

JUN 16 2008

ORDINANCE NO. 2663

Wally Jaffee
City Clerk

AN ORDINANCE TO APPROVE A SURFACE WATER MONITORING POINTS EASEMENT FOR THE CITY OF COLUMBIA LAND FILL CLOSURE FROM COLUMBIA QUARRY COMPANY, A MISSOURI CORPORATION AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF ILLINOIS, ON, OVER, ALONG AND ACROSS PROPERTY WHERE THE COLUMBIA QUARRY PLANT IS LOCATED AND TO AUTHORIZE THE MAYOR TO EXECUTE AND THE CITY ATTORNEY TO RECORD THE SAME FOR AND ON BEHALF OF THE CITY

WHEREAS, the City is the owner of a tract of land (the "landfill property") that adjoins or is located near the Columbia Quarry Plant which plant has the assigned address of 200 Todd Center Drive, Columbia, Illinois on which City landfill property the City used to operate a public refuse disposal or landfill site which landfill use has since been abandoned and closed to the public and for which the City is seeking to obtain a landfill monitoring permit and a landfill closure permit from the Illinois Environmental Protection Agency ("IEPA");

WHEREAS, in order for the City to obtain the permits it needs from IEPA for the closure of its landfill it will be necessary for the City to locate three (3) ground water monitoring points on the Quarry property and an easement of access for said monitoring points that will provide both the City and IEPA free and unobstructed access to the monitoring points for purposes of conducting a continuing surveillance of the monitoring points to monitor against ground water contamination by the City's landfill after the closure of the landfill;

WHEREAS, the Quarry is agreeable to granting the monitoring points and access easement to the City and IEPA on the terms and conditions set forth in the "Surface Water Monitoring Easement" that is authorized and approved by this ordinance, a copy of which is attached to this ordinance;

WHEREAS, it is necessary and appropriate that the City enact this ordinance to approve and authorize the City to acquire the Surface Water Monitoring Points Easement on the terms set forth in the easement agreement and commit the City to do and perform its obligations under said agreement so that the City can acquire the subject easement required for the accomplishment of its landfill closure.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. Attached hereto is a copy of the Surface Water Monitoring Points Easement from the above-described property owner for the subject Surface Water Monitoring Easement. The City hereby approves the form of the Surface Water Monitoring Points Easement, as signed by the legal representatives of the property owner aforesaid, and does hereby authorize and direct the Mayor to sign the same (acknowledging the City's acceptance of the easement involved and the City's agreement to do and perform the City's obligations undertaken in the easement agreement) and does hereby authorize and direct the City Clerk to attest the same and affix thereto the corporate seal of the City.

Section 3. The City Council hereby authorizes and directs the City Attorney, Tom D. Adams, to record in the office of the Monroe County, Illinois Recorder the fully executed and attested Surface Water Monitoring Points Easement aforesaid and thereafter to file the same with the permanent real estate records of the City.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

Alderman Niemietz moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Row, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Row, Hejna, Oberfell and Stumpf.

NAYS: None.

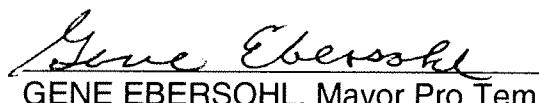
ABSENT: Mayor Hutchinson.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 16th day of June, 2008.

ATTEST:


WESLEY J. HOEFFKEN, City Clerk


GENE EBERSOHL, Mayor Pro Tem

(SEAL)

After Recording Return to:
Adams & Huetsch
Attorneys at Law
P.O. Box 647
Columbia, Illinois 62236

