

**RESOLUTION NO. 2023-11-093R \_\_\_\_\_**

**A RESOLUTION APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT  
WITH SMC-RE, LLC (106 N. RACE STREET)**

**WHEREAS**, the City Council, in its discretion and consistent with applicable law, may authorize, by ordinance, the Mayor to execute license agreements on behalf of the City for use of public rights-of-way where such use will involve the placement or installation of any facility on the surface of or above the ground in a public right-of-way; and

**WHEREAS**, the City Council, after due consideration, finds that approving 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 RESOLVED** by the City Council, of the City of Urbana, Illinois, as follows:

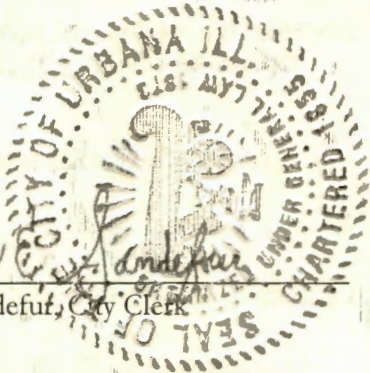
A right-of-way license agreement between SMC-RE, LLC and the City of Urbana for (106 N. Race Street), in substantially the form of the copy of said agreement attached hereto and hereby incorporated by reference, is hereby authorized and approved. The Mayor of the City of Urbana is hereby authorized to execute and deliver said agreement as so authorized and approved for and on behalf of the City of Urbana.

**PASSED BY THE CITY COUNCIL** this 27th day of November, 2023.

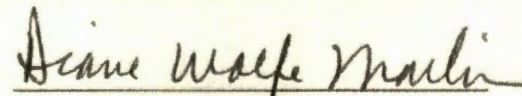
AYES: Wu, Evans, Hursey, Kolisetty, Bishop, Wilken, Quisenberry

NAYS: None

ABSTENTIONS: None

  
*Darcy E. Sandefur*  
Darcy E. Sandefur, City Clerk

**APPROVED BY THE MAYOR** this 13th day of December, 2023.

  
Diane Wolfe Marlin, Mayor

an



DocId:8485703

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**This instrument was prepared by:**

Public Works Director  
City of Urbana  
706 Glover Avenue  
Urbana, Illinois 61802

2024R03216  
REC ON: 03/14/2024 11:05:17 AM  
CHAMPAIGN COUNTY  
AARON ANMONS  
REC FEE: 51.00  
RHSPS FEE:  
STATE TAX:  
COUNTY TAX:  
PLAT ACT:  
PAGES: 9

(G) **Mail recorded document to:**

Public Works Director  
City of Urbana  
706 Glover Avenue  
Urbana, Illinois 61802

City of Urbana - Champaign County

**RIGHT-OF-WAY LICENSE AGREEMENT**  
(Outdoor Seating Area)

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SMC-RE, LLC  
(The Rose Bowl Tavern)  
505 E. Illinois Street  
Urbana, IL 61801

## RIGHT-OF-WAY LICENSE AGREEMENT

This agreement is made between SMC-RE, LLC, ("Licensee") 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 Licensee and the City agree as follows:

1. **Grant of license.** The City hereby grants and the Licensee hereby accepts a nonexclusive, nontransferable, nonassignable, and revocable license to construct, maintain, operate, and repair seating and tables, ("Facility") within the public right-of-way ("Licensed Property"). For purposes of this Agreement, the Licensed Property shall be the property described in Exhibit A.

- A. The license granted herein gives the Licensee permission to use the Licensed Property for the limited purposes and pursuant to the terms and conditions 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 granted herein 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 Licensee shall fully and faithfully perform and comply with all terms, conditions, and covenants contained in this agreement. If the Licensee fails to perform or comply with any term, condition, or covenant in this agreement, the City may revoke the license after giving the Licensee a period in which to cure such failure as set forth in this agreement.
- D. The Licensee shall not transfer or assign the license granted herein.
- E. The license granted herein 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 Licensee 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 Licensee shall use its best efforts to maintain contractors on any work project involving the Right-of-way and to work toward its timely completion, barring inclement weather or other situations determined to be beyond the Licensee's control.

2. **Term; termination.** The initial term of this agreement is five (5) 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 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 on each anniversary of such date thereafter, the Licensee shall pay to the City, in advance and without demand, an annual fee of \$0.88/ square foot x 200 square feet = **\$176.00** as compensation for the license granted under this agreement. The Licensee 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, 2024, 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 Licensee 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.** Prior to construction of the Facility, the Licensee shall provide plans to the City which clearly show the proposed Facility.

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

7. **Repair.** After doing any work within the Licensed Property, the Licensee at its sole cost and expense shall promptly repair and restore to the extent practicable any portion of the right-of-way disturbed by the Licensee, 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 Licensee, the Licensee, 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 Licensee shall complete such restoration no more than 10 days after the date of commencement of such restoration work. If the Licensee 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 Licensee 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 Licensee shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect, engineer, or contractor selected by the City.
- C. At the discretion of the Director, the Licensee shall repair or replace any shrubs, bushes, or trees existing within the Licensed Property (other than what is proposed to be permanently removed) that are disturbed, damaged, or destroyed by reason of the construction, maintenance, or repair of the Facility.
- D. The Licensee 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.
- E. 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 Licensee'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 Licensee;
  - (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 Licensee'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 Licensee 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 Licensee fails in any way to make timely payment to the City for such costs and expenses, the Licensee 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 Licensee is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify the Licensee in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice will state that the Licensee has 30 days to reassert its rights under this agreement and demonstrate that it has not in fact abandoned the Facility and thereby the license granted by this agreement. If the Licensee 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 Licensee 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.** To the extent permitted by law, the Licensee shall protect, indemnify, and defend the City against any and all losses, claims, demands, costs, causes, expenses and fees, including reasonable attorney's fees and the reasonable value of any suit or any other claim or demand for injury or damages in connection with this agreement, including the construction and maintenance of the Facility and Licensed Property, unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents or contractors. This section will survive the termination of this agreement.

11. **Insurance.** The Licensee represents that it may lawfully provide insurance coverage to the City in connection with the obligations as set forth in this agreement without such obligations being subject to the availability of funds, which may be lawfully applied thereto. Such insurance will be kept in force at all times while the Facility continues to exist at the location described. The Licensee accordingly agrees to provide to the City, upon execution of this agreement, a certificate of insurance evidencing the commercial general liability policy of the Licensee insuring the City as an additional insured for purposes of this agreement with coverage in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

12. **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 and recorded in the Office of the Champaign County Recorder of Deeds.

13. **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.

SMC-RE, LLC

SMC-RE, LLC  
Attention: Charlie Harris  
505 E. Illinois Street  
Urbana, IL 61801

City of Urbana

Public Works Director  
City of Urbana  
706 Glover Avenue  
Urbana, Illinois 61802

14. **Governing Law.** The parties shall construe this agreement in accordance with the laws of the State of Illinois and shall initiate and maintain any action to interpret, construe, or enforce this agreement in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

15. **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.

16. **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.

17. **Compliance with governmental requirements.**

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

- (1) Except in an emergency as provided in this agreement, the Licensee 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 Licensee shall comply with all conditions of any permits issued to it; and
- (2) Along with each application for a permit, the Licensee shall provide the following: prints, plans and maps showing the proposed location and design of the Facility to be constructed; and
- (3) In an emergency that the Licensee believes poses a threat of immediate harm to the public or to any of the Licensee's facilities, the Licensee may access the public way to mitigate the threatened harm without the benefit of a permit. In this case, the Licensee 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 Licensee 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.

18. **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.

19. **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.

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

21. **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) will be deemed original signatures for all purposes.

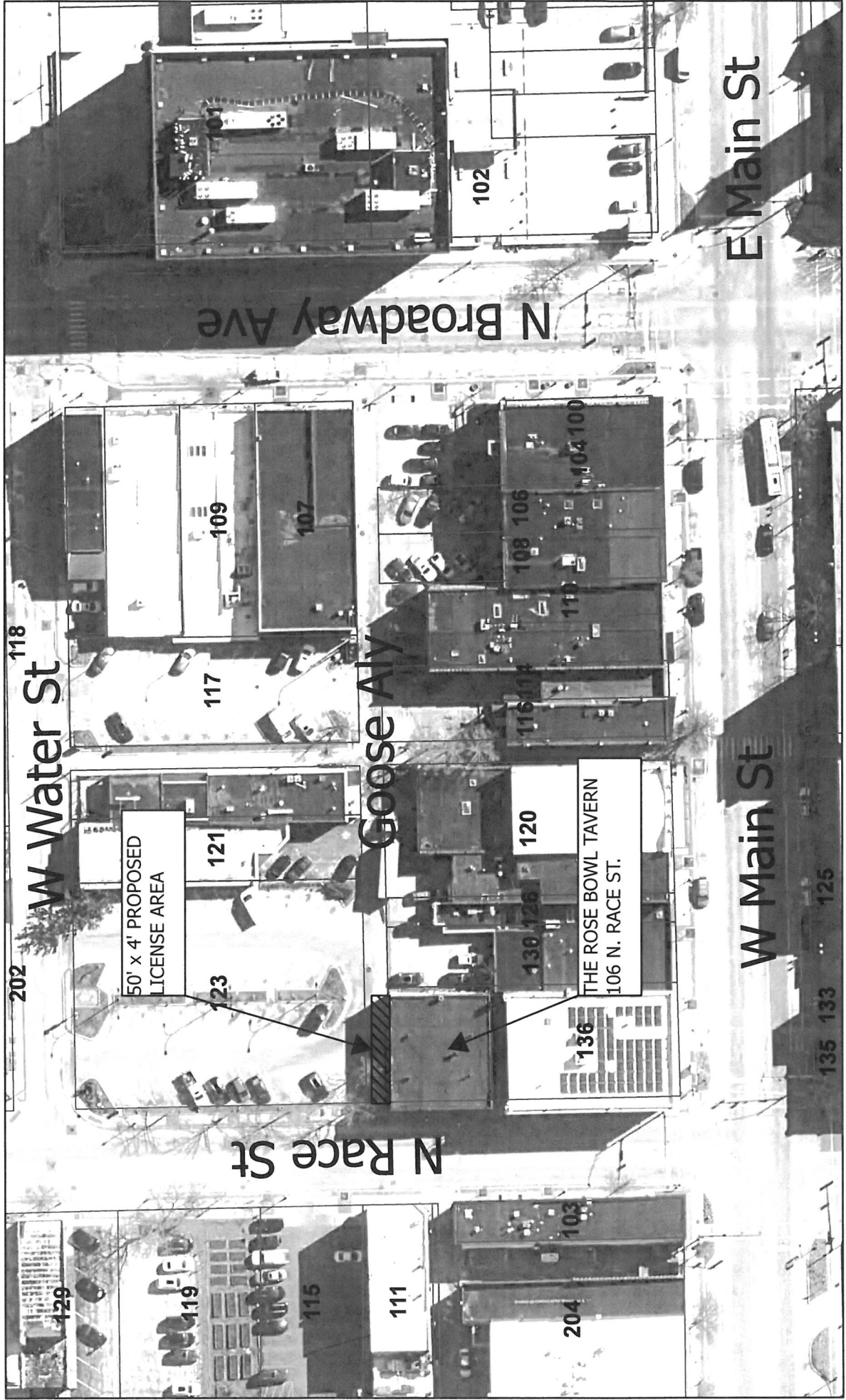
[Signature page follows]



# EXHIBIT "A"

The Rose Bowl Tavern - 106 N. Race Street, Urbana, IL

Date created: 9/28/2023  
Created by: Urbana Public Works, (217) 384-2342  
Data source: CCGIS Consortium, Urbana Public Works



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Scale: 1" = 70'

