 CITY OF ST. CHARLES ILLINOIS • 1834	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		Agenda Item number: 4e
	Title:	<b>Recommendation to approve a License Agreement with, Northern Green Walnut St., LLC for a Concrete Walkway located within City Property (309 Walnut Street- South Walnut/Parking Lot “R”)</b>	
	Presenter:	<b>Russell Colby</b>	
<b>Meeting:</b> Planning & Development Committee		<b>Date:</b> September 11, 2023	
<b>Proposed Cost:</b> N/A		<b>Budgeted Amount:</b> N/A	<b>Not Budgeted:</b> <input type="checkbox"/>
<b>TIF District:</b> None			
<b>Executive Summary</b> (if not budgeted, please explain):			
<p>Northern Green St., LLC is the owner of the property located 309 Walnut St. The building is adjacent to a City owned parking lot known as South Walnut or Parking Lot “R”. Currently, there is a brick paver walkway extending from the building to the parking area. The walkway is partially located on private property and partially located on City Property. Staff was unable to locate any record regarding the installation of the walkway.</p> <p>Northern Green St. LLC, has provided photos showing the walkway having missing and cracked bricks. They are looking to replace the brick walkway with a concrete walkway. The proposed walkway will also be squared off, leaving no mulch between the walkway and the curb.</p> <p>This type of private improvement located on City Property requires a license agreement between the property owner and the City. The license agreement will provide for maintenance, indemnity, and insurance for the private improvement by the property owner.</p> <p>The license agreement is a standard form used for other locations within downtown.</p>			
<b>Attachments</b> (please list):			
Draft License Agreement			
<b>Recommendation/Suggested Action</b> (briefly explain):			
Recommendation to approve a License Agreement with, Northern Green Walnut St., LLC for a Concrete Walkway located within City Property (309 Walnut Street- South Walnut/Parking Lot “R”)			





Prepared by:

City of St. Charles  
2 E. Main St.  
St. Charles, IL 60174

For Recorder's Use Only

### **LICENSE AGREEMENT**

This LICENSE AGREEMENT (hereinafter the "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of St. Charles, an Illinois municipal Corporation, Kane and DuPage Counties, Illinois (hereinafter "City"), and Northern Green Walnut St., LLC, an Illinois Limited Liability Corporation (hereinafter "Licensee"); the City and Licensee are sometimes hereinafter collectively referred to as the Parties ("Parties") or individually as the Party ("Party");

#### **WITNESSETH:**

WHEREAS, the City does maintain, occupy, operate and use public property known as Municipal Parking Lot "R" ("Parking Lot "R"), as depicted on Exhibit "A", legally described in Exhibit B attached hereto and made a part hereof, immediately adjacent to the building, located at 309 Walnut Street, legally described in Exhibit C attached hereto and made a part hereof; and

WHEREAS, Licensee owns the building, located at 309 Walnut St. ("Licensee Property"), the southernly property line of which abuts the Lot R Parking Lot; and

WHEREAS, Licensee proposes to install, operate and maintain a Concrete Walkway ("*Concrete Walkway*"), projecting into Parking Lot "R", as illustrated on Exhibit D.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

1. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. The City, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Licensee, its successors, grantees and assigns, an irrevocable permanent and exclusive restricted license (hereinafter the "License") for the purpose of constructing and maintaining the Concrete Walkway solely within the limited area in Parking Lot "R", pursuant to the plans for and as illustrated on the attached Exhibit "D," subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference.

3. Licensee must construct and maintain the Concrete Walkway in full compliance with the permit and all conditions contained herein or attached hereto by reference.

4. The Concrete Walkway shall not in any manner be expanded, added to or enlarged beyond the extent as described herein and shown in Exhibit "D."

5. The Concrete Walkway shall not in any manner be constructed, reconstructed, modified or improved without prior written consent of the City.

6. This Agreement shall terminate in the event that any of the following occur: (a) the primary structure located on the Licensee Property is ever damaged or destroyed, to the extent that its value is less than 25% of the cost to replace the primary structure, and the Licensee shall have failed to repair the primary structure within one hundred and eighty (180) days of said damage; (b) if the Concrete Walkway is ever removed and the use terminated for more than three (3) months; (c) if the City provides notice to Licensee requiring removal of the Concrete Walkways for any other reason, effective eighty (80) days later; (d) this Agreement otherwise terminates pursuant to any other provision of this Agreement. Prior to termination of this Agreement, the City shall provide Licensee with a written Notice of Termination ten (10) days prior to the date of said termination.

