

Ordinance No. 09-06

**AN ORDINANCE AUTHORIZING ACQUISITION OF A WELLSITE OPTION  
(Mendenhall)**

*BE IT ORDAINED BY THE SOUTH SANGAMON WATER COMMISSION, AS  
FOLLOWS:*

**SECTION 1:** The Chairman of the Commission is authorized and directed to execute a wellsite option agreement, in the form attached hereto, with such emendations and changes as he deems appropriate, for an option purchase price of up to \$ 1500.00 and thereafter to carry out the contract according to its terms.

**SECTION 2:** This Ordinance is effective immediately.

PASSED this 23 day of October, 2009.

  
\_\_\_\_\_  
CHAIRMAN

ATTEST:

  
\_\_\_\_\_  
Clerk

AYES: Hau, McCord, Pfeffer\_\_\_\_\_

NAYS: none\_\_\_\_\_

PASSED: 10/23/09\_\_\_\_\_

APPROVED: 10/23/09\_\_\_\_\_

ABSENT: none\_\_\_\_\_

## AGREEMENT

### *I. DEFINITIONS AND PURCHASE PRICE*

#### **1. TRUST.**

As used in this Agreement, "TRUST" refers to:

A.B. Mendenhall Trust  
c/o Allen and Barbara Mendenhall, Trustees  
3115 Leach Road  
Rochester, IL 62563

#### **2. COMMISSION**

As used herein, "COMMISSION" refers to:

South Sangamon County Water Commission  
Attn: Del McCord  
116 E. Mulberry Street  
COMMISSION, IL 62629

Fax No. (217) 483-3422

#### **3. The Well Property and Surrounding Parcel**

As used herein, the term, "Well Property" means one or more square tracts of land 50 ft. x 50 ft. in size, to be used by COMMISSION as a water well or standby generator site, the precise locations of which may be identified by COMMISSION at COMMISSION's sole discretion, anywhere within a larger parcel ("the Surrounding Parcel") described as follows:

See Exhibit A

**4. Permanent Well Site Access Easement** A permanent easement over, under and through the Surrounding Parcel from the Well Property to other wells or standby generator sites in the Surrounding Parcel or lands contiguous to the Surrounding Parcel, 25 feet in width and at precise locations anywhere in the Surrounding Property to be identified by COMMISSION in COMMISSION's sole discretion, for:

a. a pipeline and associated works for transporting water, with the right to construct, maintain, repair and replace same; and

- b. a roadway for access to the Well Property, with the right to construct, maintain, repair and replace same.
- c. underground electric lines and works for delivery of electric power to the well.

A typical plan of the Permanent Well Site Access Easement is depicted in Exhibit B hereto.

The Permanent Well Site Access Easement shall be substantially in the form of Exhibit C hereto. The area of the easement shall be surveyed prior to closing.

### **5. Temporary Construction Easement**

A temporary easement necessary for construction of the works within the Well Property and Permanent Well Site Access Easement. The Temporary Construction Easement shall include all land within 25 feet of the Well Property and the Permanent Well Site Access Easement.

The Temporary Construction Easement shall be substantially in the form of Exhibit D hereto. The area of the easement shall be surveyed prior to closing.

**6. Purchase Price and Easement Price** As used herein, the term "Purchase Price" means the sum of \$7,500 for each 50 x 50 ft. parcel. "Easement Price" means \$2.00 per lineal foot of the Permanent Well Site Access Easement, and includes consideration for the temporary construction easement.

## ***II. OPTION AGREEMENT***

1. Grant of Option. Upon payment by COMMISSION of \$ \_\_\_\_\_, within 5 days of execution of this Agreement, (the Option Payment") TRUST grants to COMMISSION the option to purchase the Well Property for the Purchase Price and the Permanent Well Site Access Easement and Temporary Construction Easement for the Easement Price. The term of the option commences upon execution of this agreement by all parties, and shall continue until December 31, 2011, at 5:00 pm., Central Standard time (the "Option Period"). This is an exclusive option.

