



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: February 8, 2018
RE: Agreement for Site Lighting Improvements Installation at 111 West Main Street

Action Requested

Approval of the attached ordinance entitled “AN ORDINANCE APPROVING AN AGREEMENT WITH DOWNTOWN CREATIONS, LLC FOR SITE LIGHTING IMPROVEMENTS INSTALLATION (111 W. Main Street).”

Background and Facts

Downtown Creations, LLC, which operates the Blackbird bar at 119 West Main Street, has installed site lighting for an outdoor seating area in Fish Alley located behind their business. The lighting is strung across the alley on cables from the building located at 119 West Main Street to the City owned Parking Garage at 111 West Main Street. The site lighting cables are anchored into the wall of the City’s Parking Garage thus requiring a license agreement for that attachment.

Financial Impact

The proposed installation will be at no cost to the City. Downtown Creations, LLC will pay an annual fee of \$94.00 to the City for the attachments to the City Parking Deck in accordance with the City’s Schedule of Fees.

Recommendations

It is recommended that the City Council approve “AN ORDINANCE APPROVING AN AGREEMENT WITH DOWNTOWN CREATIONS, LLC FOR SITE LIGHTING IMPROVEMENTS INSTALLATION (111 W. Main Street)

Attachments: “AN ORDINANCE APPROVING AN AGREEMENT WITH DOWNTOWN CREATIONS, LLC FOR SITE LIGHTING IMPROVEMENTS INSTALLATION (111 W. Main Street).”

AGREEMENT FOR SITE LIGHTING IMPROVEMENT INSTALLATION AT 111 WEST MAIN STREET

ORDINANCE NO. 2018-02-009

**AN ORDINANCE APPROVING AN AGREEMENT WITH DOWNTOWN
CREATIONS, LLC FOR SITE LIGHTING IMPROVEMENTS INSTALLATION**

(111 W. Main Street)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE

CITY OF URBANA, ILLINOIS, as follows:

Section 1.

An Agreement for Site Lighting Improvements between Downtown Creations, LLC at the 119 West Main Street and the City of Urbana, Illinois Parking Garage at 111 West Main Street, 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

**AGREEMENT FOR SITE LIGHTING IMPROVEMENTS INSTALLATION AT
111 WEST MAIN STREET**

Downtown Creations, LLC
2232 SW Adams Street
Peoria, Illinois 61602-1804

**AGREEMENT FOR SITE LIGHTING IMPROVEMENTS INSTALLATION
AT 111 WEST MAIN STREET**

This agreement is made between Downtown Creations, LLC, an Illinois limited liability company ("Company"), 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 Company and the City agree as follows:

1. **Garage.** The City of Urbana municipal parking garage ("Licensed Property") is located at 111 West Main Street, Urbana, Illinois, and has a Permanent Index Number of 92-21-17-206-030.

2. **Grant of license.** The City hereby grants and the Company hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, operate, repair, and remove a site lighting facility ("Facility"), to be located on the Licensed Property as shown in Exhibit A, and in accordance with the installation standards contained in Exhibit B.

- A. The license gives the Company 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 Company shall fully and faithfully perform and comply with all terms, conditions, and covenants contained in this agreement. If the Company fails to perform or comply with any term, condition, or covenant herein, the City may revoke the license after giving the Company a period in which to cure such failure as set forth in this agreement.
- D. The Company shall not transfer or assign the license.
- E. The license is non-exclusive 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 garage or the redevelopment of the 111 West Main Street site. Accordingly, if necessary to accommodate repair, maintenance, or construction of City utilities or improvements to the Licensed Property, the Company shall, at its sole cost, relocate or remove all or any portion of the Facility not more than ninety (90) days after the City's Public Works Director ("Director") directs such relocation or removal in writing.
- F. The Company 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 Company's control.

3. **Term; termination.** The initial term of this agreement is twenty (20) years from the effective date. Upon expiration of this initial term or any renewal term, this agreement automatically renews for a subsequent term of five (5) years, unless, no fewer than ninety (90) days prior to 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 forty-five (45) days prior to 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 forty-five (45) days after the date thereof if the other party does not completely cure the reason or reasons for such notice of termination.

4. **Fee.** On the effective date of this agreement and on each anniversary thereafter, the Company shall pay to the City, in advance and without demand, an annual fee as compensation for the license granted under this agreement. Such fee will be in an amount equal to the City's then current non-franchise utility maintenance fee appearing in the City's Schedule of Fees, as amended from time to time, based on a 47-foot occupation of the Licensed Property. As of the effective date of this agreement, such fee is \$94. The Company shall pay 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.

5. **Installation.** The Company 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.

6. **Maintenance.** The Company 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 Company at its sole cost and expense shall promptly repair and restore to the extent practicable any part of the Licensed Property or any other City-owned property disturbed by the Company, including without limitation all walls, ceilings, roofs, sidewalks, parkways, or pavements, to the condition in which they existed before the repair, or better, in accordance with the specifications of the City.

- A. If such property cannot be so repaired, replaced, or restored, the Company 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.
- B. The provisions in this Paragraph 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 Company's non-compliance with any term, provision, or covenant in this agreement that is not cured within the time provided herein following notice of such non-compliance tendered to the Company;
 - (3) the Director or other responsible City official, in good faith, deems the procedure in Paragraph 7 impracticable under the circumstances present;
 - (4) termination of this agreement for any reason;
 - (5) the Company's abandonment of the Facility's in accordance with the provisions in Paragraph 9 of this agreement; or
 - (6) expiration of this agreement in the absence of any renewal thereof.
- B. The Company 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 Company fails in any way to make timely payment to the City for such costs and expenses, the Company 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. This provision will survive the termination of this agreement.

9. Lapse and termination. The license herein granted is limited to the construction, maintenance, operation, repair, and removal of the Facility. Any additional use other than that specifically named herein, 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 Company is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Company in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice will state that the Company has thirty (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 Company demonstrates within the thirty (30) day period that it has not abandoned the Facility, this agreement will remain in force and effect according to its terms. If the Company does not demonstrate within the thirty (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 Company 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 Company'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.

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.

12. **Notices.** All notices required under this agreement must be in writing. Notices must be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the respective party as shown below, or to any changed address either party may have fixed by notice. Notice will be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice will be deemed given on the date of the mailing. Either party may designate by written notice a different address to which notices must be sent.

Downtown Creations, LLC.

Scott Glassman
Blackbird
119 W. Main St
Urbana, Illinois 61801-2714

City of Urbana

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

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. **Compliance with governmental requirements.** The Company 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 Zoning Ordinance regarding outdoor lighting, all of which as may be amended from time to time.

15. **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.

16. **Due Authorization.** Each party represents to the other that the person or persons signing this agreement on behalf of the party is 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.

17. **Recording.** The City will record this agreement in the Office of the Champaign County Recorder of Deeds at the expense of the Company.

18. **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.

Downtown Creations, LLC

By: The 3 Gs' Endeavors, LLC and
Phlat 5, Inc.
its managers

By: 
Arian Goldberg
a manager of The 3 Gs' Endeavors, LLC

Date: 12-1-, 2017

By: 
Arian Goldberg
a manager of The 3 Gs' Endeavors, LLC

Date: 12/01, 2017

By: 
Scott Glassman
President of Phlat 5, Inc.

Date: 1/19/, 2018

City of Urbana, Illinois

By: _____
Diane Wolfe Marlin
Mayor

Date: _____, 2017

Attest:

Charles A. Smyth
City Clerk
Resolution No. 2017-

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

Downtown Creations, LLC

By: The 3 Gs' Endeavors, LLC and
Phlat 5, Inc.
its managers

By: _____
Arlan Goldberg
a manager of The 3 Gs' Endeavors, LLC

Date: _____, 2017

By: _____
Jay Goldberg
a manager of The 3 Gs' Endeavors, LLC

Date: _____, 2017

By: _____
Scott Glassman
President of Phlat 5, Inc.

Date: _____, 2017

City of Urbana, Illinois

By: _____
Diane Wolfe Marlin
Mayor

Date: _____, 2018

Attest:

Charles A. Smyth
City Clerk
Ordinance No. 2018-

STATE OF ILLINOIS)
)
COUNTY OF Peoria) ss.

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Arlan Goldberg and Jay Goldberg personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument in their capacity as the duly authorized Managers of The 3 Gs' Endeavors, LLC, the said The 3 Gs' Endeavors, LLC being a manager of Downtown Creations, LLC, as their free and voluntary acts, and the free and voluntary acts of The 3 Gs' Endeavors, LLC and Downtown Creations, LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 15th day of December 2017.



[Redacted Signature]
Notary Public

STATE OF ILLINOIS)
)
COUNTY OF _____) ss.

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Scott Glassman, 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 acknowledged that he signed, sealed and delivered the said instrument in his capacity as the duly authorized President of Phlat 5, Inc., the said Phlat 5, Inc. being a manager of Downtown Creations, LLC, as his free and voluntary act, and the free and voluntary acts of Phlat 5, Inc. and Downtown Creations, LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 19 day of January 2018.



[Redacted Signature]
Notary Public

- Attachments: Exhibit A Location map (1 page)
Exhibit B Installation standards (1 page)



EXHIBIT A - LOCATION MAP



Exhibit B Installation Standards

1. The Company may install pipe and flanges anchored into the north wall of the Licensed Property to support cables for overhead lighting in Fish Alley. The Company shall not install electrical conduit in or on such wall.
2. The Company may install up to six (6) aerial cables extending from 121 West Main Street to the north wall of the Licensed Property that faces Fish Alley. The Company shall use only self-supporting cable that meets or exceeds industry standards. The Company shall install such cable so that the lowest point hangs at a height of eighteen (18) feet or higher.
3. Any pipe or flanges attached to the wall of the Licensed Property must utilize epoxy adhesive anchors (HVU adhesive capsule with HAS anchor rod assembly manufactured by HILTI or an equal approved by the City Engineer). Masonry screws are not an acceptable fastening method.
4. The Company shall promptly remedy any problems the City identifies with any part of the installation of the Facility.
5. The Company shall notify the City no more than sixty (60) days after it discontinues use of the Facility.