7. Licensee understands and agrees that the Concrete Walkway shall remain in good structural condition at all times and that the use and enjoyment of Parking Lot "R" shall not be compromised in any unsafe or adverse manner. The Licensee shall promptly restore or cause to be restored the Concrete Walkway to a good state of repair and in a clean, safe, unobstructed and usable condition, at all times complying with all local codes and ordinances. Should repairs or maintenance be needed to the Concrete Walkway, Licensee shall perform such work within thirty (30) days of notification by the City. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to terminate the Agreement or perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the Licensee Property.

8. Licensee understand and agrees that the Concrete Walkway shall be maintained in accordance with the City approved plan provided in Exhibit "C" and that the use and enjoyment of Parking Lot "R" shall not be compromised in any unsafe or adverse manner. Should the Concrete Walkway not be maintained in accordance with the plan to the City's satisfaction, or should the Concrete Walkway interfere in any way with the use and enjoyment of Parking Lot "R", the City shall have the right to perform or complete such work as to return the Concrete Walkway to a condition acceptable to the City. Licensee agrees to reimburse the City

for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the Licensee Property.

9. To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless the City, its officials, agents, and employee, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, specifically including but not limited to, any claim or damages caused by or to the Concrete Walkway or within Parking Lot "R", or caused by work performed by the City, or its agents, which may in anywise accrue against the City, its officials, agents, and employees, arising in whole or in part or in consequence of the performance of this Agreement by the Licensee, their agents, invitees, employees, contractors or subcontractors, or which may in anyway result therefrom, except that arising out of the sole legal cause of the City, its agents or employees, the Licensee shall, at their own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the City, its officials, agents and employees, in any such action, the Licensee shall, at its own expense, satisfy and discharge the same. Upon completion and occupancy, the Licensee shall furnish to the City a certificate of insurance evidencing commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$3,000,000.00 general aggregate limits and otherwise reasonably satisfactory to the City. The insurance policy shall be expressly endorsed to include the City as an additional insured, Such certification of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the City in the event of any cancellation, non-renewal or change in the policy limits, terms or conditions which would cause them to fail to meet the foregoing requirements. Such insurance shall be maintained during the term of the License.

10. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Concrete Walkway to protect the health, safety and welfare of the public utilizing Parking Lot "R". The Licensee will provide, at its expense (and the City shall have no obligation to provide or pay for), any and all improvements and/or modifications to the Concrete Walkway to comply with this provision.

11. Licensee accepts Parking Lot "R", "As-Is," "Where-Is," and in its current condition, and the City makes no representations concerning the condition of the Licensee Property. Licensee understands and agrees that various third-party utility, telecommunication, and T.V. cable companies, including but not limited to Commonwealth Edison, NICOR and AT&T and their successors and assigns ("Utility Companies"), may have certain rights arising in Parking Lot "R", and that this Agreement does not in any way affect or diminish the rights of those Utility Companies. Licensee hereby acknowledges and agrees that the Utility Companies have no obligation or responsibility to Licensee.

12. If this Agreement is terminated under any of the provisions contained herein, Licensee shall remove the Concrete Walkway within thirty (30) days of termination. If the required work is not performed or completed to the City's satisfaction, the City shall have the right to perform or complete such work. Licensee agrees to reimburse the City for performance of such work within thirty (30) days of invoice by the City. Non-payment of invoices shall constitute a lien against the Licensee Property.

13. The Concrete Walkway when installed does not become a part of or an interest in the Parking Lot "R", the air rights above and below or the underlying property. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond the irrevocable, permanent and exclusive license to the Licensee, as provided herein.

14. Licensee is responsible for the cost of installation, maintenance, and removal of such Concrete Walkway and is responsible for any damage caused to Parking Lot "R" resulting from such installation, maintenance, and removal.