2. Exercise of Option; Creation of Contract COMMISSION may exercise its option at any time during the Option Period, by delivering written notice of such exercise to TRUST personally, or by sending written notice of such exercise by regular mail to TRUST at the address set forth above, postmarked on or before expiration

date. Any exercise of option shall particularly describe the Well Property and the Permanent Well Site Access Easement by metes-and-bounds descriptions and a survey. Exercise of the option shall give rise to a Contract to Purchase Real Estate, section III, below.

3. Application of Option Payments. In the event COMMISSION exercises the option, the Option Payment shall be considered as earnest money under the Contract to Purchase Real Estate. In the event the option is not exercised, the Option Payment shall be retained by TRUST.

4. Recordation. COMMISSION may at its expense record a memorandum of this option agreement with the Recorder of Deeds of the County in which the Surrounding Parcel is located.

5. Inspection and Testing. During the Option Period, COMMISSION, its agents and consulting and environmental engineers, shall have free and unrestricted access to the Surrounding Parcel at reasonable times to make soil borings and otherwise investigate underground conditions, and to conduct nondestructive tests or surveys, including the drilling of test wells, provided that COMMISSION shall be liable to TRUST for all damages to the Property or growing crops thereon. COMMISSION may, at its expense, have a Phase One Environmental Study performed with respect to the Surrounding Parcel. COMMISSION shall defend, indemnify and hold harmless TRUST from all claims arising from the entry of COMMISSION, its agents, contractors, on the Surrounding Property. COMMISSION shall not permit the Surrounding Property to be subjected to any mechanics lien as a result of investigations, tests and borings set forth in this paragraph. COMMISSION shall provide TRUST with a certificate of liability insurance naming TRUST as an insured in an amount not less than Two Million Dollars (\$2,000,000) before COMMISSION or any of its contractors or agents enters into the Surrounding Property. COMMISSION's obligations pursuant to this paragraph 5 survive the termination of this Agreement.

6. Assignments. COMMISSION may assign this option only to another governmental entity which engages, or is about to engage, in the production of water. If COMMISSION assigns this option contract to such a third party, COMMISSION shall have no further obligations with respect to this option or to any contract resulting from the exercise of option by the assignee.

7. Prior Assignment COMMISSION represents that the Village of Chatham has assigned its prior option agreement expiring December 31, 2009, to COMMISSION.

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Allen Mendenhall

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Barbara Mendenhall

**COMMISSION:**

SOUTH SANGAMON WATER COMMISSION

By:   
Del McCord, Chairman

### ***III. CONTRACT TO PURCHASE REAL ESTATE***

COMMISSION's exercise of the option constitutes an agreement for COMMISSION to purchase, and for TRUST to sell, the Well Property for the Purchase Price and the Permanent Well Site Access Easement and the Temporary Construction Easement in accordance with the following terms and conditions.

1. COMMISSION shall within 30 days after the exercise of option, furnish at COMMISSION'S expense a commitment for a Title Guaranty Policy issued by an affiliate of Chicago Title Insurance Company, or other company acceptable to COMMISSION, for the amount of the purchase price, showing merchantable title to the Well Property and Easement in TRUST, subject only to the following:

a. All real estate taxes, special assessments and special service area taxes now a lien, levied, or confirmed after the date hereof, except as hereinafter provided.

b. Building, uses and occupancy restrictions, if any.

c. Zoning laws and ordinances.

d. Easements of record or in place affecting the premises, if any.

e. Drainage ditches, feeders and laterals, if any.

f. Mortgage or other liens that may be eliminated at closing by application of the purchase price.

g. Rights of tenants in possession, if any, which may be eliminated at or prior to closing.

2. COMMISSION shall, within 15 days after receiving such title evidence, provide TRUST or his agent with any written objections to the merchantability of the title. In the event that such objections (other than the items specified in paragraph 1) are not cured. TRUST agrees that prior conveyance of coal and other mineral rights is a valid objection to merchantability of title due to the use of the Property contemplated by COMMISSION so long as such conveyance does not interfere with the contemplated use of the Well Property and Easement. If objections to merchantability of title are not cured within 30 days, this Contract may be voided by COMMISSION, and the earnest money shall be returned to COMMISSION. COMMISSION may in its sole discretion waive any or all objections, and in such case, TRUST shall proceed to closing.

