

BILL NO. 2630

ORDINANCE NO. 2445

AN ORDINANCE APPROVING THE SETTLEMENT OF THE LITIGATION BETWEEN THE CITY OF CHESTERFIELD, PUBLIC WATER DISTRICT NO. 2 OF ST. CHARLES COUNTY, JACOBS CIVIL, INC., J.H. BERRA ENGINEERING AND SURVEYING COMPANY, INC. AND KARSTEN EQUIPMENT COMPANY

WHEREAS, the City of Chesterfield filed suit against Public Water District No. 2 and other defendants on February 17, 2006, claiming that the construction of a water transmission line by the defendants in the City was a public nuisance and the design and construction of the water line was negligent. The City claimed that water transmission line, as constructed blocked a portion of a City drainage ditch that lead to a City pump station in Chesterfield Valley. An amended petition was also filed the by the City claiming that the City was a third party beneficiary of the contracts between the defendants that called for the design and construct of the water lines; and

WHEREAS, the City, Public Water Supply District No. of St. Charles County, Jacobs Civil Inc., J.H. Berra Engineering and Surveying Company, Inc. and Karsten Equipment Company are now desirous of settling and resolving this dispute; and

WHEREAS, The City Council of Chesterfield, Missouri, after careful consideration of the matter and through discussion with the City's attorney, authorized the City Administrator of Chesterfield to enter into a Settlement Agreement similar in form to that attached;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Administrator is hereby authorized to sign the Settlement Agreement in a form substantially similar as that attached.

Section 2. The City Administrator, City Attorney and Director of Planning are authorized to perform on behalf of the City all obligations required of the City.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 19th day of March, 2008.


MAYOR



ATTEST:

CITY CLERK

FIRST READING HELD: 3/19/08

MUTUAL RELEASE OF ALL CLAIMS

WHEREAS, the City of Chesterfield ("City") is a third class city and political subdivision of the State of Missouri located in St. Louis County which is the official flood plan administrator for Chesterfield Valley, 4,300 acres of nearly flat land that is protected from flooding by a levy system and interior storm water drainage system; and

WHEREAS, Public Water District No. 2 of St. Charles County ("Water District") is a political corporation of the State of Missouri, organized, existing and in good standing in the State of Missouri pursuant to Chapter 247 RSMo (2002), which owns and operates a water transmission line ("Water Line") located, in part, in Chesterfield Valley; and

WHEREAS The Water Line was designed by Jacobs Civil, Inc., d/b/a Sverdrup Civil, Inc. ("Jacobs"), with certain surveying services provided by J. H. Berra Engineering and Surveying Company, Inc., d/b/a The Sterling Company ("JH Berra") and construction of the Water Line was performed by Karsten Equipment Company ("Karsten") (Water District, Jacobs, Karsten and JH Berra are hereafter collectively referred to as "Defendants"); and

WHEREAS, a dispute has arisen between and among City, Water District, Jacobs, Karsten and JH Berra concerning the location of the Water Line; and

WHEREAS, City has filed a lawsuit in the Circuit Court of the County of St. Louis, styled State of Missouri ex rel. City of Chesterfield v. Public Water District No. 2 of St. Charles County, Missouri, et al., Cause No. 06CC-000698 seeking injunctive relief and present and future damages allegedly resulting from the location and elevation of the Water Line ("Lawsuit"); and

WHEREAS, Defendants have denied and continue to deny any liability for the allegations and claims asserted in the Lawsuit; and

WHEREAS, City and Defendants desire to effect a good faith settlement of City's claims and to extinguish all liability among Defendants for any cross claims arising from the matters at issue in the Lawsuit.

NOW, THEREFORE, in consideration of the following mutual covenants and agreements and in order to effectuate this agreement it is hereby mutually agreed by and among Plaintiff and Defendants as follows:

1. Water District, Jacobs, Karsten and JH Berra each agree to pay to City the sum of Five Thousand Five Hundred Dollars (\$5,500.00) for total payment of Twenty-Two Thousand Dollars (\$22,000.00), receipt of which is hereby acknowledged.
2. City and Defendants agree that reference herein to Water District, Jacobs, Karsten or JH Berra includes that entity's affiliates, predecessors, successors, assigns, insurers, officers, directors, employees and agents.
3. City hereby releases and discharges Water District, Jacobs, Karsten and JH Berra from any and all actions, claims and demands whatsoever that may now exist or may hereinafter accrue in the future against Water District, Jacobs, Karsten or JH Berra for property damage, economic loss, nuisance or other injuries and damages that have been pled, or could have been pled, in the Lawsuit, and agrees to dismiss the Lawsuit with prejudice.
4. Water District, Jacobs, Karsten and JH Berra each agree to release the other from any claims they may have for contribution and indemnity, both contractual and non-contractual, arising from the matters at issue in the Lawsuit, and to dismiss any pending cross claims with prejudice.
5. City, Water District, Karsten, Jacobs and JH Berra agree that upon dismissal of the Lawsuit all parties will bear their own costs.
6. City and Water District agree to cooperate and coordinate to the extent required by Missouri law in any future relocation of the Water Line necessitated by public improvements in Chesterfield Valley.
7. It is understood that this agreement is conditioned upon its execution by City and all Defendants.

