

May 1, 2012

MEMORANDUM

LEGAL DEPARTMENT

TO: THOMAS THOMAS

FROM: TED KUTSUNIS

RE: LICENSE AGREEMENT FOR RETAINING WALL ON PUBLIC RIGHT OF WAY AT 2535  
35<sup>th</sup> AVENUE

At our April 23, 2012 Council Meeting, the Council approved the construction of a retaining wall within the Public Right Of Way at 2535-35<sup>th</sup> Avenue. The conditions which were part of the motion required the owner, Larry O'Melia, to maintain appropriate insurance to protect the City from liability; to make sure that the City would not be responsible for maintenance; and to authorize staff to create an agreement with Mr. O'Melia.

Pursuant to the directive of Council, attached is a License Agreement for the City and Mr. O'Melia to execute. Since it may very well be that the property located at 2535- 35<sup>th</sup> Avenue may be owned by other individuals some day, the License Agreement will be recorded with the Recorder of Deeds, to put future title holders on notice of the rights and obligations of the City and subsequent property owners as they relate to the retaining wall.

**RECOMMENDATION**

It is recommended that the Council approve the License Agreement and authorize the City Manager to execute the contract document. The Council may wish to add as a condition that Mr. O'Melia is required to pay the recording fees for this Agreement, which I believe will be either \$32.50 if the document is electronically filed or \$42.50 if it is a hard copy filing.

**SUBMITTED BY:** Ted Kutsunis, City Attorney

**APPROVED BY:** Thomas Thomas, City Manager

## **LICENSE AGREEMENT**

For good and valuable consideration in the sum One Dollar (\$1.00) received on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by The City of Rock Island, Illinois, hereinafter Licensor, from Larry S. O'Melia, hereinafter Licensee, said Licensor grants to said Licensee a license to construct a retaining wall within the Licensor's Public Right of Way, more particularly described as follows:

Beginning at the southeast corner of Lot 12 of Pleasant Hills 2nd Addition located in the City of Rock Island, Illinois, thence westerly a distance of thirty (30) feet along the South line of said lot, thence southerly a distance of ten (10) feet perpendicular to the South line of said lot, thence easterly a distance of thirty (30) feet parallel with and ten (10) feet southerly from the South line of said lot, thence northerly a distance of ten (10) feet to the point of beginning.

Said License to construct said retaining wall is subject to the following conditions:

1. The retaining wall would extend no more than eight (8) feet into the 35<sup>th</sup> Avenue Right of Way.
2. The maximum height of said retaining wall would be no more than forty-five (45) inches above the existing grade.
3. Licensee agrees to obtain and maintain, with no lapse in coverage, liability insurance with maximum liability coverage of \$1,000,000.00, and with The City of Rock Island, Illinois, being named as an additional insured on said policy. Licensee shall provide to the Licensor, on an annual basis, proof of the maintenance of said policy of insurance.
4. Licensee agrees to hold harmless The City of Rock Island, Illinois, from any and all acts of negligence on the part of said Licensee or his agents,

representatives, heirs, assigns, contractors, subcontractors, or employees of any of the above, in the construction and maintenance of said retaining wall.

5. That Licensee understands that an existing water main is located approximately 3.5 to 4 feet from the base of said retaining wall which said Licensee will need to maintain. Licensee further understands that there may arise in the future the need for said Licensor to install future utilities or facilities as needed. Licensee agrees that should the Licensor need to remove all or part of said retaining wall in order to maintain or install any existing or future utilities or facilities, that said Licensor is not obligated to said Licensee to repair or replace said wall or any part thereof nor is said Licensor liable to or obligated to compensate said Licensee for any repair or replacement costs incurred as a result thereof.
6. That the Licensee agrees to maintain, and keep in good repair from both a structural and aesthetic aspect said retaining wall. The Licensor, after first determining that said Licensee is unable or unwilling to maintain the retaining wall in a proper condition, retains the right to exercise whatever remedies it may have in law to remedy said situation including the right to remove or replace all or part of said retaining wall. Licensee agrees to reimburse the Licensor for all of its costs and expenses including reasonable attorney's fees, should it become necessary for the Licensor to undertake any remedial action to maintain or demolish said retaining wall.
7. The terms, conditions and obligations of this License Agreement are binding upon any heirs, assigns, purchasers, and future owners of the property owned by said Licensee upon which said retaining wall is located.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

THE CITY OF ROCK ISLAND, ILLINOIS

BY: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Larry S. O'Melia

LICENSOR

LICENSEE

PREPARED BY AND RETURN TO:  
Theodore G. Kutsunis  
1515 - 4<sup>th</sup> Avenue, Suite 301  
Rock Island, IL 61201