



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of the City Council
FROM: William R. Gray, Public Works Director
Bradley M. Bennett, Assistant City Engineer
DATE: May 10, 2018
RE: MCDJ Development, LLC (208 West Griggs Street), Amended and Restated Agreement for Use of Right-of-Way

Action Requested

Approval of the attached ordinance entitled “AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT WITH MCDJ, LLC (208 West Griggs Street).”

Background and Facts

On December 19, 2016, the City Council passed Ordinance No. 2016-12-115, approving a right-of-way license agreement with MCDJ, LLC to allow the construction of an entryway, patio, and awning upon 450 square feet of the public right-of-way located at 208 West Griggs Street. That space was to be utilized by the 25 O’Clock Brewing Company for access to their business and to outdoor seating for the brewery taproom.

The 25 O’Clock Brewing Company is requesting to expand the entryway, patio, and awning area located in the public right-of-way by 320 square-feet to the west of the area approved under Ordinance No. 2016-12-115. The brewery has also requested to install permanent chairs and tables along the east side of 208 West Griggs Street in a 558 square-foot landscaped area on City-owned property that is part of the Boneyard Creek Crossing. The landscaped area along the east side of the building space would also be utilized for outdoor seating for the brewery taproom.

In accordance with City policy, a license agreement, which is required for the installations described above, is attached for Council consideration. The existing and proposed locations of the improvements are depicted in Exhibit A attached to the proposed agreement. The public right-of-way line is at the south face of the building. The City-owned Boneyard Creek Crossing property is at the east face of the building.

Financial Impact

The proposed installation will be at no cost to the City. MCDJ, LLC will pay an annual fee of \$1,128.80 to the City for the right-of-way occupation in accordance with the City’s Schedule of Fees. The annual fee will be adjusted by the Consumer Price Index each year of the agreement.

Recommendations

It is recommended that the City Council approve “AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT WITH MCDJ, LLC (208 West Griggs Street)”.

Attachments: AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT WITH MCDJ, LLC (208 West Griggs Street)”
AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT (MCDJ, LLC)

ORDINANCE NO. 2018-05-035

**AN ORDINANCE APPROVING AN AMENDED AND RESTATED RIGHT-OF-WAY
LICENSE AGREEMENT WITH MCDJ, LLC**

(208 W. Griggs Street)

WHEREAS, on December 19, 2016, the City Council passed Ordinance No. 2016-12-115, approving a right-of-way license agreement between MCDJ, LLC and the City of Urbana (“City”); and

WHEREAS, both parties desire to amend and restate the agreement; and

WHEREAS, the City Council, after due consideration, finds that amending and restating the agreement 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. An Amended and Restated Right-of-Way License Agreement between MCDJ, LLC 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

AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT

MCDJ, LLC
208 West Griggs Street
Urbana, Illinois 61801-2608

AMENDED AND RESTATED RIGHT-OF-WAY LICENSE AGREEMENT

MCDJ, LLC, an Illinois limited liability company ("Company"), and the City of Urbana, an Illinois municipal corporation ("City"), each a "party" and together the "parties," mutually agree to amend and restate the right-of-way license agreement authorized by Ordinance No. 2016-12-115 and entered into on December 21, 2016. This amended and restated right-of-way license agreement is effective on the last date signed by a party hereto and is to read in its entirety as follows:

1. **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 facility ("Facility") consisting of an entryway, patio, and awning (comprising 770 square feet) and an outdoor serving area, including chairs and tables (comprising 558 square feet), upon a total of 1,328 square feet of the public right-of-way located at 208 West Griggs Street, Urbana, Illinois ("Licensed Property"), as shown in Exhibit A-1.

- 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 in this agreement, 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 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 Company 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 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.

2. **Term; termination.** This agreement is binding upon the parties hereto for a term of 20 years commencing as of its effective date, unless sooner terminated in accordance with this agreement. 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 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 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 on each anniversary of such date thereafter, the Company shall pay to the City, in advance and without demand, an annual fee of \$1,128.80 as compensation for the license granted under this agreement, minus credits and prorations for amounts paid under the previous version of this agreement. The Company 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 January 1, 2019, 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 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.

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

6. **Maintenance.** The Company shall maintain the Facility in good and safe condition and in a manner that complies with all applicable laws. In the outdoor seating area on the east side of the building, the Company shall, at its sole expense, provide for regular landscaping, including without limitation mowing, watering, weeding, edging, trimming, pruning, fertilizing, mulching, and removing and replacing dead or dying plants, as needed to maintain high aesthetic standards.

7. **Repair.** After doing any work, the Company at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by the Company, 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 Company, the Company, as soon as climatic conditions reasonably permit, shall promptly, and 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 Company shall complete such restoration no more 10 days after the date of commencement of such restoration work. If the Company 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 Company 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 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.
- C. Within a reasonable time after completion of any excavations in lawns or grassy parkways, the Company 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 Director's discretion, the Company 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 Company shall promptly repair and restore at its own expense 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 Company'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 Company;
 - (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 Company's abandonment of the Facility's 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 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 granted in this agreement is limited to the construction, maintenance, operation, repair, and removal 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 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 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 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 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 attachment, 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.** 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 acknowledg-

es 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.

