of \$1,190,000 or allow University Construction to access the L/T 1223 site along the alignment approved in the north Lincoln Avenue Preliminary Plat as shown on Exhibit B attached. The Lincoln Avenue pavement improvements shown on Exhibit B shall be in accordance with the pavement and roadway cross section on Lincoln Avenue from Somer Drive south to the Saline Branch bridge and all said work shall be solely at the expense of University Construction.

Section 6.3 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City, University Construction, and L/T 1223 and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge

the obligation or liability of any third persons to either the City or University Construction, nor will any provision give any third parties any rights of subrogation or action over or against either the City, University Construction, and L/T 1223. This Agreement is not intended to, and does not create any third party beneficiary rights whatsoever.

Section 6.4 Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each will be considered an original and together they will constitute one agreement.

Section 6.5 Special and Limited Obligation. This Agreement will constitute special and limited obligation of the City according to the terms hereof.

Section 6.6 Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither University Construction nor the City nor L/T 1223 will be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute "unavoidable delays"): any strike, lockout or other labor disturbance (whether legal or illegal, with respect to which University Construction, the City and others will have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God or third parties, or any other cause beyond the reasonable control of University Construction or the City, or for any other reasons not within University Construction's or the City's control.

Section 6.7 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver will be deemed to exist unless such waivers are in writing. No such waiver will obligate the waiver of any other right or remedy hereunder, or will be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 6.8 Cooperation and Further Assurances. The City, University Construction, and L/T 1223 each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered,

such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or University Construction or other appropriate persons all singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 6.9 Notices. All notices, demands, request, consents, approvals or other communications or instruments required or otherwise given under this Agreement will be in writing and will be executed by the party or an officer, agent or attorney of the party, and will be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To University Construction:
PO Box 848
Urbana, Illinois 61803
TEL: (217) 355-9115, FAX: (217) 355-8974

with a copy to:
J. Michael O'Byrne or Stephen M. O'Byrne
Rawles, O'Byrne, Stanko & Kepley, P.C.
PO Box 800
Champaign, IL 61824-0800
TEL: (217) 352-7661
FAX: (217) 352-2169

To Chicago Title Land Trust Company,
as Trustee of Land Trust No. 131-1223
Attn.: Carrie Cullinan Barth, Office Counsel
171 North Clark Street
Chicago, IL 60601-3294
TEL: (312) 223-3037

To the City:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attention: Chief Administrative Officer
TEL: (217) 384-2454
FAX: (217) 384-2363

with a copy to:
Legal Division
400 South Vine Street
Urbana, IL 61801
TEL: (217) 384-2464
FAX: (217) 384-2363

Section 6.10. No Joint Venture, Agency, or Partnership Created.

Nothing in this Agreement or any actions of the parties to this Agreement will be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

Section 6.11. Illinois Law. This Agreement will be construed and interpreted under the laws of the State of Illinois.

Section 6.12. No Personal Liability of Officials of City. No covenant or agreement contained in this Agreement will be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City will be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

Section 6.13. Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement will be controlling.

Section 6.14. Term. This Agreement will remain in full force and effect until said Agreement is mutually amended or rescinded however, the provisions requiring dedication of right-of-way or easements will survive the termination of this Agreement in perpetuity.

Section 6.15. Option to Terminate. If the conditions precedent described in Section 4.1.2 have not been satisfied by January 1, 2002, University Construction and L/T 1223 shall each have the option, exercised jointly, to terminate this Agreement by written notice to the City.

Section 6.16. Price Escalation. If the agreement referenced in Section 4.1.2(c) is not signed by July 1, 2001, then the University Construction cost participation in Section 3.1.1 may be raised three percent (3%) to \$787,950 and, correspondingly, the City cost participation may

increase three percent (3%) to \$442,900 for a total project cost of \$1,230,850.

IN WITNESS WHEREOF, the City, University Construction, and L/T 1223 have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

CITY OF URBANA, ILLINOIS

By: _____
Mayor

Date: _____

ATTEST:

City Clerk
Date: _____

of

**University Construction, a division
MACC of ILL. INC.**

By: _____
Hugh W Gallivan,
Its: President

Date: _____

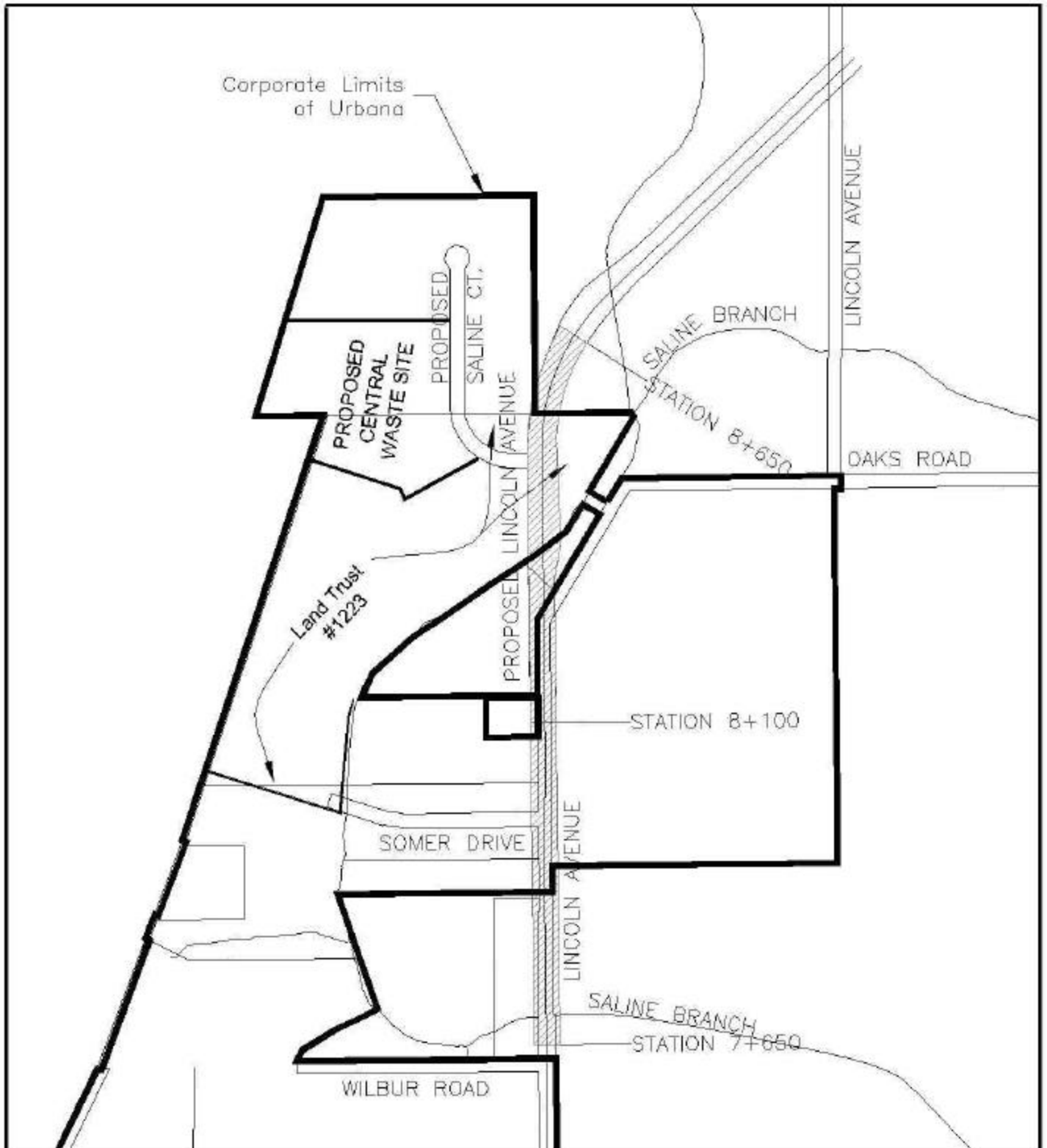
ATTEST:

Scott Stromberg, Its Secretary
Date: _____

**CHICAGO TITLE LAND TRUST
COMPANY, as Trustee of
LAND TRUST NO. 131-1223
A/K/A Land Trust No. 1223**

By: _____
Its: _____
Date: _____

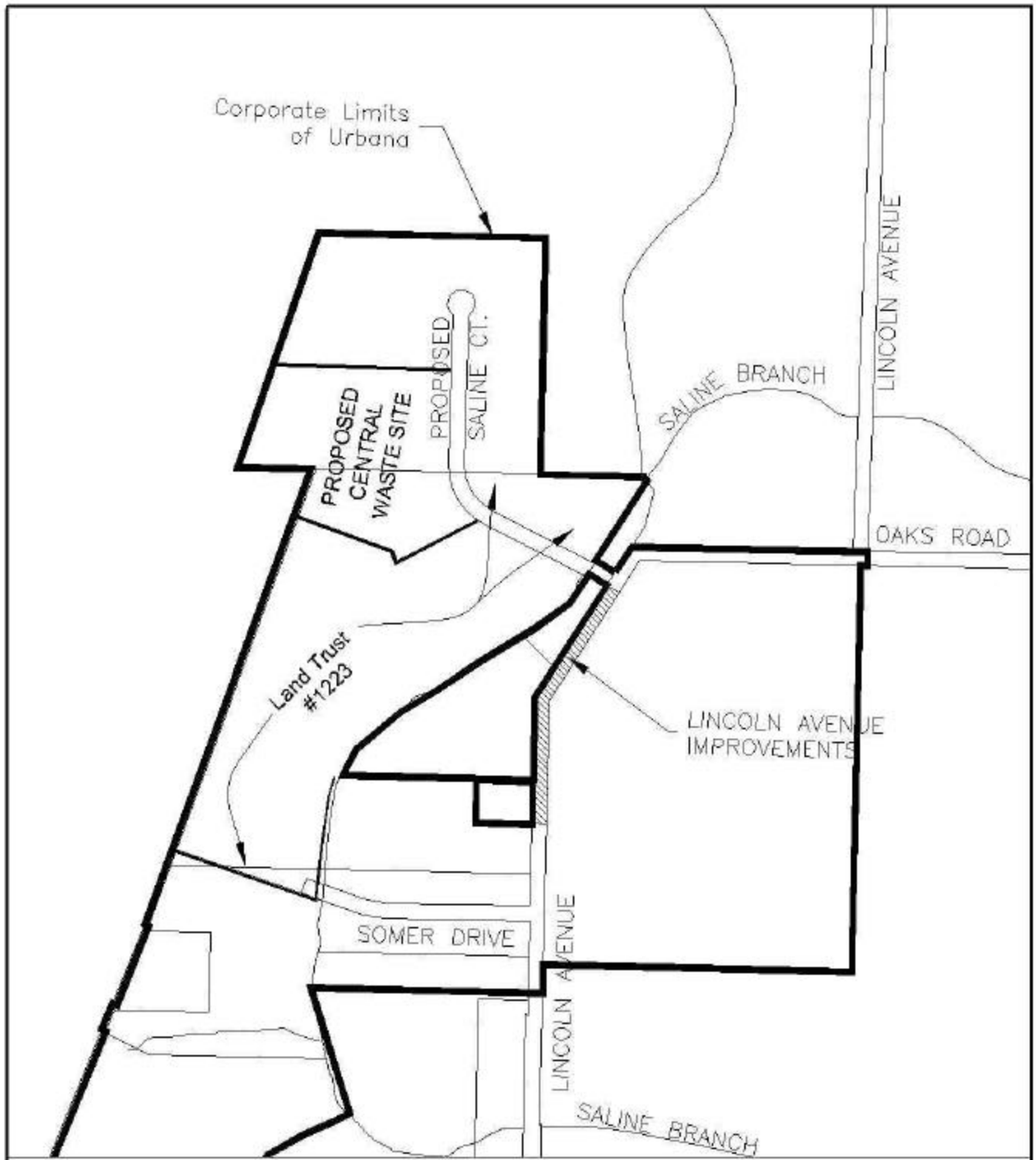
ATTEST:



 North
 11/19/99 K.L.H.
 03/09/01 B.W.F.

North Lincoln Avenue Proposed Construction Area

Exhibit "A"



North
11/19/99 K.L.H.

North Lincoln Avenue Proposed Construction Area

Exhibit "B"



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ADMINISTRATION

MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer

FROM: William R. Gray, P.E., Public Works Director

DATE: March 22, 2001

RE: **University of Illinois Request to Install a Gateway
Northwest Corner of Race Street and Windsor Road**

INTRODUCTION

Late last year, representatives from the University of Illinois contacted the City requesting a license agreement to install a gateway at the northwest corner of Race Street and Windsor Road (see attached photo). The location of the gateway proposed is in the right-of-way of Race Street, north of Windsor Road. The City and University deemed this location acceptable for visibility purposes. This gateway is one of seven that the University of Illinois is installing to help visitors find their way to the campus. The other gateways that are installed or planned in Urbana are located at Green and Lincoln, Springfield and Goodwin, and University and Harvey.

In order for the gateway to be installed in the city right-of-way, a license agreement is necessary. Attached please find an agreement for use of right-of-way, which outlines the conditions for permitting the University to occupy the public right-of-way with a gateway.

Meanwhile, the University has already begun the installation of the gateway with the lettering, lighting, electrical service, and landscaping remaining before the gateway is completed.

Failure to approve the attached ordinance and agreement may result in forcing the University to remove the gateway at its current location. The University, late last year, proceeded with construction of the gateway at their risk, based on the availability of staff, funding, and a desire to have these gateways installed soon.

FISCAL IMPACTS

There would be no financial impacts to the City since the installation and maintenance for the gateway is solely at the University's expense. Additionally the University is indemnifying the City against any losses, claims, etc., that may occur as a result of the gateway at this location.

RECOMMENDATION

It is recommended that the attached ordinance recommending the Mayor and Clerk execute "AN AGREEMENT FOR USE OF RIGHT-OF-WAY" be approved.

WRG:klf

Attachments: Photos
 Agreement for Use of Right -of-Way
 Exhibit A (Layout Plan and Elevation)
 Ordinance

ORDINANCE NO. 2001-03-029

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

(Northwest Corner of Race Street and Windsor Road)

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 (Northwest Corner of Race Street and Windsor Road) between the City of Urbana and the Board of Trustees of the University of Illinois, 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 _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY
[Northwest Corner of Race Street and Windsor Road]

THIS AGREEMENT, made and entered into this _____ day of _____, 2001~~0~~, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City") and the ~~Board of Trustees~~ **BOARD OF TRUSTEES OF THE** UNIVERSITY OF ILLINOIS at Urbana-Champaign campus (hereinafter "University").⁵

WITNESSETH:

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

A. Race Street is an 80-foot dedicated right-of-way north of the north right-of-way of Windsor Road.

B. The University is herein granted by the City a limited right to construct a gateway to be built in part upon such right-of-way. This limited right is wholly dependent upon the University, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The University expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the University, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. The City agrees that it will provide reasonable notice to the University upon such failure or non-compliance and will give the University a reasonable time to cure such a breach. Further, it is expressly understood that, regardless of the existence or not of any breach, the use by the University 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 construction and maintenance of a gateway, of 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") in consultation with the University, 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 University will cause the gateway or any portion thereof to be removed, as nearly as possible in conformance with the Director's request, within ten (10) days after receipt of written Notice from the Director. The University is solely and entirely responsible for any and all costs directly or indirectly related to such gateway removal.

E. In the event of an emergency, defined as imminent peril to person or property, or when the University 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 University consents and agrees that the City or its duly authorized agent may remove the gateway, or any portion thereof, and charge all costs and expenses incurred in such removal and disposal to the University. ~~Should the University agree to make such a payment in a timely way fail in any way to make timely payment in accordance with the Illinois Prompt Payment Act, to the City for such costs and expenses, the University 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 University 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 construction of the gateway, 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 University 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.~~

F. To the extent permitted by law, the University agrees to protect, indemnify, hold and save harmless and defend the City against any and all losses, claims, demands, costs, causes, expenses and fees, including reasonable attorney's fees and the reasonable value of any suit or any other claim or demand for injury or damages in connection with this Agreement, including the construction of the gateway, unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents or contractors.

G. The University represents that it may lawfully provide insurance coverage to the City in connection with the obligations as set forth in Paragraph F without such obligations being subject to the availability of funds, which may be lawfully applied thereto. Such insurance shall be kept in force at all times while the structure referred to in Paragraph B above continues to exist at the location described. The University accordingly agrees to provide to the City upon execution of this Agreement, a certificate of insurance evidencing the commercial general liability policy of the University insuring the City as an additional insured for purposes of this Agreement with coverage having a maximum limitation of \$1,000,000. In lieu of annual renewal of such certificate, the University agrees to notify the City if for any reason the coverage described in the certificate provides a lesser coverage.

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, and the fee for such recording to be at the sole expense of the University.

* * *

CITY OF URBANA, ILLINOIS
THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS

Tod Satterthwaite, Mayor

By: _____
Craig S. Bazzani, Vice
President and Comptroller

ATTEST:

Phyllis D. Clark, City Clerk

ATTEST:

Secretary, Michele M. Thompson

Approved as to legal form:

Office of University Counsel

Approved:

Charles Colbert, Vice Chancellor
for Administration and
Human Resources

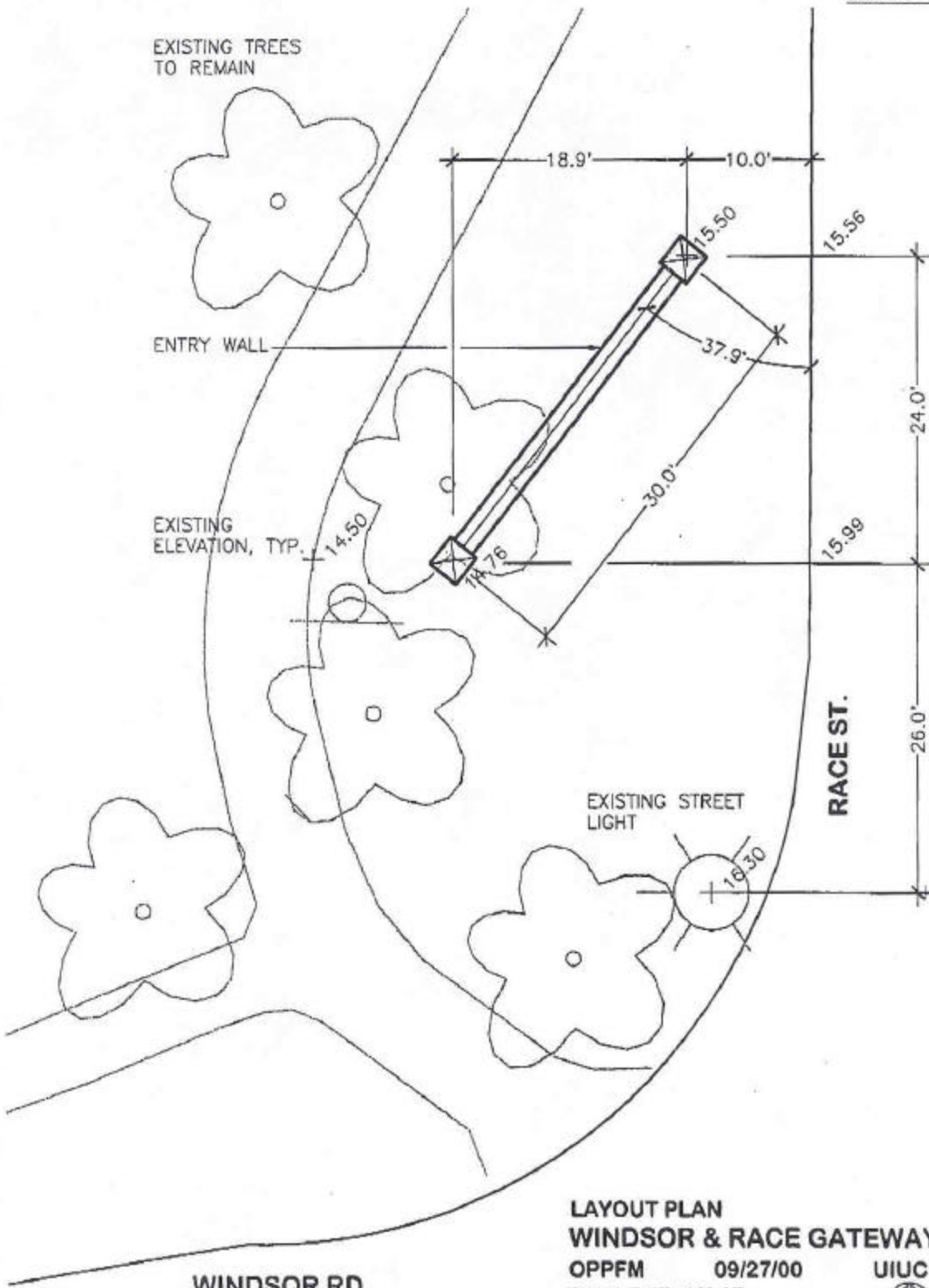
Prepared by and please return recorded copy to:

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



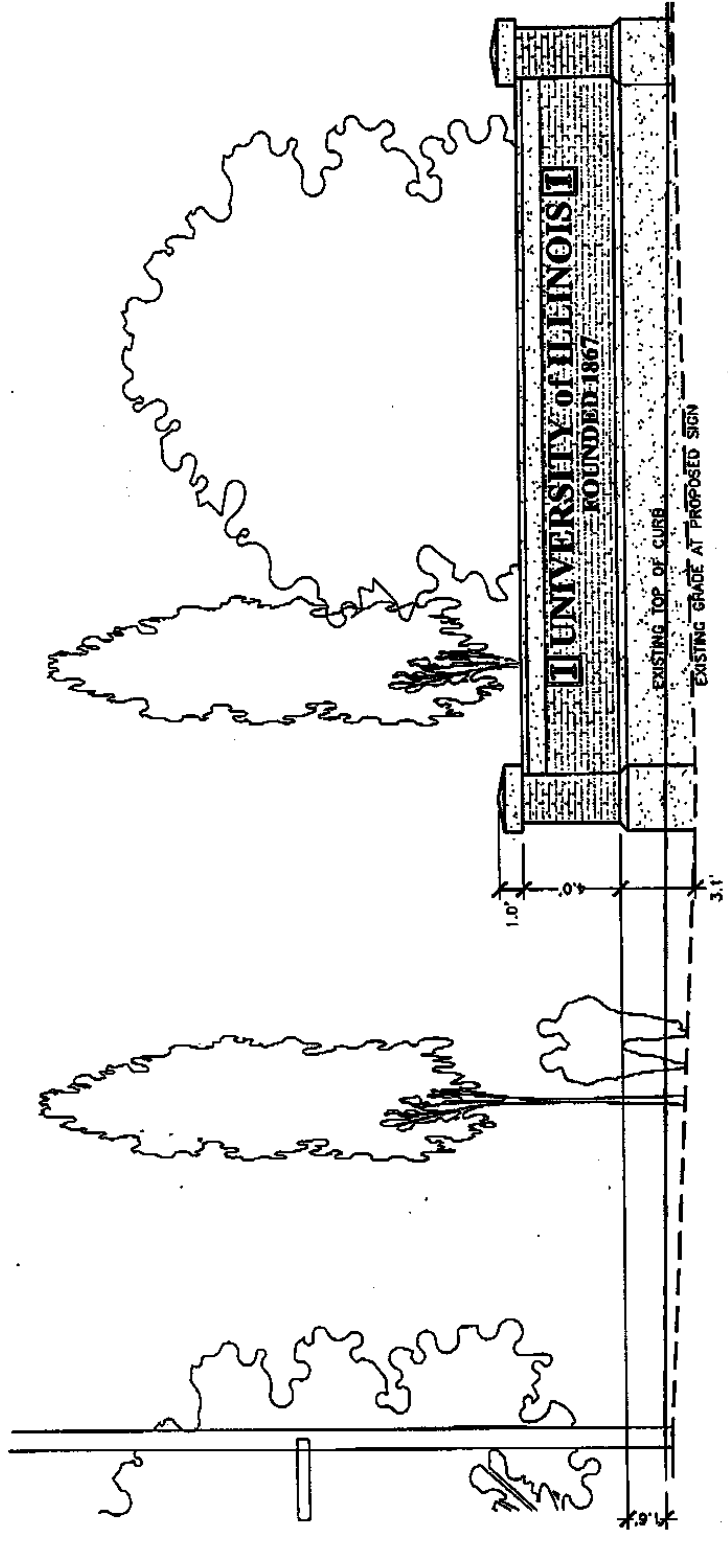
U of I Entrance Project On The Northwest Corner Of Windsor
And Race In Urbana





LAYOUT PLAN
WINDSOR & RACE GATEWAY
OPPFM 09/27/00 UIUC
SCALE 1"=10'-0"





ELEVATION
 WINDSOR & RACE GATEWAY
 OPPFH 09/27/00 UIUC
 SCALE 1/4"=1'-0"
 EXHIBIT A

MEMORANDUMS AND SUPPORTING TABLES OF INFORMATION FOR THE CITY'S LONG-RANGE CAPITAL IMPROVEMENTS PLAN WILL BE AVAILABLE ON THE CITY'S WEB SITE IN THE VERY NEAR FUTURE. IN THE MEANTIME, A WRITTEN COPY CAN BE VIEWED AT THE OFFICE OF THE CITY CLERK.

ORDINANCE NO. 2001-03-030

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND
RESTATED BOUNDARY DEVELOPMENT AREA AGREEMENT

(Metrozone)

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

Section 1. That an Amended and Restate Boundary Development Area
Agreement between the City of Urbana, Illinois and the City of Champaign,
Illinois, 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. **[The actual agreement will be faxed on 3/23/01]**

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 _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor

ORDINANCE NO. 2001-03-031

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
CHAMPAIGN COUNTY, ILLINOIS

(Champaign County Courthouse Construction)

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

Section 1. That An Agreement Between the City of Urbana and Champaign
County Respecting Champaign County Courthouse Construction, 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 _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Tod Satterthwaite, Mayor