



MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer
FROM: William R. Gray, P.E., Public Works Director
Barbara H. Stiehl, Assistant to the Public Works Director
DATE: February 9, 2005
RE: Carle Foundation Hospital Request to Install Conduits in the City Right-of-Way
Coler Avenue between University Avenue and Sassafrass Alley

INTRODUCTION

The Carle Foundation Hospital has requested permission from the City of Urbana to install up to ten two-inch conduits in the Coler Avenue right-of-way south of University Avenue and north of Sassafrass Alley to serve the property they own at 601 West University Avenue. Attached is Exhibit A that shows the location for the conduits.

In order for Carle Foundation Hospital to install the conduits in City right-of-way, a license agreement is necessary. Attached please find a draft agreement for use of the right-of-way, which outlines the conditions for permitting the Carle Foundation Hospital to occupy the public right-of-way with their underground electrical system.

FISCAL IMPACTS

The Carle Foundation Hospital will pay the City annually, per policy, for the use of its right-of-way. There would be no direct financial impacts to the City since the installation and maintenance for the underground electrical system is solely at the Hospital's expense. Additionally, the Carle Foundation Hospital is indemnifying the City against any losses, claims, etc., that may occur as a result of their underground electrical system installation at this location.

RECOMMENDATION

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

Attachments: Exhibit A
Agreement
Ordinance

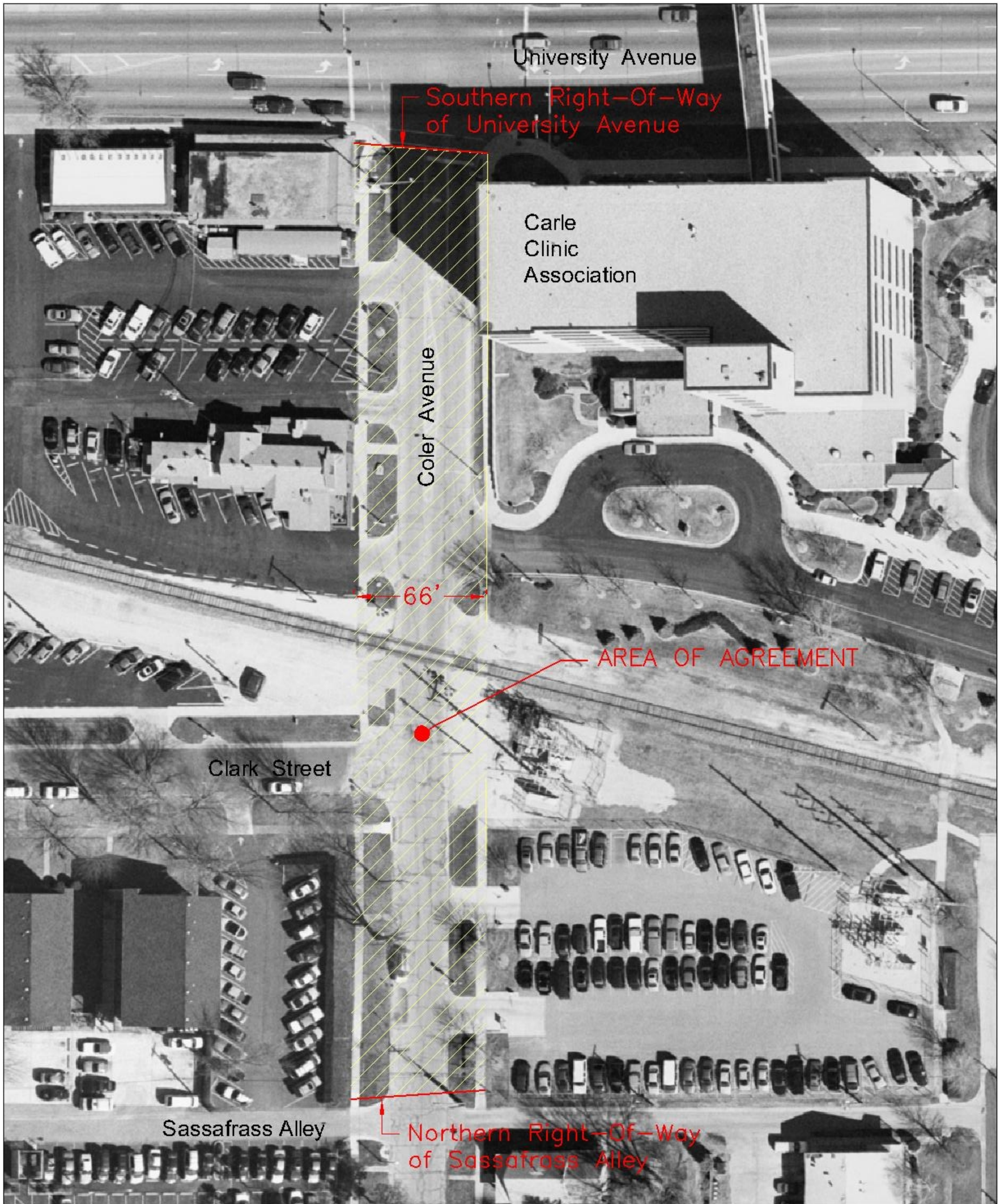


EXHIBIT A



Prepared by:
City of Urbana
Public Works Dept.
Engineering Div.
Date: 02/09/05 PLC
date of aerial photography: April 2002



AGREEMENT FOR USE OF RIGHT-OF-WAY

(Coler Avenue Between University Avenue and Sassafrass Alley)

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and THE CARLE FOUNDATION HOSPITAL (hereinafter "Hospital"),

WITNESSETH:

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

A. Coler Avenue is a 66-foot dedicated right-of-way between the southern right-of-way of University Avenue and the northern right-of-way of Sassafrass Alley.

B. Hospital is herein granted by the City a limited right to install up to ten (10) two-inch (2") conduits within the Coler Avenue right-of-way (hereinafter "conduit duct bank"). This limited right is wholly dependent upon Hospital, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. Hospital expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that Hospital, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement provided that Association 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 Hospital of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way. 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.

C. The construction and installation of said facility or any change thereof including extension, reduction or removal of the conduit duct bank shall be subject to the issuance of a permit therefore by the City's Director of Public Works (hereinafter referred to as "Director"). No conduit duct bank shall be laid or installed in or under any streets, alleys or other public way until a permit therefore 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 public way granted by this Agreement. The application for a permit shall be accompanied by prints, plans and maps showing the

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *The Hospital Foundation***

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 Hospital believes poses a threat of immediate harm to the public or to any of Hospital's facilities, Hospital shall be permitted access to the public way to mitigate the threatened harm without the benefit of a permit, provided however Hospital shall advise the Municipality of the emergency as its earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter.

D. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation, operation, and maintenance of an conduit duct bank in the said right-of-way, which is shown on Exhibit A, which is attached to and incorporated into this agreement, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director, this Agreement shall immediately lapse and terminate. If the City believes that any facilities of Hospital are no longer in use by Hospital or are otherwise abandoned by Hospital, the City may notify Hospital in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice must give Hospital at least thirty (30) days to respond. If Hospital demonstrates that the facilities are still in use by Hospital and are not otherwise abandoned by Hospital, this Agreement shall remain in force and effect according to its terms. If Hospital does not demonstrate within thirty (30) days of the notice that the facilities are in use by Hospital and are not otherwise abandoned by Hospital, 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. Hospital, 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 Hospital to the condition in which they 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 Hospital, then Hospital, as soon as climatic conditions will reasonably permit shall promptly, and no more than fifteen 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 Hospital. Such restoration shall be completed within ten (10) days after the date of commencement of such restoration work. In the event that 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 Hospital any costs and expenses the City incurs. In the event that such public way or improvement cannot be so repaired, replaced or restored, Hospital 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 hydroseed in accordance with the applicable provisions of this Agreement. 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 Hospital to any other utility including storm and sanitary sewers and their services,

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *The Hospital Foundation*

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

G. 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 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, 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. Hospital acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the conduit duct bank.

I. Hospital 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.

J. Annual payments shall be made to the City in the amount of one dollar and sixty-two cents (\$1.62) per lineal foot of licensed property. The amounts herein set for compensation shall, on January first of each year beginning January 1, 2005, 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.

K. In the event that Association becomes a retailer of telecommunications services in the City by transmitting, supplying or furnishing of telecommunications, including without limitation internet services, data services, local telephone services or long distance services, as contemplated under the Illinois Simplified Municipal Telecommunications Tax Act, as amended from time to time, then Association shall provide written notice thereof to the City, and as soon as practicable thereafter commence collection of the taxes provided for under that Act, and any other taxes that it may be required by law to collect. Upon commencing such activities as a retailer, the obligation of Association to make annual payments pursuant to Paragraph J of this Agreement shall cease, and all payments thenceforth shall be based upon the taxation requirements stated herein.

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *The Hospital Foundation*

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

M. This license shall be non-exclusive. No license granted under this authority shall confer any exclusive right, privilege, or license to occupy the rights-of-way for any purpose.

N. No license granted under this authority shall convey any right, title, or interest in 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 on the grant. No license granted under this authority shall be construed as any warranty of title.

O. 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.

P. 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.

<u>To the City:</u>	Mayor City of Urbana 400 South Vine Street Urbana, Illinois 61801	Chief Administrative Officer City of Urbana 400 South Vine Street Urbana, Illinois 61801
---------------------	--	---

<u>To Hospital:</u>	Carle Foundation Hospital <i>Attention:</i> Andrew Manzer 601 West University Avenue Urbana, Illinois 61801
---------------------	--

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

Q. 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.

R. 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 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.

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *The Hospital Foundation*

S. Hospital shall comply with all ordinances of the City of Urbana, 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. Hospital shall comply with all conditions of permits issued to it.

T. 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.

U. 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.

[Remainder of Page Left Intentionally Blank]

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *The Hospital Foundation***

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: _____
Tod Satterthwaite, Mayor

ATTEST:

Phyllis D. Clark, City Clerk

* * *

CARLE FOUNDATION HOSPITAL

By: _____
(Signature)

**Andrew Manzer
Vice-President of Support Services**

ATTEST:

(Signature)

(Print Name & Title)

Prepared by and please return recorded copy to:

*Steve Holz, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801*

ORDINANCE NO. 2005-02-021

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
AGREEMENT FOR USE OF RIGHT-OF-WAY
(Coler Avenue Between University Avenue and Sassafrass Alley)

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 (Coler Avenue
between University Avenue and Sassafrass Alley) between the City of Urbana
and the Carle Foundation, 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 _____,
2005.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
2005.

Tod Satterthwaite, Mayor