

CITY OF LEROY
COUNTY OF MC LEAN
STATE OF ILLINOIS

ORDINANCE NO. 824

AN ORDINANCE APPROVING AN EASEMENT AGREEMENT BETWEEN LEROY FERTILIZER SERVICES, INC., AND THE CITY OF LEROY, ACCEPTING AN EASEMENT GRANTED BY LEROY FERTILIZER SERVICES, INC. TO THE CITY OF LEROY

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY THIS 7TH
DAY OF December 7 , 1998.

PRESENTED: December 7 , 1998

PASSED: December 7 , 1998

APPROVED: December 7 , 1998

RECORDED: December 7 , 1998

PUBLISHED: December 7 , 1998

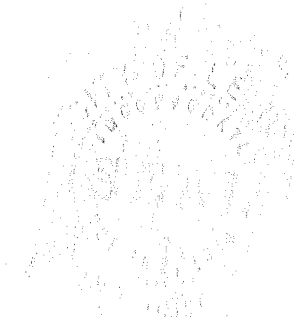
In Pamphlet Form

Voting "Aye" 5

Voting "Nay" 0

The undersigned being the duly qualified and acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned ordinance and that such ordinance was presented, passed, approved, recorded and published as above stated.

(SEAL)


Aue Marcum

City Clerk of the City of LeRoy,
McLean County, Illinois

Dated: December 7 , 1998.

ORDINANCE NO. 824

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WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, have determined that it is in the best interest of the City to obtain an easement across property owned by LeRoy Fertilizer Services, Inc., in order to construct an underground storm sewer line; and

WHEREAS, LeRoy Fertilizer Services, Inc., has signed a contract (a copy of which is set forth in Exhibit "A", attached hereto and incorporated by reference) proposing to grant such easement,

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of LeRoy, Illinois, in lawful meeting assembled, as follows:

SECTION 1. The contract between LeRoy Fertilizer Services, Inc., and the City of LeRoy, a copy of which is set forth in Exhibit "A", attached hereto and incorporated herein by reference, is hereby approved.

(See Exhibit A attached hereto and incorporated herein by reference).

SECTION 2. The Mayor and City Clerk are hereby directed and authorized to sign the original and as many copies as appropriate of that agreement as set forth in Exhibit "A" attached hereto, being certain to obtain one or more fully signed copies for the records of the City.

SECTION 3. This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by
Dick Oliver, seconded by Ron Litherland

_____, by roll call vote on the 7th day of December, 1998, as follows:

Aldermen elected 6

Aldermen present 5

VOTING AYE:

Ryan Miles, Dawn Thompson, W.H. Weber, Ron Litherland, Dick Oliver.

(full names)

VOTING NAY:

None

(full names)

ABSENT:

Dave McClelland, absent

(full names)

ABSTAIN:

none

(full names)

OTHER:

(full names)

and deposited and filed in the office of the acting City Clerk in said municipality on the 7th day of December, 1998.

X Sue Marcum

Sue Marcum, City Clerk of the City of LeRoy,
McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 7th day of

December, 1998.

X Robert Rice

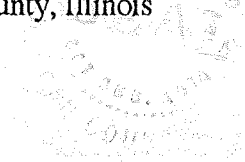
Robert Rice, Mayor of the City of LeRoy,
McLean County, Illinois

ATTEST:

(SEAL)

X Sue Marcum

Sue Marcum, City Clerk, City of LeRoy,
McLean County, Illinois



Mail to: Hunt Henderson, Attorney
for the City of LeRoy
112 East Center Street
LeRoy, Illinois 61752

EASEMENT

THE GRANTOR, LeRoy Fertilizer Services, Inc., of 210 North Buck Street, P.O. Box 116 , in the City of LeRoy , County of McLean, and State of Illinois (hereinafter referred to as "GRANTOR"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, does hereby convey to the City of LeRoy , McLean County, Illinois, an Illinois municipal corporation (hereinafter referred to as "CITY"), an Exclusive Permanent Easement and Grant of Right-Of-Way across the following described premises:

The South 18 feet of the platted right-of-way of Cherry Street between the west right-of-way of Buck Street and the east right-of-way line of Allen Street, all in the City of LeRoy, McLean County, Illinois (no PIN available); and

a temporary working easement, said easement to be in effect only until July 1, 1999, across the following described premises:

a strip of land 10 feet in width lying immediately South of the previously described Exclusive Permanent Easement and Grant of Right-Of-Way, all in Block 42 of Conkling's Addition to the City of LeRoy, McLean County, Illinois (PIN: parts of [Bk 15] 30-20-431-001; 30-20-431-003; 30-20-431-004; 30-20-431-005; 30-20-431-006; and 30-20-432-014),

the aforesaid temporary working easement shall be deemed automatically extinguished effective July 1, 1999.

The easement granted herein shall be for the limited purposes of constructing, reconstructing, replacing, maintaining, and keeping in repair one or more subsurface storm sewer drains or lines across and under the previously-described permanent right-of-way, and the use of the temporary working easement area, as previously described herein, for purposes of constructing, reconstructing, replacing, maintaining and keeping in repair other subsurface utility lines across the previously-described permanent right-of-way, as well as constructing, reconstructing, replacing, maintaining, and keeping in repair one or more subsurface storm sewer lines across and under the previously-described permanent right-of-way and in connection

EXHIBIT "A"

therewith, using the aforescribed temporary working easement during the period of construction, reconstruction, and keeping in repair until July 1, 1999. The subject premises shall not be available for public use as a travelway, roadway, or other means of ingress or egress to any other property, other than to the extent the same (that portion described as the exclusive permanent easement way) is designated as a platted city street in the City of LeRoy, but rather shall be used for the purposes of constructing, reconstructing, replacing, maintaining, and keeping in repair, one or more subsurface storm sewer lines or other subsurface utility lines across and under the premises previously described herein. The City of LeRoy, its agents, employees and assignees shall have the right from time to time to enter and depart over and upon the above-described premises to effect the purposes of the easements herein granted. The City of LeRoy, through its appropriate agents and officials, shall further have the right from time to time to grant rights to public utility entities and quasi-public utility entities, including electrical, natural gas, water, sewer, telephone, other telecommunications, and cable television companies and entities, to place underground utility lines in the exclusive permanent easement way and right-of-way previously described herein, and to grant such entities, and their agents, employees and assignees, the right to enter and depart over and upon the above-described premises from time to time to effect the purposes of the rights granted herein.

In consideration of the conveyance by GRANTOR, CITY agrees as follows:

1. Upon completion of any construction, reconstruction, maintenance, or repair of the subsurface storm sewer line(s), as provided previously herein, or upon completion of any construction, reconstruction, maintenance, or repair of any other subsurface utility line, CITY, or CITY's assignee, shall restore the premises previously described herein to that condition as such premises existed prior to the aforesaid construction, reconstruction, maintenance, or repair of the subsurface storm sewer line or other subsurface utility line, as nearly as may be reasonably possible, in keeping with good engineering practices and accepted soil erosion control practices.
2. From time to time, should CITY make further improvements in any subsurface utility line or subsurface storm sewer line, or install one or more additional subsurface storm sewer lines or other utility lines, CITY shall restore the premises described above to the condition as the same existed prior to said construction as nearly as may be reasonably possible, in keeping with good engineering practices and accepted soil erosion control practices.
3. CITY shall cause any entity or persons to whom CITY shall grant rights as provided herein for placement of underground utility lines to restore the premises previously described herein to that condition as such premises existed prior to any construction, reconstruction, maintenance, repair or deepening of any underground utility line, as nearly as may be reasonably possible, in keeping with good engineering practices and excepted soil erosion control practices.
4. GRANTOR shall have the right to use the premises located within the easement description for purposes not inconsistent with CITY's full enjoyment of the rights hereby granted, including those rights that CITY may grant to other entities as aforesaid, provided that GRANTOR shall not erect or construct any building or other structure, or drill or operate any well, or construct any other obstruction within the easement way.