SURFACE WATER MONITORING POINTS EASEMENT

This Agreement for Surface Water Monitoring and Access Easement is made this ____ day of _____, 2008, between The Columbia Quarry Company, a Missouri Business Corporation created and existing under and by virtue of the laws of the State of Missouri and authorized to do business in the State of Illinois, having its Main Office at 200 Todd Center Drive, Columbia, Illinois 62236, the Grantor (herein referred to as "Grantor" or the "Quarry"); and, the City of Columbia, Illinois, a municipal corporation created and existing under and by virtue of the laws of the State of Illinois, being a body both corporate and politic of the State of Illinois, having its City Hall located at 208 South Rapp Avenue, Columbia, Illinois 62236, the Grantee, (herein referred to as "Grantee" or the "City"); and, the Illinois Environmental Protection Agency, an Executive Branch Agency of the State of Illinois and a body politic of the State of Illinois, having its local office at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276, the Sub-Grantee, (herein referred to as the "Sub-Grantee" or the IEPA"), WITNESSETH:

WHEREAS, the Grantor is the owner of the real estate described in Exhibit "1", which is attached hereto and by reference made part hereof, on, over, along and across which accesses to the three (3) surface water monitoring points involved herein shall be located (the "access easement tract") and on which tract the City shall be granted the right to locate, operate and maintain three (3) surface water monitoring points for the City's abandoned landfill, (the "monitoring points easement"), which easement tract is a tract of land on which the Grantor operates its "Columbia Quarry" plant;

WHEREAS, the City is the owner of a tract of land that adjoins or is located near the Columbia Quarry Plant property which City property is more particularly described in Exhibit "2", which is attached hereto and by reference made part hereof, (the "landfill property") on which City landfill property the City used to operate a public refuse disposal or landfill site which landfill use has since been abandoned and closed to the public and for which the City is seeking to obtain a landfill monitoring permit and a landfill closure permit from IEPA;

WHEREAS, in order for the City to obtain the permits it needs for the closure of its landfill from IEPA it shall be necessary for the City to locate three (3) surface water monitoring points on the Quarry property and have an easement of access for ingress to and egress from said monitoring points that will provide both the City and IEPA free and unobstructed access to the monitoring points for purposes of conducting a continuing surveillance of the monitoring points to monitor against ground water contamination by the City's landfill after the closure of the landfill;

WHEREAS, the Quarry is agreeable to granting the monitoring points and access easement to the City and IEPA on the terms and conditions herein set forth.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration that is hereby acknowledged by the Grantor, the Grantor hereby grants the access easement and the monitoring point easement to the City and access easement to the IEPA, as follows:

(1) Monitoring Points Easement. The Grantor hereby grants to the City, (and to the City's employees, contractors and other agents), the perpetual and continuing right to locate, use, maintain, replace, operate and inspect three (3) surface water monitoring points at the locations depicted on the USGS Map attached hereto as Exhibit "3", which is by reference made part hereof, which are located on the property described in Exhibit 1, which points shall be located and maintained in compliance with IEPA requirements and regulations in effect from time to time, as an appurtenance to the Landfill property described in Exhibit "2", on the terms and conditions hereinafter stated in this agreement. The surface water monitoring points easement includes the right for the Grantee and the Sub-Grantee to bring, have and use men, machinery and equipment on the monitoring points easement tract for the uses and purposes aforesaid.

(2) Access Easement. The Grantor hereby grants to the City and IEPA (and to their employees, contractors and other agents), a blanket easement (subject to the conditions specified in the next successive paragraph of this Section (2) of this agreement) for the free and unobstructed right to come upon, be upon and to travel on, over, along and across the access easement tract described in Exhibit "1", as and for an access easement for the location, maintenance, use, replacement, operation and inspection of the three (3) surface water monitoring points of the City involved herein, on the terms and conditions hereinafter stated in this agreement. This access easement includes the right for the Grantee and the Sub-Grantee to bring, have and use men, machinery and equipment on the access easement tract for the monitoring points uses and purposes.

Notwithstanding anything to the contrary stated in the preceding paragraph of this Section 2 of this agreement, the following terms and conditions shall apply to the access easement:

(i) The location for the right of way for the access easement shall be the most direct route across the Exhibit "1" described property that will provide free and unobstructed access to the surface water monitoring points depicted on Exhibit "3" without interfering with the Grantor's concurrent use of the access easement tract;

(ii) The location of the access right of way may be changed from time to time by the Grantor in order to accommodate the special needs of the Grantor at the time of reference;

(iii) The access easement rights of way will be of the minimum width reasonably necessary to accomplish the monitoring points easement and access easement uses and purposes intended by the City and IEPA; and,

(iv) Prior to each and every entry on the real estate premises of the Grantor by representatives of the City or IEPA they shall provide to the Grantor the opportunity to escort them to the monitoring points on the Grantor's real estate premises. No representative of the City or IEPA shall enter the real estate premises of the Grantor without first conferring with a duly authorized representative of the Grantor to determine if they want to escort the party seeking entry to the monitoring points on the Grantor's real estate premises.

(v) At least seventy two (72) hours prior to each and every entry on the real estate premises of the Grantor by representatives of the City or IEPA coming on said real estate premises to collect ground water samples, the party seeking to collect the ground water samples shall notify the duly authorized representative of the Grantor of their intention to come upon the Grantor's real estate premises to collect the samples.

(vi) Entry onto the real estate premises of the Grantor by representatives of the City or IEPA shall be limited to the normal operating business hours of the Grantor in effect at the time of reference, except as otherwise authorized by the Grantor.

(vii) The City shall hold the Grantor safe, harmless, free and fully indemnified against the claims or causes of action of employees or agents of the City for personal injury, death or property damage sustained while on the real estate premises of the Grantor pursuant to and in the exercise of the easement rights granted and provided by this easement; except for injury, death or property damage caused to such employees or other agents of the City by the negligence, gross negligence, willful and wanton or intentional acts or omissions of the Grantor or its employees or other agents. The indemnity herein made and provided shall include indemnity for reimbursement of the Grantor's reasonable attorney fees, court costs and other costs necessary to be incurred in order to enforce this indemnity agreement; and, the same may be included in any judgment entered by a court of competent jurisdiction in an action filed to enforce this indemnity agreement.

(viii) The City shall hold the Grantor safe, harmless, free and fully indemnified against the claims or causes of action resulting from ground water contamination caused by and/or coming from the City's landfill (which this easement and the monitoring points on the Grantor's property are intended to monitor). The indemnity herein made and provided shall include indemnity for reimbursement of the Grantor's reasonable attorney fees, court costs and other costs necessary to be incurred in order to enforce this indemnity agreement; and, the same may be included in any judgment entered by a court of competent jurisdiction in an action filed to enforce this indemnity agreement.

(ix) As soon as practicable after the taking and testing of each ground water sample from any one or more monitoring points on the Grantor's real estate premises the party performing the sampling shall provide to the Grantor the written results of the testing of the sampling by mailing the same, first class mail with required postage affixed, to Columbia Quarry Company, P.O. Box 18, Columbia, Illinois 62236.

(3) Reasonable Use. The right granted to the City (including the City's employees, contractors and other agents) to conduct monitoring from the stream points on the monitoring points easement property and the right of ingress and egress to and from the monitoring points on the Exhibit "1" easement property herein granted to the City and to IEPA (including their employees, contractors and other agents), shall be exercised and used in such manner as not to cause any damage or destruction of any nature whatsoever to or interruption of the use of the adjoining lands owned by the Grantor.

(4) Non-Exclusive Easements. The Grantor shall have the right to grant other nonexclusive easements over, along, upon, under and/or across the access easement property and the monitoring points easement property; provided that any such use or other easement shall be subject to the easements herein granted to the City and to IEPA, and shall not interfere with the use of those easements by the City and IEPA for their intended uses and purposes.

(5) Reservation of Use. The Grantor reserves the right to use the easement tract involved herein and described in Exhibit "1" in any manner that will not prevent or interfere with the exercise by the Grantee and the Sub-Grantee of the rights herein granted to them.

(6) Relocation of Access Easement. The Grantor reserves the right to, from time to time, change the location of the route of the accesses to the monitoring points on the Exhibit "1" property of the Grantor providing that such relocated routes shall be of the same character, size and subject to the same uses as herein established in favor of the Grantee and the Sub-Grantee and equally suitable for the uses and purposes for which the access easement involved herein is created.

