



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

**ENGINEERING**

**MEMORANDUM**

**TO: Mayor Laurel L. Prussing and Members of the City Council**  
**FROM: Gale L. Jamison, Assistant City Engineer** *RBJ*  
**William R. Gray, Public Works Director**  
**DATE: November 3, 2011**  
**RE: Agreement for Use of Right-of-way – Stone Creek Boulevard, Smith Road and Colorado Avenue**

**INTRODUCTION**

The Legal Division has asked for additional language to be included in the agreement considered at the October 24<sup>th</sup> Committee of the Whole and forwarded to the November 7<sup>th</sup> Council Meeting with a recommendation for approval. A copy of the agreement with the additional language denoted is attached.

**RECOMMENDATION**

It is recommended that the City Council approve and authorize the execution of the Agreement with the added language by resolution as provided in the packet for the October 24<sup>th</sup> Committee of the Whole meeting.

RESOLUTION NO. 2011-10-035R

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR USE OF RIGHT-OF-WAY WITH THE STONE CREEK SUBDIVISION HOMEOWNERS ASSOCIATION

(Stone Creek Boulevard, Smith Road and Colorado Avenue)

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

Section 1. That an agreement by and between the City of Urbana, Illinois and the Stone Creek Subdivision Homeowners Association in substantially the form of the 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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

**After recording return to:**

City of Urbana Legal Division  
400 S. Vine Street  
Urbana, IL 61801

**AGREEMENT FOR USE OF RIGHT-OF-WAY**

**(Stone Creek Subdivision Homeowners Association)**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Stone Creek Subdivision Homeowners Association, an Illinois not-for-profit corporation, Inc. (hereinafter "Stone Creek").

**WITNESSETH:**

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

A. Stone Creek Boulevard is a roadway of variable width between eighty and one hundred feet of dedicated right-of-way (r-o-w) between Windsor Road and High Cross Road. Smith Road is a roadway of sixty-six feet of dedicated right-of-way between Stone Creek Boulevard and Florida Avenue.

B. The City hereby grants Stone Creek a limited right to construct, reconstruct, use, operate, maintain, repair, inspect, and remove decorative entryway signage, landscaping and street lighting (hereinafter "facilities"), provided that any facility shall under no circumstances encroach into the sight distance triangle, pursuant to Chapter 20, Article VI, of the Urbana Code of Ordinances, as of now or hereafter amended. This limited right is wholly dependent upon Stone Creek and its successors and assigns fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. Stone Creek expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that Stone Creek or its successors or assigns fails to perform or comply with any term, condition or covenant set forth within this Agreement provided that Stone Creek shall have a period to cure any such failure as otherwise set forth herein. This Agreement may be terminated at any time without notice upon the express written consent of both Parties. 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. A notice of termination shall specify the "cause" upon which such termination is based. Further, it is expressly understood that regardless of the existence or not of any breach, the use by Stone Creek of the hereinabove described r-o-w shall at all times be subordinate to the City's use of said r-o-w.

C. The construction and installation of said facilities or any change thereof including extension, reduction or removal of the facilities shall be subject to the issuance of a permit therefore by the City's Director of Public Works (hereinafter referred to as "Director"). No facility shall be constructed or installed in or under any streets, alleys or other public way until a permit therefore is issued by the Director. Permit approval shall be granted if the proposed improvements are consistent with the use of the public way granted by this Agreement. Each application for a permit shall be accompanied by prints, plans and maps showing the proposed location of each facility to be constructed or installed, the location and depth of any conduit to be installed, and the number and placement of any other related appurtenances, along with the appropriate insurance certificate and permit fees required by the Urbana City Code.

D. The purpose of the herein permitted right shall be limited solely to the construction, reconstruction, use, operation, maintenance, repair, inspection and removal of the facilities on, in and/or from the r-o-w, shown on Exhibit A, attached to and incorporated into this Agreement, and by this reference, and for incidental uses reasonably related thereto. Upon cessation of such use as reasonably determined by the Director as provided hereinafter, this Agreement shall immediately lapse and terminate. If the City believes that any facilities installed by Stone Creek are no longer in use by Stone Creek or are otherwise abandoned by Stone Creek, the City may notify Stone Creek in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice must give Stone Creek at least thirty (30) days to respond. If Stone Creek reasonably demonstrates that the facilities are still in use by Stone Creek and are not otherwise abandoned by Stone Creek, this Agreement shall remain in force and effect according to its terms. If Stone Creek does not demonstrate within thirty (30) days of the notice that the facilities are in use by Stone Creek and are not otherwise abandoned by Stone Creek, this Agreement shall be deemed lapsed and terminated. 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.

E. Stone Creek, after doing any work shall, at its sole cost and expense, promptly repair and restore the site including all sidewalks, parkways or pavements disturbed by Stone Creek to the condition in which it existed prior to the performance of the work, or nearly as practicable as determined by the City in the exercise of its reasonable discretion. In the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by Stone Creek, then Stone Creek, no more than fifteen (15) days from receipt of notice from the City to do so or as soon as climatic conditions will reasonably permit, shall 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 Stone Creek. Subject to reasonable delay due to climatic conditions, such restoration shall be completed within ten (10) days after the date of commencement of such restoration work. In the event that Stone Creek 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 Stone Creek any costs and expenses the City incurs. In the event that such public way or improvement cannot be so repaired, replaced or restored, Stone Creek shall justly compensate the City. 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 hydro-seed in accordance with the applicable provisions of this Agreement. Stone Creek 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 Stone Creek 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 Stone Creek has inadequately complied with an order of the Director pursuant to Paragraph (B) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (B) impracticable under the circumstances present, Stone Creek consents and agrees that the City or its duly authorized agent may remove the facility, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to Stone Creek. Should Stone Creek fail in any way to make timely payment to the City for such costs and expenses, Stone Creek agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

G. Stone Creek 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, 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, Stone Creek 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.

H. Stone Creek acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the facilities.

I. Stone Creek shall provide as built plans to the City upon completion of the installation of the facilities.

J. The license granted under this Agreement may not be transferred without the express written consent of the City, provided that such consent shall not be unreasonably withheld.

K. The license granted under this Agreement does not confer any exclusive right or privilege to occupy any r-o-w for any purpose.

L. The license granted under this Agreement does not convey any right, title, or interest in any r-o-w but is deemed a license only for the limited purposes and term stated herein. The license will not be construed as any warranty of title.

M. This Agreement is expressly binding upon both parties, their successors and assigns.

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

**To the City:** Director of Public Works  
City of Urbana  
706 S. Glover Avenue  
Urbana, Illinois 61802

**To Stone Creek:** Stone Creek Homeowners Association  
*Attention: President*  
2805 South Boulder Drive  
Urbana, Illinois 61802

Either party may designate by written notice a different address to which notices must be sent.

~~If Stone Creek Homeowners Association is no longer in existence, and the City has not been notified in writing of the name and address of any legal successor to the interest of Stone Creek Homeowners Association, then it shall be legally effective notice under this section for the City to publish in a news paper of general circulation in the City of Urbana, for three (3) successive weeks, a Notice of Action that the City intends to take.~~

O. Stone Creek 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.

P. This Agreement and the License granted to Stone Creek hereunder shall commence as of the date of this Agreement and shall continue until terminated in accordance with this Agreement.

Q. Stone Creek 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. Stone Creek shall comply with all conditions of permits issued to it.