5. Any and all costs and expenses with regard to the aforesaid easement and use of the same by CITY, including, but not limited to, construction, reconstruction, operation and maintenance, in good repair, of the subsurface storm sewer line(s) or any other subsurface utility line(s) shall be the duty and obligation of CITY (or CITY's assignee as to any subsurface utility line not maintained by CITY) and CITY (or CITY's assignee) shall repair any damage caused by it to GRANTOR's premises, and shall save and hold harmless and indemnify GRANTOR from any and all liability which may be incurred by GRANTOR by reason of the construction, reconstruction, maintenance, in good repair, or operation, of said subsurface storm sewer line(s) (or other subsurface utility line(s)) installed by or operated by CITY, or CITY's assignee, and that may be incurred by GRANTOR by reason of CITY's exercise of its right to enter and depart upon the described easement way as previously set forth herein. Any and all costs in regard to any future improvements or reconstruction of any subsurface storm sewer line or utility line installed or operated by CITY either existing or to be constructed in the future, including, but not limited to, construction, reconstruction, operation and maintenance of said subsurface storm sewer line or other subsurface utility line(s) installed by or operated by CITY (or by CITY's assignee), shall be the duty and obligation of CITY. Further, should CITY grant any rights to any entities as previously granted herein for the placement of underground utility lines of any sort, as previously described herein, CITY shall cause the assignee or grantee of any such rights to repair any damage caused by it to GRANTOR's premises, and shall cause said entity to save and hold harmless and indemnify CITY and GRANTOR from any and all liability which may be incurred by GRANTOR by reason of construction, reconstruction, maintenance, in good repair, or operation of any said underground utility line or improvement as well as for any future such improvements or reconstruction.

6. CITY agrees, upon the completion of any construction, reconstruction, or maintenance work conducted by it on or in the easement way to reseed the stand of grass in the easement way, to the extent of any grassy area damaged, and to follow up the reseeding, as may be necessary, to water and fertilize the seed bed in order to re-establish the grassy area in a condition the same as or better than it existed prior to the damage to the grassy area by CITY or its agents, employees, or contractors.

7. By executing this instrument, GRANTOR makes no representation or warranty, and CITY acknowledges that no representation or warranty has been made to it by GRANTOR or anyone on GRANTOR's behalf, that GRANTOR is the owner in fee simple, or in any other manner, of all of the real estate across which the grant of easement herein is described. GRANTOR represents to CITY that GRANTOR has possessed all of said real estate not described as a platted right-of-way, and as to the area designated across a platted right-of-way, GRANTOR has used said area for GRANTOR's benefit. CITY shall consider GRANTOR's conveyance of the easement ways described herein to be in the nature of a "quitclaim" conveyance rather than a conveyance by warranty.

8. The parties hereto agree that CITY, its agents, employees and contractors, from time to time, may place temporary stakes and markers within the easement way in order to facilitate construction, reconstruction, or repair work. Further, that GRANTOR shall not place any fencing along the sides, on either end, or within the easement way, without CITY's consent.

9. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, tenants, personal representatives, and successors in interest, of the parties hereto.

10. The rule of strict construction shall not apply to this grant of easement. This grant shall be given a reasonable construction so that the intention of the parties to confer a usable right in grantee (CITY) is carried out.

11. This written agreement contains the sole and entire agreement between the parties, and supersedes any and all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this agreement or any representations inducing the execution and delivery of this agreement except such representations as are specifically set forth herein, and each party acknowledges that he, she, or it has relied on his, her, or its own judgment in entering into this agreement. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with his, her or its dealings with the other.

12. No waiver or modification of this agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth.

13 This agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of Illinois.

14. Should either party, or the respective heirs, executors, administrators, assigns or successors in interest of either party, to this agreement, be required to incur attorney fees, costs, and/or other expenses as a result of the other party's failure to perform any obligation pursuant to the terms of this agreement, then the party so failing to perform shall be liable to the other party for any reasonable attorney fees, costs, and expenses incurred by such other party. Should either party to this agreement, or the respective heirs, executors, administrators, assigns or successors in interest of either party, fail to reimburse the other party for such reasonable attorney fees, costs, and other expenses, as aforesaid, then said amount may be obtained or collected by the party to whom it is due by bringing an action against the other party for such fees, costs and expenses incurred as a result of the first party's failure to perform.

15. It is expressly understood and agreed between the parties to this agreement that in the event a court of competent jurisdiction shall at any time after the date of this agreement hold that a portion of this agreement is invalid, illegal or unenforceable, that the remainder shall not be affected thereby, but shall continue in full force and effect.

16. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

17. Whenever the context of this agreement requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural.

18. This agreement shall be binding upon and inure to the benefit of the respective parties, their respective heirs, executors, administrators, assigns and successors in interest.

19. This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same agreement.

20. Service of all notices under this agreement shall be sufficient if given personally or mailed via certified mail to the party involved at its respective address as previously set forth in this agreement, or at such other address as such party may provide in writing from time to time in accordance with this section regarding notices. Any such notice mailed to such address shall be

effective when deposited in the United States mail, duly addressed and with first-class postage prepaid.

IN WITNESS WHEREOF, GRANTOR has caused its proper corporate officers to set their hand(s) and affix GRANTOR's corporate seal and CITY has caused its proper corporate officers to set their hands and affix the seal of the City to this agreement this 7th day of December, 1998.

LEROY FERTILIZER SERVICES, INC.,
a Delaware corporation, licensed to do business
in Illinois,

CITY OF LEROY, McLean County, Illinois,
an Illinois municipal corporation,

By: _____
James Allen, President

By: Robert Rice
Robert Rice, Mayor of the City of LeRoy,
McLean County, Illinois

[SEAL]

[SEAL]

ATTEST:

ATTEST:

Dennis Myers, Secretary

Sue Marcum, City Clerk of the City of
LeRoy, McLean County, Illinois

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, the undersigned, a Notary Public in and for said county and state aforesaid, DO HEREBY CERTIFY that Robert Rice, personally known to me to be the Mayor of the City of LeRoy, and Sue Marcum, personally known to me to be the City Clerk of said city, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such mayor and city clerk, they signed and delivered said instrument of writing as mayor and as city clerk of said city, and caused the seal of the City of LeRoy to be affixed thereto pursuant to authority given by the City Council of said city as a free and voluntary act, and as the free and voluntary act and agreement of the City of LeRoy, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, 1998.

Notary Public

My Commission expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, the undersigned, a Notary Public in and for said county and state aforesaid, DO HEREBY CERTIFY that James Allen, personally known to me to be the President of the corporation that is the Grantor, and Dennis Myers, personally known to me to be the Secretary of the corporation, that is the Grantor, both of whom are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as president and secretary of LeRoy Fertilizer Services, Inc., they signed, sealed and delivered the said instrument as president and secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, 1998.

.....
Notary Public

My Commission expires:

This instrument prepared by:
Hunt Henderson, Attorney at Law #01186256
112 East Center Street, LeRoy, Illinois 61752
Telph: (309) 962-2791
Fax: (309) 962-6212

CERTIFICATE

I, Sue Marcum, certify that I am the duly appointed and acting municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on December 7, 1998, the Corporate Authorities of such municipality passed and approved Ordinance No. 824, entitled:

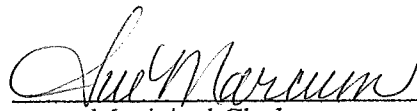
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which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 824, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on December 7, 1998, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 7th day of December, 1998

(SEAL)



Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

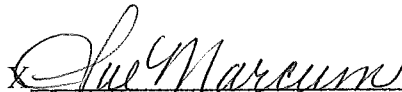
I, Sue Marcum, do hereby certify that I am the duly qualified and acting City Clerk of the City of LeRoy, McLean County, Illinois, and as such acting City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

AN ORDINANCE APPROVING AN EASEMENT AGREEMENT BETWEEN LEROY FERTILIZER SERVICES, INC., AND THE CITY OF LEROY, ACCEPTING AN EASEMENT GRANTED BY LEROY FERTILIZER SERVICES, INC. TO THE CITY OF LEROY

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 7th day of December, 1998, and prior to the making of this certificate the said ordinance was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said ordinance in the record books.

Dated this 7th day of December, 1998.



City Clerk

(SEAL)