



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ADMINISTRATION

M E M O R A N D U M

TO: Bruce K. Walden, Chief Administrative Officer

FROM: William R. Gray, P.E., Public Works Director

DATE: July 5, 2001

RE: **Trinity Lutheran Church Request to Install Cable at Sunnycrest Drive**

INTRODUCTION

The Trinity Lutheran Church has requested permission from the City of Urbana to install a one-inch diameter conduit containing two cables crossing Sunnycrest Drive, east of Anderson Street, to serve two properties they own. Attached is Exhibit A that shows the location for the conduit.

In order for Trinity Lutheran Church to install the conduit in city right-of-way, a license agreement is necessary. Attached please find a draft agreement for use of right-of-way, which outlines the conditions for permitting Trinity Lutheran Church to occupy the public right-of-way with a conduit.

FISCAL IMPACTS

There would be no financial impacts to the City since the installation and maintenance for the conduit is solely at Trinity Lutheran Church's expense. Additionally, Trinity Lutheran Church is indemnifying the City against any losses, claims, etc., that may occur as a result of the conduit installation at this location.

RECOMMENDATION

It is recommended that "AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR USE OF RIGHT-OF-WAY" be approved.

WRG:klf

Attachments: Exhibit A
Agreement
Ordinance

ORDINANCE NO. 2001-07-071

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
AN AGREEMENT FOR USE OF RIGHT-OF-WAY
{Sunnycrest Drive between Anderson Street and Cottage Grove Avenue}**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Agreement for Use of Right-of-Way (Sunnycrest Drive
between Anderson Street and Cottage Grove Avenue) between the City of Urbana and
the Trinity Lutheran Church, in the form of a copy of said Agreement attached hereto and
hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That 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.

PASSED by the City Council this _____ day of _____, 2001.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,

2001.

Tod Satterthwaite, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

[Sunnycrest Drive Between Anderson Street and Cottage Grove Avenue]

THIS AGREEMENT, made and entered into this _____ day of _____, 2001, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Trinity Lutheran Church (hereinafter "Church"),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Church do mutually covenant and agree as follows:

A. Sunnycrest Drive is a 60-foot dedicated right-of-way between the east right-of-way of Anderson Street and the west right-of-way of Cottage Grove Avenue.

B. The Church is herein granted by the City a limited right to bury a one-inch conduit containing two cables under such right-of-way. This limited right is wholly dependent upon the Church, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Church expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Church, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Church of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way.

C. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation and maintenance of a one-inch conduit, which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director"), this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

D. When so instructed by the Director, the Church will cause the conduit to be removed, as nearly as possible in conformance with the Director's request, within thirty {30} days after receipt of written notice from the Director. The Church is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration in-kind of the right-of-way.

E. In the event of an emergency, defined as imminent peril to person or property, or when the Church has inadequately complied with an order of the Director pursuant to Paragraph (D) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (D) impracticable under the circumstances present, the Church consents and agrees that the City or its duly authorized agent may remove the conduit, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Church. Should the Church fail in any way to make timely payment to the City for such costs and expenses, the Church agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

F. The Church agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the installation of the conduit, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Church shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

G. The Church acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the conduit and cables.

H. The Church shall provide to the City, upon completion of the conduit installation, as-built plans.

I. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

* * *

CITY OF URBANA, ILLINOIS

By: _____

Tod Satterthwaite, Mayor

ATTEST:

Phyllis Clark, City Clerk

* * *

TRINITY LUTHERAN CHURCH

By: _____

Trustee Chair

ATTEST:

Church Secretary

* * *

Prepared by and please return recorded copy to:

*Jack Waaler, City Attorney
City of Urbana, Illinois
400 South Vine Street*