

FEB 05 2007

ORDINANCE NO. 2531


City Clerk

AN ORDINANCE TO APPROVE A WATERLINE EASEMENT FROM THE CONOCOPHILLIPS PIPE LINE COMPANY ON PROPERTY COMPRISING SAID COMPANY'S EAST ST. LOUIS TERMINAL HAVING THE ASSIGNED ADDRESS OF 3300 MISSISSIPPI AVENUE IN THE VILLAGE OF CAHOKIA, ST. CLAIR COUNTY, ILLINOIS AND TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER THE SAME FOR AND ON BEHALF OF THE CITY; AND TO AUTHORIZE THE PAYMENT OF \$3.00 PER LINEAL FOOT FOR SAID EASEMENT.

WHEREAS, the City of Columbia, Illinois (the "City") has determined to extend a sixteen inch (16') diameter waterline from the Rectory of the Holy Family Roman Catholic Church located at 116 Church Street in Cahokia, Illinois to connect to the Illinois-American Water Company Water Service System at or near the northeast corner of property at 3300 Mississippi Avenue (a/k/a Illinois Route No. 3) in Cahokia, Illinois which belongs to the ConocoPhillips Pipe Line Company on which said company owns and operates its East St. Louis petroleum refueling terminal, to include approximately 1,115 lineal feet along the frontage of said property belonging the ConocoPhillips Pipe Line Company; and,

WHEREAS, it is necessary and appropriate that the City acquire right-of-way easements for the same from owners of property in which the City is going to install its potable waterline and waterline facilities and appurtenances for its subject Illinois Route No. 3 potable waterline extension project.

WHEREAS, the ConocoPhillips Pipe Line Company, a Delaware corporation, authorized to conduct business in the State of Illinois, has agreed to sell the required Waterline Easement for right of way located along the frontage of its property in Cahokia, Illinois to the City for the price of Three Dollars (\$3.00) per lineal foot and on the terms set forth in the Waterline Easement which is approved and authorized by this ordinance;

WHEREAS, the City has acquired all of the other Waterline Easements required for its Cahokia, Illinois water service project and it is necessary that the acquisition of the easement be concluded so that the City can proceed with the installation of its waterline and it is necessary and appropriate that the City enact this ordinance to approve and authorize the City to acquire the easement for the payment of the price of \$3.00 per lineal foot and subject to the terms set forth in the Waterline Easement so that the City can acquire the subject easement required for the accomplishment of its waterline project.

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 Waterline Easement from ConocoPhillips Pipe Line Company. The City hereby approves the form of the Waterline Easement 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 Waterline Easement) 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 St. Clair County, Illinois Recorder the fully executed and attested Waterline Easement aforesaid and thereafter to file it 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 Conrad moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Ebersohl, and the roll call vote was as follows:

YEAS: Aldermen Conrad, Ebersohl, Agne, Niemietz, Unnerstall, Koesterer, Row, Huch and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 5th day of February, 2007.



KEVIN B. HUTCHINSON, Mayor

ATTEST:


WESLEY J. HOEFFKEN, City Clerk

(SEAL)
Ordinance No. 2531
February 5, 2007

This document prepared by and
after recording return to:

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WATERLINE EASEMENT

FOR AND IN CONSIDERATION of the sum of Ten Dollars and other valuable consideration (\$10.00 and OVC), the receipt of which is hereby acknowledged, ConocoPhillips Pipe Line Company, hereinafter referred to as "Grantor" (whether one or more) hereby grants to the City of Columbia, Illinois, a Municipal Corporation and body both corporate and politic, located in the counties of Monroe and St. Clair, created and existing under and by virtue of the laws of the State of Illinois, hereinafter referred to as "Grantee", its successors and assigns, without warranty of title, express or implied, the non-exclusive easement right from time to time, to locate, construct, lay, maintain, inspect, erect, operate, re-construct, remove, protect, replace with same or different size water line and appurtenances, over, through, upon, under and across the following premises in the County of St. Clair, State of Illinois, to-wit:

A ten (10) foot wide easement for water line uses and purposes on, over and across the East ten (10) feet of a tract of land conveyed to Phillips Pipe Line Company by deed recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Deeds 760 on page 426, being part of Lots 193, 196, 197 and 200 of "Third Subdivision of Cahokia Commons", reference being had to the Plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats A on page 60, said easement being more particularly described as follows:

Beginning at the Point of Intersection of the West Right-of-Way line of Illinois Route 3 (F.A. Route 14) with the North line of Lot 200 of "Third Subdivision of Cahokia Commons"; thence South 16° 36' 12" West, along the West Right-of-Way line of Illinois Route 3 (F.A. Route 14), a distance of 1115 feet, more or less, to the Northeast corner of a tract of land conveyed to Mack W. and Catherine G. Jones by deed recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Deeds 2771 on page 1911; thence West, along the North line of said Jones tract, a distance of 10 feet, more or less, to a point which lies 10.00 feet, measured at right angles, West of the West Right-of-Way line of Illinois Route 3 (F.A. Route 14); thence North 16° 36' 12" East, parallel to the West Right-of-Way line of Illinois Route 3 (F.A. Route 14), a distance of 1115 feet, more or less, to a point which lies on the North line of Lot 200 of "Third Subdivision of Cahokia Commons"; thence East, along the North line of Lot 200, a distance of 10.00 feet, more or less, to the Point of Beginning.

Said 10' W. Water Line Easement being situated in St. Clair County, Illinois; more particularly shown on Exhibit A attached hereto and by this reference made a part hereof;

together with the right of ingress and egress to and from said premises for the purposes aforesaid. Subject to Grantee's strict compliance with all of Grantor's safety policies, procedures and guidelines, Grantee may temporarily use available work space as needed during the exercise of the rights herein granted in other areas owned by Grantor immediately adjacent to said premises during construction only; provided, however, that all areas used by Grantee shall be restored to as near original condition as is practicable after construction. Grantor shall have the right to use and enjoy the above-described premises except as to and consistent with the rights granted herein.

The Easement herein granted is subject to the following terms and conditions:

1. **TO THE EXTENT ALLOWED BY LAW, GRANTEE AGREES TO PAY GRANTOR FOR ALL DAMAGES TO OR LOSS OF PROPERTY OF GRANTOR'S WHICH ARE CAUSED BY OR RESULT FROM THE CONSTRUCTION AND OPERATION OF SAID WATER LINE AND ASSOCIATED APPURTENANCES OR BY VIRTUE OF ANY OF THE RIGHTS AND PRIVILEGES HEREIN GRANTED. GRANTEE AGREES TO INDEMNIFY, RELEASE, DEFEND, SAVE AND HOLD HARMLESS GRANTOR, GRANTOR'S PARENT, AFFILIATED AND SUBSIDIARY COMPANIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES, (THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, DAMAGES, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS), AND LIABILITIES, OF ANY KIND OR NATURE, BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL AGENCY, FOR ANY INJURY OR DEATH, DAMAGE TO OR DESTRUCTION OF PROPERTY, REAL OR PERSONAL, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL CONTAMINATION, CLEAN UP OR REMEDIATION, ARISING OUT OF OR IN CONNECTION WITH THE EXERCISE BY GRANTEE OF THE RIGHTS HEREIN GRANTED, REGARDLESS OF WHETHER SUCH INJURY, DEATH, DAMAGE OR DESTRUCTION IS CAUSED OR CONTRIBUTED TO IN PART BY STRICT LIABILITY OR THE NEGLIGENCE OF THE INDEMNIFIED PARTIES; PROVIDED, HOWEVER, THIS RELEASE AND INDEMNIFICATION SHALL NOT APPLY IF SUCH INJURY, DEATH, DAMAGE OR DESTRUCTION IS CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTIES.**

2. This grant is subject to all grants, easements, leases, mineral leases or rights, reservations, rights and rights-of-way heretofore reserved or granted and/or now existing on the premises. The terms and provisions of this agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, personal representatives and heirs. The easement and right of way herein granted may not be leased or assigned in whole or in part without the written consent of Grantor. Such consent will not unreasonably be withheld.

3. In the event Grantee does not use said water line on the premises for a continuous period of two (2) years, then all rights granted herein shall terminate and Grantee shall, at the written request of Grantor, execute a proper recordable instrument evidencing such termination. Upon termination of the rights herein granted, at Grantor's sole option, Grantee shall either (i) remove its water line from the premises and restore the premises as nearly as practicable to the condition existing at the time of this grant, or (ii) abandon the water line in place.

4. It is understood and agreed between the parties that Grantor's property shall remain secured by the existing fence at all times during Grantee's exercise of the rights granted herein. In addition, Grantee hereby agrees to provide and maintain minimum of two (2) feet of clearance between its water line and all pipelines owned and operated by Grantor.

5. Grantee shall, at its sole cost and expense, exercise its rights hereunder and perform all activities on and about the premises in such a manner so as to not interfere at any time with Grantor's use of its terminal driveway. During the installation of the water line Grantee shall, at the point or points where

Grantee's water line crosses Grantor's terminal driveway, bore under the driveway and place the water line inside of a twenty-four (24) inch casement pipe.

6. All exhibits referenced herein, unless otherwise noted, are attached hereto and made a part hereof for all purposes.

7. No waiver of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of a similar or dissimilar nature, unless expressly so stated in writing.

8. This Agreement is intended solely for the benefit of the parties hereto and shall not create any rights, including without limitation any third party beneficiary rights, in any third party.

9. In the event any provision or any portion of any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable by reason of any law or public policy, such provision or portion thereof shall be considered to be deleted, and the remainder of this Agreement shall constitute the entire agreement between Grantor and Grantee covering the subject matter hereof.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflicts of law principles that might apply the law of another jurisdiction.

IN WITNESS WHEREOF, this instrument is executed in DUPLICATE this _____ day of _____, 2007.

ConocoPhillips Pipe Line Company

By: _____

Name: _____

Title: _____

State of Oklahoma)
) **SS**
County of Washington)

On the _____ day of _____, 2007, personally appeared _____, to me personally known to be the Attorney-in-Fact of ConocoPhillips Pipe Line Company, a corporation, being duly sworn did say and acknowledge to me that he executed the foregoing instrument on behalf of said corporation as the free and voluntary act and deed of **said corporation**, for the uses, purposes and consideration therein set forth.

My Commission Expires:

Notary Public

