

Ordinance No. 11- 10

AN ORDINANCE APPROVING AN AGREEMENT

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

SECTION 1: That Agreement between James R. Heissinger, Mark S. Heissinger, James Farris, Matt Mickey, Curtis Hopkins and the South Sangamon Water Commission, a copy of which is attached hereto, is hereby approved.


SECTION 2: The Chairman of the Commission is authorized and directed to approve said contract on behalf of the Commission, and the proper officers of the Commission are authorized and directed to carry out the agreement by its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 19th day of July, 2011.


CHAIRMAN

ATTEST:


Village Clerk

AYES: McCord, Puffer

NAYS: none

PASSED: 7/19/2011

APPROVED: 7/19/2011

ABSENT: Hall

This space for Recorder of Deeds

AGREEMENT

I. DEFINITIONS

1. Owners.

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

Name(s):	James R. Heissinger 1020 N. Oak St. Rochester, IL 62563	James Farris 7563 New City Road Rochester, IL 62563
	Mark S. Heissinger 1905 Young Road Mechanicsburg, IL 62545	Matt Mickey 1515 North Oak Rochester, IL 62563
	Curtis Hopkins 45 Pakey Road Springfield, IL 62712	

Owners designate James R. Heissinger as their agent for purposes of notices pertaining to this Agreement. Notice to James R. Heissinger is notice to all Owners.

2. Commission

As used herein, "Commission" refers to:

South Sangamon Water Commission

P.O. Box 83
New Berlin, IL 62670

3. The Well Properties and Surrounding Parcel

As used herein, the term, "Well Properties" means one or more square tracts of land 75 ft. x 75 ft. in size, to be used by Commission as a water well, 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:

The West half of the Southwest Quarter of Section 6, Township 15 North, Range 3 West of the Third Principal Meridian, Sangamon County, Illinois.

tax id. no. 24-06.0-300-005.

4. Well Site Access Easement A permanent easement over, under and through the Surrounding Parcel to any part of the Well Properties, 25 feet in width and at precise locations anywhere in the Surrounding Parcel to be identified by Commission in Commission's sole discretion, for:

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

b. a roadway for access to the Well Properties, from the south border of the Surrounding Parcel with the right to construct, maintain, repair and replace same; and

c. utility lines serving the wells.

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

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

5. Pilapil Access Easement

A permanent easement over, under and through the Surrounding Parcel from the south boundary of the Surrounding Parcel to the boundary of land owned by Vergilio and Elena Pilapil to the east of the Surrounding Parcel (tax id nos 26-06-300-002 and -004), 25 feet in width and at precise locations anywhere in the Surrounding Parcel to be identified by Commission in Commission's sole discretion, for:

a. a pipeline and associated works for transporting water from wells to be located on the Pilapil tracts, with the right to construct, maintain, repair and replace same; and

b. a roadway for access to the Pilapil tracts, with the right to construct, maintain, repair and replace same; and

c. utility lines serving the wells on the Pilapil tracts.

The Pilapil Access Easement will give access to the Pilapil tracts only to the Commission and its agents, and not to the Pilapils or owners of other adjacent properties, unless expressly agreed by Owners in their discretion.

6. Temporary Construction Easement

An temporary easement necessary for construction of the works within the Well Properties and Well Site Access Easement and Pilapil Access Easements. The Construction Easement shall include all land within 75 feet of the Well Properties and 15 feet each side of the Well Site Access and Pilapil Access Easements.

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

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

7. Consideration Items

The total consideration to be paid by the Commission for the Well Properties, the Easements, and the perpetual right to extract raw water from the wells and from the aquifer underlying the Surrounding Parcel, (the "Full Consideration") includes:

a. the purchase price of \$7,500 for each of the first two 75 x 75 ft. parcels, and \$10,000 for any subsequent 75 x 75 ft. parcels; and

b. payment for easements in the amount of \$2.00 per lineal foot of the Well Site Access and Pilapil Access Easements, and including consideration for the temporary construction easement; and

c. the sum of \$500 as the premium for this Option Agreement.

The foregoing monetary consideration is subject to a credit of \$9,100 already expended by the Village of Chatham (and reimbursed to the Village by the Commission) with respect to a well provided to one of the Owners.