CITY OF CHESTERFIELD, MISSOURI

Date: _____

By: _____

MICHAEL G. HERRING,
City Administrator,
City of Chesterfield, Missouri

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2008, before me personally appeared Michael G. Herring, known to me to be the City Administrator of the City of Chesterfield, who executed this Mutual Release of All Claims on behalf of the City of Chesterfield, Missouri pursuant to Ordinance No. ____ authorizing him to sign this Mutual Release of All Claims for and on behalf of the City of Chesterfield, Missouri and acknowledged that he fully understood the contents of the Mutual Release of All Claims, freely executed the same for the sole consideration therein expressed, and executed the same based upon the advice of the attorney for the City of Chesterfield, Missouri and the authority granted to him by Missouri law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed any official seal the day and year first above written.

Notary Public

My Commission Expires:

PUBLIC WATER SUPPLY DISTRICT
NO. 2 OF ST. CHARLES COUNTY

Date: _____

By: _____

Title: _____

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2008, before me personally appeared _____ of the Public Water Supply District No. 2 of St. Charles County, known to me to be the individual who executed this Mutual Release of All Claims for and on behalf of the Public Water Supply District No. 2 of St. Charles County pursuant to authority granted to him by the Public Water Supply District No. 2 of St. Charles County and acknowledged that he fully understood the contents of this Release, freely executed the same for the sole consideration therein expressed, and upon the advice of the attorney for the Public Water Supply District No. 2 of St. Charles County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed any official seal the day and year first above written.

Notary Public

My Commission Expires:

JACOBS CIVIL, INC. d/b/a SVERDRUP CIVIL, INC.

Date: _____

By: _____

Title: _____

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2008, before me personally appeared _____, known to me to be the _____ of Jacobs Civil, Inc. d/b/a Sverdrup Civil, Inc. who executed this Mutual Release of All Claims for and on behalf of Jacobs Civil, Inc. d/b/a Sverdrup Civil, Inc. pursuant to the authority granted to him by Jacobs Civil, Inc. d/b/a Sverdrup Civil, Inc., and acknowledged that he fully understood the contents of this Release, freely executed the same for the sole consideration therein expressed, and executed the same based upon the advice of the attorney for Jacobs Civil, Inc. d/b/a Sverdrup Civil, Inc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year and first above written.

Notary Public

My Commission Expires:

J.H. BERRA ENGINEERING AND SURVEYING
COMPANY, INC., d/b/a THE STERLING COMPANY

Date: _____ By: _____

Title: _____

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2008, before me personally appeared _____, known to me to be the _____ of J. H. Berra Engineering and Surveying Company, Inc., d/b/a The Sterling Company who executed this Mutual Release of All Claims for and on behalf of J. H. Berra Engineering and Surveying Company, Inc., d/b/a The Sterling Company pursuant to the authority granted to him by J. H. Berra Engineering and Surveying Company, Inc., d/b/a The Sterling Company, and acknowledged that he fully understood the contents of this Release, freely executed the same for the sole consideration therein expressed, and executed the same based upon the advice of the attorney for J. H. Berra Engineering and Surveying Company, Inc., d/b/a The Sterling Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year and first above written.

Notary Public

My Commission Expires:

KARSTEN EQUIPMENT COMPANY

Date: _____

By: _____

Title: _____

STATE OF MISSOURI)

) SS.

COUNTY OF _____)

On this ____ day of _____, 2008, before me personally appeared _____, known to me to be the _____ of Karsten Equipment Company who executed this Mutual Release of All Claims for and on behalf of Karsten Equipment Company pursuant to the authority granted to him by Karsten Equipment Company, and acknowledged that he fully understood the contents of this Release, freely executed the same for the sole consideration therein expressed, and executed the same based upon the advice of the attorney for Karsten Equipment Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year and first above written.

Notary Public

My Commission Expires: