



## MEMORANDUM

**TO:** Mayor Laurel Lunt Prussing and Members of the City Council  
**FROM:** William R. Gray, Public Works Director  
**DATE:** July 23, 2015  
**RE:** License Agreement for the A Plus VIP Lounge to Permit a Canopy at 214 West Main Street

### **Introduction**

The City of Urbana has received a request from the new owner of the A Plus VIP Lounge to continue to have an existing canopy in the city right-of-way at 214 West Main Street. (See Exhibits A and B for the canopy details and location.) The physical location of the canopy and its support system do not block the public access and use of the sidewalk. The attached license agreement stipulates the conditions for granting use of the public right-of-way for the canopy.

The city has granted similar license requests for the installation of canopies and overhead walkways within city right-of-ways. Examples include a canopy for Carle Foundation in 2009 on the south side of Church Street east of Coler Avenue and an overhead walkway for Presence (Provena) Hospital in 1999 on Church Street west of Romine Street.

### **Fiscal Impact**

The City will receive a license fee of \$140.00 adjusted annually per the Consumer Price Index. Staff time is required in administering this agreement. A sidewalk café permit will need to be obtained every year for the owner's use of the sidewalk to place tables and chairs to serve food and alcohol.

### **Recommendation**

It is recommended that an Ordinance Approving an Agreement for Use of Right-of-Way with McVili Enterprises, LLC (214 West Main Street) be approved.

Attachments: Ordinance  
Agreement  
Exhibit A and B

ORDINANCE NO. 2015-07-081

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH  
MCVILI ENTERPRISES, LLC

(214 West Main Street)

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 McVili Enterprises, 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.

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**

**McVili Enterprises, LLC**

**214 West Main Street**

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

1. **Right-of way.** West Main Street ("right-of-way") is a roadway of at least sixty feet in width of dedicated right-of-way.
2. **Grant of license.** The City hereby grants the Company a limited license to construct a Facility ("Facility") consisting of a canopy upon such right-of-way, as described and depicted in Exhibits A and B, both of which exhibits are attached hereto and are made a part hereof.
  - 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 or 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.**

- (1) 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.
- (2) 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. **Plan submission.** The Company shall provide as-built plans to the City upon completion of construction of the Facility in an electronic format compatible with the City's Geographic Information System.

5. **Fee.** The Company shall pay the City an annual fee of \$140 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.

6. **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.

7. **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.

8. **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.

9. **Facility removal.**

- A. 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:
- (1) An emergency that presents imminent peril to person or property.
  - (2) 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.
  - (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) Abandonment of the Facility's use in accordance with the provisions in Paragraph 8 of this Agreement.
  - (6) Expiration of this Agreement in the absence of any renewal thereof.
- B. 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.

10. **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.

11. **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.

12. **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.

13. **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.

McVili Enterprises, LLC

City of Urbana

McVili Enterprises, LLC  
Attention: Di Yu  
P.O. Box 86  
Urbana, Illinois 61803

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

14. **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.

15. **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.

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

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

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


19. **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.

[Signature page follows]

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

MCVILI ENTERPRISES, LLC

CITY OF URBANA, ILLINOIS

By:   
Di Yu  
Manager  
Date:

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

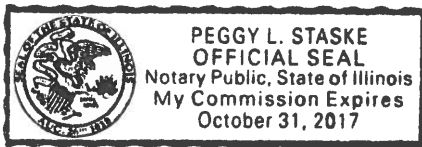
Attest:

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

STATE OF ILLINOIS                    )  
  )    ss.  
COUNTY OF CHAMPAIGN            )

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Di Yu, 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 McVili Enterprises, LLC as his free and voluntary act, and the free and voluntary act of McVili Enterprises, LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 16 day of JULY 2015.

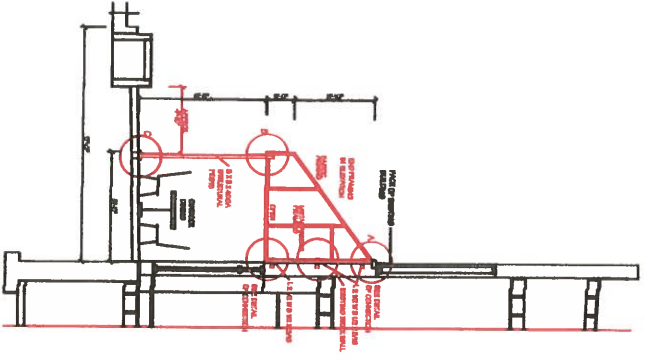


  
Notary Public

Attachments:   Exhibit A   Scale drawing  
                  Exhibit B   Location map