As additional nonmonetary consideration, the Commission agrees as follows:

(i) Owners shall be entitled to any wood found on the Commission's roads after flood events;

(ii) While Commission will use best efforts not to harm any hardwood trees during construction of the wells and roads, Owners may remove any hardwood trees that are felled during such construction. In the event that any oak or hickory trees with a trunk diameter of greater than 8 inches are removed, Commission shall be liable to Owners for the fair market value of such trees. The parties shall negotiate the value of such trees, and if they cannot agree, the fair market value of such trees shall be determined by a consulting forester listed on the list maintained by the Illinois Department of Natural Resources:

http://dnr.state.il.us/conservation/forestry/CONSULTING_FORESTERS.pdf.

(iii) The Commission will provide a free water tap for Mr. Elmer Farris, 5999 Cardinal Hill Road, Rochester, IL, and after the water system comes on line, to provide water to that location at its regular rates;

(iv) Owners shall have the right to use Commission roads that are across adjoining property or which service the wellsites, for access to the Surrounding Parcel.

II. OPTION AGREEMENT

1. Grant of Option. Owners hereby grant to Commission the option to purchase the Well Properties, Well Site Access Easement, the Pilapil and Construction Easements for the Full Consideration. The term of the option commences on July 1, 2011 shall continue for 60 months, through and including June 30, 2016. (the "Option Period").

2. Exercise of Option in Stages

Commission may exercise its option in stages—e.g., it may exercise its option to purchase a one or more Well Properties and associated easements in 2011, and then may exercise its option to purchase additional Well Properties and associated easements, including the Pilapil Access Easement, at any time or times during the Option Period.

3. Guaranty as to Wellsite in Southeast corner of Surrounding Parcel

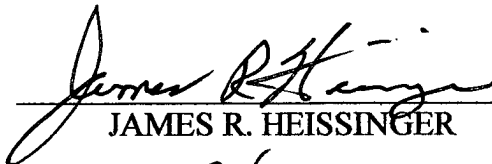
Commission guarantees that within 6 months of execution of this Agreement, it will exercise its option to purchase for the sum of \$7,500, at least one 75 x 75 foot parcel in the southeast corner of the Surrounding Parcel where a test well has already been drilled and the resulting water flow confirmed, and will purchase sufficient easement to service that well.

4. 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 Owners during the Option Period. Any exercise of option shall particularly describe the relevant Well Properties, the relevant Well Site Access Easement and the Pilapil 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.

5. Recordation. Commission may at its expense record this agreement with the Recorder of Deeds of Sangamon County, IL. This option agreement supersedes all previous option agreements among the parties with respect to the land described herein, and Owners may keep the \$500 option premium previously paid to them with respect to the earlier option agreement.

4. 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 Owner for all damages to the Surrounding Parcel or oak or hickory trees thereon. If the parties cannot agree on the amount of such damages, the damages may be determined by a consulting forester listed on the list maintained by the Illinois Department of Natural Resources. Commission may, at its expense, have a Phase One Environmental Study performed with respect to the Surrounding Parcel.

AGREED:


JAMES R. HEISSINGER


JAMES FARRIS


MARK S. HEISSINGER


MATT MICKEY

Curtis Hopkins
CURTIS HOPKINS

SOUTH SANGAMON WATER COMMISSION

By: Del McCord
Del McCord, Its Chairman

III. CONTRACT TO PURCHASE REAL ESTATE

Commission's exercise of its option constitutes an agreement for Commission to purchase, and for Owners to sell, the relevant Well Properties, Well Site Access Easements, the Pilapil Access Easement and the Construction Easement in accordance with the following terms and conditions.

1. Commission shall within 30 days after each exercise of option, furnish at Owner's expense a commitment for an Owners 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 Surrounding Parcel in Owners, 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 Owners or their 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. Owners agree 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 if the such conveyance interferes with the contemplated use of the Well Properties and Easement. Commission may in its sole discretion waive any or all objections, and in such case, Owners shall proceed to closing.

3. This transaction shall be closed within 30 days after Commission's exercise of the Option unless the closing must be extended in order to clear title in accordance with paragraph 2. Owner 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 Owner 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.

4. At closing Owners shall convey and transfer the Well Properties to Commission by recordable warranty deed, releasing homestead, and shall execute easements in substantially the forms attached hereto as Exhibits B and C. 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.

5. Should Commission materially breach this contract, the Owners' sole remedy shall be to retain the earnest money in full satisfaction of all claims and damages. In the event of Owners' material breach of this contract, Commission may elect, at Commission's sole option, to (a) void the contract and have a return of its earnest money; or (b) affirm the contract, and have any available rights and remedies at law or in equity, including but not limited to specific performance.

6. Time is of the essence of this Contract. The warranties and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns of me parties hereto.

7. All notices and demands to or by the parties shall be in writing. The mailing of any such notice or demand to the Owners or to the Commission at their respective addresses set forth above shall be considered sufficient service.

8. Commission shall be solely responsible at its sole expense for obtaining necessary releases and permissions from applicable federal and state agencies, under the CREP or similar programs, and will use best efforts to obtain such releases or permissions. If, however, such releases or permissions cannot be obtained, Commission may void the contract and obtain a return of its earnest money.

9. 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.

Exhibit B

This space for Recorder of Deeds

PERMANENT EASEMENT

THIS EASEMENT is granted by JAMES R. HEISSINGER, JAMES FARRIS, MARK S. HEISSINGER, MATT MICKEY and CURTIS HOPKINS ("Grantor") to the South Sangamon Water Commission, an Illinois municipal corporation and its successors and assigns ("Commission") and is dated this ___ day of _____ 20__.

1. In consideration of ten dollars and other good and valuable consideration specifically recited in that certain Agreement between Commission and Grantor dated July __, 2011 and recorded with the Recorder of Deeds of Sangamon County, IL on _____ as Document No. _____, Grantor hereby grants to Commission a permanent easement on, over and under certain Property owned by Grantor in Sangamon County, Illinois, the legal description of which is as follows:

Southwest Quarter of Section 6, Township 15 North, Range 3 West of the Third Principal Meridian, Sangamon County, Illinois, having tax i.d. number, 24-06.0-300-005.

The precise area of the easement is set forth and legally described 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 an 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 constructed by Commission on the Property, 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 lines and works in good condition, and after construction of or maintenance on any pipelines, will restore the surface of the Property to the condition and grade which it had prior to such construction.

d. Commission shall pay Grantor, or any tenant in possession of the Property as directed by Grantor, for any damage to oak or hickory trees with a trunk diameter of 8 inches or more, caused by Grantor, due to construction of the lines and works contemplated hereby, at the fair market value of such trees. and if the parties cannot agree, the fair market value of such trees may be determined by a consulting forester listed on the list maintained by the Illinois Department of Natural Resources.

e. 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.

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

JAMES R. HEISSINGER

JAMES FARRIS

MARK S. HEISSINGER

MATT MICKEY

CURTIS HOPKINS

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that JAMES R. HEISSINGER, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that JAMES FARRIS, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that MARK S. HEISSINGER, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that MATT MICKEY, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that CURTIS HOPKINS, 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 he signed, sealed and delivered the said instrument as his 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 & Hanken, PC
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 C

This space for Recorder of Deeds

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT is granted by JAMES R. HEISSINGER, JAMES FARRIS, MARK S. HEISSINGER, MATT MICKEY and CURTIS HOPKINS ("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.

3. 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.

2. 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.

JAMES R. HEISSINGER

JAMES FARRIS

MARK S. HEISSINGER

MATT MICKEY

CURTIS HOPKINS

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that JAMES R. HEISSINGER, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that JAMES FARRIS, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that MARK S. HEISSINGER, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that MATT MICKEY, 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 he signed, sealed and delivered the said instrument as his 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

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

The undersigned, a Notary Public in and for said County and State, does hereby certify that CURTIS HOPKINS, 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 he signed, sealed and delivered the said instrument as his 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

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. 11- 10, adopted by the Commission on the 19th day of July, 2011, said Ordinance being entitled:

AN ORDINANCE APPROVING AN AGREEMENT

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 19th day of July, 2011.

Laura VanPraegen
Clerk