

BILL NO. 2905

ORDINANCE NO. 2722

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF CHESTERFIELD, MISSOURI TO EXECUTE AN AGREEMENT PROVIDING FOR THE FUNDING AND CONSTRUCTION OF CERTAIN HIGHWAY AND TRAFFIC IMPROVEMENTS WITHIN THE CITY OF CHESTERFIELD RELATED TO IMPROVEMENTS TO SOUTH OUTER FORTY ROAD.

WHEREAS, the City of Chesterfield desires to extend the current South Outer Forty Road and have a new slip ramp constructed from South Outer Forty Road to eastbound I-64; and,

WHEREAS, Mercy Health agrees to work diligently with the City to secure the necessary approvals for construction of South Outer Forty Road which includes a connection from the Mercy development to/from South Outer Forty Road; and,

WHEREAS, the Planning and Public Works Committee, at their meeting on August 30th, 2012, reviewed and recommended approval of an agreement to provide for the construction of a portion of the South Outer Road and access onto Missouri Route 40, Interstate 64 eastbound; and,

WHEREAS, the City of Chesterfield, Missouri, after careful consideration and deliberation has determined that the City is willing to enter into an agreement pertaining to the funding and construction of said improvements.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby approves of the Agreement in substantially the form set forth in Exhibit A, attached hereto and incorporated by reference.

Section 2. The Council is hereby authorized to enter into, and the Mayor of the City of Chesterfield and the City Clerk are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of the City, the Agreement, such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and with the provisions of the Agreement.

Section 3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparable connected with and dependent upon the void portion that it

cannot be presumed that the City has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 4. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 5. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 19th day of September, 2012.


MAYOR

ATTEST:


CITY CLERK

FIRST READING HELD: 09/05/2012

**AGREEMENT REGARDING THE CONSTRUCTION AND
FUNDING BY ESCROW OF CERTAIN HIGHWAY AND TRAFFIC
IMPROVMENTS WITHIN THE CITY OF CHESTERFIELD,
MISSOURI**

AGREEMENT made this ____ day of August, 2012 by and between THE CITY OF CHESTERFIELD, MISSOURI, a municipal corporation (City") and MERCY HEALTH, a not for profit Missouri corporation (Mercy").

RECITALS:

A. Mercy owns approximately forty acres at/near the southeast corner of the intersection of I-64 and Clarkson Road (the "Property").

B. Mercy has applied to the City's Planning Commission for rezoning of the Property, which is located within the City's "Urban Core", to allow for the development of its corporate headquarters, including a Virtual Care Facility, a Specialty Hospital and associated uses, including parking (the "Development").

C. Mercy has submitted a traffic study, detailing the impacts of the Development and various improvements that it proposes to make, in order to mitigate said impacts. The City has reviewed said traffic study, has commented on the proposed improvements and added an additional requirement that the South Outer Road be extended, east of Clarkson Road, that a connection be established from the Development to/from said South Outer Forty Road and that a new slip ramp be constructed, further to the east, from South Outer Forty to eastbound I-64 ("South Outer Forty").

D. While Mercy asserts that its Development can be accommodated by various improvements to existing roads and the construction of a new access road, along its eastern border it agrees to work diligently with the City to secure the necessary governmental approvals and permits, at all governmental levels, (the "Approvals"), for the construction of South Outer Forty and agrees to establish, as a condition to obtaining building permits for construction of the Development, an escrow or other mutually-agreed-upon financial instrument, such as a bond or letter of credit, to insure construction of South Outer Forty (the "Financial Instrument").

E. Mercy and the City agree that execution of this AGREEMENT and the establishment, by Mercy, of the Financial Instrument to provide funds for the construction of South Outer Forty will enable construction of the Development to proceed while the Approvals are secured in order to construct South Outer Forty. The City asserts that construction of South Outer Forty will insure that the Development can/will be built

without degrading the existing traffic conditions.

NOW THEREFORE, it is agreed as follows;

1. The Recitals are incorporated herein by reference.
2. Mercy agrees to diligently pursue obtaining the Approvals to enable construction of South Outer Forty. The design of South Outer Forty shall be in general conformance with the road improvements depicted on Exhibit A and as may be approved by the City of Chesterfield.
3. Once the Approvals have been obtained for South Outer Forty, Mercy agrees to design and construct South Outer Forty, as required by this Agreement and the City ordinance rezoning the Property for the Development.
4. Mercy agrees to work in cooperation with the City to jointly promote and pursue the Approvals to construct South Outer Forty.
5. City agrees to support and assist Mercy in its efforts to obtain governmental funding to construct South Outer Forty. However, Mercy's success or failure in obtaining funding from other governmental sources will in no way affect its obligations under this Agreement.
6. Mercy, before site improvement plan approval, shall establish a Financial Instrument, in a form mutually agreeable, with the City in the amount of One Million, Eight Hundred Thousand Dollars (\$1,800,000.00). However, Mercy agrees to fund the entire cost, including design cost and changes thereto, of South Outer Forty, even if said cost exceeds that amount.
7. The Financial Instrument shall be held by the City to secure the funding of the construction of South Outer Forty, depicted on Exhibit A, by Mercy.
8. Once the Approvals are obtained, Mercy agrees to fund the entire cost and commence the construction of South Outer Forty within twelve (12) months after obtaining the Approvals and the approvals of the applicable utilities. If Mercy fails to commence construction of South Outer Forty within said time period, City may declare Mercy to be in default of this Agreement by notice to Mercy, and if such default is not cured by Mercy within ninety (90) days after the giving of said notice, City may draw on the Financial Instrument to fund the cost of constructing South Outer Forty, as depicted on Exhibit A, by City or contractor(s) contracted by the City.
9. Once construction of South Outer Forty is commenced, the Financial Instrument shall be reduced in proportion to the construction that has been completed.

