

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: *4i

Title:

Recommendation to approve a Right-of-Way License Agreement between the City of St. Charles and St. Charles Public Library District regarding the St. Charles Public Library, 1 S. 6th Ave.

Presenter:

Ellen Johnson

Meeting: Planning & Development Committee

Date: September 14, 2020

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted: ☐

In January of this year, the City approved a Planned Unit Development and PUD Preliminary Plan for redevelopment of the St. Charles Public Library under Ord. 2020-Z-2. As part of the project, the City required extension of the public sidewalk along Illinois Ave. to S. 7th Ave. A retaining wall was deemed necessary to facilitate the sidewalk extension. However, the retaining wall projects into the Illinois Ave. Right-of-Way by approximately 1.5 ft. for a length of 18 ft.

The retaining wall ROW projection is depicted on the approved PUD Preliminary Plan. One of the conditions of PUD approval was that a Right-of-Way License Agreement between the City and the Library be executed to permit the projection.

An agreement has been drafted to grant the Library a license for maintaining the retaining wall within the City Right-of-Way.

The agreement terms are similar license agreements approved for other recent projects including First Street and Crystal Lofts.

The Library as the property owner will be responsible for maintaining the retaining wall in a safe manner and in accordance with the City approved plans. Per the agreement, the Library agrees to indemnify the City and provide insurance for the benefit of the City. A certificate of insurance has been provided.

The City will retain the right to promulgate and enforce rules and regulations regarding the retaining wall.

Attachments *(please list):*

ROW License Agreement

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve a Right-of-Way License Agreement between the City of St. Charles and St. Charles Public Library District regarding the St. Charles Public Library, 1 S. 6th Ave.

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

RIGHT-OF-WAY LICENSE AGREEMENT

WITNESSETH:

WHEREAS, the City has required the Licensee to extend the public sidewalk along the north side of Illinois Avenue adjacent to the Library Property to the corner of Illinois Avenue and S. 7th Avenue as depicted on the plans approved under the PUD Ordinance, an excerpt of which is attached hereto as Exhibit “B”; and

WHEREAS, a retaining wall has been deemed necessary to facilitate construction of said public sidewalk, and the proposed retaining wall projects into the Illinois Avenue ROW by approximately 1.5 feet for a length of approximately 18 feet ("Retaining Wall Projection"), as depicted on the plans approved under the PUD Ordinance and as illustrated on Exhibit "C".

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 Retaining Wall Projection solely within the limited area in the Illinois Avenue ROW, pursuant to the City approved plans for and as illustrated on the attached Exhibit "C" subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference ("Encroachment").

3. Licensee must construct and maintain the Retaining Wall Projection in full compliance with the building permit and all conditions contained herein or attached hereto by reference.

4. The Encroachment shall not in any manner be expanded, added to or enlarged beyond the extent of the Retaining Wall Projection, as described herein and shown in Exhibit "C".

5. The Encroachment 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 Retaining Wall Projection is ever damaged or destroyed, to the extent that its value is less than 25% of the cost to replace the Retaining Wall Projection, and the Licensee shall have failed to repair the Retaining Wall Projection within one hundred and eighty (180) days of said damage; (b) this Agreement otherwise terminates pursuant to any other provision of this Agreement. Prior to termination of this Agreement, Licensor 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 Retaining Wall Projection shall remain in good structural condition at all times and that the use and enjoyment of the Illinois Avenue ROW shall not be compromised in any unsafe or adverse manner. The Licensee shall promptly restore or cause to be restored the Retaining Wall Projection 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 Retaining Wall Projection, 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 Library Property.

8. 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 Retaining Wall Projection, any respective parts thereof located within or attached to the Library Property or within the Illinois Avenue ROW, 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.

9. The City shall have the right, in its sole and absolute discretion, to promulgate and enforce rules and regulations regarding the use of the Retaining Wall Projection, to protect the health, safety and welfare of the public utilizing the Illinois Avenue ROW. 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 Retaining Wall Projection to comply with this provision.

10. Except in the Encroachment, 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 the Illinois Avenue ROW, 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 or the Encroachment.

11. The Encroachment when installed does not become a part of or an interest in the Illinois Avenue ROW, 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.

12. Licensee is responsible for the cost of installation, maintenance, and removal of such Retaining Wall Projection in the Encroachment and is responsible for any damage caused to the Illinois Avenue ROW resulting from such installation, maintenance, and removal.

13. The terms of this Agreement are covenants running with the Library Property and shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns, including any future association for the Library Property and all owners of all or any portion of, or interest in, any of the properties covered hereby.

14. 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.

15. 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.


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

17. 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.

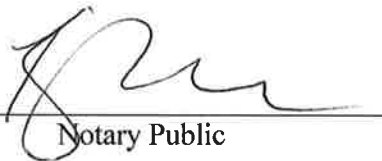
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated this 8th day of September, 2020.

ST. CHARLES PUBLIC LIBRARY DISTRICT

By: 

Subscribed and sworn to before me this 8 day of Sept., 2020.


