



**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:** June 21, 2001

**RE:** **Flex-N-Gate Request to Install Fiber Optic Cable at Lierman Avenue**

**INTRODUCTION**

The Flex-N-Gate Corporation has requested permission from the City of Urbana to install a fiber optic cable crossing Lierman Avenue, north of University Avenue, to serve two properties they own. Attached is Exhibit A that shows the location for the fiber optic cable.

In order for Flex-N-Gate to install the fiber optic cable in city right-of-way, a license agreement is necessary. Attached please find a draft agreement for use of right-of-way, which outlines the conditions for permitting Flex-N-Gate to occupy the public right-of-way with fiber optic cable.

**FISCAL IMPACTS**

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

**RECOMMENDATION**

It is recommended that "AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR USE OF RIGHT-OF-WAY" be approved.

WRG:klf

Attachments: Exhibit A  
Agreement  
Ordinance

**ORDINANCE NO. 2001-06-062**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE  
AN AGREEMENT FOR USE OF RIGHT-OF-WAY  
{Lierman Avenue Between University Avenue and Butzow Drive}**

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 (Lierman Avenue  
Between University Avenue and Butzow Drive) between the City of Urbana and the  
Flex-N-Gate Corporation, 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 \_\_\_\_\_, 2001.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_

Tod Satterthwaite, Mayor

**AGREEMENT FOR USE OF RIGHT-OF-WAY**

**[Lierman Avenue Between University Avenue and Butzow Drive]**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Flex-N-Gate Corporation (hereinafter "Corporation"),

**WITNESSETH:**

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

A. Lierman Avenue is a 60-foot dedicated right-of-way between the north right-of-way of University Avenue and the south right-of-way of Butzow Drive.

B. The Corporation is herein granted by the City a limited right to bury a fiber optic cable under such right-of-way. This limited right is wholly dependent upon the Corporation, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Corporation expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Corporation, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Corporation 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 installation and maintenance of a fiber optic cable, 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"), 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 Corporation will cause the fiber optic cable to be removed, as nearly as possible in conformance with the Director's request, within thirty {30} days after receipt of written notice from the Director. The Corporation is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration in-kind of the right-of-way.

E. In the event of an emergency, defined as imminent peril to person or property, or when the Corporation 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 Corporation consents and agrees that the City or its duly authorized agent may remove the fiber optic cable, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Corporation. Should the Corporation fail in any way to make timely payment to the City for such costs and expenses, the Corporation 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 Corporation 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 installation of the fiber optic cable, 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 Corporation 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.

G. The Corporation acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the fiber optic cable.

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.

\* \* \*

**CITY OF URBANA, ILLINOIS**

By: \_\_\_\_\_  
**Tod Satterthwaite, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Phyllis Clark, City Clerk**

\* \* \*

**FLEX-N-GATE CORPORATION**

By: \_\_\_\_\_  
**President**

**ATTEST:**

\_\_\_\_\_  
**Secretary**

\* \* \*

**Prepared by and please return recorded copy to:**

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