



## MEMORANDUM

**TO:** Mayor Laurel L. Prussing and Members of the City Council

**FROM:** William R. Gray, Public Works Director  
Bradley M. Bennett, Assistant City Engineer

**DATE:** July 9, 2015

**RE:** Colorado Place LLC, Agreement for Use of Right-of-Way

### Action Requested

Approval of the attached ordinance entitled "AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH COLORADO PLACE LLC."

### Background and Facts

Colorado Place LLC of Urbana, Illinois proposes to construct a security fence within the City right-of-way reserved originally for a mid-block sidewalk that was never installed and is not planned to be installed at this location (902 East Harding Drive). In accordance with City policy, a license agreement, which is required for that installation, is attached for Council consideration. The proposed location of the fence is depicted in Exhibit A attached to the proposed agreement. This segment of right-of-way is included in the owner's plan to fence in the entire 902 East Harding Drive site.

### Financial Impact

The proposed fence installation will be at no cost to the City. Colorado Place LLC will pay an annual fee of \$20.00 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 the attached ordinance entitled "AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH COLORADO PLACE LLC."

Attachments: AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH COLORADO PLACE LLC

AGREEMENT FOR USE OF RIGHT-OF-WAY (Colorado Place LLC.)

ADMINISTRATION • ARBOR • ENGINEERING • ENVIRONMENTAL MANAGEMENT  
EQUIPMENT SERVICES • OPERATIONS • PUBLIC FACILITIES

ORDINANCE NO. 2015-07-074

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH COLORADO PLACE LLC

902 East Harding Drive

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. An Agreement for Use of Right-of-Way between the City of Urbana, Illinois, and Colorado Place LLC, 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 and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

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:

ABSENT:

ABSTAINED:

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

APPROVED BY THE MAYOR this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

**After recording return to:**

City of Urbana Legal Division  
400 S. Vine Street  
Urbana, IL 61801

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

**Colorado Place LLC  
902 E. Harding Drive**

This Agreement is made and entered into by and between the CITY OF URBANA, a municipal corporation of the State of Illinois ("City"), and COLORADO PLACE LLC ("Company") and is effective on the last date signed by a party hereto. The City and the Company agree as follows:

1. ***Grant of license.*** The City hereby grants the Company a limited license to construct a security fence ("Facility") upon the right-of-way located at 902 East Harding Drive, Urbana, Illinois, within a part of such right-of-way depicted in Exhibit A and in accordance with the following specifications:

- A. Height: 6 feet
- B. Width: 10 feet
- C. Material: Metallic
- D. Color and design: Black ornamental
- E. Gate: None
- F. Standards: The Company shall install the Facility in a good, substantial, and competent manner and in conformity with law and the ordinances of the City.
- G. Placement: The Company shall install the Facility so that it extends from the west property line of 902 East Harding Drive to the east property line of 805 East Colorado Avenue, such that the Facility adjoins the existing fence located on the east property line of 805 East Colorado Avenue.

2. ***License terms***

- A. The license granted under this Agreement is wholly dependent upon the Company fully and faithfully performing and complying with all the terms,

conditions, and covenants contained in this Agreement. This 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 right-of-way.

- B. The license granted under this Agreement is immediately revocable at the option of the City in the event that the Company fails to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that the Company will have a period in which to cure any such failure as set forth in this Agreement.
- C. The license granted under this Agreement may not be transferred or assigned.
- D. The license granted under this Agreement does not convey any right, title, or interest in any right-of-way but is deemed a license only to use and occupy the right-of-way for the limited purposes and term stated herein. The license will not be construed as any warranty of title.
- E. The License granted under this Agreement is non-exclusive and at all times is subordinate to the City's and the public's use of said right-of-way for purposes normally associated with such a public right-of-way. Accordingly, if necessary to accommodate repair, maintenance, or construction of City utilities, sidewalks, or other improvements to the right-of-way, 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.

3. ***Compliance with governmental requirements.***

- A. ***Right-of-way permit.*** The construction and installation of the Facility or any change thereof including without limitation extension, reduction, or removal of the Facility shall be subject to the issuance of a right-of-way permit or permits therefore by the Director. No Facility shall be constructed in any streets, alleys or in, on, or over any other public way until a permit therefore is issued by the Director. Said permit will indicate the time, manner and place of constructing the Facility. The City will approve the permit if the proposed improvements are consistent with the use of the license granted by this Agreement. The Company shall comply with all conditions of permits issued to it. Each application for a permit must be accompanied by prints, plans and maps showing the proposed location and design of the Facility to be constructed, along with the appropriate surety bond, insurance certificate, and permit fees required by the Urbana City Code. 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. In the event of an emergency which the Company believes poses a threat of immediate harm to the public or to any of the Company's facilities, the Company will be permitted access to the public way to mitigate the threatened harm without the benefit of a permit; provided, however, the Company shall advise the City of the emergency at the earliest reasonable opportunity and shall seek a proper permit within a reasonable period of time thereafter and in the manner as hereinbefore stated.
- B. ***Ordinances.*** The Company shall comply with all ordinances of the City, including without limitation all generally-applicable provisions regarding rights-

of-way and their uses, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement.

4. **Fee.** The Contractor shall pay the City an annual fee of \$20 as compensation for the license granted under this Agreement. The amount herein set for compensation shall be adjusted on January first of each year beginning January 1, 2016, by 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.

5. **Facility maintenance and repair.** The Company shall be fully responsible and shall bear all costs associated with any and all maintenance or repair of the Facility.

6. **Right-of-way 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 the condition in which they existed before performance of the work.

- 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 fifteen (15) days from receipt of notice from the City to do so, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by the Company. Such restoration shall be completed within ten (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 time periods prescribed herein, the City has the right to, but has no obligation to, perform such work and recover from the Company any costs and expenses the City incurs.
- 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. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped, and then restored within a reasonable time thereafter to the original condition with seed or mulch in accordance with the applicable provisions of this Agreement. In the event any shrubs, bushes, or trees existing within the right-of-way are disturbed by reason of the construction, maintenance, or repair of the Facility, the Company shall repair or replace such shrubs, bushes, or trees as the case may warrant as determined by the Director.
- D. The Company shall keep all structures constructed pursuant to this Agreement in a reasonably safe condition at all times and shall maintain such traffic control and protection during the construction, repair, or renewal work performed hereunder as will reasonably avoid danger to life, limb, and property.
- 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.

7. **Lapse and termination.** The License shall be limited solely to the construction, maintenance, and use of the Facility. Upon cessation of such use, as determined by the Director, this Agreement will immediately and automatically 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 shall state that the Company has thirty (30) days in which reassert its rights under this Agreement and demonstrate that it has not in fact abandoned use of 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 shall remain in force and effect according to its terms. If the Company does not demonstrate within the thirty (30) day period of the notice that it has not abandoned the Facility, this Agreement will be deemed lapsed, terminated, and no longer in effect. Any additional use other than that specifically named herein, without the further express written consent of the City, is a violation of this Agreement.

8. **Facility removal.** In the event of the existence of one or more of the following, the Company consents and agrees that the City or its duly authorized agent may remove the Facility, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Company:

- A. An emergency that presents imminent peril to person or property.
- B. Non-compliance with any term, provision, or covenant in this Agreement that is not cured within the time period provided herein following notice of such non-compliance tendered to the Company.
- C. The Director or other responsible City official, in good faith, deems the procedure in Paragraph 6 impracticable under the circumstances present.
- D. Termination of this Agreement for any reason.
- E. Abandonment of the Facility's use in accordance with the provisions in Paragraph 7 of this Agreement.
- F. Expiration of this Agreement in the absence of any renewal thereof.

If the Contractor fails in any way to make timely payment to the City for such costs and expenses, the Contractor agrees to pay, in addition to any amount so owed, actual attorneys' fees and court costs incurred in the collection of such amount.

9. **Indemnity.** The Company, at its sole cost and expense, shall defend and indemnify the City from and against any and all claims, suits, actions, causes of actions, judgments, decrees, damages, rights, remedies, and/or liabilities, whether in law or in equity, for or in connection with the death or injury to any person or damage to any property, real or personal, brought against the City in connection with the Company's construction, maintenance, repair, use, or removal of the Facility, unless such claim, suit, action, cause of action, judgment, decree, damages, or liability arises solely and exclusively from a negligent or intentional act or omission by the City or any of its employees, agents or contractors.

10. **Term; termination.** This Agreement is binding upon the parties hereto for a term of twenty (20) years commencing as of its effective date, unless sooner terminated in accordance with this Agreement. This Agreement may be terminated at any time without notice upon the express written consent of both parties. 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 notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) days after the date thereof in the event the reason or reasons for such notice of termination are not fully and completely cured.

11. **Entire agreement.** This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties and may be changed, modified, or amended only by mutual written agreement executed by them.

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.

Colorado Place LLC

City of Urbana

Colorado Place LLC  
P.O. Box 3455  
Champaign, Illinois 61826-3455

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

13. **Non-waiver.** The Company will not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

14. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Illinois, and the parties agree that any action to interpret, construe, or enforce this Agreement shall be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois. 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 by reason of the principles of evidence or contract law.

15. **Amendment.** This Agreement may be amended only by a writing which is fully and duly executed by the parties hereto.

16. **Due Authorization.** Each party hereto acknowledges that the individual who has executed this Agreement has the due and full authority to do so.

17. **Recording.** This Agreement will be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the City.

18. **Execution by counterpart.** This Agreement may be executed in counterparts, each of which will for all purposes be deemed to be an original and will together constitute one and the same instrument.

The parties are signing this Agreement at Champaign County, Illinois, on the dates as stated below.

COLORADO PLACE LLC:

CITY OF URBANA, ILLINOIS

By: \_\_\_\_\_  
Paul Zerrouki  
Manager  
Date:

By: \_\_\_\_\_  
Laurel Lunt Prussing  
Mayor  
Date:

Attest:

\_\_\_\_\_  
Phyllis Clark  
City Clerk

STATE OF ILLINOIS            )  
  )  
COUNTY OF CHAMPAIGN    )    ss.

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Paul Zerrouki, 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 Manager of Colorado Place LLC as his free and voluntary act, and the free and voluntary act of Colorado Place LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

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

Attachment:    Exhibit A   (1 page)





**EXHIBIT "A"**

Proposed License Agreement  
902 East Harding Drive

City of Urbana  
Public Works Department  
Engineering Division

Date: 5/21/2015 Drawn by: BWF