MCDJ, LLC

City of Urbana

MCDJ, LLC
Attention: Michael D. Hosier, Manager
1300 S. Neil Street
Champaign, Illinois 61820-6528

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.**

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

- (1) Except in an emergency as provided in this agreement, the Company 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 Company shall comply with all conditions of any permits issued to it.
- (2) In an emergency that the Company believes poses a threat of immediate harm to the public or to any of the Company's facilities, the Company may access the public way to mitigate the threatened harm without the benefit of a permit. In this case, the Company 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 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 City Code regarding rights-of-way and their uses, 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.

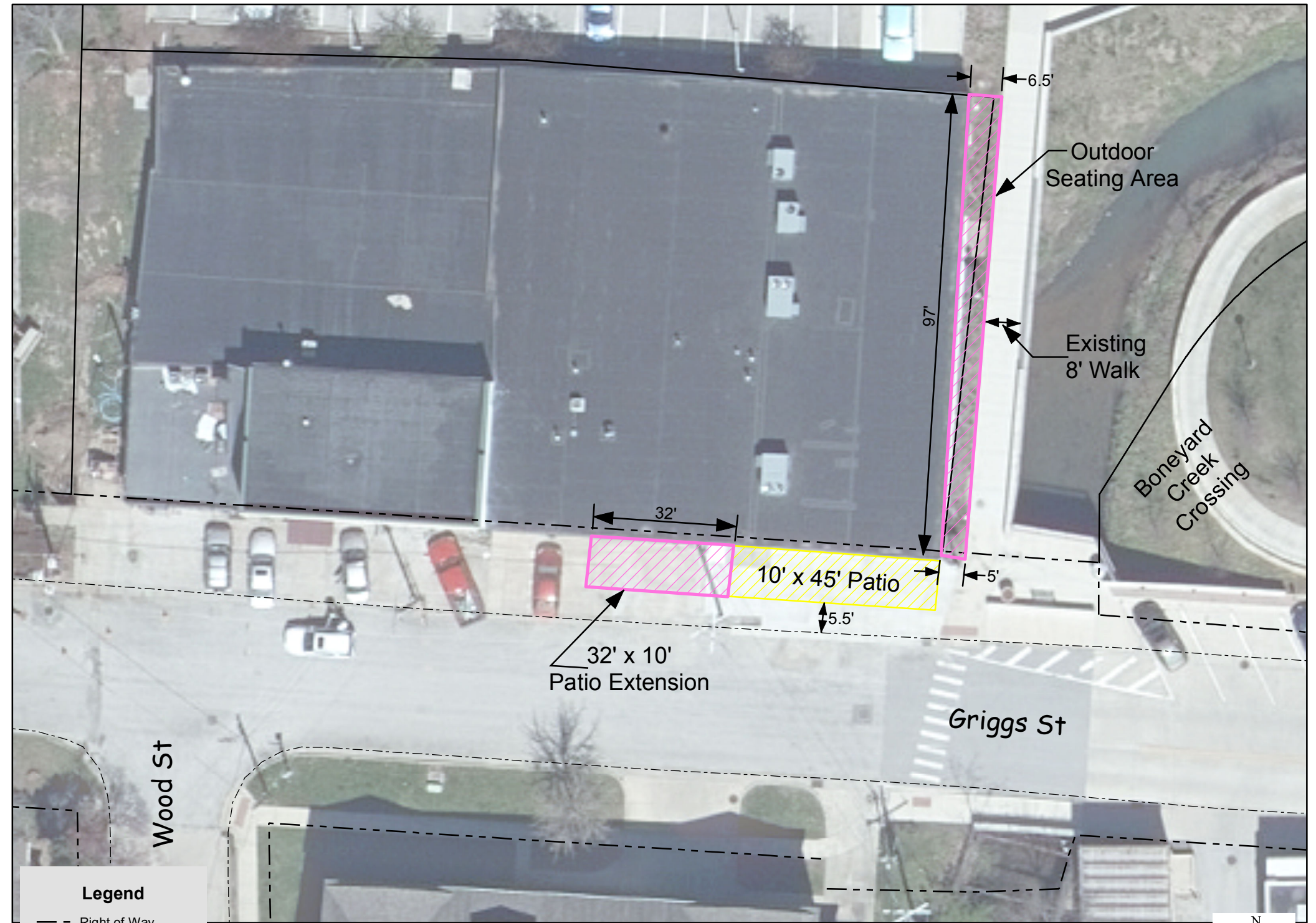
City of Urbana, Illinois

By: _____
Diane Wolfe Marlin
Mayor
Date: _____, 2018

Attest:

Charles A. Smyth
City Clerk
Ordinance No. 2018-

Attachment: Exhibit A-1 Facility description (1 page)



Legend

- Right of Way
- Property Line
- - - Edge Of Pavement

208 Griggs Street
Exhibit A

