



## MEMORANDUM

**TO:** Bruce K. Walden, Chief Administrative Officer  
**FROM:** William R. Gray, Public Works Director  
**DATE:** September 21, 2006  
**RE:** Alley License Agreement  
406 East California Avenue

### Introduction

Mr. Luther Marlow, who resides at 406 East California Avenue and owns the property at 404 East California Avenue, has requested that the City of Urbana grant him permission via a license agreement (see attached) to install a fence across the north-south alley between Illinois Street and California Avenue. The alley is midway between Urbana Avenue and Maple Street. See attached aerial photograph.

The alley has been closed to through traffic for many years when the City installed a guard rail across the alley mid-block. The alley is used by 406 East California Avenue and also used by 405 East Illinois Street for access to their respective garages. There is not unanimous support among property owners to vacate the alley at this time because the owner at 506 South Urbana Avenue is an absentee owner. There is no known objection by adjacent owners to install a fence across the alley right-of-way. Mr. Marlow will be required to obtain a fence permit from the Community Development Department.

### Fiscal Impact

There will be no fiscal impact to the City other than staff time to prepare the license agreement.

### Recommendation

It is recommended that the Ordinance Authorizing the Mayor to Approve the License Agreement between the City of Urbana and Luther Marlow be approved.

Attachments: License Agreement  
Aerial Photograph  
Ordinance

**CITY OF URBANA**  
**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT, made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (the "City"), and Luther Marlow, (the "Licensee"),

**WITNESSETH:**

WHEREAS, the Licensee desires to construct, install and maintain a fence and appurtenances located in the Public Alley Right-of-Way of the City of Urbana, as shown on the sketch attached hereto and made a part thereof.

WHEREAS, the Public Alley Right-of-Way is currently closed to through traffic.

WHEREAS, the Licensee desires to construct, install and maintain the fence at its own expense and agrees to hold the City harmless from any and all liability in connection therewith; and

WHEREAS, the City is willing to allow said construction, installation and maintenance by the Licensee of said fence under the terms and conditions as are herein set forth.

**Section 1.** NOW, THEREFORE, in consideration of the promises herein made by the Licensee, the City, subject to the terms and conditions of this License Agreement and subject to the rights of any public utility having easements in and about the premises, does hereby grant to the Licensee the license, right and privilege to enter upon such portion of the Public Alley Right-of-Way as shall be required for the purpose of constructing, installing and maintaining the fence in accordance with the attached sketch.

**Section 2.** Cost of construction, installation and maintenance. The Licensee shall be solely responsible for any and all costs associated with the design and location of the fence, as well as the actual construction, installation, maintenance, relocation or removal of the fence. All surplus excavation and other spoil shall also be promptly removed from the Public Alley Right-of-Way at the Licensee's sole cost and expense.

**Section 3.** Time and manner of construction, installation and maintenance. The Licensee and/or its contractor shall perform any such work in connection with the fence, with a minimum of inconvenience to the general public and shall, prior to commencing any construction, installation or maintenance, relocation or removal of the fence, be required to obtain a fence permit from the City of Urbana Community Development Department, with payment of appropriate fees for any such work in the Public Alley Right-of-Way, which such permit by the City may include additional requirements for time of construction and any other such matters relating to such work as the City, in its sole discretion, may from time to time require.

**Section 4.** Further conditions and terms. It is expressly understood and agreed that the License herein granted to the Licensee by the City is and the same shall be at all times subordinate to the City's use of the Public Alley Right-of-Way, and should any relocation of the fence be deemed necessary by the City at any time in the future, then such relocation of the fence shall be at the Licensee's sole cost and expense and shall be done as nearly as practicable in accordance with the City's request for such relocation. This License shall extend for such period as the Licensee continues to use and maintain the fence in good condition and repair and

only for so long as the Licensee shall use the fence for the intended purpose as stated herein, and the same shall immediately lapse and terminate if, as a result of the City's use of the Public Alley Right-of-Way, the City determines that the removal of the fence shall be necessary in connection with a proper public purpose for the use of the Public Alley Right-of-Way. In the event of any such termination, the removal of the fence shall be at the Licensee's sole cost and expense and shall be done in a timely manner as nearly as practicable in accordance with the City's request for such removal.

Section 5. Insurance. The Licensee and/or the Licensee's contractor shall have and maintain at their sole expense during any period of construction, installation, maintenance, relocation or removal of the fence in the Public Alley Right-of-Way public liability and property damage insurance adequate to protect against liability for damage claims through public use and/or such claims arising out of accidents occurring in or around the construction, installation, maintenance, relocation or removal of the fence. Such insurance policy shall provide coverage for City's contingent liability on such claims or losses, shall be in standard Illinois form written by an insurance company regularly doing business in Illinois, and shall name the City as an additional insured party. The Licensee and/or the Licensee's contractor shall provide the City with certificates of insurance as to the coverages required in this section, and on the request shall permit the City to examine the originals of all copies of such policies of insurance.

Section 6. Indemnity. The Licensee further agrees at its sole cost and expense to protect, indemnify, hold and save harmless and defend the City against any and all claims, costs, causes, expenses and fees, including reasonable attorney's fees, incurred by reason of any lawsuit or any other claim for damages arising in favor of any person, including the contractor or any agents of the Licensee and the Licensee itself, on account of personal injuries or death, or damage to property, including the fence itself, occurring, growing out of, incident to, or resulting directly or indirectly from this License or this License Agreement and/or the performance by the Licensee hereunder, whether such loss, damage, injury or liability is contributed to by the negligence of City or its officers, employees, or agents or by the condition of the Public Alley Right-of-Way or other facilities thereon, whether latent or patent, or from any other cause whatsoever.

Section 7. Binding effect. The terms, conditions and covenants of this License Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the City and the Licensee, and shall be a covenant running with the land herein below described.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF URBANA, ILLINOIS

By: \_\_\_\_\_  
Laurel L. Prussing, Mayor

ATTEST:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

LUTHER MARLOW

By: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF CHAMPAIGN    )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Laurel L. Prussing, personally known to me to be the Mayor of the City of Urbana, Illinois and Phyllis D. Clark, personally known to me to be the City Clerk of the City of Urbana, Illinois, the GRANTOR, and personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as Mayor and City Clerk, they signed and delivered the said instrument as Mayor and City Clerk, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF CHAMPAIGN    )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Luther Marlow, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public



Luther Marlow  
License Agreement Exhibit

City of Urbana  
Public Works Department  
Engineering Division

Date: 8/17/2006

Drawn by :BWF



ORDINANCE NO. 2006-09-123

AN ORDINANCE APPROVING AND AUTHORIZING THE CONSTRUCTION, INSTALLATION AND MAINTENANCE OF A FENCE IN A PUBLIC ALLEY RIGHT-OF-WAY

(North/South Public Alley Right-Of-Way Between E. Illinois and E. California Streets)

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

Section 1. That a License Agreement for Construction, Installation and Maintenance of a Fence in a Public Alley Right-of-Way between the City of Urbana, Illinois and Luther Marlow, in substantially the form of the copy of said License 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 License 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 \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor