



MEMORANDUM

TO: Mayor Laurel Lunt Prussing and Members of the City Council
FROM: William R. Gray, Public Works Director
DATE: July 10, 2008
RE: License Agreement for Carle Foundation to install a Duct Bank in the Church Street Right-of-Way

Introduction

The Carle Foundation has requested from the City of Urbana permission to install an underground duct bank in the Church Street right-of-way between Goodwin Avenue (at the electric substation) and Busey Avenue. The duct bank will be encased in concrete and will include twelve 6" diameter and two 2" diameter conduits planned to house electricity, telephone, cable and fiber optic cables necessary to support the proposed Heart and Vascular Institute located at Coler Avenue and Park Street. This work is being carefully coordinated with the proposed City intersection and traffic signal improvements at Lincoln Avenue and Church Street. All duct bank related work is paid for by Carle Foundation. This work is scheduled to begin this summer and be completed this fall.

Attached please find a draft license agreement that identifies the conditions associated with granting this license agreement. A similar license agreement was granted to Carle Foundation for a duct bank that was installed in 2005 on Coler Avenue between Clark Street and University Avenue which provided electricity for clinic improvements and the Mills Breast Cancer Institute.

Fiscal Impact

The City of Urbana is not responsible for any of the costs associated with this work. Staff time is required in developing this agreement and for providing construction oversight. As stated in the agreement, the Foundation will be required to compensate the City \$1.76/foot times the licensed length and this amount is adjusted annually per the Consumer Price Index. This payment is for occupying and managing the right-of-way and is similar to compensation received from other private license agreements. The amount received in the first year is approximately \$3120.

Recommendations

It is recommended that the attached Ordinance Approving an Agreement for Use of Right-of-Way be approved.

ORDINANCE NO. 2008-07-075

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY

(Church Street between Goodwin Avenue and Busey Avenue)

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

Section 1. That an Ordinance approving an Agreement for the Use of Right-Of-Way in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby 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 authorized to attest to said execution of said Assignment and Estoppel Certificate as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, 2008.

AYES:

NAYES:

ABSTAINS:

Phyllis Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2008.

Laurel Lunt Prussing, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Church Street between Goodwin Avenue and Busey Avenue)

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and THE CARLE FOUNDATION, an Illinois not-for-profit corporation (hereinafter "Foundation").

WITNESSETH:

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

A. Church Street has a dedicated right-of-way varying from 26 feet to 62 feet between the eastern right-of-way of Goodwin Avenue and the eastern right-of-way of Busey Avenue as shown on Exhibit A, attached hereto and made a part hereof (the "Right-of-Way").

B. Foundation is herein granted by the City a limited license ("License") to install up to twelve (12) six inch (6") and up to two (2) two-inch (2") diameter conduits ("Conduit Duct Bank"). This license is for the purpose of installing, maintaining, and repairing underground utility leads, including but not limited to electricity, telephone, cable, and fiber optics within the Right-of-Way. The License granted herein is wholly dependent upon Foundation, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. This 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 Right-of-Way. Foundation expressly acknowledges and agrees that such limited license is immediately revocable at the option of the City in the event that the City's Director of Public works (the "Director") reasonably determines that Foundation, its successor or assign, has failed to perform or comply with any term, condition or covenant set forth within this Agreement, provided, however, City shall provide Foundation with written notice of such non-compliance and Foundation shall have a reasonable period of time to cure any such failure as set forth herein. Either party may terminate this Agreement for cause by giving written notice to the other party at least forty-five (45) days prior to the proposed termination. For the purposes of this section, "for cause" means the breach of any material provision of this Agreement, which remains uncured for a period of thirty (30) days after serving the written notice thereof to the other party; or if such default cannot be cured within thirty (30) days, then a reasonable period of time, so long as the party in default is making a reasonable effort to cure said default. A notice of termination shall specify the "cause" upon which such termination is based. This License does not authorize the placing of any conduit, wire, fiber, poles or other appurtenances above ground, except for markers and handholes or other appurtenances that are commonly associated with below-grade installations of conduit and fiber. This Agreement may be terminated at any time without notice upon the express written consent of both parties.

It is expressly understood and agreed that the nonexclusive License herein granted is, and shall be at all times, subordinate to the City's use and public's use of the Right-of-Way for purposes normally associated with a public right-of-way; accordingly, if reasonably necessary to accommodate repair or construction of utilities or improvements owned by the City within the Right-of-Way, the Foundation shall, as its sole cost, be obligated to relocate any portion of the

Conduit Duct Bank installed in the Right-of-Way, pursuant to this Agreement, if directed in writing to do so by the City Engineer, or, as otherwise agreed to by the City and the Foundation. In all events, Foundation must be given a reasonable amount of time to arrange for the relocation of the Conduit Duct Bank unless impractical.

C. The construction and installation of the Conduit Duct Bank, or any change thereof, including any extension, maintenance, reduction or removal of the Conduit Duct Bank shall be subject to the issuance of a permit by the Director. No Conduit Duct Bank shall be laid or installed in or under any streets, alleys or other public way, until a permit is issued by the Director. Said permit shall indicate the time, manner and place of laying or installing the Conduit Duct Bank. Permit approval shall be granted if the proposed improvements are consistent with the use of the Right-of-Way granted by this Agreement. The application for a permit shall be accompanied by prints, plans and maps showing the proposed location of the Conduit Duct Bank to be laid or installed, the location of each conduit to be entered, and the number and placement of manholes or other openings to gain access to said conduit. In the event of an emergency which Foundation believes poses a threat of immediate harm to the public or to any of Foundation's facilities, then Foundation shall be granted access to the Right-of-Way to mitigate the threatened harm without the benefit of a permit, provided however, Foundation shall advise City of the emergency as its earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter.

D. The License shall be limited solely to the installation, operation, maintenance and use of the Conduit Duct Bank in the said Right-of-Way, which is shown on Exhibit A. If the City reasonably believes that all facilities with the Conduit Duct Bank of Foundation are no longer in use by Foundation, or are otherwise abandoned by Foundation, the City shall notify Foundation in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice must give Foundation at least thirty (30) days to respond. If Foundation reasonably demonstrates that the facilities are still in use by Foundation and are not otherwise abandoned by Foundation, this Agreement shall remain in force and effect according to its terms. If Foundation does not demonstrate within thirty (30) days of the notice that the facilities are in use by Foundation and are not otherwise abandoned by Foundation, this Agreement shall be deemed lapsed and terminated. Any additional use, other than that specifically named herein, without the further express written consent of the City, shall be construed as a violation of this Agreement.

E. Foundation, after doing any work shall, at its sole cost and expense, promptly repair and restore the Right-of-Way including all sidewalks, parkways or pavements disturbed by Foundation to the condition in which they existed prior to the performance of the work, to the extent practicable. In the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by Foundation, then Foundation shall, as soon as climatic conditions will reasonably permit, 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 to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by Foundation to the extent practicable. Such restoration shall be completed within ten (10) days or a reasonable period of time after the date of commencement of such restoration work. In the event that Foundation fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City may, but shall have no obligation to, perform such work and recover from Foundation any costs and expenses the City incurs. In the event that the Right-of-Way or improvement cannot be so repaired, replaced or restored, Foundation shall compensate the City for the cost of such improvements and in an amount estimated by an independent architect or engineer mutually

agreed upon by the parties. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped and then restored within a reasonable time thereafter to the original condition with sod or hydroseed in accordance with the applicable provisions of this Agreement. Foundation shall keep all structures which it shall construct by virtue of this Agreement, in a reasonably safe condition at all times and shall maintain such traffic control and protection during the construction, repair or renewal work performed hereunder as will reasonably avoid danger to life, limb and property. Any damage caused by Foundation to any other utility including storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or any facilities from any other utility company shall, at its sole cost and expense, promptly repair and restore said damaged facility.

F. In the event of an emergency, defined as imminent peril to person or property or when Foundation has inadequately complied with an order of the Director pursuant to Paragraph (B) so long as Foundation is given notice and an opportunity to cure the event(s) of noncompliance, Foundation consents and agrees that the City or its duly authorized agent may remove the Conduit Duct Bank, or any portion thereof, and charge all reasonable costs and expenses incurred in such removal, disposal, and restoration to Foundation. Should Foundation fail in any way to make timely payment to the City for such costs and expenses, Foundation agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

G. Foundation 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 Duct Bank, 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, Foundation shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of the Foundation's negligence such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

H. Foundation agrees to use its best efforts to maintain contractors on any work project involving the Conduit Duct Bank and to work toward its timely completion, barring inclement weather or other situations beyond the Foundation's control.

I. Foundation acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the Conduit Duct Bank.

J. Foundation shall provide as-built plans to the City, upon completion of the installation of the Conduit Duct Bank, in an electronic format compatible with the City's Geographic Information System.

K. Annual payments shall be made to the City in the amount of one dollar and seventy-six cents (\$1.76) per lineal foot (licensed length shown on Exhibit A is 1773') of licensed property. The amounts herein set for compensation shall, on January first of each year beginning January 1, 2009 be adjusted by the Consumer Price Index 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.

L. Foundation shall become a member of JULIE at Foundation's expense in order to respond to future excavations that may occur in the Right-of-Way and within the Coler Avenue/University Avenue/Orchard Street licensed area as previously executed on March 24, 2005.

M. The License granted pursuant to this Agreement may not be transferred without the express written consent of the City, provided that such consent shall not be unreasonably withheld.

N. The License shall be non-exclusive and shall not confer any exclusive right, privilege, or license to occupy the Right-of-Way for any purpose.

O. The License granted under this authority shall not convey any right, title, or interest in the Rights-of-Way but shall be deemed a license only to use and occupy the Right-of-Way for the limited purposes and term stated in the grant. The License granted under this authority shall not be construed as conveying any warranty of title.

P. 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.

Q. Notices transmitted to either party to this Agreement shall be addressed as follows. All notices required under this agreement shall be in writing. Notices shall be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the address of the respective party as stated below, or to any changed address either party may have fixed by notice. Notice shall be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice shall be deemed given on the date of the mailing.

To the City:	Mayor City of Urbana 400 South Vine Street Urbana, Illinois 61801	Public Works Director City of Urbana 706 South Glover Avenue Urbana, Illinois 61802
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To Foundation:	The Carle Foundation Attention: Contracts 601 West University Avenue Urbana, IL 61801
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Either party may designate by written notice a different address to which notices shall be sent.

R. Foundation shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

S. The initial term of this Agreement shall be twenty (20) years from the date of execution. Upon expiration of the initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) additional years, unless, no less than ninety (90) days prior to the expiration of the current term, either party provides written notice to the other party of the intent not to renew.

T. Foundation shall comply with all ordinances of the City, including but not limited to all generally-applicable provisions regarding rights-of-way, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict

with an express provision of this Agreement. Foundation shall comply with all conditions of permits issued to it.

U. In the event any one or more of the provisions contained in this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore, remain in full force and effect.

V. This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the parties, and may be changed, modified or amended only by mutual written agreement executed by them.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year first above written.

CITY OF URBANA, ILLINOIS

By: _____
Laurel Lunt Prussing, Mayor

ATTEST:

Phyllis D. Clark, City Clerk

THE CARLE FOUNDATION

By: _____
**John M. Snyder, Executive Vice President
& CEO**

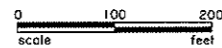
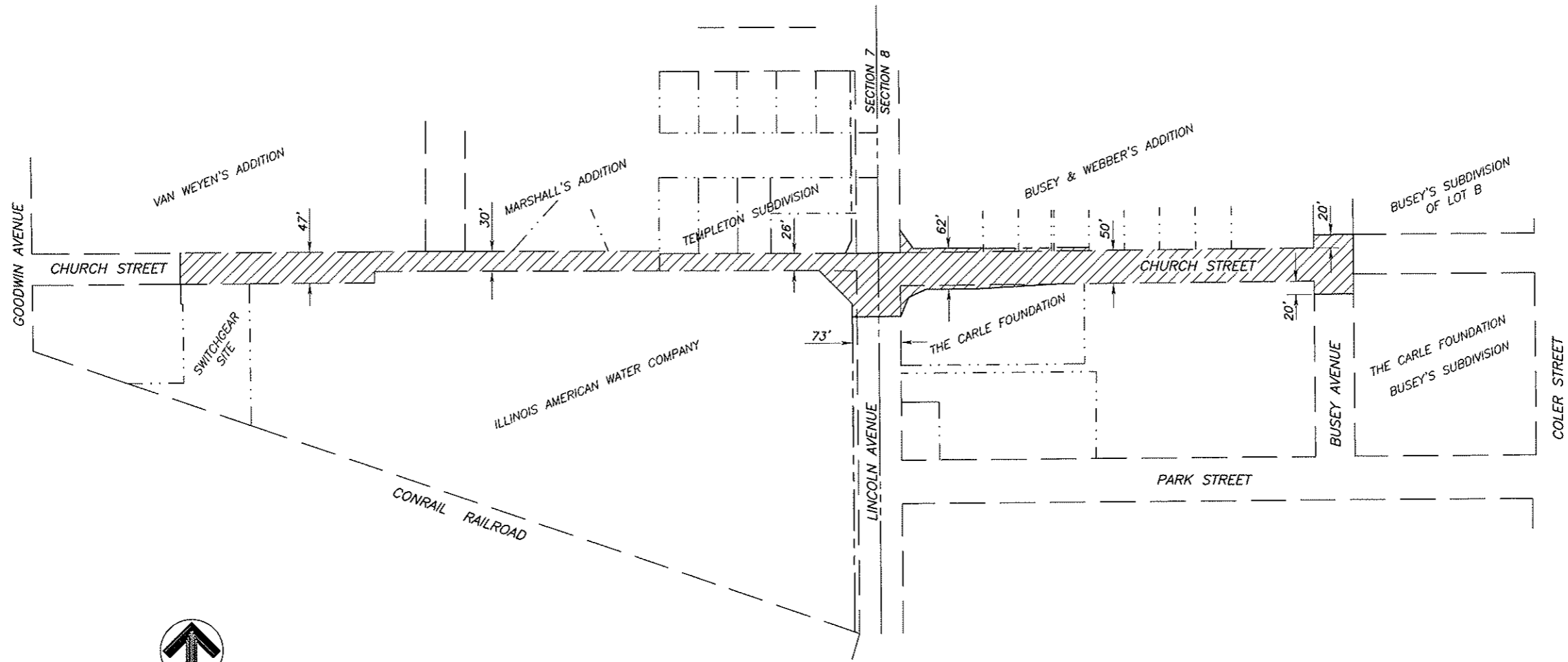
ATTEST:

(Print Name & Title)

Prepared by and please return recorded copy to:

***Ron O'Neil, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801***

Carle Foundation Hospital
City of Urbana Right-of-Way Use Permit Exhibit A
 Part of the SE 1/4, Section 7, T. 19 N., R. 9 E. and
 Part of the SW 1/4, Section 8, T. 19 N., R. 9 E. of the 3rd P.M.
 City of Urbana, Champaign County, Illinois



- LEGEND**
- EXISTING RIGHT-OF-WAY LINE
 - EXISTING LOT LINE
 - SECTION LINE
 - PROPOSED RIGHT-OF-WAY LINE
 - ▨ RIGHT-OF-WAY USE PERMIT AREA * (L=1,773' ±)

*** NOTE:**
 CITY OF URBANA PUBLIC STREET RIGHT-OF-WAY IS
 REQUIRED FOR INSTALLATION OF A 12.47 KV
 ELECTRICAL DUCT BANK WITH INSTALLATION ON
 PRIVATE PROPERTY OUTSIDE OF THE LIMITS SHOWN.

Date of Preparation: April 29, 2008	PROJECT ID 06C022.00
Foth Foth Infrastructure & Environment, LLC 1610 Goodwood Drive Champaign, IL 61821 Phone: 217-352-4100 Fax: 217-352-6085	SHEET NO. 1 OF 1 SHEETS

REUSE OF DOCUMENTS
 THIS DOCUMENT HAS BEEN DEVELOPED FOR A SPECIFIC APPLICATION AND NOT FOR
 GENERAL USE. THEREFORE IT MAY NOT BE USED WITHOUT THE WRITTEN APPROVAL OF
 FOTH INFRASTRUCTURE AND ENVIRONMENT, LLC. UNAPPROVED USE IS THE SOLE
 RESPONSIBILITY OF THE UNAUTHORIZED USER

Revised: July 7, 2008

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