

MAR - 6 2017

**ORDINANCE NO. 3313**

**AN ORDINANCE TO AUTHORIZE THE MAYOR OF THE CITY OF  
COLUMBIA, ILLINOIS TO EXECUTE A SECOND AMENDMENT TO  
AN AGREEMENT WITH THE EQUITY TRUST COMPANY  
CUSTODIAN FBO BRIAN PENDLETON IRA, AND THE EQUITY  
TRUST COMPANY CUSTODIAN FBO DAVID WITTENAUER IRA TO  
SUPPORT COOPERATIVE EFFORT TO RECLAIM THE FORMER  
VIDEO EXCHANGE SITE IN THE CITY OF COLUMBIA, ILLINOIS**

*Stacy Haff*  
City Clerk

WHEREAS, in 1996 the City of Columbia, Illinois ("City") formed the Admiral Parkway Redevelopment Area ("Area") to address blight, especially chronic flooding, in the property adjacent to Illinois Route 3; and

WHEREAS, flooding has negatively impacted the commercial property at 1019 Valmeyer Road in Columbia, Illinois ("Site") formerly developed as the Video Exchange and now owned jointly by the Equity Trust Company Custodian fbo Brian Pendleton IRA ("Pendleton IRA") and the Equity Trust Company Custodian fbo David R. Wittenauer IRA ("Wittenauer IRA") so as to prevent current use or redevelopment of the parcel; and

WHEREAS, in 2012 the City adopted a master plan for the Admiral Trost Subdivision Park ("Park Plan") that envisioned wetlands restoration as a central part of future development of that property, as well as providing some additional retention for stormwater; and

WHEREAS, as part of the aforementioned Park Plan, removal of dirt is anticipated from the Area which may either be used at other site(s) in the floodplain or disposed of at other site(s) outside the flood plain at a more significant cost; and

WHEREAS, the City, the Pendleton IRA and the Wittenauer IRA agreed that it was necessary and desirable to coordinate efforts to pursue implementation of the Park Plan, reduce flooding in the Area and help to reclaim the Site, as set forth in an Agreement ("Agreement") approved by the City Council under Ordinance 3162 on February 2, 2015; and

WHEREAS, due to conditions outside the control of the City, the Pendleton IRA or the Wittenauer IRA, the tentative schedule set forth in the Agreement was amended by the City Council under Ordinance 3243 on February 16, 2016; and

WHEREAS, as a result of proposed revisions to the effective flood maps by the Federal Emergency Management Agency ("FEMA"), the Pendleton IRA and the Wittenauer IRA are unable to secure a Conditional Letter of Map Revision Based on Fill from FEMA; and

WHEREAS, the Pendleton IRA and the Wittenauer IRA have obtained Permit No. DS2016077 from the Illinois Department of Natural Resources ("IDNR") authorizing the

excavation of material within the Carr Creek floodway and the placement of fill material within the Wilson Creek floodway for the purpose of preparing the Site for future commercial development (“Project”); and

WHEREAS, IDNR, through the issuance of Permit No. DS2016077, has determined that the Project will have no appreciable impact on the conveyance of flood flows nor result in a storage loss within either waterway; and,

WHEREAS, the City desires to further amend the Agreement by removing the requirement of the Pendleton IRA and the Wittenauer IRA to secure a Conditional Letter of Map Revision Based on Fill and Letter of Map Amendment Based on Fill.

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.** The City Council of the City of Columbia, Illinois, does hereby authorize a Second Amendment to the Agreement with the Pendleton IRA and the Wittenauer IRA as set out in the attached document (Exhibit “A”), and does further authorize and direct the Mayor to execute and deliver this Second Amendment to the Agreement, in the form attached hereto, evidencing such an agreement with the aforementioned parties, which Agreement is hereby approved as to form, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

**Section 3.** IDNR Permit No. DS2016077 is attached as Exhibit “B”.

**Section 4.** This Ordinance shall be in full force and effect from and after its passage, as provided by law.

YEAS: Aldermen Ebersohl, Agne, Roessler, Huch, Reis, Holtkamp and Martens.

