



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

ADMINISTRATION

M E M O R A N D U M

TO: Bruce K. Walden, Chief Administrative Officer

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

DATE: December 17, 2001

RE: **Revised North Lincoln Avenue Development Agreement
{Time Extension for Lease Agreement}**

INTRODUCTION

On October 2, 2000, the City Council approved a development agreement with University Construction for North Lincoln Avenue improvements. Again on April 2, 2001, the City Council approved a revised development agreement, which revised the scope of work for the North Lincoln Avenue improvements. This month, Central Waste received an Illinois Environmental Protection Agency [IEPA] permit to develop a Waste Transfer/Recycling Facility on North Lincoln Avenue. Since this IEPA approval, the two parties have renewed their discussions for a build to suit lease agreement. The City and University Construction development agreement refers, under a condition precedent, that the agreement would be null and void unless this lease or land sale agreement was concluded by January 1, 2002. Central Waste and University Construction are close to completing this lease agreement and development agreement, but they need to have an extension of time. The attached revised development agreement reflects those extensions of time, particularly in Section 4.1.2(b) and (c) and also in Section 6.15. (See attached revised agreement.)

FISCAL IMPACTS

There are no new or additional direct fiscal impacts to the City other than what was previously stated in the agreement. This amount per Section 6.16 in the agreement is \$442,900.

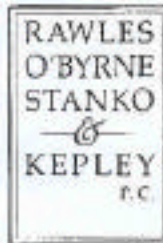
RECOMMENDATION

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

ADMINISTRATION · ARBOR · ENGINEERING · ENVIRONMENTAL MANAGEMENT
EQUIPMENT SERVICES · OPERATIONS · PUBLIC FACILITIES

J. Michael O'Byrne
Edward H. Rawles
Stephen M. O'Byrne
Clara A. Stanko
Kurt A. Kopley
Timothy S. Jefferson



attorneys at law
December 13, 2001

Bena & O'Byrne
1962-1962
Rene, O'Byrne
& Kopley
1962-1964
Rene, O'Byrne
& Kopley, P.C.
1964-1994

Via Fax - 384-2400
Mr. William R. Gray, P.E.
Public Works Director
City of Urbana

Re: North Lincoln Avenue Improvements and Development Agreement

Dear Bill:

As we have discussed, the present Development Agreement has provisions for cancellation if certain things are not accomplished by January 1, 2002. Namely, those conditions were that a non-cancelable land sale agreement be entered into with Central Waste and, secondly, that a non-cancelable development agreement be entered into with Central Waste by January 1, 2002.

Recently, a permit was approved for Central Waste to use the area for its new facility. So, it looks like the project will definitely move ahead provided we can obtain some additional time on these conditions precedent.

Our original agreement with Central Waste contemplated a sale and construction contract. Recently, Central Waste has requested instead a build to suit lease agreement. This complicates matters because of the necessity of our receiving from Central Waste their construction requirements. Then, our making a construction cost estimate and lease proposal that could well require some negotiations.

Therefore, University Construction, a division of MACC of Ill., Inc. requests that the Development Agreement be amended in the following particulars:

1. In Article IV, Section 4.1.2, Conditions Precedent, in subsection b, that the date of January 1, 2002 be changed to April 1, 2002 and then that the closing take place by June 1, 2002.
2. Next, in subsection c of Section 4.1.2, that the date for the non-cancelable development agreement with Central Waste of January 1, 2002 be amended to April 2, 2002.
3. Further, that in Article VI, Section 6.15, that the date be changed from January 1, 2002 to April 1, 2002.

I am writing this request in my capacity as attorney for the Developer and request that you submit it to the Urbana City Council for its meeting on Monday evening, December 17, 2001. Mr. Gallivan will be present at that meeting on behalf of the Developer.

If you have any questions about any of the above, please feel free to contact me.

Very truly yours,

J. Michael O'Byrne

JMOB:bjk
Enclosures

cc: Mr. Hugh W. Gallivan
Via Fax 355-8974

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 April 1, 2002; and the closing of the sale or lease takes place by June 1, 2002, and

c. Central Waste enters into a non-cancelable development agreement with University Construction by April 2, 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 April 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: _____

**University Construction, a division of
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:

ORDINANCE NO. 2001-12-173

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

{Time Extension for Lease Agreement}

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, Ordinance No. 2001-03-028, passed by the City Council on April 2, 2001, was approved; and

WHEREAS, subsequently, University Construction and Land Trust #131-1223 are requesting an extension of time to enter into a lease agreement and development agreement with Central Waste, it is necessary that this agreement 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 the amended and restated Agreement by and between the City of Urbana and University Construction, a division of MACC of IL, 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 _____,
2001.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

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

Tod Satterthwaite, Mayor