

Request for City Council Action

Date: February 1, 2011

Agenda Section: Consent No. 5	Originating Department: Legal
Item: An Ordinance authorizing the execution of an easement to South Highway Water District No. 5. 8	Approved:

Background:

South Highway Water District provides water services to certain individuals and businesses within the City of Carbondale. The City of Carbondale granted an easement for the placement of their water main which was recorded in the Jackson County Recorder's Office on April 12, 2004 in Book 2004 at Page 13445 as Document No. 332420. This document granted the permanent easement for the installation of a water booster pump station along City-owned property, in addition to a water main.

As the storm of May 8, 2009 demonstrated, long-term power outages require the placement of emergency generators to maintain necessary public utilities. While the current easement will allow for the placement of an emergency generator, the propane tanks required to run said generator will have to be placed some distance from the generator, as required by certain gas safety codes. The current easement does not allow for that additional required distance for proper placement.

Staff recommends the transfer of an additional permanent easement to South Highway Water District to ensure that the citizens of Carbondale within that water district will receive water services in the event of a natural disaster.

Recommended Action:

Staff recommends approval of an Ordinance authorizing the execution of a permanent easement to South Highway Water District for the placement of propane tanks to run emergency generators.

Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
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Council Action: Motion by _____ 2nd by _____ to _____

CITY OF CARBONDALE

ORDINANCE NO. 2011-

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN EASEMENT TO SOUTH
HIGHWAY WATER DISTRICT**

**ADOPTED BY THE CITY COUNCIL
OF THE CITY OF CARBONDALE, ILLINOIS
THIS 8TH DAY OF FEBRUARY, 2011**

**Published in pamphlet form by authority of the City Council of the City of Carbondale,
Jackson County, Illinois, this 9th day of February, 2011.**

CERTIFICATE OF PUBLICATION

I, Janet M. Vaught, the duly qualified and acting City Clerk of the City of Carbondale, Illinois, and the official custodian of the records of said City, do hereby certify that this ordinance was published in pamphlet form by authority of the City Council on the 9th day of February, 2011.

Janet M. Vaught, City Clerk
City of Carbondale, Illinois

ORDINANCE NO. 2011 -

AN ORDINANCE AUTHORIZING THE EXECUTION OF A TRANSFER OF EASEMENT TO SOUTH HIGHWAY WATER DISTRICT

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the South Highway Water District is a public utility providing water service to residents in and around the City of Carbondale; and

WHEREAS, the City of Carbondale owns undeveloped property along which South Highway Water District's main water line runs and upon which a previous permanent easement was granted which was recorded in the Jackson County Recorder's Office on April 12, 2004 in Book 2004 at Page 13446, as Document No. 332420, which established a permanent easement for the installation of a water booster pump station; and

WHEREAS, recent natural disasters have demonstrated a need for emergency generator capability to pump water; and

WHEREAS, the emergency generators require the establishment of propane tanks which, pursuant to the gas safety codes and other safety considerations, dictate that they be separated at minimum distances from the generator; and

WHEREAS, the previous easement granted to the South Highway Water District is not large enough to meet the distance required to keep the propane tanks separated from the emergency generator; and

WHEREAS, pursuant to Title One, Chapter 13-8 J of the Carbondale Revised Code, the City may convey or grant an easement to public utilities for City-owned real estate upon the adoption of an ordinance by a vote of 2/3 of the City Council members holding office; and

WHEREAS, the City Council of the City of Carbondale hereby determines that it is in the best interest of the citizens of the City of Carbondale to grant an additional permanent easement to South Highway Water District for the establishment of emergency generator equipment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION 1. That the Mayor and the City Clerk are hereby authorized and directed to execute and deliver on behalf of the City of Carbondale a transfer of an easement to South Highway Water District, attached hereto as Exhibit "A" and made a part of this Ordinance.

SECTION 2. That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

SECTION 3. The repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance, insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinance.

SECTION 4. That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 5. That the City Council of the City of Carbondale finds that the subject

matter of this Ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to the Home Rule Powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

SECTION 6. That this Ordinance shall be known as Ordinance No. 2011- ____ of the City of Carbondale, Illinois, and shall be in full force and effect from and after its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
Brad Cole, Mayor

FOR: _____
AGAINST: _____
PASSED: _____
APPROVED: _____
RECORDED: _____
PUBLISHED: _____

ATTEST: _____
Janet M. Vaught, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

EASEMENT

THIS INDENTURE MADE THIS ____ day of _____, 2011, by and between
The City of Carbondale, hereinafter called Property Owner, and the South Highway Water
District, hereinafter called District, WITNESSETH:

That for and in consideration of the benefits to be gained by the construction,
maintenance and repair of the improvements to be made to the land described herein, and the
sum of \$1.00, Cash in hand paid, the receipt of which is hereby acknowledged, and other good
and valuable consideration, the parties hereto agree as follows:

A. LAND AFFECTED:

1. That the land affected by this agreement is located in the County of Jackson, State of
Illinois and is more particularly described as follows:

PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, OF SECTION 32,
TOWNSHIP 9 SOUTH, RANGE 1 WEST OF THE 3RD PRINCIPAL MERIDIAN, JACKSON
COUNTY, ILLINOIS.

B. PERMANENT EASEMENT:

1. On such land affected, District shall have, and Property Owner hereby bargains, sells,
transfers and delivers as hereinafter described, a Permanent Easement to construct, maintain
and repair a Water Booster Pump Station together with all appurtenances and
connections. District shall have the right to excavate and refill ditches and/or trenches, and do
necessary site grading for blending the existing and proposed surfaces for the location of the
facilities described herein, and shall have the further right to do all other necessary things,
including removal of trees, bushes, undergrowth and other obstructions interfering with the
location, construction and maintenance of said facilities. This easement is more particularly
described as follows:

A 15 FOOT WIDE BY 50 FOOT DEEP PARCEL OF LAND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 9 SOUTH, RANGE 1 WEST OF THE 3RD PRINCIPAL MERIDIAN, JACKSON COUNTY, ILLINOIS; THENCE N-0°35'35"-E, ALONG THE WEST LINE OF SAID QUARTER, QUARTER SECTION, A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION. FROM SAID POINT OF BEGINNING THENCE N-00°35'35"-E, ALONG THE WEST LINE OF SAID QUARTER, QUARTER, SECTION, A DISTANCE OF 15.00 FEET TO A POINT; THENCE S-89°24'25"-E, A DISTANCE OF 50.00 FEET TO A POINT; THENCE S-00°35'35"-W, A DISTANCE OF 15.00 FEET TO A POINT; THENCE N-89°24'25"-W, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINING 750 SQUARE FEET.

to have and to hold said Permanent Easement and Right of Way unto District, and unto its successors and assigns forever. Property Owner does hereby covenant with District that they are lawfully seized and possessed of the strip of land above described, that they have a good and lawful right to convey it, or any part thereof, and it is free from all encumbrances, and that they do and will forever warrant and defend the title thereto against the claim of all persons or parties whomsoever.

C. TEMPORARY EASEMENT:

1. On such land affected, District shall have, and Property Owner further grants unto District, a Temporary Easement and Right-of-way to enter upon and have the right to excavate and refill ditches and/or trenches, and do necessary site grading for blending the existing and proposed surfaces for the location of the facilities described herein, and shall have the further right to do all other necessary things, including removal of trees, bushes, undergrowth and other obstructions interfering with the location of said facilities. This Easement is more particularly described as follows:

None

2. This Temporary Easement shall cease and terminate upon completion of the said construction as presently planned, and shall not extend to future construction beyond said installation.

D. RIGHTS OF ENTRY AND EGRESS:

1. District shall have such permanent rights of entry upon, passage over and storage of equipment and material on the land herein described as being affected by such Permanent Easement and Right of Way, as may be necessary or useful for future construction, maintenance and repair.

E. DAMAGE TO PROPERTY:

1. Premises of the Property Owner shall be left neat and clean, with all rubbish and excess earth removed and with holes filled and leveled. Existing fences and driveways shall be restored. District shall pay reasonable damages for damage to crops, trees and shrubbery that

cannot be restored except in the area described herein as Permanent and/or Temporary Easement.

Subject to the above provisions, the Property Owner hereby waives all claims for damages of every name and nature that may accrue to him or to his property because of the exercise of the rights granted herein, it being understood and agreed that this waiver does not apply to acts of negligence by the District or by its contractors.

This indenture shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

F. OTHER CONDITIONS:

1. The District agrees to indemnify and hold Property Owner harmless from any and all claims, demands, actions, causes of action, damages, expenses, losses, attorney's fees, or liabilities arising in any way from or due to District's, its agents, or employees possession or use of the property.

2. If the Property Owner ever needs this property for water plant expansion(s) or any other reason, the District shall relocate the water lines and all appurtenances to another location at no cost to the Property Owner.

3. Any new water lines shall be located a minimum horizontal distance of 10 feet from any existing water lines owned by the Property Owner.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

APPROVED:

Brad Cole, Mayor

ATTEST: _____
Janet M. Vaught, City Clerk