NAYS: None.

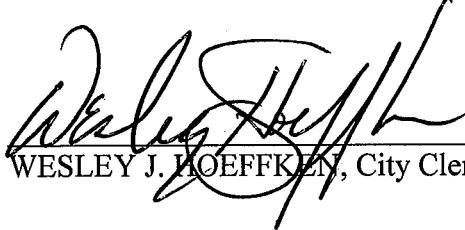
ABSENT: Alderman Niemietz.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor, this 6th day of March, 2017.

  
\_\_\_\_\_  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

  
\_\_\_\_\_  
WESLEY J. HOEFFKEN, City Clerk

(SEAL)

## **Exhibit “A”**

### **Second Amendment to the Agreement with the Pendleton IRA and the Wittenauer IRA**

**SECOND AMENDMENT  
to  
MEMORANDUM OF UNDERSTANDING  
between the  
CITY OF COLUMBIA  
the  
EQUITY TRUST COMPANY CUSTODIAN FBO BRIAN PENDLETON IRA  
and the  
EQUITY TRUST COMPANY CUSTODIAN FBO DAVID R. WITTENAUER IRA**

This Second Amendment to the Memorandum of Understanding ("MOU") adopted pursuant to Ordinance 3162 on February 2, 2015, and Ordinance 3243 on February 16, 2016, is made and entered into as of March 6, 2017 ("Effective Date") by and between the following: the Equity Trust Company Custodian fbo Brian Pendleton IRA (hereinafter, "Pendleton IRA"); the Equity Trust Company Custodian fbo David R. Wittenauer IRA (hereinafter, "Wittenauer IRA"); and the City of Columbia, an Illinois municipal corporation (hereinafter, "the City").

WHEREAS, flooding has negatively impacted the commercial property at 1019 Valmeyer Rd. in Columbia, Illinois (hereinafter "the Redevelopment Site"), formerly developed as the Video Exchange and now owned jointly by the Pendleton IRA and the Wittenauer IRA, so as to prevent current use or redevelopment of the parcel; and

WHEREAS, the Pendleton IRA and the Wittenauer IRA jointly own, and wish to jointly develop, the Redevelopment Site, which is nearby and which requires infill dirt to raise the building envelop above the floodplain; and

WHEREAS, Section 12 of the MOU allows that the schedule set out in Section 4 may be amended with the agreement of all parties without modifying the MOU.

THEREFORE, in consideration of common goals that may only be achieved through cooperation, the City, the Pendleton IRA and Wittenauer IRA agree to amend Section 4 of the aforementioned MOU as follows:

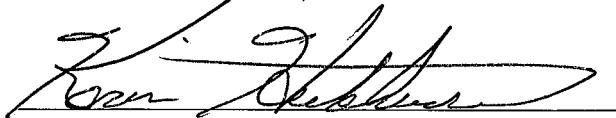
1. The City will secure a 404 permit from the Army Corps of Engineers within twelve (12) months of the date of execution of this MOU;
2. The City will install a larger culvert under Valmeyer Rd within twenty one (21) months of the date of execution of this MOU;
3. The City will initiate, complete and adopt a detailed master plan for development of the Park Site that will provide guidance for excavation of the proposed infill dirt within twenty one (21) months of the date of execution of this MOU;
4. The Pendleton IRA and the Wittenauer IRA will secure the conditional 404 permit needed to cover dirt excavation from the Park Site in the floodway within twenty one (21) months of the date of execution of this MOU;
5. The Pendleton IRA and the Wittenauer IRA will remove the structure (the former Video Exchange) and pavement from Redevelopment Site within twenty seven (27) months following the execution of this MOU (albeit this action will need to be coordinated with the action in 6, below);
6. The Pendleton IRA and the Wittenauer IRA will excavate and remove infill dirt from the Park Site to the Redevelopment Site so as to raise the entire parcel within twenty seven (27)

months following the execution of this MOU (this action will need to be coordinated with the action in 5, above); and

7. The Pendleton IRA and the Wittenauer IRA will obtain a certificate of elevation reflecting that the lowest finish floor elevation is a minimum of one foot above the 100 year flood elevation as determined by the adopted flood insurance rate maps within 33 months following the execution of this MOU.

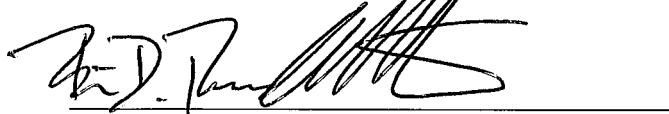
As evidenced by their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CITY OF COLUMBIA, ILLINOIS



Honorable Kevin B. Hutchinson, Mayor

EQUITY TRUST COMPANY CUSTODIAN FBO BRIAN PENDLETON IRA  
50% UNDIVIDED INTEREST



Brian D. Pendleton, IRA Account Holder

EQUITY TRUST COMPANY CUSTODIAN FBO DAVID R. WITTENAUER IRA  
50% UNDIVIDED INTEREST



David R. Wittenauer, IRA Account Holder

**Exhibit “B”**

**IDNR Permit No. DS2016077**



# Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271  
[www.dnr.illinois.gov](http://www.dnr.illinois.gov)

Bruce Rauner, Governor

Wayne A. Rosenthal, Director

November 22, 2016

**SUBJECT:** Permit No. DS2016077  
Equity Trust Co – Future Commercial Development  
Excavate and Fill  
Carr Creek and Wilson Creek Floodways  
City of Columbia, Monroe County

Equity Trust Company  
400 East Monroe Avenue  
Kirkwood, MO 63122

City of Columbia  
P.O. Box 467  
Columbia, IL 62236

Gentlemen:

Enclosed is Illinois Department of Natural Resources, Office of Water Resources (IDNR/OWR) Permit No. DS2016077 authorizing the excavation of material within the Carr Creek floodway and the placement of fill material within the Wilson Creek floodway for the purpose of preparing the project site for future commercial development. The issuance of this permit is based on our determination that the project will have no appreciable impact on the conveyance of flood flows nor result in a storage loss within either waterway. As such, the project complies with our Part 3700 Floodway Construction rules. This permit does not supersede any other federal, state or local authorizations that may be required for the project.

Please be advised that the issuance of this permit does not constitute IDNR/OWR approval of the revised floodway and floodplain boundaries as depicted on the approved plans. More detailed analysis will be necessary to enable this office to provide our concurrence with any map revision.

If any changes of the permitted work are found necessary, revised plans should be submitted promptly to this office for review and approval. Also, this permit expires on the date indicated in Condition (13). If not completed by that date, the permittee may make a written request for a time extension.

Equity Trust Company  
City of Columbia  
Page 2

Please feel free to contact Mark McCauley of my staff at 217/524-1047 if you have any questions concerning this authorization.

Sincerely,



Michael L. Diedrichsen, P.E.  
Acting Manager, Downstate Regulatory Programs

MLD:MLM:cjp

Enclosure

cc: The Clayton Engineering Co., Inc. (Greg Staley)  
IL State Water Survey (Brian Chaille)  
FEMA, Region 5 (Case #15-05-7010R)  
IDNR/OWR (Liana Winsauer)



**PERMIT NO. DS2016077**  
**DATE: November 22, 2016**

**State of Illinois**  
**Department of Natural Resources, Office of Water Resources**

**Permission is hereby granted to:**

**EQUITY TRUST COMPANY  
400 EAST MONROE AVENUE  
KIRKWOOD, MO 63122**

**CITY OF COLUMBIA  
P.O. BOX 467  
COLUMBIA, IL 62236**

**to excavate within the Carr Creek floodway and fill within the Wilson Creek floodway in southeast 1/4 Section 17, Township 1 South, Range 10 West of the 3<sup>RD</sup> Principal Meridian in Monroe County,**

**in accordance with an application dated February 2, 2016, and the plans and specifications entitled:**

**EXHIBIT OF OVERALL CLOMR FLOOD STUDY AREA  
(Fig. 5, dated 7/9/2015, received 7/7/2016);  
CLOMR FLOOD STUDY PLAN, PROJECT SITE AREA  
OFFSITE BORROW AREA, WILSON CREEK AREA  
(Fig. 6, 7 and 8, dated 7/9/2015, received 7/7/2016); and  
TOPOGRAPHIC SURVEY  
(Fig. 11a, dated 6/30/2016, received 7/7/2016).**

**Examined and Recommended:**

A handwritten signature of Michael L. Diedrichsen.

**Michael L. Diedrichsen, Acting Manager  
Downstate Regulatory Programs**

**Approval Recommended:**

A handwritten signature of Daniel A. Injerd.

**Daniel A. Injerd, Director  
Office of Water Resources**

**Approved:**

A handwritten signature of Wayne A. Rosenthal.

**Wayne A. Rosenthal, Director  
Department of Natural Resources**

**THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) This permit is granted in accordance with the Rivers, Lakes and Streams Act "615 ILCS 5."
- 2) This permit does not convey title to the permittee or recognize title of the permittee to any submerged or other lands, and furthermore, does not convey, lease or provide any right or rights of occupancy or use of the public or private property on which the activity or any part thereof will be located, or otherwise grant to the permittee any right or interest in or to the property, whether the property is owned or possessed by the State of Illinois or by any private or public party or parties.
- 3) This permit does not release the permittee from liability for damage to persons or property resulting from the work covered by this permit, and does not authorize any injury to private property or invasion of private rights.
- 4) This permit does not relieve the permittee of the responsibility to obtain other federal, state or local authorizations required for the construction of the permitted activity; and if the permittee is required by law to obtain approvals from any federal or other state agency to do the work, this permit is not effective until the federal and state approvals are obtained. If construction does not begin within two years of the date of this permit, the permittee must submit the project to EcoCAT (<http://dnr.Illinois.gov/EcoPublic/>) for an updated consultation under the Illinois Endangered Species Protection Act and the Illinois Natural Areas Preservation Act.
- 5) The permittee shall, at the permittee's own expense, remove all temporary piling, cofferdams, false work, and material incidental to the construction of the project. If the permittee fails to remove such structures or materials, the Department may have removal made at the expense of the permittee.
- 6) In public waters, if future need for public navigation or other public interest by the state or federal government necessitates changes in any part of the structure or structures, such changes shall be made by and at the expense of the permittee or the permittee's successors as required by the Department or other properly constituted agency, within sixty (60) days from receipt of written notice of the necessity from the Department or other agency, unless a longer period of time is specifically authorized.
- 7) The execution and details of the work authorized shall be subject to the review and approval of the Department. Department personnel shall have the right of access to accomplish this purpose.
- 8) Starting work on the activity authorized will be considered full acceptance by the permittee of the terms and conditions of the permit.
- 9) The Department in issuing this permit has relied upon the statements and representations made by the permittee; if any substantive statement or representation made by the permittee is found to be false, this permit will be revoked; and when revoked, all rights of the permittee under the permit are voided.
- 10) In public waters, the permittee and the permittee's successors shall make no claim whatsoever to any interest in any accretions caused by the activity.
- 11) In issuing this permit, the Department does not ensure the adequacy of the design or structural strength of the structure or improvement.
- 12) Noncompliance with the conditions of this permit will be considered grounds for revocation.
- 13) If the construction activity permitted is not completed on or before December 31, 2019 this permit shall cease and be null and void.