



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of the City Council
FROM: Tim Cowan, Public Works Director
Justin Swinford, Interim City Engineer
DATE: November 12, 2020
RE: AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT
WITH THE CHAMPAIGN-URBANA MASS TRANSIT DISTRICT

Introduction

The Champaign-Urbana Mass Transit has requested to enter into a Right-of-Way License Agreement to construct and maintain a power transmission line in the City's Right-of-Way (ROW). The proposed utility will be constructed entirely underground within the ROW. Figures describing and displaying the proposed route of the underground utility are included with the License Agreement.

While license agreements for underground utilities do not typically require the approval of City Council, this is an intergovernmental agreement and therefore not eligible for executive approval.

Financial Impact

The proposed license agreement includes an annual fee of \$967.20, which may be adjusted annually in accordance with the Consumer Price Index.

Recommendation

Staff recommends that the attached Ordinance Approving a Right-of-Way License Agreement with the Champaign-Urbana Mass Transit District be approved.

Attachment: Ordinance 2020-11-018 – An Ordinance Approving a Right-of-Way License Agreement with the Champaign-Urbana Mass Transit District

ORDINANCE NO. 2020-11-066

**AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH
THE CHAMPAIGN-URBANA MASS TRANSIT DISTRICT**

(2020)

WHEREAS, Article VII, Section 10(a), of the Illinois Constitution, 1970, and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize intergovernmental cooperation in any manner not prohibited by law or ordinance; and

WHEREAS, the Champaign-Urbana Mass Transit District, a local mass transit district created under the authority of the Local Mass Transit District Act (70 ILCS 3610/1 *et seq.*) (“MTD”), and the City of Urbana (“City”) desire to execute an intergovernmental agreement to allow the MTD to construct and maintain an underground electrical line within the right-of-way generally located on N. Hickory Street between the north alley of E. Park Street and E. University Avenue as herein provided; and

WHEREAS, Section 5 of the Intergovernmental Cooperation Act, 5 ILCS 220/5, requires the governing body of each party to an intergovernmental agreement to approve such agreement; and

WHEREAS, the City Council, after due consideration, finds that approving such an agreement 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.

An intergovernmental agreement between the Champaign-Urbana Mass Transit District and the City of Urbana, Illinois, in substantially the form of the copy of the Right-of-Way License 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 with the Champaign County Office of Recorder of Deeds and to transmit a copy of the recorded Ordinance to the Champaign-Urbana Mass Transit District, Attention Kirk Kirkland, Facilities Director, 1101 E. University Avenue, Urbana, Illinois 61802-2009.

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 date day of Month, Year.

AYES:

NAYS:

ABSTENTIONS:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this date day of Month, Year.

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

Champaign-Urbana Mass Transit District
1101 E. University Avenue
Urbana, Illinois 61802-2009

RIGHT-OF-WAY LICENSE AGREEMENT

This agreement is made between the Champaign-Urbana Mass Transit District, a local mass transit district created under the authority of the Local Mass Transit District Act (70 ILCS 3610/1 *et seq.*) ("MTD"), and the City of Urbana, an Illinois municipal corporation ("City"), each a "party" and together the "parties," and is effective on the last date signed by a party hereto. The parties agree as follows:

1. **Grant of license.** The City hereby grants and the MTD hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, operate, repair, reconstruct, remove, and inspect a facility ("Facility") consisting of one directionally bored four-inch HDPE conduit with three 15kv rated 12.5kv cable, suitable handholes, and belowground pedestals, as described in Exhibit A and shown in Exhibit B, within the public right-of-way ("Licensed Property") designated in Exhibit C.

- A. The license gives the MTD permission to use the Licensed Property for the limited purposes and term stated in this agreement. 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 MTD shall fully and faithfully perform and comply with all terms, conditions, and covenants contained in this agreement. If the MTD fails to perform or comply with any term, condition, or covenant in this agreement, the City may revoke the license after giving the MTD a period in which to cure such failure as set forth in this agreement.
- D. The MTD shall not transfer or assign the license.
- E. 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 MTD 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 ("Director") directs such relocation or removal in writing.
- F. The MTD shall use its best efforts to maintain contractors on any work project involving the Facility and to work toward its timely completion, barring inclement weather or other situations beyond the MTD's control.

2. **Term; termination.** The initial term of this agreement is 20 years from the effective date. Upon expiration of this initial term or any renewal term, this agreement automatical-

ly renews for a subsequent term of five 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. Either party may terminate this agreement for cause by giving written notice to the other party at least 45 days before the proposed termination. Such party shall specify the reason or reasons for such termination in the written notice and shall specifically state that such termination will become effective on a date at least 45 days after the date thereof if the other party does not completely cure the reason or reasons for such notice of termination.

3. **Fee.** On the effective date of this agreement and each anniversary of such date thereafter, the MTD shall pay to the City, in advance and without demand, an annual fee of \$967.20 as compensation for the license granted under this agreement. The MTD shall pay to the City the annual fee and all other charges required to be paid under this agreement by cash, valid check, or money order at City of Urbana Accounting, 400 S. Vine Street, Urbana, Illinois 61801. The City may adjust the amount set for compensation on January 1 of each year, beginning in 2022, in accordance with the Consumer Price Index (CPI-U) published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.

4. **Installation.** The MTD 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.

5. **Plan submission.** Upon completion of construction of the Facility, or each segment thereof, the MTD shall provide as-built plans to the City in an electronic format compatible with the City's Geographic Information System.

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

7. **Repair.** After doing any work, the MTD at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by the MTD, including without limitation all sidewalks, parkways, or pavements, to their original condition or better in accordance with the specifications of the City.

- A. If any such sidewalk, parkway, or pavement becomes uneven, unsettled, or otherwise requires repairing, because of such disturbance by the MTD, the MTD, as soon as climatic conditions reasonably permit, shall promptly, and in no more than 15 days from receipt of notice from the City to do so, cause such sidewalk, parkway, or pavement to be repaired or restored. The MTD shall complete such restoration no more than 10 days after the date of commencement of such restoration work. If the MTD fails to commence and complete the restoration work in the manner and within the times prescribed in this section, the City may perform such work, and the MTD shall pay any costs and expenses the City incurs upon written demand by the City.

- B. If such right-of-way or improvement cannot be so repaired, replaced, or restored, the MTD shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect, engineer, or contractor mutually agreed upon by the parties.
- C. Within a reasonable time after completion of any excavations in lawns or grassy parkways, the MTD shall backfill, tamp, and restore with seed or mulch all disturbed areas to at least as good a condition as existing immediately preceding the excavation.
- D. At the discretion of the Director, the MTD shall repair or replace any shrubs, bushes, or trees existing within the Licensed Property that are disturbed by reason of the construction, maintenance, or repair of the Facility.
- E. The MTD 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 company.
- F. The provisions in this section 7 will survive the termination of this agreement.

8. Removal.

- A. The City may remove and dispose of the Facility, or any portion thereof, upon occurrence of any of the following:
 - (1) an emergency that presents imminent peril to person or property;
 - (2) the MTD's non-compliance with any term, provision, or covenant that is not cured within the time provided for in this agreement following notice of such non-compliance tendered to the MTD;
 - (3) the Director or other responsible City official, in good faith, deems the procedure in section 7 impracticable under the circumstances present;
 - (4) termination of this agreement for any reason;
 - (5) the MTD's abandonment of the Facility in accordance with the provisions in section 9 of this agreement; or
 - (6) expiration of this agreement in the absence of any renewal thereof.
- B. The MTD shall bear all costs and expenses incurred in the removal and disposal of the Facility and the restoration of the Licensed Property.

- C. If the MTD fails in any way to make timely payment to the City for such costs and expenses, the MTD shall pay, in addition to any amount so owed, the City's reasonable attorneys' fees and court costs incurred in the collection of such amount.
- D. The provisions in this section 8 will survive the termination of this agreement.

9. **Lapse and termination.** The license granted in this agreement is limited to the construction, maintenance, operation, repair, reconstruction, removal, and inspection of the Facility. Any additional use other than that specifically named in this agreement, without the further express written consent of the City, is a violation of this agreement. Upon cessation of such use, as determined by the Director, this agreement immediately and automatically will lapse and terminate. If the Director believes the MTD is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the MTD in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice will state that the MTD has 30 days to reassert its rights under this agreement and demonstrate that it has not in fact abandoned the license granted by this agreement. If the MTD demonstrates within the 30-day period that it has not abandoned the Facility, this agreement will remain in force and effect according to its terms. If the MTD does not demonstrate within the 30-day period that it has not abandoned the Facility, this agreement will be deemed lapsed, terminated, and no longer in effect.