(7) Indemnity. The City hereby agrees to indemnify and hold the Grantor safe, harmless, free and fully indemnified against any environmental liability claim or any other liability claim whatsoever caused as a result of ground water contamination by the City's abandoned landfill or the monitoring thereof and from the occupancy and use of the surface water monitoring easement and the access easement by the City or the IEPA (and their employees, contractors and other agents). The indemnity involved herein shall include indemnity to the Grantor for reasonable attorney fees and costs necessary to be incurred in order to enforce this indemnity agreement.

(8) Binding Effect. The provisions, covenants, terms and conditions contained in this easement agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns (including successor municipalities of the City of Columbia, Illinois, successor business entities of the Columbia Quarry Company and successor agencies of the Illinois Environmental Protection Agency of the State of Illinois).

IN WITNESS WHEREOF the Grantor has made, executed and delivered this easement agreement for the uses and purposes set forth above and the City and IEPA have joined in executing the same to commit to comply with the conditions contained therein and incumbent on the City and IEPA to be done and performed, same to take effect on the date first above written.

THE COLUMBIA QUARRY COMPANY, an
Illinois Business Corporation

BY:

CLYDE TREXLER, President

ATTEST:

MIKE ERRANTE, Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County, in the State aforesaid, hereby certifies that CLYDE TREXLER and MIKE ERRANTE, personally known to me and known to me and known to me to be the President and Secretary, respectively, of the COLUMBIA QUARRY COMPANY, an Illinois Business Corporation, whose names are subscribed to the above and foregoing document for and on behalf of said Corporation in the above agreement referred to as the Grantor, appeared before me in person, this date, and acknowledged that they signed and delivered said document as his free and voluntary act and deed and as the free and voluntary act and deed of said COLUMBIA QUARRY COMPANY, for the uses and purposes therein set forth.

Given under my hand and Notary Seal this ____ day of _____, 2008.

Notary Public

THE CITY OF COLUMBIA, ILLINOIS, a Municipal Corporation of the State of Illinois

BY: KEVIN B. HUTCHINSON, Mayor

ATTEST:

WESLEY J. HOEFFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County, in the State aforesaid, hereby certifies that KEVIN B. HUTCHINSON and WESLEY J. HOEFFKEN, personally known to me and known to me to be the Mayor and the City Clerk, respectively, of the City of Columbia, in Monroe and St. Clair Counties, Illinois, in the above agreement referred to as the Grantee, appeared before me, in person, this date, and acknowledged that they signed and delivered the above and foregoing document pursuant to ordinance of the City of Columbia, Illinois duly enacted, as their free and voluntary act and deed and as the free and voluntary act and deed of the CITY OF COLUMBIA, ILLINOIS, an Illinois Municipal Corporation, for the uses and purposes therein set forth.

Given under my hand and Notary Seal this _____ day of _____, 2008.

Notary Public

THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY, an Agency of the Executive Branch of the
State of Illinois

BY:

STEPHEN F. NIGHTINGALE, P.E., Manager
Permit Section, Bureau of Land

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

The undersigned, a Notary Public in and for the County, in the State aforesaid, hereby certifies that STEPHEN F. NIGHTINGALE, P.E., personally known to me and known to me to be the Manager of the Permit Section of the Bureau of Land, of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY of the State of Illinois, in the above agreement referred to as the Sub-Grantee, appeared before me, in person, this date, and acknowledged that he signed and delivered the above and foregoing document, as his free and voluntary act and deed and as the free and voluntary act and deed of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, an Executive Branch of the State of Illinois, for the uses and purposes therein set forth.

Given under my hand and Notary Seal this _____ day of _____, 2008.

Notary Public

THIS DOCUMENT PREPARED BY:

TOM D. ADAMS #13439
ADAMS AND HUETSCH
Attorneys-at-Law
321 Wedgewood Square
P. O. Box 647
Columbia, Illinois 62236
Telephone (618) 281-5185/5186
Fax No. 618-281-5553
E-mail Address: tdadams@htc.net