3. TRUST shall, within 45 days after the exercise of option, obtain all necessary releases from the Federal CRP contract and the CREP easement applicable to the Well Property and Permanent Well Site Access Easement.

4. COMMISSION shall reimburse TRUST for any and all costs incurred in securing the releases referred to in Paragraph III.3, including future CRP payments which would have been made on the released acreage.

5. This transaction shall be closed within 60 days after COMMISSION's exercise of the Option unless the closing must be extended in order to clear title in accordance with paragraph 2 or to secure the necessary releases specified in paragraph 3. TRUST shall deliver possession on the date of closing. All prorations, including rents, general real estate taxes and special service area taxes, shall be made as of the date of closing, based upon latest available information. Special assessments are not subject to proration. Rather, at COMMISSION's option, all remaining installments of special assessments shall be paid by TRUST at or prior to closing, or due credit shall be given to COMMISSION at closing. Mortgages and other liens shall be cleared by application of the purchase price.

6. COMMISSION shall pay all legal fees incurred on behalf of the TRUST, Sangamon County Soil and Water Conservation District and the Illinois Department of Natural Resources in connection with this Agreement and its relationship to the CRP contract and CREP easement referenced in III.3, said fees to be paid at closing on the Water Treatment Plant purchase.

7. At closing, TRUST shall convey and transfer the Well Property to COMMISSION by recordable warranty deed which explicitly requires grantee, its successors and assigns to make every reasonable effort to minimize the impact of the operations on the Well Property and Permanent Well Site Access Easement on the Surrounding Parcel consistent with the purposes of maintaining the Surrounding Parcel under a perpetual CREP easement. Said deed shall also be made subject to the right of the Sangamon County Soil and Water Conservation District and its successors and assigns under the CREP easement to make use of the Permanent Well Site Access Easement for any purposes related to the CREP easements. The deed shall release all homestead. TRUST shall also execute easements in substantially the forms attached as Exhibits C and D. The Purchase Price and the Easement Price, subject to credits and prorations, shall be paid and all documents relative to the transaction shall be signed and delivered.

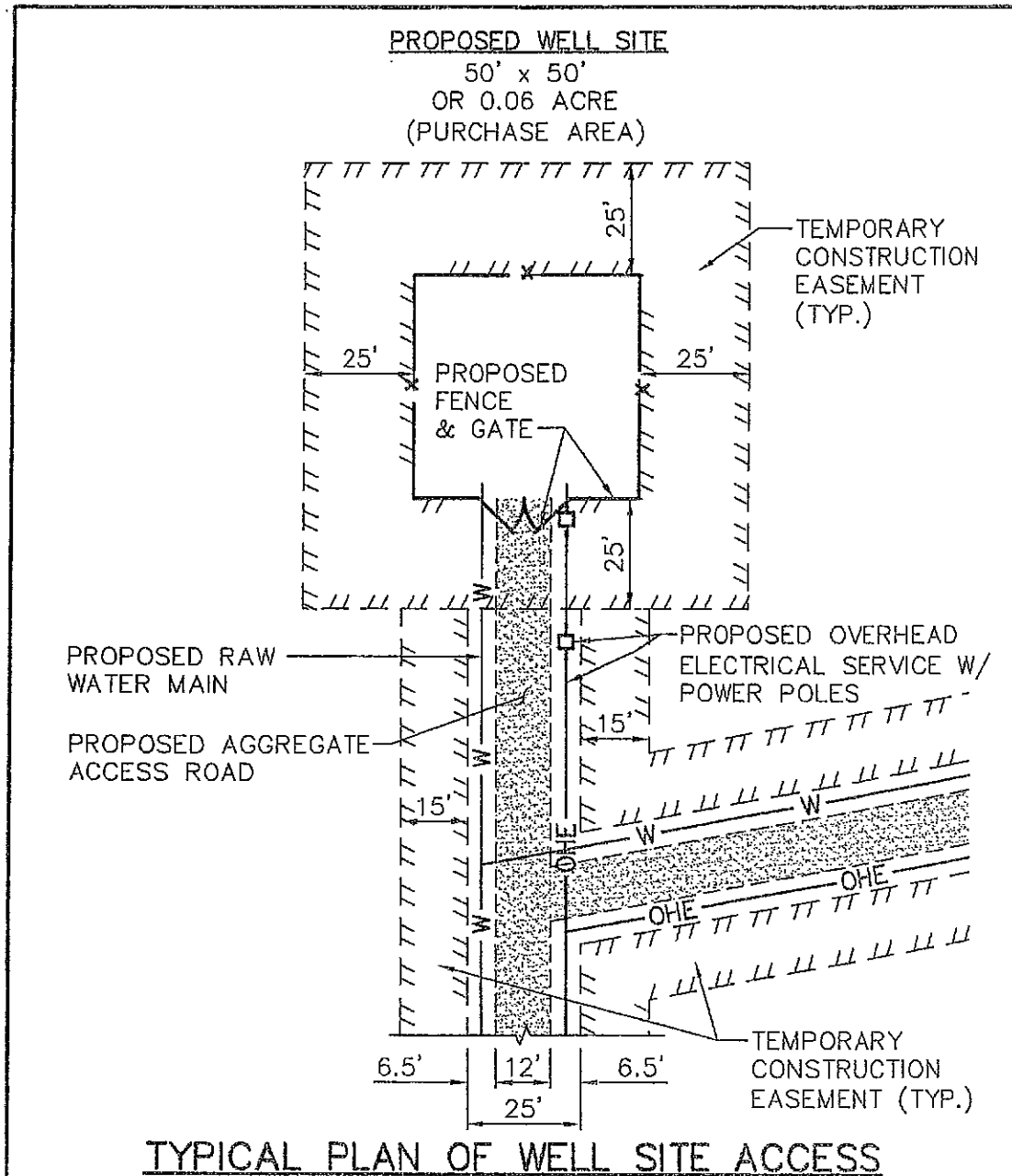
8. This Agreement is the entire agreement of the parties with respect to its subject matter, and all prior representations and negotiations are expressly disclaimed. This Agreement may be amended only by a writing signed by all the parties.

9. In addition to the foregoing, COMMISSION agrees to the following terms and conditions, all of which shall survive closing and shall be incorporated as covenants into the deed of conveyance of the Well Property and Permanent Well Site Access Easement: COMMISSION shall defend, indemnify and hold harmless TRUST from all claims arising from any COMMISSION operations or activities occurring on the Well Property or the Permanent Well Site Access Easement.



**EXHIBIT A**

Legal Description of Surrounding Parcel



REVISIONS	DATE	BY



**GREENE & BRADFORD, INC.**  
OF SPRINGFIELD  
CONSULTING ENGINEERS  
3501 CONSTITUTION DRIVE  
SPRINGFIELD, ILLINOIS 62711  
(217) 793-0844, (217) 793-6227 FAX

DATE	8/30/07
DRAWN	BISHOP
PROJ. NO.	06-195
FIELD BOOK	-
COMPUTER FILE NO.	06195ACCESS.dwg

PROFESSIONAL LAND SURVEYING FIRM NO. 048-000098 PLOT SCALE 1" = 30'

micheel J: 1061951DRAWNGS106195ACCESS.dwg Thu, 08/30/2007 1:57pm Xrefs:

**Exhibit B**

**Exhibit C**

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*This space for Recorder of Deeds*

**PERMANENT EASEMENT**

THIS EASEMENT is granted by A.B. Mendenhall Trust, ("Grantor") to the Village of COMMISSION, Illinois, an Illinois municipal corporation and its successors and assigns ("COMMISSION") and is dated this \_\_ day of \_\_\_\_\_, 200\_\_.

1. In consideration of ten dollars and other good and valuable consideration, Grantor hereby grants to COMMISSION a permanent easement under certain property owned by Grantor in Sangamon County, Illinois, the legal description of which is set forth on a plat attached hereto as Exhibit 1, (the "Property") with the right to erect, construct, reconstruct, replace, remove, maintain, repair and use water pipelines, a road, and a underground electrical service line.

