CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS
ENGINEERING

MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of the City Council

FROM: William R. Gray, Public Works Director
Craig E. Shonkwiler, Assistant City Engineer

DATE: October 18, 2018

RE: Right-of-Way License Agreement with Urbana Park District
Crystal Lake Shared Use Path
North of W. Park Street between W. Church Street and N. Broadway Avenue

Action Requested

Approval of the attached ordinance entitled "AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH THE URBANA PARK DISTRICT (North of W. Park St. between W. Church St. and N. Broadway Ave.)."

Background

The Urbana Park District proposes to install a ten-foot-wide shared use path on the north side of West Park Street between West Church Street and North Broadway Avenue. The location of the proposed path will be mainly within Crystal Lake Park, however, portions of the path and pads for park benches will be located within the public right-of-way as described and shown in the attached Right-of-Way License Agreement.

In accordance with City policy, a license agreement is attached for Council consideration. This license agreement is required for the installation of the shared use path on public right-of-way.

Financial Impact

The proposed installation will be at no cost to the City. The installation of the shared use path is being funded by the Urbana Park District using Illinois Transportation Enhancement Program funds with the local match coming from Carle Hospital. Maintenance of the path, including the portions within City right-of-way will be the sole responsibility of the Urbana Park District. It is recommended that the annual licensing fee typically associated with private party license agreements be waived, since the path will function as a public path that will benefit City residents and maintenance of the path will be performed by the Urbana Park District.

Recommendations

It is recommended that the City Council approve the ordinance entitled "AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH THE URBANA PARK DISTRCT (North of W. Park St. between W. Church St. and N. Broadway Ave.)."

Attachments: AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH THE URBANA PARK DISTRICT

RIGHT-OF-WAY LICENSE AGREEMENT

ORDINANCE NO. 2018-10-070

AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH THE URBANA PARK DISTRICT

(North of W. Park St. between W. Church St. and N. Broadway Ave.)

WHEREAS, Section 2-2-12 of the Illinois Municipal Code (65 ILCS 5/2-2-12) authorizes incorporated cities to contract and be contracted with; and

WHEREAS, the City Council, after due consideration, finds that approving a right-of-way license agreement with the Urbana Park District as herein provided is in the best interests of the residents of the City and is desirable for the welfare of the City's government and affairs.

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

Section 1.

A Right-of-Way License Agreement between the Urbana Park District and the City of Urbana, Illinois, in substantially 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.

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.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

This Ordinance shall be in full force and effect from and after its passage. Upon approval of this Ordinance, the City Clerk is directed to record a certified copy of this Ordinance with the Champaign County Office of the Recorder of Deeds.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this___ day of _____, _____.

AYES:

NAYS:

ABSTENTIONS:

_____
Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this___ day of _____, _____.

_____
Diane Wolfe Marlin, Mayor

This instrument was prepared by:

Curt Borman
Assistant City Attorney
City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801

Mail recorded document to:

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

City of Urbana – Champaign County

RIGHT-OF-WAY LICENSE AGREEMENT

Urbana Park District
1011 East Kerr Avenue
Urbana, Illinois 61802-1799

RIGHT-OF-WAY LICENSE AGREEMENT

This agreement is made between the Urbana Park District ("District") and the City of Urbana, Illinois ("City"), each a "party" and together the "parties," and is effective on the last date signed by a party hereto. The District and the City agree as follows:

1. **Grant of license**. The City hereby grants and the District hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, operate, repair, and remove a facility ("Facility") consisting of a ten-foot-wide multi-use path and pads for park benches, for use by the general public, within the public right-of-way located north of West Park Street between West Church Street and North Broadway Avenue in Urbana, Illinois ("Licensed Property"), as described and shown in Exhibit A.

   A. The license is not a warranty of title and does not convey any right, title, or interest in the Licensed Property.

   B. The license is subject to the rights of any public utility or other person or entity currently having rights, licenses, franchises, or easements in and about the Licensed Property.

   C. The license is nonexclusive and at all times subordinate to the City's and the public's use of the Licensed Property for purposes normally associated with a public right-of-way. Accordingly, if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to the Licensed Property, the District shall, at its sole cost, relocate or remove all or any portion of the Facility not more than 90 days after the City's Public Works Director directs such relocation or removal in writing.

2. **Term; termination**. The initial term of this agreement is 99 years from the effective date. Upon expiration of this initial term or any renewal term, this agreement automatically renews for a subsequent term of 20 years, unless, no fewer than 90 days before the scheduled expiration of the current term, either party provides written notice to the other party of the intent not to renew. The parties may terminate this agreement at any time by mutual written consent.

3. **Installation**. The District warrants that installation of the Facility will be done and completed in a good and competent manner, in accordance with all requirements of law, and at no expense to the City.