15. The terms of this Agreement are covenants running with the Licensee Property and shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

16. The parties acknowledge that the licensed area is part of Parking Lot "R" and is currently exempt from any tax assessment for real estate or any other taxes. In the event that Lot R or any part thereof becomes subject to real estate or other taxes arising out of this License Agreement, the Licensee shall be liable for those real estate or other taxes and will pay said taxes as they become due and owing.

17. This Agreement may be enforced either at law or in equity, with the non-breaching Party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the non-prevailing Party in such action shall reimburse the prevailing Party for its attorneys' fees and related costs in such action.

18. Licensee shall not assign this Agreement or its rights and duties under this License, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

19. This Agreement may be modified or amended only by a written instrument executed by the Parties, or their respective permitted successors or assigns.

20. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

Northern Green Walnut St., LLC  
an Illinois Limited Liability Corporation

By: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

CITY OF ST. CHARLES,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk





Date	8/10/2023
EST#	E20231442

**Estimate / Contract**

Joe Freeman  
 30W075 Whitney Dr.  
 West Chicago, IL 60185

Customer Phone	630-488-7873
Customer E-mail	jaf0705@yahoo.com

Estimator	TS
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**Project**

Scope of work	Cost
<p>Job: 309 Walnut St. - St. Charles, IL 60174</p> <p>Remove existing paver brick walk. Excavate soil in same area. Form and pour new concrete walk between building and curb at parking area (7'+ x 53').            Concrete thickness: 5". Stone base: 4". Concrete mix design: 4,000 PSI. Concrete reinforcement: N/A.            Apply water stop S to concrete 10 days after pour.</p> <p>Note:            Any permits needed to be applied by other.</p>	<p>6,500.00</p>
<p>By signing this agreement you acknowledge attached Terms of Contract.</p> <p>SIGNATURE <i>Joseph Freeman</i></p>	<p><b>TOTAL \$6,500.00</b></p>

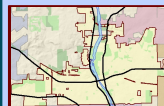
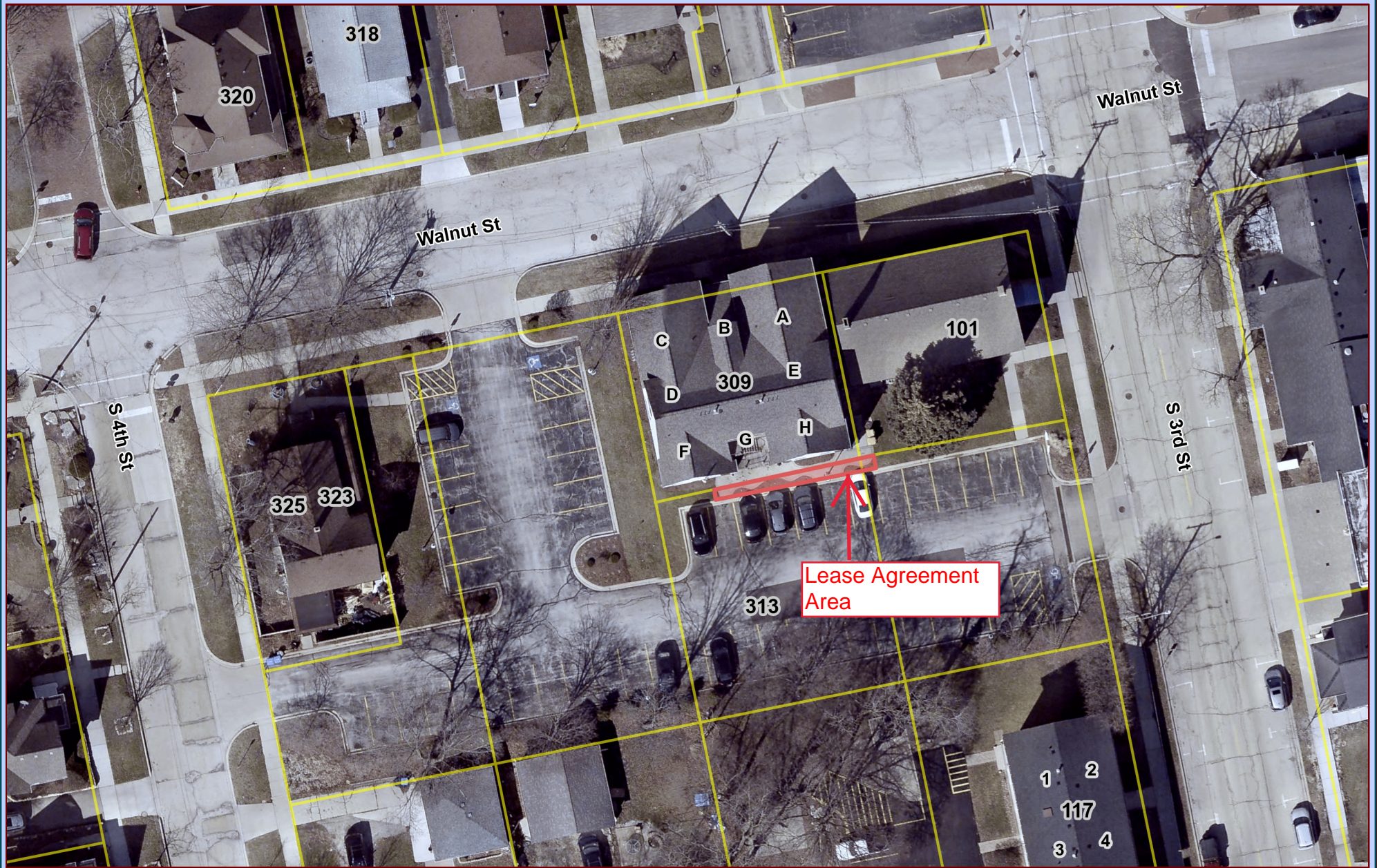
The above work does not include any unforeseen conditions including, but not limited to:  
 1) Excavation of any dirt, clay, or debris under existing pavement. SCI assumes that existing pavement will have a stone/gravel base according to village codes. In the event excavation and hauling of such materials is necessary to achieve the suitable stone/gravel base, there will be an extra charge for this service. 2) Concrete removal beyond eight inches (8") thick, there will be an extra charge for this service.