10. If Mercy fails to complete construction of South Outer Forty within twenty four (24) months after commencement of construction, City may declare Mercy to be in default of this Agreement by notice to Mercy, and, if completion of construction does not occur within six (6) months after giving of said notice, City may draw on the remaining balance of the Financial Instrument to fund the cost of completing the construction of South Outer Forty, as depicted on Exhibit A, by City or contractor(s) contracted by the City. Mercy will be liable to the City for any costs the City incurs beyond the balance of the Financial Instrument. Mercy agrees that if the construction is not completed and the City must complete the construction, the City may withhold any permit approvals until Mercy has paid to the City all sums needed to finish construction of South Outer Forty.

11. Mercy represents to City that execution of this Agreement has been or will be duly authorized by its Board of Directors. If this Agreement is executed by Mercy before authorization by its Board of Directors, Mercy's obligations under this Agreement shall be conditioned upon such authorization. The City represents to Mercy that this Agreement has been duly authorized by ordinances of the City Council of City.

12. Any notice required or permitted to be given hereunder shall be deemed given (i) on the date when it is personally delivered; or (ii) on the date when it is sent by facsimile transmission with confirmation of receipt of transmission; or (iii) when deposited with the United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Mercy: Mercy Health
 14528 South Outer Forty, Suite 100
 Chesterfield, Missouri 63017
 Attn: General Counsel

With a copy to: Michael J. Doster
 DosterUllom, LLC
 16090 Swingley Ridge Road, Suite 620
 Chesterfield, Missouri 63017

If to City: City of Chesterfield, Missouri
 Attn: Michael Herring, City Administrator
 690 Chesterfield Parkway West
 Chesterfield, Missouri 63017-0760
 Telecopier or Facsimile: (636) 537-4798
 Email: mherring@chesterfield.mo.us

or to such other address as contained in a notice to the other party.

13. This Agreement shall be binding upon and shall inure to the benefit of City and of Mercy and their respective successors and assigns. This Agreement shall terminate, the Financial Instrument shall be released in full to Mercy and Mercy shall have no further obligation under this Agreement or the Financial Instrument in the event any of the Approvals are denied by the applicable governmental agency and the City and Mercy reasonably agree that further pursuit of the Approvals would be meritless.
14. This Agreement has been made and entered into in the County of St. Louis, State of Missouri, and shall be governed and construed by and in accordance with the laws of the State of Missouri without giving effect to conflict of laws principles.
15. If the last day for the giving of notice or performance of any obligation or condition hereunder is a Saturday, Sunday or legal holiday in the State of Missouri, then such last day shall be extended to the next succeeding business day thereafter. Mercy will not be liable for failure to perform or delays in performance caused by any events or contingency beyond its reasonable control, including, but not limited to: acts of God; accidents; wars (declared or undeclared), civic commotion or riots; terrorism; epidemics; fires, explosions or floods; strikes, work stoppages, slow-downs, or other labor difficulties; shortages of vehicles, fuel, power, material, or labor; embargoes; delays in transportation. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Mercy to perform. If Mercy is affected by such event or circumstance Mercy will notify the City as promptly as possible of the occurrence of such event or circumstance.
16. Except as otherwise provided herein, no claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.
17. Mercy and City agree to execute such further documents and take such further actions as may reasonably be required to carry out the provisions and intent of this Agreement or any agreement or document relation hereto or entered into in connection herewith. City and Mercy contemplate that an agreement governing and implementing the Financial Instrument in conformity with this Agreement will be executed as a condition to the issuance of the building permits described herein.
18. This Agreement may be signed in any number of counterparts and signature to any one counterpart shall be deemed signature to all counterparts, which when taken together shall constitute one contract.
19. All exhibits attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF CHESTERFIELD MISSOURI

By: _____

Title: _____

MERCY HEALTH

By: _____

Title: _____

PROJECT NO.	14-01218-01
CLIENT	MAJDOT
CONTRACT NO.	CLARKSON ROAD
EXHIBIT	EXHIBIT

DATE	1/27/2012	211-4021
SCALE	AS SHOWN	
DATE	1/27/2012	211-4021
SCALE	AS SHOWN	

REVISIONS:	
DATE	DESCRIPTION

CONCEPTUAL SOUTH OUTER 40 ROAD PLAN BETWEEN
 CLARKSON ROAD & CHESTERFIELD PARKWAY EAST
 CHESTERFIELD, MISSOURI 63005

STOCK & ASSOCIATES
 Consulting Engineers, Inc.
 207 Orchard Business Parkway
 St. Louis, MO 63005
 PH: (314) 550-9100
 FAX: (314) 550-9100
 E-MAIL: info@stockeng.com
 WWW: www.stockeng.com

PREPARED BY:

