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Recording Cover Sheet

ORDINANCE NO. 2012-12-112

AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF
RIGHT-OF-WAY (HEART VASCULAR INSTITUTE SHUTTLE
BUS DROP-OFF, CHURCH STREET BETWEEN COLER
AVENUE AND ORCHARD STREET)

and

AGREEMENT FOR USE OF RIGHT-OF-WAY (THE CARLE
FOUNDATION HOSPITAL HEART VASCULAR INSTITUTE
SHUTTLE BUS DROP-OFF CHURCH STREET BETWEEN
COLER AVENUE AND ORCHARD STREET)

2013R02633
REC ON: 01/30/2013 3:44:00 PM
CHAMPAIGN COUNTY
BARBARA A. FRASCA, RECORDER
REC FEE: 31.00
PAGES 10
PLAT ACT: 0 PLAT PAGE:

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

Return to:

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

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

**(Heart Vascular Institute Shuttle Bus Drop-Off,
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.

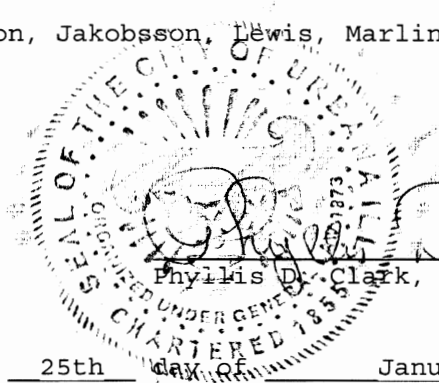
Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 22nd day of January, 2013.

AYES: Bowersox-Johnson, Jakobsson, Lewis, Marlin, Roberts, Smyth

NAYS:

ABSTAINS:



Phyllis D. Clark
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 25th day of January, 2013.

Laurel Lunt Prussing
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

**(The Carle Foundation Hospital Heart Vascular Institute Shuttle Bus Drop-Off
Church Street between Coler Avenue and Orchard Street)**

THIS AGREEMENT is made and entered into by and between the CITY OF URBANA, a municipal corporation of the State of Illinois ("City"), and THE CARLE FOUNDATION HOSPITAL ("Carle") and is effective on the last date signed by a party hereto. The City and Carle agree as follows:

1. **Right-of Way.** Church Street ("right-of-way") 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.
2. **Grant of License.** The City hereby grants TO Carle a limited license to construct the following facility within said right-of-way: a shuttle bus drop-off (hereinafter, the "Facility").
 - A. The license granted under this Agreement is wholly dependent upon Carle fully and faithfully performing and complying with all the terms, conditions, and covenants contained in 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.
 - B. The license granted under this Agreement is immediately revocable at the option of the City in the event that Carle fails to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that Carle will have a period in which to cure any such failure as set forth in this Agreement.
 - C. The license granted under this Agreement may not be transferred.
 - D. The license granted under this Agreement does not convey any right, title, or interest in any right-of-way but is deemed a license only to use and occupy the right-of-way for the limited purposes and term stated herein. The license will not be construed as any warranty of title.
 - E. The License granted under this Agreement is non-exclusive and at all times is subordinate to the City's and the public's use of said right-of-way for purposes

normally associated with such a public right-of-way. Accordingly, Carle shall, at its sole cost, relocate or remove any portion of the Facility upon the written direction of the City's Director of Public Works ("Director") if necessary to accommodate repair, maintenance or construction of City utilities or improvements to the right-of-way.

3. **Compliance with Governmental Requirements.**

- A. **Permit.** The construction and installation of the Facility or any change thereof including without limitation extension, reduction, or removal of the Facility shall be subject to the issuance of a permit therefore by the Director. No Facility shall be constructed in any streets, alleys or in, on or over any other public way until a permit therefore is issued by the Director. Said permit will indicate the time, manner and place of constructing the Facility. The City will approve the permit if the proposed improvements are consistent with the use of the license granted by this Agreement. Carle shall comply with all conditions of permits issued to it. The application for a permit must be accompanied by prints, plans and maps showing the proposed location and design of the Facility to be constructed, along with the appropriate surety bond, insurance certificate, and permit fees required by the Urbana City Code. Carle shall use its best efforts to maintain contractors on any work project involving the Facility and to work toward its timely completion, barring inclement weather or other situations beyond Carle's control. In the event of an emergency which Carle believes poses a threat of immediate harm to the public or to any of Carle's facilities, Carle will be permitted access to the public way to mitigate the threatened harm without the benefit of a permit; provided, however, Carle shall advise the City of the emergency at the earliest reasonable opportunity and shall seek a proper permit within a reasonable period of time thereafter and in the manner as hereinbefore stated.
- B. **Ordinances.** Carle shall comply with all ordinances of the City, including without limitation, all generally-applicable provisions regarding rights-of-way and their uses, 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.

4. **Plan Submission.** Carle shall provide as built plans to the City upon completion of construction of the Facility in an electronic format compatible with the City's Geographic Information System.

5. **Fees.** In consideration for the granting of the license provided for in this Agreement Carle shall pay to the City an annual fee of One Thousand Sixty-Two and No/Hundredths Dollars (\$1,062.00) as hereinafter provided.

- A. The initial annual fee shall be paid on or before January 15, 2013 and with each subsequent payment to be made on or before January 15th of each successive year until this Agreement is terminated or expires without automatic renewal.
- B. The fee to be paid each year during which this Agreement shall be enforce shall be increased or decreased by the application of the percentage by which the Consumer Price Index, as issued by the United States Department of Labor, increases or decreases year-over-year. The applicable Consumer Price Index percentage shall be that year-over-year increase or decrease as reported by the United States Department of Labor issues for the month of December and any

percentage adjustment to the annual fee shall be applied to the immediately next annual fee payment. For example and by way of example only: If the 2013 annual fee is \$1,062.00 and the United States Department of Labor reports a 0.8% year-over-year increase in the Consumer Price Index for December 2013, then the annual fee which Carle shall pay to the City for 2014 shall be \$1,68.37 (i.e., \$1,070.50 X 1.008= \$1,070.496).

- C. Upon payment of any annual fee provided for in this Agreement, the same shall be deemed to have been fully earned upon receipt and there shall be no full or partial refund of any annual fee payment should this Agreement be terminated by either or both parties prior to the date when this Agreement is scheduled to expire.
- D. In the event that the parties to this Agreement elect to extend this Agreement or should this Agreement be extended pursuant to Paragraph 13 hereof, the annual fee shall continue to be recalculated in the manner provided for in this Paragraph 5 unless otherwise agreed to in a writing executed by the parties hereto.

6. **Facility Maintenance and Repair.** Carle will be fully responsible and will bear all costs associated with any and all maintenance or repair of the Facility.

7. **Right-of-Way Repair Following Installation of Facility.** After doing any work, Carle at its sole cost and expense shall promptly repair and restore to the extent practicable any right-of-way disturbed by Carle, including without limitation all sidewalks, parkways, or pavements, to the condition in which they existed before performance of the work.

- A. If any such sidewalk, parkway or pavement becomes uneven, unsettled, or otherwise requires repairing, because of such disturbance by Carle, Carle, as soon as climatic conditions reasonably permit shall 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 Carle. Such restoration shall be completed within ten (10) calendar days after the date of commencement of such restoration work. If Carle fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City may, but shall have the right but has no obligation to, perform such work and recover from Carle any costs and expenses the City incurs in undertaking and completing such work.
- B. If such right-of-way or improvement cannot be so repaired, replaced or restored, Carle shall compensate the City for the cost or reasonable value of such improvements in an amount estimated by an independent architect or engineer mutually agreed upon by the parties.
- C. 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. In the event any shrubs, bushes or trees existing within the right-of-way are disturbed by reason of the construction, maintenance or repair of the Facility, Carle shall repair or replace such shrubs, bushes or trees as the case may warrant as determined by the Director of Public Works.

- D. Carle shall keep all structures constructed pursuant to 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.
- E. Carle shall promptly repair and restore at its own expense all damage it causes to any other utility, including but not limited to storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or facilities from any other utility company.

8. **Abandonment of Use.** The License shall be limited solely to the construction, maintenance, and use of the Facility. Upon cessation of such use, as determined by the Director, this Agreement will immediately and automatically lapse and terminate. If the Director believes Carle is no longer using the Facility or that it otherwise has been abandoned, he or she shall notify Carle in writing that the City is asserting its right to declare this Agreement lapsed and terminated by reason of abandonment. Such notice shall state that Carle has thirty (30) days in which reassert its rights under this Agreement and demonstrate that Carle has not in fact abandoned use of the license granted by this Agreement. If Carle demonstrates within the thirty (30) day period that it has not abandoned the Facility, this Agreement shall remain in force and effect according to its terms. If Carle fails to demonstrate within the thirty (30) day period of the notice that it has not abandoned the Facility, this Agreement shall be deemed lapsed, terminated and no longer in force or effect and the license granted hereby shall automatically and immediately terminate.

9. **Other Uses.** In the absence of the City's prior written consent, any use by Carle of the license granted by this Agreement other than that which is specifically provided for in this Agreement shall constitute a violation of this Agreement.

10. **Notice of Default and Termination of Agreement.** Any one or more of the following shall constitute a default of this Agreement and this Agreement and the license granted by this Agreement shall terminate and become null and void:

- A. An emergency which presents imminent peril to person or property;
- B. Non-compliance with any term, provision or covenant in this Agreement;
- C. The Director or other responsible City official, in good faith, deems the procedure in Paragraph 4 impracticable under the circumstances present;
- D. Abandonment of the Facility's use in accordance with the provisions in Paragraph 8 of this Agreement;
- E. The license granted under this Agreement is immediately revocable at the option of the City in the event that Carle fails to perform or comply with any term, condition, or covenant set forth in this Agreement, provided that Carle will have a period in which to cure any such failure as set forth in this Agreement.
- F. The transfer or attempted transfer of the license granted under this Agreement;
- G. The creation of any form of lien, including but not necessarily limited to a Mechanic's Lien, or claim of right, title or interest on, in, or to the right-of-way other than one created or permitted to accrue by the City; and/or

H. Expiration of this Agreement in the absence of any renewal or extension thereof.

In the event any one or more of the immediately aforesaid reasons for termination of this Agreement arises, the City shall provide Carle with a written Notice of Default which identifies the particular default and states that this Agreement and the license granted hereby shall terminate unless Carle fully and completely cures the default within thirty (30) days of the date first appearing on the written Notice of Default. In the absence of such full and complete cure of the any such default, this Agreement and the license granted hereby shall fully, completely and automatically terminate on the thirty-first (31st) following the date first appearing on the Notice of Default.