4. **Maintenance**. The District shall maintain the Facility in good and safe condition and in a manner that complies with all applicable laws.

5. **Repair**. After doing any work, the District at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by the District, including without limitation all sidewalks, parkways, or pavements, to their original condi-

tion or better in accordance with the specifications of the City. The District shall promptly repair and restore at its sole cost all damage it causes to any other utility, including but not limited to storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or facilities from any other utility District.

6. **Removal.** The District shall bear all costs and expenses incurred in the removal and disposal of the Facility and the restoration of the Licensed Property.

7. **Indemnification.** The District shall indemnify and defend the City, its officers, employees, and agents against all claims, liability, or damage, including without limitation reasonable attorney's fees and costs, arising from or in any way related to the District's construction, maintenance, operation, repair, or removal of the Facility, except to the extent caused by the gross negligence or willful misconduct of the City, its officers, employees, or agents. This section will survive the termination of this agreement.

8. **Entire agreement; amendment.** This agreement, together with its attachments, constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be amended except by a writing signed by both parties and recorded in the Office of the Champaign County Recorder of Deeds.

9. **Notices.** The parties shall give all notices required or permitted by this agreement in writing. All notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier service (e.g., FedEx or UPS). A notice delivered by email will be deemed given when the recipient acknowledges having received the email by an email sent to the sender's email address, as stated in this section, or by a notice delivered by another method in accordance with this section. An automatic "read receipt" will not constitute acknowledgment of an email for purposes of this section. Each party's address is stated below and may be changed to such other address as the party may hereafter designate by notice.

Urbana Park District: Board President, Urbana Park District, 1011 East Kerr Avenue, Urbana, Illinois 61802-1799

City of Urbana: Public Works Director, City of Urbana, 706 S. Glover Avenue, Urbana, Illinois 61802-4427

10. **Compliance with governmental requirements.**

A. **Right-of-way permit.**

(1) Except in an emergency as provided in this agreement, the District shall obtain a right-of-way permit from the City before constructing, installing, extending, removing, or otherwise changing the Facility. The permit will indicate the time, manner, and place of the work to be performed. The District shall comply with all conditions of any permits issued to it.

(2) Along with each application for a permit, the District shall provide the appropriate surety bond, insurance certificate, and permit fees required by the Urbana City Code.

(3) In an emergency that the District believes poses a threat of immediate harm to the public or to the Facility, the District may access the public way to mitigate the threatened harm without the benefit of a permit. In this case, the District shall advise the City of the emergency at the earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter and in the manner as stated in this agreement.

B. **Applicable law.** The District shall comply with all applicable laws, ordinances, regulations, and requirements of federal, state, county, and local regulatory authorities, including without limitation the applicable provisions of the Urbana City Code regarding rights-of-way and their uses and the Americans with Disabilities Act, all of which as may be amended from time to time.

11. **Recording.** The City will record this agreement in the Office of the Champaign County Recorder of Deeds at the District's expense.

12. **Counterparts.** The parties may sign this agreement in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures delivered by email in Adobe Portable Document Format (PDF) or by facsimile will be deemed original signatures for all purposes.

The parties are signing this agreement on the dates indicated below their signatures.

Urbana Park District

By: [redacted]

Michael Walker
Board President
Date: 9/19/, 2018

Attest:

[redacted]

Tim Bartlett
Board Secretary 9.24.18

City of Urbana, Illinois

By: _____

Diane Wolfe Marlin
Mayor
Date: _____, 2018

Attest:

_____

Charles A. Smyth
City Clerk
Ordinance No. 2018-

Attachment: Exhibit A Facility description (1 page)

FEHR GRAHAM
ENGINEERING & ENVIRONMENTAL
ILLINOIS DESIGN FIRM NO. 184-003525

ILLINOIS
IOWA
WISCONSIN

PLOT DATE: 6/18/18

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OWNER/DEVELOPER:
URBANA PARK DISTRICT
1011 KERR AVENUE
URBANA, ILLINOIS 61802

PROJECT AND LOCATION:
URBANA PARK DISTRICT
CRYSTAL LAKE SHARED USE PATH
URBANA, ILLINOIS

CONTRACT NO. 91576

DRAWN BY: RLT
APPROVED BY: WRW
DATE: 7/6/18

REVISIONS

REV. NO.	DESCRIPTION	DATE
1	PER IDOT/CITY OF URBANA REVIEW	8/6/18

DRAWING:
RIGHT OF WAY EXHIBIT

O:\C3D\17\17-641\check_plots\8-16-18\ROW Exhibit.dwg, FG-34x22 PLAN

JOB NUMBER:
17-641

Exhibit A