

#45,568



Water & Sewer Department

June 22, 2005

Will Gilliland
Division of Water Resources
109 Southwest 9th Street, 4th Floor
Topeka, Kansas 66612-1280

RE: Copy of Agreement for Permanent Easement - Weber

Dear Mr. Gilliland:

Enclosed is the Agreement with the Webers for the purchase of a permanent easement on their property. We were able to get a copy of the faxed agreement.

Jerry Blain will return to the office Monday, June 27, if you wish to talk with Jerry about this easement.

Sincerely,

Denise Tipton
Administrative Secretary

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Office of the Director

City Hall • 8th Floor • 455 North Main • Wichita, Kansas 67202-1677

T 316.268.4504

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Agreement for Permanent Easement

THIS AGREEMENT, Made and entered into this 28 day of May, 2005 by and between John F. and Ileen L. Weber, Michael J. and Shirley A. Weber, and Edward J. and Tricia R. Weber, and/or assigns, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, and/or assigns, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSED: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer a permanent easement for the following described real property, situated in Harvey County, Kansas, to wit:

Generally described as a site of 5.1 acres located in the NE Corner of the NE 1/4 of Sec.25, TWP.23-S, R-3-W of the 6th P.M., Harvey County, Kansas

See Exhibit A

(Specific location, size and description shall be prepared and approved by both the Buyer and Seller)

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the permanent easement of the above-described real property the following: the sum of Eighteen Thousand Three Hundred Sixty Dollars and No Cents (\$18,360) in the manner following, to-wit:

cash at closing.

and additional consideration consisting of:

- a) Two (2) water meters described as 8-inch flanged irrigation water meters,
- b) City of Wichita agrees to abandon a section of existing 12-inch PVC pipeline running from approximately Section 34, Township 24 South, Range 2 West, to approximately Section 32, Township 24 South, Range 2 West, Harvey County, Kansas, subject to Seller acquiring easement rights from the property owner(s) and establishing a new place of use with the Division of Water Resources for Water Right #35,227. City of Wichita will plug and cap the portion of the pipeline east of the connection point to be conveyed to the Seller.

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- 11/1-27-2003 PM 02:03 PM CITY OF WICHITA, KS
- c) City agrees to directional drill and install a twelve-inch PVC encasement line under the railroad bed near the NW ¼ of Section 32, T23S, R2W (specific location to be approved by BNSF) subject to Seller obtaining approval from the Burlington Northern Sante Fe OR, if Seller chooses to utilize an alternate contractor for the described directional drill, pay to alternate contractor up to \$4,700 following completion of directional drill and upon presentation of contractor's invoice.
 - d) Seller must obtain approvals and request the City to do the aforementioned work within 24 months of closing.

3. The Seller, as a condition of the sale, agrees to allow access to the Buyer, its agents and assigns, access over, under, through, in and across the real property described above and made a part hereof by this reference in order to construct, install, maintain, operate, test, repair, replace, and/or remove monitoring wells, recharge/recovery wells, flow meters, pipelines, and other operations and associated instrumentation to collect and transmit data and water for the Equus Beds Groundwater Recharge Project (hereinafter "Project"). Buyer hereby agrees to pay any damages which may arise to crop, pasturage, fences or buildings belonging to any tenant on said land resulting from the exercise of the rights herein granted, said damages, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by said tenant, one by Buyer, and the third by two so appointed, and their written determination of amount to be final and conclusive.

3.5. Buyer, as a condition of the sale, agrees that any building constructed will be located a minimum of 220' south of the centerline of east/west road. In regards to all other plans, Seller has a right to review engineering plans on the new facilities and to provide comments to the City prior to construction, and the City will give due consideration of those comments.

4. A title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management, City of Wichita, 455 N. Main, Wichita, KS 67202 for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

5. A duly executed copy of this Agreement shall be delivered to the parties hereto.

6. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any, shall be retained by the Sellers.

7. The Seller further agrees to convey the above described premises with all the Improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.
8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before June 30, 2005.
9. Possession to be given to Buyer on or before closing date.
10. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid by Buyer. The Buyer will pay 100 % of all closing costs.
11. Buyer may enter upon property prior to closing for the sole purpose of obtaining, at its sole expense, such engineering reports, soil tests, percolating studies, or other evaluation of such property which Buyer deems necessary. Buyer agrees that the firm(s) which will conduct the tests and studies must be approved by Seller prior to conducting the same. Seller agrees that it shall not unreasonably withhold or delay such approval. Buyer agrees to indemnify Seller with respect to personal injury, including death, to any person or physical damage to said property that may occur as a result of Buyer's acts or omission in the exercise of any of the rights granted under this paragraph. Pending closing, Buyer agrees to keep the information obtained from its test and studies confidential; and to disclose such information only to its attorney, agents, and staff.
12. Seller makes no representations or warranties, expressed or implied, as to the condition, including the environmental condition, of subject property and the surrounding property, including all facilities, improvements, structures, and equipment thereon, surface water thereon or adjacent thereto, including soil and groundwater thereunder. Any information, reports or records, (Disclosures) provided or made by Seller to Buyer concerning the environmental condition of property shall not be deemed representations or warranties. Buyer shall not rely on such disclosures, but rather rely only on its own inspection of property. Neither Seller nor Buyer by this agreement assumes an obligation to remedy environmental problems arising from events occurring prior to the date of this agreement or contract.
13. The Buyer, at its sole expense, agrees to remove and relocate said equipment, components and systems, if the Project should not prove successful and be discontinued or abandoned by the Buyer. If Buyer so desires, and with Sellers' permission, Buyer may leave or sell pump and/or equipment, providing a written agreement between Buyer and Seller is reached at the time of project discontinuation or abandonment. Buyer will plug well at Seller's option, subject to approval of regulatory entities.

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13.5 Upon abandonment by City, permanent easement reverts to Seller and/or their assigns.

14. Buyer further agrees that the installation, maintenance, operation, repair replacement, relocation or removal shall be done in a careful and workmanlike manner in accordance with sound engineering practices and in a manner not to endanger persons or property and in such a manner so as to not impair or impede the use of said property for roads, ditches, drains, and borrow pits and to maintain said equipment, components and systems at such depth as will not impair or obstruct drainage.

15. Buyer agrees to seek and obtain such reviews, approvals, permits as may be required prior to the construction, installation, and operation of the groundwater recharge, storage and recovery project and to obtain all such reviews, approvals and permits as may be required for the continuing operation of the project.

16. Seller and Buyer acknowledge that Buyer has been provided a full opportunity to inspect the premises. Buyer takes the premises "as is," with all faults and conditions thereon.

17. Site Assessment

A. At any time prior to the closing of this agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the buyer shall have the right to void this agreement upon notice to the seller, in which event neither party shall be under any further obligation to the other, with the exception that seller shall return to buyer any deposit made hereunder. Seller waives his right to see environmental audit.

B. The buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or testing of the property, at the buyer's sole expense.

C. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraphs A and B above. If a site assessment is completed after the closing date set herein, then the buyer and seller shall close or the buyer shall advise seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

18. Buyer agrees and covenants to protect and hold harmless the Seller, its successors, and assigns, from any and all losses, damages or expenses of any kind growing out of any

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and all claims, demands, or causes of action for injury or damages to persons or property arising out of this authorization to cross over, under, above, through in and across the subject property (including all facilities, improvements, structures, and equipment thereon, surface water thereon or adjacent thereto, and soil or groundwater thereunder) under the ownership and control of Seller.

19. Buyer hereby releases and discharges the Seller, agents and assigns, from and against any and all suits, claims, demands, causes of action, damages, consequential damages, losses, costs and expenses of any kind, whether known or unknown, which Buyer had, has or at any time may have, based on (i) any environmental law, including any cost recovery claim under common law, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 6901 et seq., as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, or comparable state law; (ii) any release of any hazardous material on, at, to or from the described easement including with respect to the easement, all facilities, improvements, structures, and equipment thereon, surface water thereon or adjacent thereto, and soil or groundwater thereunder); (iii) any conditions whatsoever on, under, or in the vicinity of the easement, including the presence of hazardous materials, such as asbestos, on said easement.

20. INDEMNIFICATION:

- A. To the extent allowed by law and as additional consideration herein, the Buyer agrees to indemnify and hold harmless the Seller and its assigns from any and all liability, loss or damages Seller may suffer as a result of claims, demands, costs, orders or judgments against it arising from the installation, operation, maintenance, testing, and construction of a water facility of any kind, water lines, power lines, measuring wells, monitoring wells, pumping wells, flow meter, injection wells, recharge wells, recharge basins, meters, etc. that are place in, on or under the above described real property or immediately adjacent property, whether owned by Seller or others.
- B. Buyer also agrees to return the real property to the condition as it existed at and before approval of this agreement. Including, but not limited to, any and all cost, expenses, or judgments that may arise as a result of any adverse environmental condition as a result of the installation, operation, maintenance, and removal of the water treatment facility, pipeline, poles, wells, meters, etc. that are in place in, on or under the above described real property or immediately adjacent property, whether owned by Seller or others.
- C. The agreements to indemnify specifically includes any claims, demands, cost, orders or judgments which might be made by any governmental agency or private party relating to pollution, contamination, or hazardous substances which might leach from the real property during the installation, construction, maintenance, and removal of said facility this excludes such substances which exist at the property before or at the time of the approval of this agreement and leach there from at a later date).

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- D. Seller shall notify Buyer of any claims made against it which are covered by this agreement within a reasonable time of the claims being made. Notice shall be made in writing and served upon the Clerk of the City of Wichita, Kansas.
- E. Upon receiving notice from the Seller of a claim covered by this agreement, the Buyer shall defend and indemnify the Seller from that claim, and Buyer shall bear all legal and other expenses in regard to the claim.
- F. If it is necessary for the Seller to enforce the indemnity provision of this agreement, the Seller, if successful, shall be entitled to collect from the Buyer all costs incurred in obtaining the enforcement, including reasonable attorney's fees.
- G. These provisions for indemnification shall inure to the benefit of any party which might obtain a consensual lien upon the property with the consent of the Seller. Seller benefits under this agreement shall automatically be transferred and assigned to any subsequent transferees of the property.
- H. Seller agrees to cooperate with Buyer in connection with any response to a claim covered by these indemnity provisions. Buyer shall be granted reasonable access to the property for the purpose of responding to such a claim, so long as such activity does not unreasonably interfere with Seller's use of the property.

- 21. Items numbered 2a, 2b,2c, 2d, 6, 13, 13.5, 14, 15, 16, 17, 18, 19, 20, 21, 22, as paragraphs of this Agreement shall survive the closing.
- 22. Buyer shall not assign its rights hereunder without the prior written consent of Seller, which consent shall not be unreasonably withheld.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

John F. Weber
 John F. Weber
509-52-8635
 S. S. # or Tax ID#
Michael J. Weber
 Michael J. Weber
514608100
 S. S. # or Tax ID#

Ileen L. Weber
 Ileen L. Weber
509-50-5258
 S. S.# or Tax ID#
Shirley A. Weber
 Shirley A. Weber
511-76-5019
 S. S.# or Tax ID#

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Edward J. Weber

Edward J. Weber
513-86-7258

S. S. # or Tax ID#

Tricia R. Weber

Tricia R. Weber
514-92-1901

S. S.# or Tax ID#

BUYER:

Carlos Mayans, Mayor

Approved as to Form:

Gary E. Rebenstorf, Director of Law

ATTEST:

Karen Sublett, City Clerk