11. **Restoration of Right-of-Way Upon Termination or Expiration of Agreement.** In the event that this Agreement and the license granted hereby expires or is terminated, the City or its designee shall have the sole and exclusive right and discretion to remove the Facility or any portion thereof and restore the right-of-way to the condition it was in prior to the granting of the license contemplated by this Agreement. Carle agrees that in the event of expiration or termination of this Agreement and the license granted hereby and the City's or its designee's full or partial removal of the Facility, Carle shall reimburse the City for any and all costs and expenses it has incurred or for which it is obligated to pay for undertaking such removal, disposal of the material so removed, and restoration of the right-of-way.

12. **Indemnity.** Carle, at its sole cost and expense, shall defend, indemnify and hold harmless the City from and against any and all claims, suits, actions, causes of actions, judgments, decrees, damages, rights, remedies, and/or liabilities, whether in law or in equity, for or in connection with the death or injury to any person or damage to any property, real or personal, brought against the City in connection with Carle's construction, maintenance, repair, use, and removal of the Facility unless such claim, suit, action, cause of action, judgment, decree, damages, or liability arise solely and exclusively from a negligent or intentional act or omission by the City or any of its employees, agents or contractors.

13. **Term of License; Termination of Agreement and License.** The initial term of this Agreement shall be twenty (20) years which shall commence on January 1, 2013. 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 scheduled expiration of the current term, either party provides written notice to the other party of the intent not to renew. 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) calendar days prior to the proposed termination. Such notice of termination shall specify the reason or reasons for such termination and shall specifically state that such termination shall become effective thirty (30) calendar days after the date thereof in the event the reason or reasons for such notice of termination are not fully and completely cured.

14. **Entire Agreement.** 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.

15. **Notices.** 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 Carle: The Carle Foundation Hospital
Attention: Contracts
601 West University Avenue
Urbana, Illinois 61801

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

16. **Non-Waiver.** Carle will 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.

17. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Illinois, and the parties agree that any action to interpret, construe or enforce this agreement shall be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois. Each party hereto acknowledges that this Agreement is the product of good faith negotiations by and between the parties hereto and, as such, neither party may seek to have this Agreement strictly construed against the other party as drafter of this Agreement by reason of the principles of evidence or contract law.

18. **Recording.** This Agreement shall be recorded in the Office of the Champaign County Recorder of Deeds at the expense of the City.

19. **Execution by Counterpart.** This Agreement may be executed in counterparts, each of which will for all purposes be deemed to be an original and will together constitute one and the same instrument.

20. **Amendment.** This Agreement may be amended only by a writing which is fully and duly executed by the parties hereto.

21. **Due Authorization.** Each party hereto acknowledges that the individual who has executed this Agreement has the due and full authority to do so.

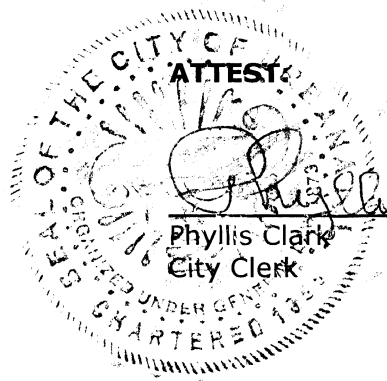
IN WITNESS WHEREOF, the parties have executed this Agreement at Champaign County, Illinois, on the dates as stated below.

[END OF AGREEMENT, SIGNATURE PAGE FOLLOWS.]

City of Urbana, Illinois:

Laurel Lunt Prussing _____ 1/29/13
Laurel Lunt Prussing Date
Mayor

ATTEST:
Phyllis D. Clark
Phyllis Clark
City Clerk

The seal of the City of Urbana, Illinois, is circular. It features the text "SEAL OF THE CITY OF URBANA, ILLINOIS" around the top edge and "INCORPORATED UNDER GEN. STAT. CHARTERED 1859" around the bottom edge. In the center, there is a smaller circular emblem with a figure and the word "ATTEST:" above it.

The Carle Foundation Hospital:

John M. Snyder _____ 12-21-2012
John M. Snyder Date
Executive Vice President & CEO

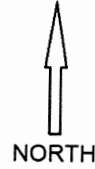
Scott Harding
Vice President Facilities/Support Services

ATTEST:

Deborah Adams
Secretary (Signature)

Deborah Adams
Name (Printed)

Attachment: Exhibit A



ON ROAD
CITY BIKE ROUTE
COLER AVE.