Notary Public



CITY OF ST. CHARLES,
an Illinois municipal corporation

By: _____
Mayor

Attest: _____
City Clerk

Exhibit A:

Plat of Subdivision



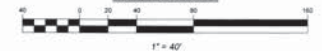
PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY, ILLINOIS.

SANDY WEGMAN
RECORDER - KANE COUNTY, IL
RECORDED: 4/22/2020 04:41 PM
RFC FEE: \$2.00

PAGES: 4



GRAPHIC SCALE



BASIS OF BEARINGS

THE BASIS OF BEARINGS IS THE STATE PLANE
COORDINATE SYSTEM (SP-9) MAPS BY (5000) 2000
1201 (ILLINOIS EAST) WITH PROJECT ORIGIN AT
LATITUDE: 41°54'49.41861" N
LONGITUDE: 88°18'27.42698" W
ELLIPSOIDAL HEIGHT: 631.327 SFT
GROUND SCALE FACTOR: 1.0000560704
ALL MEASUREMENTS ARE ON THE GROUND.

EASEMENT TYPE	LOT 1	LOT 2	TOTAL
P.U. & D.E.	42,574	21,042	63,616
CROSS ACCESS	20,905	12,060	32,965
STORMWATER DETENTION	9,267		9,267

LEGEND

	PROPERTY LINE		FOUND IRON IN CONCRETE
	EASEMENT RIGHT OF WAY LINE		FOUND BRASS ROD
	PROPOSED RIGHT OF WAY LINE		FOUND IRON NAILER
	EXISTING LOT LINE		FOUND IRON ROD
	PROPOSED LOT LINE		FOUND NAIL ROD SPIKES
	EX. & PROP. CENTERLINE		FOUND PIN NAIL
	EXISTING EASEMENT LINE		FOUND NAIL NAIL
	PROPOSED EASEMENT LINE		FOUND OUT CURB
	EX. & PROP. BUILDING SETBACK LINE		FOUND IRON PIPE
	SECTION LINE		FOUND IRON BAR
	PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT		SET BACKER POINT
	PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT		SET BACK NAIL
	PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT		SET BACK PIPE
	PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT		SET BACK CONCRETE MONUMENT WITH BRASS DISC
	PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT		SET BACK CONCRETE MONUMENT WITH BRASS DISC

ABBREVIATIONS

N	NORTH	PC	POINT OF CURVATURE
S	SOUTH	POC	POINT OF COMPOUND CURVATURE
E	EAST	PRC	POINT OF REVERSE CURVATURE
W	WEST	PT	POINT OF TANGENCY
CB	CHORD BEARING	REC	RECORD DATUM
A	ARC LENGTH	MEAS	MEASURED DATUM
R	RADIUS	CALC	CALCULATED DATUM
		DEED	INFORMATION TAKEN FROM DEED
P.U.	PUBLIC UTILITY EASEMENT	EX	EXISTING
P.U.D.	PUBLIC UTILITY AND DRAINAGE EASEMENT	PRO	PROPOSED

OWNER

St. Charles Public Library
1 S. 6th Avenue
St. Charles, IL 60174

St. Mark's Lutheran Church
101 S. 6th Avenue
St. Charles, IL 60174

ENGINEER

Eriksson Engineering Associates, Ltd.
145 Commerce Drive, Suite A
Graylake, IL 60030

SURVEYOR

V3 Companies, Ltd.
7325 Janes Avenue
Woodridge, IL 60517
630-724-9200

Project Manager : Anthony J. Strickland
tstrickland@v3co.com



Engineers 7325 Janes Avenue, Suite 100
Scientists Woodridge, IL 60517
630.724.9200 voice
Surveyors 630.724.0384 fax
v3co.com

PREPARED FOR:
Shales McNutt
425 Renner Drive
Elgin, IL 60123
847.622.1214

		REVISIONS			
NO	DATE	DESCRIPTION	NO	DATE	DESCRIPTION
1	12-08-19	REVISED PER CITY COMMENTS			
2	01-29-20	FINAL PUD APPLICATION			
3	02-06-20	REVISED TO REMOVE PROPOSED EASEMENT PER COMMENTS			
4	02-27-20	REVISED PROPERTY LINES			
5	03-11-20	REVISED PER CITY COMMENTS			

FINAL PLAT OF SUBDIVISION
ST. CHARLES LIBRARY DISTRICT

Project No:	19188
Group No:	VP04.1

DRAFTING COMPLETED:	01/16/2020	DRAWN BY: SPK, MLP	PROJECT MANAGER: AJS	SHEET NO.
FIELD WORK COMPLETED:	N/A	CHECKED BY: AJS	SCALE: 1" = 40'	2 of 3

Exhibit B:

Approved PUD Plan (site plan only)

Exhibit C:

Plan Depicting Retaining Wall Projection

EEA - P:\Aaron\Sheehan Nagle Hartray - St. Charles Public Library\Drawings\SCPL Civil Site Plan.dwg
Plotted: 5/18/20 @ 2:48pm By: abruder

Scale: 1"=5'