Payments: - 25% deposit is due at time of signing - Percent due at stages of job - Balance, including any extras, minus any payments due upon completion (after pouring of concrete). If payment is not made upon completion as specified above, then a charge of 2.0% per month interest shall be made until full payment is received. The undersigned acknowledges that they have read and know the contents of this contract and any attachment to this contract, and that they understand that no other agreements verbal or otherwise are binding on the parties hereto, and that same contains the entire contract and understanding of the parties. Any payment made with credit card will incur a 3% convenience fee.

NOTICE OF CANCELLATION: You, Buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction without penalty. Do not sign this agreement before you read and understand it. This contract is subject to all terms and conditions set forth on the attachment to this contract. By executing this agreement, Buyer acknowledges all the terms and conditions herein and acknowledges receipt of a copy of this contract.

**Exhibit A:**

Municipal Parking Lot "R"



Data Source:  
 City of St. Charles, Illinois  
 Kane County, Illinois  
 DuPage County, Illinois  
 Projection: Transverse Mercator  
 Coordinate System: Illinois State Plane East  
 North American Datum 1983  
 Printed on: August 31, 2023 11:41 AM



0 21 42 Feet

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 Powered by Precision GIS

**Exhibit A:**

Legal Description Municipal Parking Lot "R"

LOT S 1, 2, 3 IN BLOCK 50 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE WEST SIDE OF FOX RIVER, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS

PIN: 09-34-108-012

THE SOUTHERLY 71.0 FEET OF LOT 4, BLOCK 50 OF THE ORIGINAL TOWN OF ST. CHARLES, ON THE WEST SIDE OF THE FOX RIVER, KANE COUNTY, ILLINOIS

PIN: 09-34-108-015

**Exhibit C:**

Licensee Property

309 Walnut St.

THE NORTHERLY 61.00 FEET OF LOT 3 (EXCEPT THE SOUTHERLY 23.60 FEET OF THE NORTHERLY 39.90 FEET OF THE EASTERLY 2.04 FEET THEREOF) BLOCK 50 OF THE ORIGINAL TOWN OF ST. CHARLES, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

**Exhibit D:**

Concrete Walkway

