



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: October 22, 2003
RE: Request to Use Right-of-Way at 410 North Vine Street

INTRODUCTION

The 410 North Vine Building Corporation has requested permission from the City of Urbana to occupy the right-of-way to install and maintain a sign for the Carter's Furniture Store within the right-of-way at 410 North Vine Street. Attached is Exhibit A that shows the location for the sign.

In order for 410 North Vine Building Corporation to occupy the City right-of-way, a license agreement and an outdoor advertising permit from the Illinois Department of Transportation are necessary. Attached please find a draft agreement for use of right-of-way, which outlines the conditions for permitting 410 North Vine Building Corporation to occupy the public right-of-way with a sign.

As part of this agreement, the 410 North Vine Building Corporation will grant the City an easement for the use of the driveway located along the west side of the building located at 410 North Vine Street to provide ingress and egress to the Vine Street Lift Station, located at 408 North Vine Street.

FISCAL IMPACTS

There would be no financial impacts to the City since the installation and maintenance for the sign is solely at 410 North Vine Building Corporation's expense. Additionally, 410 North Vine Building Corporation is indemnifying the City against any losses, claims, etc., that may occur as a result of the sign at this location.

RECOMMENDATION

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

Attachments: Ordinance
Agreement
Exhibit A
Application for Outdoor Advertising Permit

ORDINANCE NO. 2003-10-116

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
AN AGREEMENT FOR USE OF RIGHT-OF-WAY
(410 North Vine Street)

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 (the east side
of Vine Street between University Avenue and CSX Railroad right-of-way)
between the City of Urbana and 410 North Vine Building Corporation, 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 _____,
2003

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
2003

Tod Satterthwaite, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

[410 North Vine Street]

THIS AGREEMENT, made and entered into this _____ day of _____, 2003, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and 410 North Vine Building Corporation (hereinafter "Owner"),

WITNESSETH:

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

A. Between University Avenue and the CSX Railroad Viaduct, Vine Street is a 170-foot wide right-of-way.

B. The Owner is herein granted by the City a limited license to erect and maintain a sign within such right-of-way that conforms to the standards established by the City. This limited license is wholly dependent upon the Owner, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Owner expressly acknowledges and agrees that such limited license is immediately revocable at the option of the City in the event that the Owner, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Owner of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way.

C. The purpose of the herein permitted license to construct upon such right-of-way shall be limited solely to the installation and maintenance of a sign, which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director"), this Agreement shall immediately lapse and terminate. 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.

D. When so instructed by the Director, the Owner will cause the sign to be removed, as nearly as possible in conformance with the Director's request, within thirty (30) days after mailing of written notice from the Director. The Owner is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration of the right-of-way.

E. In the event of an emergency, defined as imminent peril to person or property, or when the Owner has inadequately complied with an order of the Director pursuant to Paragraph (D) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (D) impracticable under the circumstances present, the Owner consents and agrees that the City or its duly authorized agent may remove the sign, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Owner. Should the Owner fail in any way to make timely payment to the City

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and 410 North Vine Building Corporation
[410 North Vine Street]**

for such costs and expenses, the Owner agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

F. The Owner 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 and maintenance of the sign, 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 Owner 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

G. The Owner acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the sign.

H. The Owner shall provide to the City, upon approval from the Illinois Department of Transportation, a completed, approved application for Outdoor Advertising Permit prior to the installation of the sign.

I. The Owner herein grants to the City an easement for the use of the driveway located along the west side of the building located at 410 North Vine Street to provide ingress and egress to the Vine Street Lift Station located at 408 North Vine Street. The easement shall terminate automatically upon the seller conveying title to another or upon sixty (60) days notice.

J. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Owner at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

In the case of the Owner, to:

ATTN: _____
Tel: (217) _____
Fax: (217) _____

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and 410 North Vine Building Corporation
[410 North Vine Street]**

In the case of the City, to:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
ATTN: Chief Administrative Officer
Tel: (217) 384-2454
Fax: (217) 384-2363

J. This Agreement, with the exception of Paragraph I, 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.

* * *

In witness to their Agreement, the Parties have executed this document this _____ day of _____, 2003.

CITY OF URBANA

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED:

By: _____
Legal Counsel

410 North Vine Building Corporation

By: _____
V. B. Leister, President

ATTEST:

By: _____
Sandra C. Leister, Secretary

* * *

Prepared by and please return recorded copy to:

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