10. **Indemnification.** The MTD shall indemnify and defend the City, its officers, employees, and agents against all claims, liability, or damage, including without limitation reasonable attorneys' fees and costs, arising from or in any way related to the MTD's construction, maintenance, operation, repair, reconstruction, removal, or inspection 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.

11. **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.

12. **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.

MTD
Kirk Kirkland
Facilities Director
Champaign-Urbana Mass Transit District
1101 E. University Avenue
Urbana, Illinois 61802-2009
kkirkland@mtd.org

City of Urbana
Public Works Director
City of Urbana
706 S. Glover Avenue
Urbana, Illinois 61802-4427
cjmitten@urbanaininois.us

13. **Non-waiver.** Either party's failure to enforce any provision of this agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any provision of this agreement is valid only if in writing and signed by the parties.

14. **Severability.** The parties intend this agreement to be enforced to the fullest extent as allowed by law. If any provision of this agreement is found to be unenforceable by any court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect.

15. **Compliance with governmental requirements.**

A. Right-of-way permit.

- (1) Except in an emergency as provided in this agreement, the MTD 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 MTD shall comply with all conditions of any permits issued to it.
- (2) Along with each application for a permit, the MTD shall provide the following:
 - (a) prints, plans and maps showing the proposed location and design of the Facility to be constructed, including the location of each conduit to be entered, and the number and placement of handholes or other openings to gain access to that conduit; and
 - (b) the appropriate surety bond, insurance certificate, and permit fees required by the Urbana City Code.
- (3) In an emergency that the MTD believes poses a threat of immediate harm to the public or to any of the MTD's facilities, the MTD may access the public way to mitigate the threatened harm without the benefit of a permit. In this case, the MTD 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 MTD 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, all of which as may be amended from time to time.

16. **No presumption.** Each party hereto acknowledges that this agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this agreement strictly construed against the other party as drafter of this agreement.

17. **Due authorization.** Each party represents to the other that the person or persons signing this agreement on behalf of the party is or are authorized and empowered to enter into this agreement by and on behalf of such party and that this agreement is a legal, valid, and binding obligation of such party, enforceable against the other in accordance with its terms.

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

19. **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.

[Signature page follows]

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

Champaign-Urbana Mass Transit District

City of Urbana, Illinois

By: _____

**Karl Gnadt
Managing Director**

Date: _____, 2020

Attest:

**Jack Waaler
Secretary**

By: _____

**Diane Wolfe Marlin
Mayor**

Date: _____, 2020

Attest:

**Phyllis D. Clark
City Clerk
Ordinance No. 2020-**

Attachments: **Exhibit A** **Path Description (1 page)**
 Exhibit B **Segment Map (2 pages)**
 Exhibit C **Licensed Property (1 page)**

Path Description – Exhibit A

Path A-1:

Path A-1 includes (1) Directionally bored 4" HDPE Conduit with (3) 15kv rated, 12.5kv cable for the interconnect of a PV field being installed by U/C MTD to their new proposed Hydrogen Production Facility for their busses on their property. The electrical is proposed to be provided parallel and along the east side of North Hickory Street, starting at the north right-of-way of the public alley north of East Park Street at coordinates 40.117691, -88.197326 and terminating at the northerly right-of-way of East University Avenue at coordinates 40.116452, -88.197302.

This path also includes suitable underground manholes as needed to meet reasonable customer and system management needs in the least intrusive manner feasible. Depths for this underground electric line will be minimum depth or greater below finish grade. Aboveground structures are not allowed under this license agreement.



Legend

- C-U MTD Solar Array Expansion
- Proposed U/G Electric
- Right of Way

C-U MTD Solar Array Expansion Phase 1

Exhibit "B" - Segment Map License Agreement



1 inch = 100 feet



LICENSED PROPERTY – EXHIBIT C

Hickory Street from the alley north of E. Park Street to East University Avenue