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2009R25223

Recording Cover Sheet

ORDINANCE NO. 2009-05-043

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF
RIGHT-OF-WAY (CHURCH STREET BETWEEN COLER
AVENUE AND ORCHARD STREET)

[AGREEMENT ATTACHED]

RECORDED ON
08/20/2009 04:13:13PM

CHAMPAIGN COUNTY
RECORDER

BARBARA A. FRASCA

REC FEE: 29.00

RHSPS Fee:

REV FEE:

PAGES 8

PIAT ACT: 0

PIAT PAGE:

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

Return to:

Phyllis D. Clark, City Clerk
City of Urbana
400 S. Vine Street
Urbana, IL 61801

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ORDINANCE NO. 2009-05-043

**AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY
(Church Street between Coler Avenue and Orchard Street)**

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 Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 4th day of May, 2009.

AYES: Bowersox, Gehrig, Lewis, Carlin, Roberts, Smyth, Stevenson

NAYS:

ABSTAINS:



Phyllis D. Clark
Phyllis D. Clark, City Clerk

D. Robert
Deputy Clerk

APPROVED by the Mayor this 8th day of May,

2009.

Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Church Street between Coler Avenue and Orchard Street)

THIS AGREEMENT is made and entered into this 13th day of May, 2009 by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and THE CARLE FOUNDATION HOSPITAL, an Illinois not-for-profit corporation (hereinafter "Hospital").

WITNESSETH:

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

A. Church Street is a 60-foot dedicated right-of-way between the eastern right-of-way of Coler Avenue and the western right-of-way of Orchard Street as shown in Exhibit A, attached hereto and made a part hereof (the "Right-of-Way").

B. The Hospital is herein granted by the City a limited license ("License") to construct a patient pick-up and canopy to be built in part upon such Right-of-Way. The License granted herein is wholly dependent upon the Hospital, 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. 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 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 reasonable necessary to accommodate repair or construction of utilities or improvements owned by the City within the Right-of-Way, the Hospital shall, as its sole cost, be obligated to relocate any portion of the patient pick-up and canopy 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 Hospital. In all events, the Hospital must be given a reasonable amount of time to arrange for the relocation of the patient pick-up and canopy unless impractical.

C. In the event of an emergency, defined as imminent peril to person or property or when the Hospital has inadequately complied with an order of the Director pursuant to Paragraph (B) so long as the Hospital is given notice and an opportunity to cure the event(s) of noncompliance,

the Hospital consents and agrees that the City or its duly authorized agent may remove the patient pick-up and canopy, or any portion thereof, and charge all reasonable costs and expenses incurred in such removal, disposal, and restoration to the Hospital. Should the Hospital fail in any way to make timely payment to the City for such costs and expenses, the Hospital agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

D. The construction and installation of the patient pick-up and canopy, or any change thereof, including any extension, maintenance, reduction or removal of the patient pick-up and canopy shall be subject to the issuance of a permit by the Director. No patient pick-up and canopy shall be constructed in 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 constructing a patient pick-up and canopy. 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 patient pick-up and canopy to be constructed. In the event of an emergency which the Hospital believes poses a threat of immediate harm to the public or to any of the Hospital's facilities, then the Hospital shall be granted access to the Right-of-Way to mitigate the threatened harm without benefit of a permit, provided however, the Hospital shall advise the City of the emergency at its earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter.

E. The License shall be limited solely to the construction, maintenance, and use of the patient pick-up and canopy in the said Right-of-Way, which is shown in Exhibit A. If the City reasonably believes that use of the patient pick-up and canopy by the Hospital is no longer in use by the Hospital, or is otherwise abandoned by the Hospital, the City shall notify the Hospital in writing that the City is asserting its right to declare this Agreement lapsed and terminated. Such notice must give the Hospital at least thirty (30) days to respond. If the Hospital reasonably demonstrates that the patient pick-up and canopy is still in use by the Hospital and is not otherwise abandoned by the Hospital, this Agreement shall remain in force and effect according to its terms. If the Hospital does not demonstrate within thirty (30) days of the notice that the patient pick-up and canopy is in use by the Hospital and is not otherwise abandoned by the Hospital, 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.

F. The Hospital, 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 the Hospital 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 require repairing, because of such disturbance due to construction of the improvements which are the subject of this license, then the Hospital 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 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 the Hospital 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 the Hospital any costs and expenses the City incurs. In the event that the Right-of-Way or improvement cannot be so repaired, replaced or restored, the Hospital 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. The Hospital 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 the Hospital 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.

G. The Hospital 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 construction of the patient pick-up and canopy, 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 Hospital shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of the Hospital's negligence such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

H. The Hospital agrees to use its best efforts to maintain contractors on any work project involving the patient pick-up and canopy and to work toward its timely completion, barring inclement weather or other situations beyond the Hospital's control.

I. The Hospital acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the patient pick-up and canopy.

J. The Hospital shall provide as-built plans to the City, upon completion of the installation of the patient pick-up and canopy.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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 the Hospital:	The Carle Foundation Hospital Attention: Contracts 601 West University Avenue Urbana, Illinois 61801
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Either party may designate by written notice a different address to which notices shall be sent.

P. The Hospital 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.

Q. The initial term of this Agreement shall be twenty (20) years from the date of the execution. Upon expiration of this initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) 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.

R. The Hospital 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. The Hospital shall comply with all conditions of permits issued to it.