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

S. This Agreement will be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the City.

T. 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: \_\_\_\_\_, Mayor  
**Laurel Lunt Prussing**

ATTEST:

\_\_\_\_\_, City Clerk  
**Phyllis D. Clark**

(seal)

**STONE CREEK SUBDIVISION HOMEOWNERS ASSOCIATION**

By: \_\_\_\_\_, \_\_\_\_\_  
(Name) (Title)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 A.D. by \_\_\_\_\_ as \_\_\_\_\_ for the Stone Creek Subdivision Homeowners Association

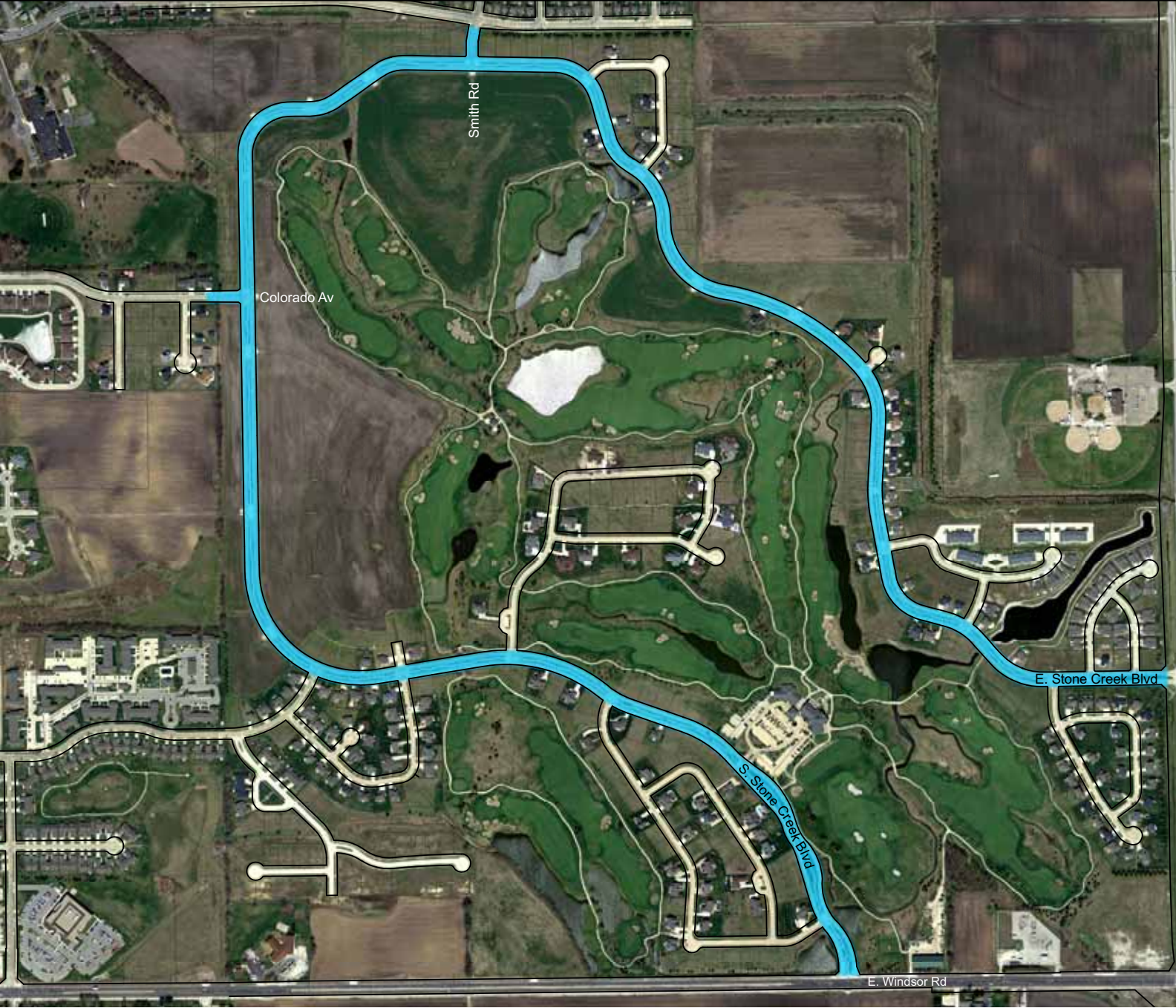
In witness hereof, I hereunto set my hand and official seal.

\_\_\_\_\_

Notary Public


(seal)

My commission expires \_\_\_\_\_.



# Exhibit A

**Legend**

 Right-of-Way Subject to Agreement



High Cross Rd/Rt 130

E. Windsor Rd