



CITY OF URBANA, ILLINOIS  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

## 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:** December 8, 2016  
**RE:** MCDJ Development, LLC (208 West Griggs Street), Agreement for Use of Right-of-Way

### Action Requested

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

### Background and Facts

MCDJ Development, LLC proposes to construct an entryway, patio, and awning upon 450 square feet of the public right-of-way located at 208 West Griggs Street. The space will be utilized by the 25 O’Clock Brewing Company for access to their business and to outdoor seating for the brewery taproom. In accordance with City policy, a license agreement, which is required for that installation, is attached for Council consideration. The proposed location of the improvements is depicted in Exhibit A attached to the proposed agreement. The public right-of-way line is at the south 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 \$382.50 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 A RIGHT-OF-WAY LICENSE AGREEMENT WITH MCDJ, LLC (208 West Griggs Street)”.

Attachments: AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT WITH MCDJ, LLC (208 West Griggs Street)  
AGREEMENT FOR USE OF RIGHT-OF-WAY (MCDJ, LLC)

ORDINANCE NO. 2016-12-115

AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT  
WITH MCDJ, LLC

(208 West Griggs Street)

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

**Section 1.** A Right-of-Way License Agreement between the City of Urbana, Illinois, and MCDJ, 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

**Mail recorded document to:**

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

City of Urbana – Champaign County

**RIGHT-OF-WAY LICENSE AGREEMENT**

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

## **RIGHT-OF-WAY LICENSE AGREEMENT**

This agreement is made between 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,” and is effective on the last date signed by a party hereto. The Company and the City agree 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, upon 450 square feet of the public right-of-way located at 208 West Griggs Street, Urbana, Illinois (“Licensed Property”), as shown in Exhibit A.

- 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 is permitted to 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 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 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.

2. **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 is permitted to 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 reason or reasons for such notice of termination are not fully and completely cured.

3. **Fee.** On the anniversary of the effective date of this agreement, the Company shall pay the City an annual fee of \$382.50 as compensation for the license granted under this agreement. The City is permitted to adjust the amount herein set for compensation on January 1 of each year beginning January 1, 2018, 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.

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 fifteen (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 than (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 herein, the City is permitted to 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 val-

ue 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 Paragraph 7 will survive the termination of this agreement.

## **8. Removal.**

- A. The City is permitted to 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, at its sole cost and expense, shall defend and indemnify the City from and against any and all losses, damage, claims or liability whatsoever for or in connection with the death or injury to any person or damage to any property in connection with the Company's construction, maintenance, repair, operation, or removal of the Facility, unless such losses, damage, claims or liability arises solely from a negligent or intentional act or omission by the City or any of its employees, agents or contractors. This provision 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.

MCDJ, LLC

City of Urbana

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

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

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. Along with each application for a permit, the Company shall provide 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 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 is 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. 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.

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



18. **Counterparts.** The parties are permitted to 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.

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

MCDJ, LLC

By: \_\_\_\_\_  
Michael D. Hosier  
Manager

By: \_\_\_\_\_  
Constance R. Hosier  
Manager

By: \_\_\_\_\_  
David Peshkin  
Manager

By: \_\_\_\_\_  
Janet Peshkin  
Manager

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 Michael D. Hosier, Constance R. Hosier, David Peshkin, and Janet Peshkin, 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 capacities as the duly authorized Managers of MCDJ, LLC as their free and voluntary act, and the free and voluntary act of MCDJ, LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

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

City of Urbana, Illinois

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

Attest:

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

Attachment: Exhibit A Facility description (1 page)



**Legend**

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

**208 Griggs Street**  
**Exhibit A**



Date of aerial photo: 2014