S. In the event any one or more of the provisions contained in the Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a court of competent

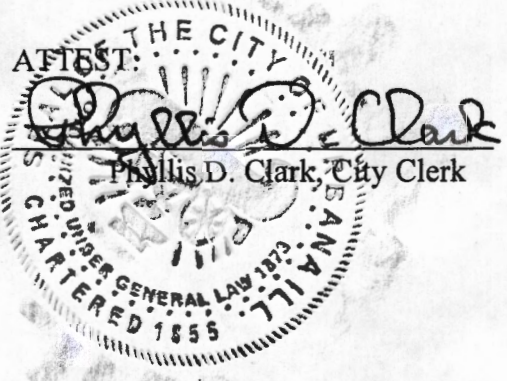
jurisdiction, such provision shall be deemed severed from the Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore, remain in full force and effect.

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: Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor



THE CARLE FOUNDATION HOSPITAL

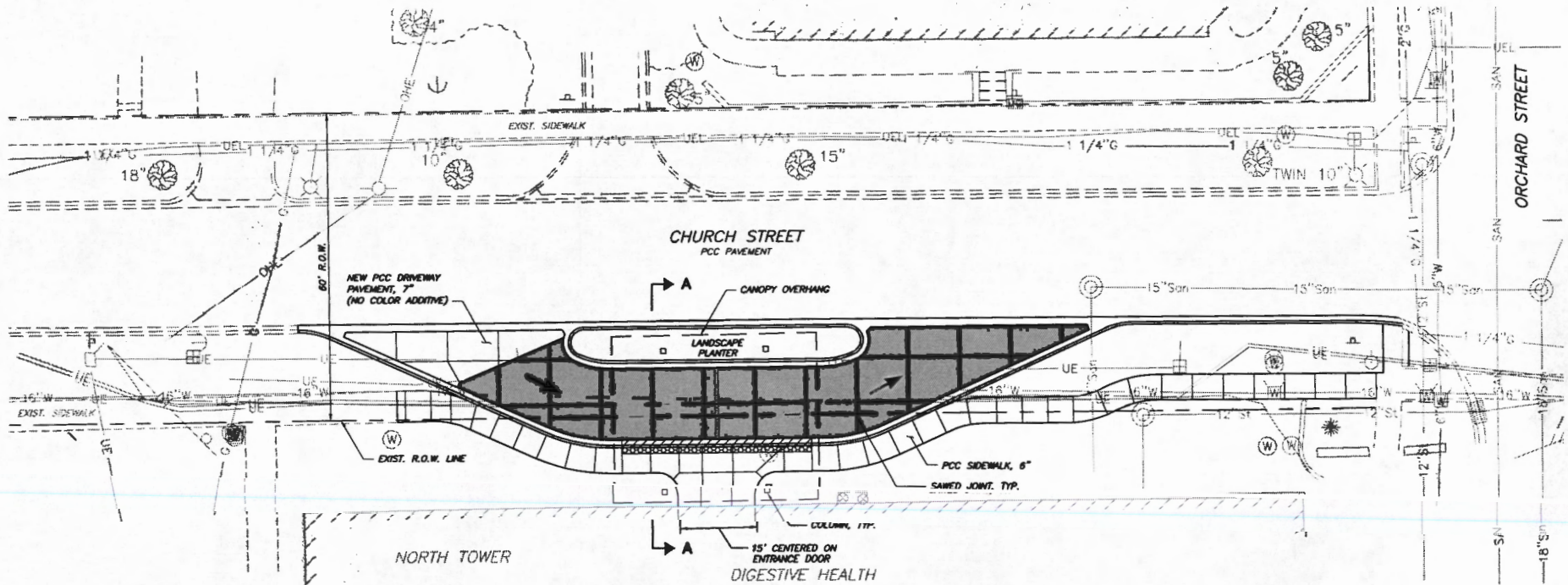
By: John M. Snyder
John M. Snyder, Executive Vice President & CEO

ATTEST:

Molly Jackson
Molly Jackson Administrative Assistant
(Print Name & Title)

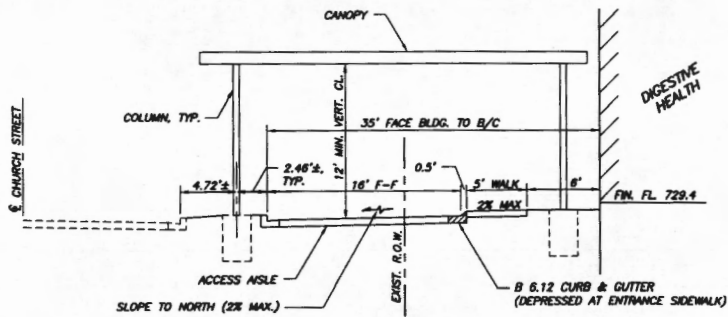
Prepared by and please return recorded copy to:
Ron O'Neal, City Attorney
Jack Waaler, Attorney
Michelle Brooks, Assistant City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801

EXHIBIT A
CARLE FOUNDATION HOSPITAL
DIGESTIVE HEALTH PICK-UP FACILITY
 URBANA, ILLINOIS



NORTH TOWER

DIGESTIVE HEALTH



SECTION A-A

- DEPRESSED CURB
- TACTILE WARNING STRIP
- PCC DRIVEWAY PAVEMENT, 7" W/ COLOR ADDITIVE (COLOR TO BE DETERMINED BY CARLE FOUNDATION)
- PROPOSED SIDEWALK JOINTING

Date of Preparation:	PROJECT ID: EC0222.02
Foth Foth Infrastructure & Environment, LLC 2000 North First Street Chicago, IL 60611 Phone: 312.261.2800 Fax: 312.261.2809	SHEET NO. 1 OF 1 SHEETS
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