2. This easement is subject to the following conditions:

a. All lines shall be buried to a depth consistent with standard construction practices and sufficient to allow the use of the Property for agricultural purposes. Grantor is not responsible to COMMISSION for damage to underground works, if any, caused by farming activities.

b. COMMISSION shall indemnify Grantor against any loss, damages, claims and causes of action arising directly or indirectly from the construction, operation, or repair of the pipelines and roads constructed by COMMISSION on the Property and electric lines constructed by an electric service provider, and from all other acts, activities, and omissions, and things whatsoever arising directly or indirectly from the grant of this Permanent Easement to Grantor, including but not limited to claims brought by third parties.

c. COMMISSION shall keep all roads, lines and works in good condition, and after construction of or maintenance on any roads or pipelines, will restore the surface of the Property to the condition and grade which it had prior to such construction.

d. COMMISSION agrees not to allow any mechanic liens or other liens to attach to the Property for any work done or materials furnished in connection with the COMMISSION's pipelines and related facilities and to immediately pay all amounts necessary to cause any such lien to be released of record without cost to Grantor. COMMISSION agrees to indemnify and save Grantor harmless against and from any and all claims arising from any work or thing whatsoever done in connection with the pipelines.

e. This easement shall run with the land and be binding upon and for the benefit of the parties hereto and their successors in title.

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Allen Mendenhall

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Barbara Mendenhall

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF SANGAMON        )

The undersigned, a Notary Public in and for said County and State, does hereby certify that Allen and Barbara Mendenhall, personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he or they signed, sealed and delivered the said instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Prepared by:  
Return to:

John M. Myers  
Rabin, Myers Schuering & Hanken, P.C.  
1300 South Eighth St.  
Springfield, IL 62703  
217.544.5000

**Exhibit 1 to Wellsite Access Easement:**

**Plat of Survey and Legal Description to be provided by Greene and Bradford**

## Exhibit D

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*This space for Recorder of Deeds*

### TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT is granted by A.B. Mendenhall Trust ("Grantor") to the Village of COMMISSION, Illinois, an Illinois municipal corporation and its successors and assigns ("COMMISSION") and is dated this \_\_ day of \_\_\_\_\_, 200\_\_.

1. In consideration of ten dollars and other good and valuable consideration, Grantor hereby grants to COMMISSION a temporary construction easement on, over and under certain property owned by Grantor in Sangamon County, Illinois.

2. The area of the temporary construction easement (the "Easement Area") is as set forth on a plat attached hereto as Exhibit 1.

3. This temporary construction easement is granted for the sole purpose of facilitating the construction of a water well, and lines and works associated therewith, pursuant to a deed and a permanent easement granted by Grantor to COMMISSION of even date herewith, which deed and permanent easement are hereby incorporated by reference. The land within the easement area shall be used for such construction operations, and for no other purpose.

4. The duration of this temporary construction easement is from the date of execution of this instrument until the completion of the lines and works contemplated hereby, or a date five years from the date of execution of this instrument, whichever is earlier.

5. This easement is subject to the following conditions:

a. COMMISSION shall indemnify Grantor against any loss, damages, claims and causes of action arising directly or indirectly from its acts, activities, and omissions, and things whatsoever arising directly or indirectly from the grant of this easement or the construction activities contemplated hereby, including but not limited to claims brought by third parties.

b. After completion of construction, COMMISSION will restore the surface of the Property to the condition and grade which it had prior to the construction.

c. This easement shall run with the land and be binding upon and for the benefit of the parties hereto and their successors in title.

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Allen Mendenhall

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Barbara Mendenhall



STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF SANGAMON        )

The undersigned, a Notary Public in and for said County and State, does hereby certify that Allen and Barbara Mendenhall, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public

Prepared by:  
Return to:

John M. Myers  
Rabin, Myers, Schuering & Hanken, P.C.  
1300 South Eighth St.  
Springfield, IL 62703  
217.544.5000

**Exhibit 1 to Temporary Easement:**

**Plat of Survey and Legal Description to be provided by Greene and Bradford**

**ORDINANCE CERTIFICATE**

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF SANGAMON )


I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the South Sangamon Water Commission.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 09-06, adopted by the Chairman and Board of Commissioners of said Commission on the 23 day of October, 2009, said Ordinance being entitled:

**AN ORDINANCE AUTHORIZING ACQUISITION OF A WELLSITE OPTION  
(Mendenhall)**

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Commission where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 23 day of October, 2009.

  
\_\_\_\_\_  
Clerk