# EXHIBIT "A"

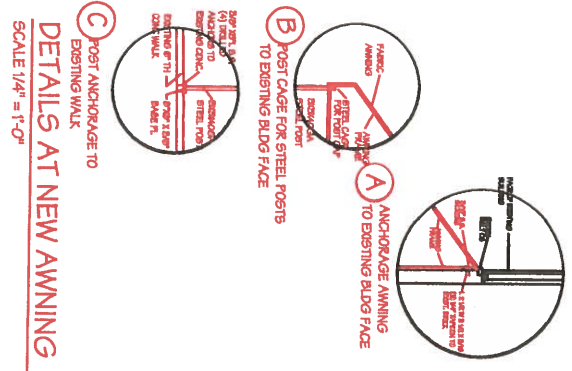


**SECTION AT NEW AWNING**  
SCALE 1/4" = 1'-0"

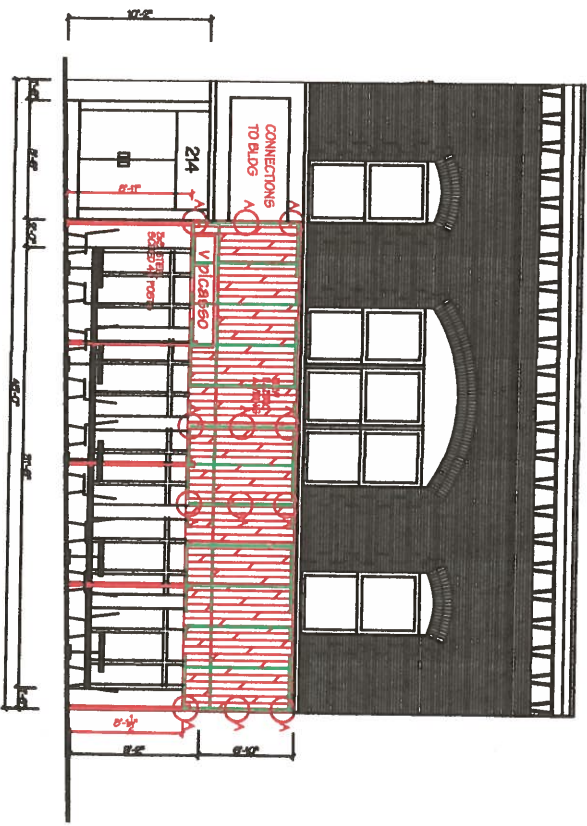
## DESIGN LOADS:

**LIVE LOADS:**  
SNOW: 30 PSF  
WIND: 90 MPH  
DEAD: 3 PSF (EST)  
STEEL: A36 POSTS

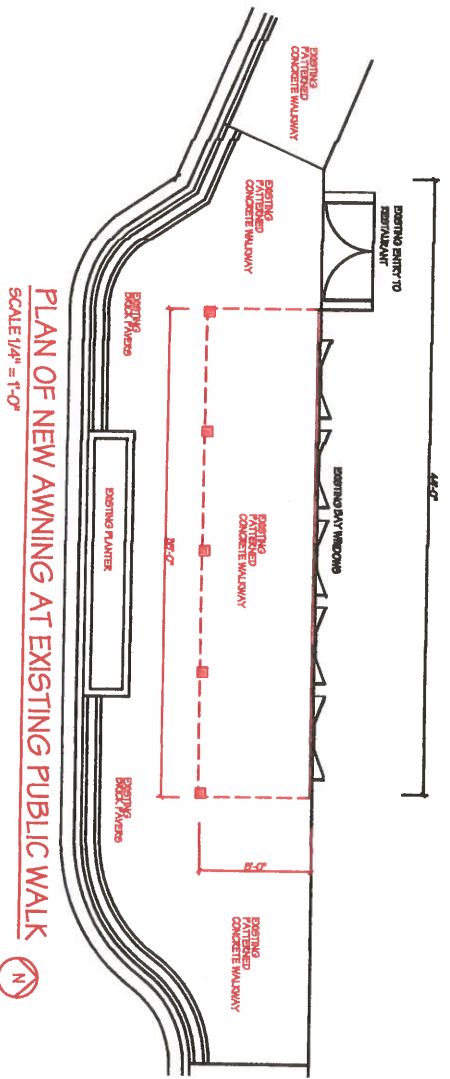
**AWNING MATERIALS:**  
ALL AWNING MATERIALS BY SUPPLIER/INSTALLER  
ALL AWNING FRAMES ALUMINUM TUBING  
FABRIC COVERING AND ENDS  
SIGNAGE: PER URBANA SIGN ORDINANCE



**DETAILS AT NEW AWNING**  
SCALE 1/4" = 1'-0"



**SOUTH ELEVATION OF NEW AWNING AT EXISTING PUBLIC WALK**  
SCALE 1/4" = 1'-0"



**PLAN OF NEW AWNING AT EXISTING PUBLIC WALK**  
SCALE 1/4" = 1'-0"

**ASD ARCHITECTS**  
201 WEST SPRINGFIELD AVE.  
CHAMPAGN, ILLINOIS 61820  
PHONE: (217) 359-4283 FAX: (217) 403-3404

REVISIONS	
DATE	DESCRIPTION

SIGNATURE	
DATE	
EXPIRATION DATE	

**STRUCTURAL SUPPORT FOR  
NEW EXTERIOR AWNING  
V. PICASSO**  
214 WEST MARK STREET URBANA, IL 61801

EXHIBIT "B"

License Agreement Site  
214 W. Main St.  
Urbana, IL

ROW 82.5'

