

AUG 03 2009

**ORDINANCE NO. 2734**

*J. Ronald Colyer*  
City Clerk

**AN ORDINANCE TO AUTHORIZE A UTILITY MUNICIPAL WATERLINE AND CONSTRUCTION EASEMENT BETWEEN THE CITY OF COLUMBIA, ILLINOIS AND THE FAUST TRUST FOR THE CITY OF COLUMBIA, ILLINOIS TO RELOCATE A CITY WATERLINE REQUIRED FOR THE WIDENING OF THE ILLINOIS HIGHWAY 158 RIGHT-OF-WAY IN THE CITY AND TO APPROVE OF THE FORM OF SAID AGREEMENT**

WHEREAS, the Department of Transportation of the State of Illinois ("IDOT") has determined it is necessary for IDOT to acquire additional right of way for the widening and relocation of Illinois Highway 158 ("Highway 158") in the City of Columbia, Illinois (the "City");

WHEREAS, in connection therewith and in consequence thereof, the City has a public waterline easement in which is located a public waterline which easement and waterline will have to be relocated in order to allow and provide for the IDOT widening of Highway 158;

WHEREAS, IDOT has agreed to reimburse the City for the cost necessary to be incurred by the City for the acquisition of easements for and relocation of said public waterline up to not to exceed the sum of Two Hundred Fifteen Thousand Dollars (\$215,000) without additional approval from IDOT;

WHEREAS, it is necessary and appropriate that the City acquire approximately 1646 lineal feet of waterline easement from the Faust Trust by easement agreement for the waterline project aforesaid, in the form approved by this Ordinance and that the City enact this ordinance to authorized and approve said permanent and construction easement agreement.

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.** The "Municipal Waterline and Construction Easement" between the Faust Trust dated March 28, 1991 and the City, a copy of which is attached hereto and by reference made part hereof, is hereby approved as to form and the Mayor is hereby authorized and directed to execute and deliver the same for and on behalf of the City, in as many counterparts as the Mayor shall determine; and, the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the

City. The City Council hereby agrees to make the payments and to do and perform its obligations under said agreement.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage by the City Council, as provided by law.

Alderman Ebersohl 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, Row, Hejna, Oberkfell, Stumpf and Roessler.

NAYS: None.

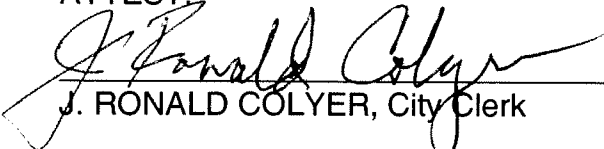
ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 3rd day of August, 2009.

  
\_\_\_\_\_  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

  
\_\_\_\_\_  
J. RONALD COLYER, City Clerk

(SEAL)

Return Easement to:  
Adams and Huetsch  
Attorneys at Law  
P. O. Box 647  
Columbia, IL 62236

**MUNICIPAL WATERLINE AND CONSTRUCTION  
EASEMENT**

The undersigned GRANTORS, ELEANORA M. FAUST and CAROL JEAN FAUST, not individually but as Co-Trustees of the FAUST TRUST dated March 28, 1991, of 748 D Road, City of Columbia, Monroe County, Illinois, for and in consideration of the payment of the sum of Fifty Seven Hundred Sixty Dollars and Forty Four Cents (\$5,760.44) as and for property damage caused to the easement premises and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged by the GRANTORS, does hereby CONVEY and WARRANT to the CITY OF COLUMBIA, ILLINOIS, a municipal corporation and body both corporate and politic created and existing under and by virtue of the laws of the State of Illinois (hereinafter referred to as the "CITY" or the "GRANTEE"), a (potable water transmission main) waterline easement, being the perpetual right to construct, install, alter and maintain a potable waterline, and all appurtenances appertaining thereto, in, under, along, through and across the following described property of the said FAUST TRUST, being part of a tract of land conveyed to the Faust Trust March 28, 1991, by deed recorded in the Recorder's Office of Monroe County, Illinois, in Book of Deeds 169, on page 740, to wit:

Commencing at the southwest corner of said Faust Trust tract; thence at an assumed bearing of North 00°24'57" East, along the west line of said Faust Trust tract, a distance of 34.36 feet to the Point of Beginning of the herein described easement; thence continuing North 00°24'57" East, along the west line of said Faust Trust tract, a distance of 11.45 feet to a point which lies 10.00 feet, measured at right angles, northwesterly of the proposed northwesterly Right-of-Way line of FAP Route 809 (Illinois Route 158); thence parallel to the proposed northwesterly Right-of-Way line of FAP Route 809 (Illinois Route 158), the following courses and distances: thence North 61°13'41" East, a distance of 53.92 feet to a point; thence North 30°15'52" East, a distance of 58.31 feet to a point; thence North 61°13'41" East, a distance of 55.54 feet to a point; thence South 87°48'29" East, a distance of 58.31 feet to a point; thence North 61°13'41" East, a distance of 141.51 feet to a point; thence North 11°02'01" East, a distance of 104.14 feet to a point; thence North 61°13'41" East, a distance of 21.17 feet to a point; thence North 85°11'26" East, a distance of 196.98 feet to a point; thence North 61°13'41" East, a distance of 270.11 feet to a Point of Curvature; thence along a curve to the left having a radius of 3290.51 feet, a central angle of 11°37'45" and a chord of 666.71 feet which bears North 55°24'49" East, an arc length of 667.86 feet to the Point of Tangency of said curve; thence North 52°01'56" East, a distance of 8.10 feet to a point which lies on the east line of said Faust Trust tract; thence

South 00°17'48" West, along the east line of said Faust Trust tract, a distance of 12.74 feet to a point which lies on the proposed northwesterly Right-of-Way line of FAP Route 809 (a.k.a. Illinois Route 158); thence along the proposed northwesterly Right-of-Way line of FAP Route 809 (a.k.a. Illinois Route 158), the following courses and distances: thence along a curve to the right having a radius of 3300.51 feet, a central angle of 11°37'31" and a chord of 668.53 feet which bears South 55°24'56" West, an arc length of 669.68 feet to the Point of Tangency of said curve; thence South 61°13'41" West, a distance of 272.24 feet to a point; thence South 85°11'26" West, a distance of 147.73 feet to a point; thence South 61°13'41" West, a distance of 50.00 feet to a point; thence South 11°02'01" West, a distance of 78.10 feet to a point; thence South 61°13'41" West, a distance of 175.00 feet to a point; thence North 87°48'29" West, a distance of 58.31 feet to a point; thence South 61°13'41" West, a distance of 50.00 feet to a point; thence South 30°15'52" West, a distance of 58.31 feet to a point; thence South 62°13'41" West, a distance of 62.28 feet to the Point of Beginning.

Containing 18,822 square feet, or 0.432 acre, more or less.

ALSO, a ten (10) feet wide temporary construction easement on, over and across part of said tract of land conveyed to Faust Trust dated March 28, 1991, by deed recorded in the Recorder's Office of Monroe County, Illinois, in Book 169 on Page 740, being part of the Northeast Quarter of Section 23, Township 1 South, Range 10 West of the Third Principal Meridian, Monroe County, Illinois, said temporary construction easement being more particularly described as follows:

The southeasterly 20 feet adjacent to the proposed northwesterly Right-of-Way line of FAP Route 809 (a.k.a. Illinois Route 158) from Station 142+62.72 to Station 146+50.00, excepting the southeasterly 10 feet thereof; the southeasterly 40 feet adjacent to the proposed northwesterly Right-of-Way line of FAP Route 809 (a.k.a. Illinois Route 158) from Station 146+50.00 to Station 147+50.00, excepting the southeasterly 30 feet thereof; and the southeasterly 20 feet adjacent to the proposed northwesterly Right-of-Way line of FAP Route 809 (a.k.a. Illinois Route 158) from Station 147+50.00 to Station 158+41.11, excepting the southeasterly 10 feet thereof, containing 16,363 square feet, or 0.376 acre, more or less.

PERMANENT PROPERTY INDEX NO.: Part of 04-23-200-016.

PRIOR DEED: Book 169, Page 740.

(Survey plat of Heneghan and Associates, P. C., being attached hereto and by reference made part hereof.)

hereby releasing and waiving all rights under and by virtue of the Homestead Exemptions Laws of the State of Illinois.

Situated in the County of Monroe and State of Illinois.

Concomitant and coextensive with the right herein granted is a further right in GRANTEE, its successors and assigns, contractors and agents, at all times, to have ingress to and egress from all points on and along said municipal utility easement tract. Since the easement uses and purposes for GRANTEE are primarily subterranean the CITY shall have no obligation to mow the grass, trim weeds or otherwise maintain the surface of the ground except as herein otherwise provided. The CITY, as GRANTEE, and its successors and assigns, by and through their agents, servants and contractors, shall have the right to remove trees, bushes, undergrowth and any other obstructions interfering with the location, construction and maintenance of its potable waterline service or services installed in and on the easement tract, whether located now or hereafter on the easement tract.

The GRANTEE, its successors and assigns, agrees to pay reasonable damages which may arise to growing crops on the GRANTOR'S premises that result from the exercise of GRANTEE'S rights and privileges herein granted, said damages, if not mutually agreed upon, to be ascertained, determined, and fully and finally settled by three (3) disinterested persons, one (1) of whom shall be selected by the GRANTOR(S), one (1) of whom shall be selected by the GRANTEE, and the third appraiser to be selected by the other two (2) appraisers that were selected by the GRANTOR(S) and the GRANTEE. The decision of any two (2) of the three (3) appraisers shall control and the arbitration and award of the amount of damages so fixed shall be final and conclusive.

The GRANTORS, for and on behalf of said FAUST TRUST, its successors, assigns and other legal representatives shall not make nor suffer any encroachment or obstructions interfering with the GRANTEE'S use of the easement tract for its intended purpose and the right of the GRANTEE in the easement tract to use the same for its intended purpose.

The GRANTORS, for and on behalf of said FAUST TRUST, its successors, assigns, and other legal representatives shall have the right to use the surface of the property comprising the above described easement tracts for uses and purposes that do not interfere with the GRANTEE'S use of the same for their intended use and purpose.

The GRANTORS, for and on behalf of said FAUST TRUST, its successors, assigns and other legal representatives shall not construct, install or maintain any buildings or permanent structures on the easement tract.

The GRANTORS, for and on behalf of said FAUST TRUST, its successors, assigns and other legal representatives shall not grant easements to any other utility service providers or other persons or parties for subterranean use of the easement tract without first obtaining the written consent of the GRANTEE.

The GRANTEE will restore the surface of the ground after each and every entry.

The terms, covenants and conditions of this easement shall inure to the benefit of and shall be binding upon the legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the undersigned GRANTORS, as the Co-Trustees of said FAUST TRUST, have made, executed and delivered this Municipal Waterline and Construction Easement to the GRANTEE, for the uses and purposes hereinabove set forth this 29<sup>th</sup> day of July, 2009.

\_\_\_\_\_  
ELEANORA M. FAUST, Co-Trustee of the Faust  
Trust dated March 28, 1991

\_\_\_\_\_  
CAROL JEAN FAUST, Co-Trustee of the Faust  
Trust dated March 28, 1991

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF MONROE     )

The undersigned, a Notary Public in and for the County, in the State aforesaid, hereby certifies that ELEANORA M. FAUST and CAROL JEAN FAUST, personally known to me and known to me to be the Co-Trustees of the Faust Trust dated March 28, 1991, appeared before me, this date, in person and acknowledged that they signed and delivered said easement as their free and voluntary act and deed and as the free and voluntary act and deed of the FAUST TRUST dated March 28, 1991, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notary Seal this 29<sup>th</sup> day of July, 2009.

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

SIGNATURE OF FARM TENANTS IN POSSESSION

The undersigned are farm tenants who are in possession of and farming the above described and adjoining property of the FAUST TRUST and by the application of their signatures to this document acknowledge their consent to the granting of the permanent and construction easements described above; consent to the GRANTEE, its contractors, subcontractors, other agents and assigns having the possession and use of the real estate premises for the above described water line easement intended uses and purposes of constructing, installing, repairing, replacing and maintaining a potable water line in said easement with the understanding and on the condition that the GRANTEE shall be required to compensate them for damage to growing crops caused by the installation of said water line as in made and provided for above in this easement.

\_\_\_\_\_  
EDWARD SCHAEFER

\_\_\_\_\_  
NORMAN SCHAEFER

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF MONROE    )

The undersigned, a Notary Public in and for the County, in the State aforesaid, hereby certifies that NORMAN SCHAEFER and EDWARD SCHAEFER, personally known to me and known to me to be the farm tenants who are in possession of and farming the farm property of the above referred to Faust Trust, including the property described above that shall be subject to the easements involved herein, appeared before me, this date, in person and acknowledged that they signed and delivered their consent to said easement stated above as their free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

SIGNATURE OF GRANTEE

The undersigned GRANTEE has executed this Easement to acknowledge its agreement and commitment to do and perform all obligations undertaken in the above Easement incumbent on the GRANTEE to be done and performed by the GRANTEE.

CITY OF COLUMBIA, ILLINOIS, a  
Municipal Corporation

BY: \_\_\_\_\_  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

\_\_\_\_\_  
J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF MONROE    )

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that KEVIN B. HUTCHINSON and J. RONALD COLYER, personally known to me and known to me to be the Mayor and City Clerk, respectively, of the City of Columbia, Illinois whose names are subscribed to the foregoing document, appeared before me this day in person and acknowledged that they signed and delivered the said document as their free and voluntary act and deed and the free and voluntary act and deed of said City, for the uses and purposes therein set forth, by authority of an enabling ordinance of said City duly enacted.

Given under my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

THIS DOCUMENT PREPARED BY:

TOM D. ADAMS #13439  
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