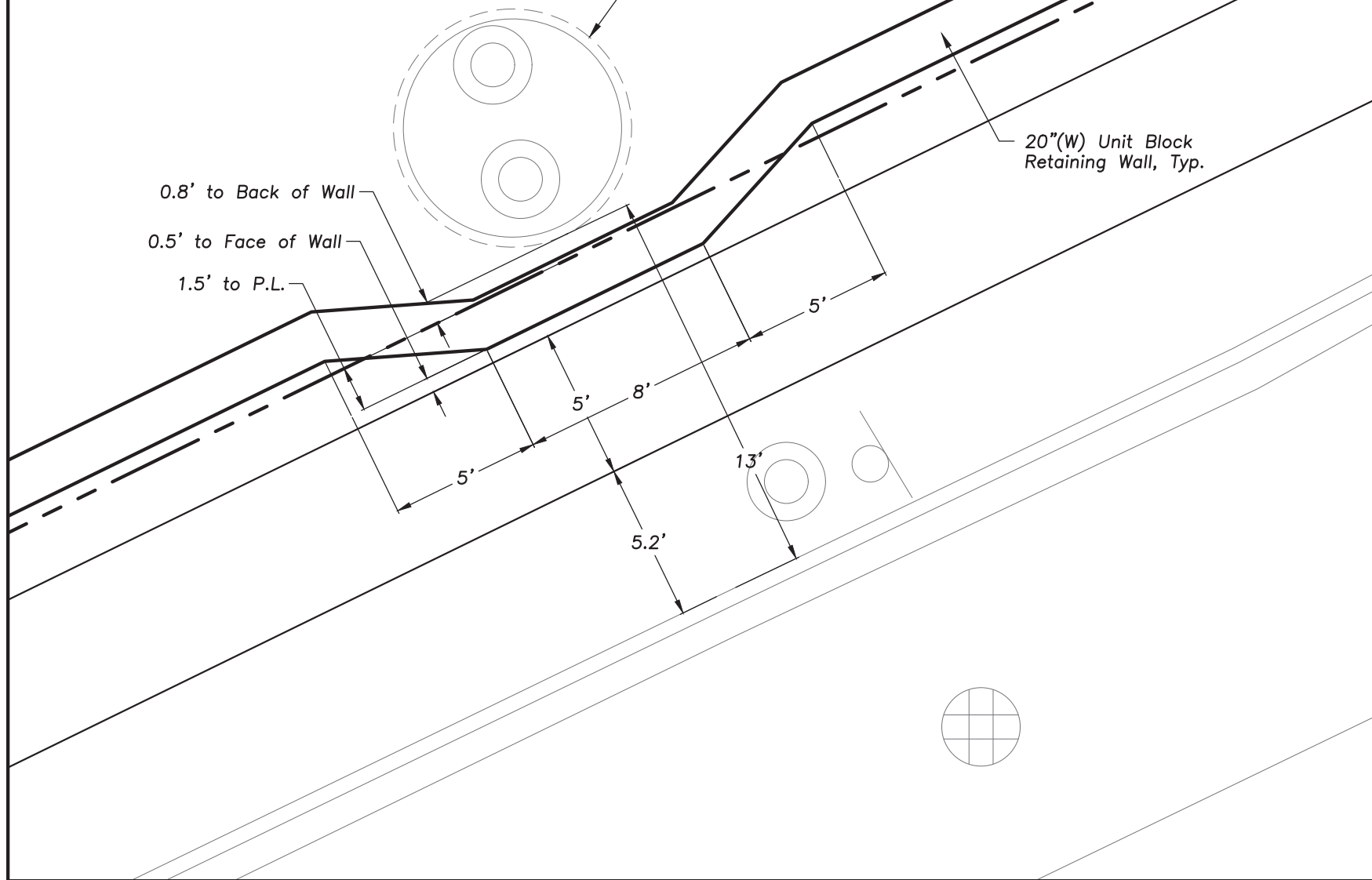
**ERIKSSON
ENGINEERING
ASSOCIATES, LTD.**

145 COMMERCE DRIVE, SUITE A
GRAYSLAKE, ILLINOIS 60030
PHONE (847) 223-4804
FAX (847) 223-4864
EMAIL: INFO@EEA-LTD.COM
PROFESSIONAL DESIGN FIRM
LICENSE NO. 184-003220
EXPIRES: 04/30/2021

Location of Outlet
Control Structure
Outer Wall, Per
Field Verification.

20"(W) Unit Block
Retaining Wall, Typ.

0.8' to Back of Wall
0.5' to Face of Wall
1.5' to P.L.



**ST. CHARLES PUBLIC LIBRARY
ADDITION & RENOVATION
ST. CHARLES, ILLINOIS**

© ERIKSSON ENGINEERING ASSOCIATES, LTD., 2020
ALL RIGHTS RESERVED. NO PART OF THIS PUBLICATION IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM ERIKSSON ENGINEERING ASSOCIATES, LTD.

Design By: **AB** Checked By: **KC/TH** Date: **05/18/20**

Sheet Title:
**ILLINOIS AVE.
RETAINING WALL
SKETCH**

Sheet No:
CSK-1