

ORDINANCE NO. 2301

CITY OF WARRENVILLE
DU PAGE COUNTY, ILLINOIS

**ORDINANCE APPROVING STORMWATER DETENTION AND EMERGENCY
ACCESS EASEMENT AGREEMENT**

WHEREAS, by virtue of a referendum, the City of Warrenville, DuPage County, Illinois, is a home rule unit and may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Amoco Oil Research Corporation ("BP") is the owner of certain property in the City of Warrenville (the "BP Property"), which is legally described in the Stormwater Detention and Emergency Access Easement Agreement (the "Easement Agreement"), attached hereto and made a part hereof; and

WHEREAS, the Easement Agreement will allow the land area, which is adjacent to the BP Property, and which is intended for the future construction of a school (the "Benefited Property") to be enhanced; and

WHEREAS, the Mayor and City Council believe, and hereby declare, that it is in the City's best interests to enter into the Easement Agreement with BP in order to provide for the enhancement of the Benefited Property with respect to stormwater detention and secondary emergency access;

NOW, THEREFORE, PURSUANT TO ITS HOME RULE AUTHORITY, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: The foregoing recitals are hereby incorporated in this Section One as if said recitals were fully set forth herein.

SECTION TWO: The Easement Agreement shall be, and is hereby, approved and the Mayor and City Clerk are hereby authorized and directed to execute said Easement Agreement, as attached.

SECTION THREE: Any policy, resolution or ordinance of the City that conflicts with the provisions of this ordinance shall be and is hereby repealed to the extent of such conflict.

SECTION FOUR: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

PASSED THIS 19th day of June, 2006.

AYES: Ald. Bevier, Weidner, Schultz, Wiesbrock, Barry, Leonard, and McGuire

NAYS: None

ABSENT: Ald. Safford

APPROVED THIS 20th day of June, 2006.

Mayor

~~ATTEST~~

Emily J. Larson
City Clerk

105368W

PUBLISHED IN PAMPHLET FORM BY
AUTHORITY OF THE CITY COUNCIL
OF THE CITY OF WARRENVILLE,
DUPAGE COUNTY, ILLINOIS, THIS

20 DAY OF JUNE 2006

Emily J. Larson
CITY CLERK

6/19/06 REVISION

This instrument prepared by
and after recording return to:

Ivan P. Kane, Esq.
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606

**STORMWATER DETENTION AND EMERGENCY
ACCESS EASEMENT AGREEMENT**

This STORMWATER DETENTION AND EMERGENCY ACCESS EASEMENT AGREEMENT (this "Agreement") is made as of the 19th day of JUNE, 2006, by AMOCO RESEARCH OPERATING COMPANY, a Delaware corporation ("BP"), as the owner of the BP Property (defined hereinafter), and THE CITY OF WARRENVILLE, an Illinois municipal corporation ("Warrenville").

RECITALS

- A. BP is the owner of a certain parcel of real estate which is legally described on Exhibit A attached (hereinafter the "BP Property").
- B. Warrenville is assisting efforts to make a certain parcel of real estate which is legally described on Exhibit B attached (the "Benefited Property") available for construction of a school and related outdoor recreation improvements.
- C. The builder of a school on the Benefited Property will need to provide for stormwater detention for such school.
- D. The builder of a school on the Benefited Property may need to provide a secondary Emergency Access drive for such school.
- E. It is possible that at sometime in the future BP will construct buildings and other improvements on the BP Property (the "BP Improvements") at which time BP will need to provide for stormwater detention for the BP Improvements.
- F. The BP Property is south of and adjacent to the Benefited Property.
- G. The land area available for construction of a school on the Benefited Property would be enhanced if the Benefited Property were able to use a portion of the

BP Property for its stormwater detention needs and a secondary Emergency Access drive for such school could be constructed across the BP Property to Herrick Road.

H. BP and Warrenville have a longstanding relationship by reason of BP's role as a principal owner and occupant of the Cantera development in Warrenville.

I. BP and Warrenville both recognize and desire to achieve the economics and environmental benefits associated with designing, constructing and maintaining a unified regional stormwater detention system that manages the stormwater runoff from the BP Property and the Benefited Property.

J. Subject to the terms and conditions herein (including Section 5.14), BP is willing to donate easement rights for stormwater detention and secondary emergency access over a portion of the BP Property (i) in appreciation of BP's relationship with Warrenville, (ii) in support of the Warrenville and Wheaton communities which would benefit from use of the Benefited Property for a school and (iii) in order to allow for the stormwater detention requirements for the BP Property and the Benefited Property to be provided in a unified and environmentally sensitive system.

NOW THEREFORE, for TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

GRANT OF EASEMENTS

1.1 Stormwater Detention Easement in Favor of the Benefited Property. Subject to the conditions set forth in Section 5.14 below, BP hereby makes the following agreements. BP hereby establishes in favor of the owner of the Benefited Property, its employees, officers, contractors, guests, and invitees, as an easement appurtenant to the Benefited Property, a permanent non-exclusive easement (a) on, in, over, under, across and through that certain portion of the BP Property legally described on Exhibit C attached hereto and made a part hereof (the "Stormwater Detention Easement Area"), for the purpose of the construction, use, installation, maintenance, repair, operation and replacement if required, of a stormwater detention facility and appurtenant pipes and equipment and (b) under and across those certain portions of the BP Property also legally described on Exhibit C attached (the "Drainage Line Easement Areas") for the construction, use, installation, maintenance, repair, operation and replacement if required of stormwater drainage lines ("Drainage Lines") to convey stormwater to and from the Stormwater Detention Easement Area. BP shall have the right to connect to and use the Drainage Lines and any drainage lines installed in the Benefited Property adjacent to the common boundary of the BP Property and Benefited Property for conveyance of stormwater from the BP property, and otherwise to use and connect to the Stormwater Detention Easement Area for its stormwater drainage and any other use not inconsistent with the rights granted in this document. The Stormwater Detention Easement Area shall be constructed by Warrenville in accordance with Article 2 below to have a capacity not

less than 11.0 acre-feet. The Benefited Property shall be entitled to use no more than 5.6 acre-feet capacity of drainage in the Stormwater Detention Easement Area for the Benefited Property. BP shall be entitled to use all remaining capacity of drainage in the Stormwater Detention Easement Area being not less than 5.4 acre-feet for the BP Property. Notwithstanding the foregoing, BP reserves the right to modify the Stormwater Detention Easement Area to accommodate any additional capacity it needs beyond that reserved or made available to it under this Agreement. Any such modification must be approved by Warrenville pursuant to its usual permit process and shall be consistent with the spirit of this agreement. If a modification of the Stormwater Detention Easement Area by BP adds materially to Warrenville's costs of maintaining such area under Section 3.1, then BP will contribute equitably to such costs to the extent necessary to cover such increase in costs.

1.2 Emergency Access Agreement. Subject to the conditions set forth in 5.14 below, BP hereby makes the following agreements. BP hereby establishes in favor of the Owner of the Benefited Property, its employees, officers, contractors, guests and invitees, as an easement appurtenant to the Benefited Property, a permanent non-exclusive easement on, over, across and through that certain portion of the BP property legally described on Exhibit D attached hereto and made a part hereof (the "Emergency Access Easement Area") for the purpose of the construction, use, installation, maintenance, repair, operation and replacement, if required, of an emergency access road (the "Emergency Access Drive") to provide emergency ingress and egress between the Benefited Property and Herrick Road on the terms and conditions which follow. The Emergency Access Easement Area shall be improved by the City of Warrenville with paving not wider than 18 feet. The Emergency Access Drive shall be restricted to emergency vehicle use only and shall not be made available for daily passenger car use and access. This restriction shall be implemented by means of a gate, movable bollards, or other device approved by BP which would permit emergency vehicle usage but would block passage by non-emergency vehicles at both the Herrick Road curb cut and the boundary between the Benefited Property and the BP Property. This easement for an emergency access drive shall become null and void if an alternative secondary full or emergency access drive is provided to the Benefited Property. In such event Warrenville and the Owner of the Benefited Property (if different), shall enter into and record a release of the Emergency Access Drive easement created by this instrument. It is understood that if BP develops its property it may provide for alternate emergency access through the BP property for the benefit of the Benefited Property. The location of the alternative emergency access shall be subject to the approval of Warrenville and the owner of the Benefited Property (if different), provided that such approval shall not be unreasonably withheld if the alternate location provides substantially similar benefits. In addition, BP may use the Emergency Access Easement Area for emergency or permanent open access from Herrick Road for the benefit of the BP Property. However, if BP uses such Emergency Access Easement Area for permanent open access from Herrick Road to the BP Property, then notwithstanding Article 3 below, BP shall maintain the roadway in the Emergency Access Easement Area, but access thereto shall still be gated or otherwise restricted at the Benefited Property boundary as described above.

1.3 Preliminary Design and Location. The Stormwater Detention Easement Area, Drainage Line Easement Areas and Emergency Access Easement Area shall sometimes be collectively referred to herein as the "Easement Areas." The Easement Areas and certain other areas referred to in this Agreement are depicted on Exhibit F attached. It is understood that the Easement Areas described on Exhibits C and D and Approved Plans described on Exhibit E are preliminary and conceptual in nature, and may change as the improvements to be made to the Benefited Property are better defined and the design plans are further refined. Accordingly BP agrees not to unreasonably withhold consent to changes in the Easement Areas and Approved Plans so long as the Easement Areas remain substantially in the same portion of the BP Property as presently set forth in this Agreement and are not enlarged by more than 10% in the aggregate. If any changes in the Easement Areas result from any changes in the Approved Plans that are approved by BP, then the parties hereto and owner of the Benefited Property shall enter into an amendment of this Agreement to modify the Easement Areas encumbered by this Agreement.

1.4 Stormwater Development Design Techniques. Except as Warrenville and the owner of the BP Property may otherwise agree, all development that occurs on the BP Property and the Benefited Property that discharges stormwater runoff into the Stormwater Detention Easement Area shall make reasonable efforts to utilize "best practice" development design techniques to manage the volume and improve the quality of such stormwater discharge, which techniques may include but shall not necessarily be limited to, bioswales, natural plantings and other vegetated buffers, infiltration trenches, and level spreaders.

ARTICLE 2

CONSTRUCTION

2.1 Construction. Warrenville shall be obligated, at its sole cost and expense, to construct their improvements and facilities contemplated to be located in the Easement Areas in a good, workmanlike and lien-free manner. Prior to the commencement of any construction Warrenville shall submit the construction plans (including landscaping plans) for the Easement Areas to BP for approval, which approval shall not be reasonably withheld or delayed provided that the plans are consistent with the preliminary plans described on Exhibit E (the "Approved Plans"). Prior to the commencement of construction Warrenville shall also be responsible for obtaining a J.U.L.I.E. review. Once BP approves the Approved Plans and a J.U.L.I.E. review has been performed, Warrenville may commence construction substantially as provided in the Approved Plans, subject to any required governmental permits and applicable legal requirements. Warrenville shall be solely responsible for obtaining any required governmental permits and complying with all applicable legal requirements. In exercising the rights and privileges granted in this Agreement, Warrenville shall comply fully with the provisions of the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1, et. seq., as it may be amended or replaced with comparable provisions. In addition, Warrenville shall be responsible at its sole expense to comply with any governmental requirements applicable to the exercise of Warrenville's rights under this Agreement

pertaining to the wetlands which exist on the BP Property and to obtain any required permits with respect to such wetlands (the matters in this sentence are called the "Wetlands Matters"). The provisions of this Section 2.1 shall apply not only to initial construction, but also to any repair and maintenance work undertaken by Warrenville after the initial construction. Upon completion of construction of the Easement Areas, Warrenville shall obtain and deliver to BP, at its sole cost and expense, an "as-built" survey made by a surveyor mutually approved by the City and BP (each acting reasonably) which shall show all installations which have been made within the Easement Areas.

2.2 Other Construction Matters. All construction personnel and equipment for work on the Easement Areas shall enter and exit the work area from Herrick Road within the Emergency Access Easement Area or from the Benefited Property. The contractor performing the work shall be subject to BP's reasonable approval. All construction contracts for work shall contain "no lien" provisions regarding the BP Property. Warrenville shall commence the work by the Commencement Deadline set forth in Section 5.14 below and shall be obligated to complete the initial construction of the Easement Areas within six (6) months after commencing such work subject to force majeure and to reasonable extension into the next planting season for the purpose of landscape installation if such construction is otherwise completed at a time when weather conditions reasonably require deferral of landscaping installation (the "Completion Deadline"). Except for the existence of the new stormwater detention areas and landscaping thereon after construction, Warrenville shall restore the BP Property to the condition it was in immediately prior to such entry.

ARTICLE 3

REPAIR AND MAINTENANCE

3.1 Maintenance Responsibility. Warrenville shall be responsible for maintaining the Easement Areas at their sole expense. As used herein, such maintenance responsibility shall include causing the Easement Areas to be maintained, repaired and replaced in good condition and repair. Such maintenance responsibility includes both ordinary and capital repairs. Repair and maintenance of the Stormwater Detention Easement Area shall include, but not be limited to, mowing the lawn, maintaining any fencing, landscaping, trimming and pruning all bushes and trees, replacing dead or diseased vegetation, keeping the Stormwater Detention Area clear of debris and keeping any drainage inlets and outlets free of obstruction so that the Stormwater Detention Easement Area functions as designed. Repair and maintenance of the Drainage Lines shall include keeping the same structurally sound and unobstructed so as to function as intended. The Benefited Property shall not drain into the Stormwater Detention Easement Area any more than the volume of drainage set forth in Section 1.1 above nor any more than the rate of drainage set forth on the Approved Plans and shall not cause any hazardous materials or pollutants to be drained into the Drainage Lines or Stormwater Drainage Easement Area. Maintenance of the Emergency Access Drive shall include keeping the road bed in good repair and otherwise in a safe and slightly condition, maintaining the gates or other access control in a functional condition, and removal of

