

BILL NO. 3118

ORDINANCE NO. 2923

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A UTILITY ATTACHMENT AGREEMENT WITH THE MISSOURI AMERICAN WATER COMPANY REGARDING UTILITY RELOCATION FOR THE RECONSTRUCTION OF THE SCHOETTLER ROAD BRIDGE OVER CREVE COEUR CREEK.

WHEREAS, the City of Chesterfield desires to reconstruct the Schoettler Road bridge over Creve Coeur Creek; and

WHEREAS, in order to construct the project as designed Missouri American Water Company must relocate existing water facilities, located in private easements, along Schoettler Road; and,

WHEREAS, in order to proceed with the project, the City needs to enter into a Utility Attachment Agreement with the Missouri American Water Company; and,

WHEREAS, the City Council of Chesterfield, Missouri, after careful consideration of the matter and thorough discussion with the City's attorney, desires to authorize the City Administrator of Chesterfield to enter into a Utility Attachment Agreement similar in form to that attached as Exhibit 2;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD AS FOLLOWS:

Section 1. The City Council of the City of Chesterfield hereby authorizes and directs the City Administrator to act on behalf of the City of Chesterfield to enter into an agreement with the Missouri American Water Company relative to the utility relocation for the reconstruction of the Schoettler Road Bridge over Creve Coeur Creek, in a form substantially similar to that attached hereto as Exhibit 2.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 21ST day of November, 2016

Bob Nation
PRESIDING OFFICER

Bob Nation
Bob Nation, MAYOR

ATTEST:

Vickie Hass
Vickie Hass, CITY CLERK

FIRST READING HELD: 11/7/2016

EXHIBIT 2

**CITY OF CHESTERFIELD, MISSOURI
UTILITY ATTACHMENT AGREEMENT**

THIS AGREEMENT is made by and between Missouri American Water (hereinafter, "Company") and the City of Chesterfield (hereinafter, "City").

WITNESSETH:

WHEREAS, the City proposes to construct and improve a section of roadway designated as Job No. BRM-5410(623), Schoettler Rd., St. Louis County, in the vicinity of Creve Coeur Creek in accordance with certain road plans on file in the office of the County Clerk of St. Louis County, Missouri.

WHEREAS, the Company has requested the City to include in the design plans and construction contract, provisions for a utility attachment on Bridge No. 07930041 which is located in Chesterfield, MO and carries Schoettler Rd. over Creve Coeur Creek.

WHEREAS, the City acknowledges that the construction of the project will cause the Company the loss of its' existing 8" water main crossing Creve Coeur Creek adjacent to the southwest side of the existing Schoettler Rd. structure over Creve Coeur Creek.

WHEREAS, lack of right of way at the Schoettler Rd structure creates a need and will necessitate the construction of an attachment to the bridge of a new water main (hereinafter, "bridge attachment") thereon to Bridge No. 07930041.

WHEREAS, the Company, citing a need to improve its' system in the project area shall increase the main size from 8 inch to 12 inch. This will provide a betterment to the Company's system. The Company shall accept responsibility for the costs associated with this betterment.

WHEREAS, 125 feet of the 140 feet of the existing 8 inch main that will be affected by the project, are outside City right of way. The City agrees to take responsibility for the cost of relocating the portion of the main that is outside City right of way. The 125 feet outside of City right of way represent 89.29% of the overall relocation. The City shall pay 89.29% of the overall cost not including costs associated with the betterment. The Company shall pay 10.71% of the overall cost not including the betterment cost, plus all costs related to the betterment.

WHEREAS, the Company shall install the 12 inch main outside of the limits of the bridge attachment. The City is willing to provide the design and construction of the said bridge attachment.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations in this Agreement, the parties agree as follows:

(1) COSTS: The Company does hereby agree as a consideration for the installation of the **bridge attachment** as herein set out, to pay the City a lump sum amount computed as follows:

(A) 10.71% of the actual construction contractors bid price for furnishing & placing the hanger system and placing the attached pipe furnished by the Company.

(2) PAYMENT PERIOD: The Company will be advised of the final lump sum amount due when the contract is awarded. Payment will be requested upon award of the contract and made in accordance with this Agreement and shall be made payable to the City. If the Company fails to make payment promptly upon notification from the City, the City may terminate this Agreement and the City may not include the attachment of the Company's facilities to Bridge No. 07930041 as part of City Project No. BRM-5410(623).

(3) PAYMENT ADJUSTMENTS: In the event of overruns or underruns in bid quantities during construction, adjustments in payments will be made in the form of additional billings to the Company or in refunds of the overpayments in the event of underruns.

(4) PERIOD OF PERFORMANCE: This Agreement shall be for a period of fifty (50) years, beginning with the date last written in this Agreement, or for the period of City maintenance of the bridge, whichever is of shorter duration. The City shall not be obligated to maintain said bridge solely for the benefit of the Company in the event of abandonment of said bridge for any cause.

(5) INSTALLATION: The **bridge attachment** shall be located on the bridge in accordance with approved plans marked "Exhibit A" attached and made a part of this Agreement. The City will construct the bridge attachment as part of the Schoettler Road Bridge Project. Subsequently, the Company shall maintain the **bridge attachment** and supporting equipment, at the expense of the Company, to the satisfaction of the City Engineer. Satisfactory maintenance shall be that which is mutually agreed upon by the parties. Should the maintenance not be satisfactory, the Company shall, immediately upon notice, do whatever is necessary to make the same satisfactory; and should the Company fail to do so within a reasonable time, the City may do whatever is necessary, in the opinion of the City Engineer, to make such construction, attachment, or maintenance satisfactory, or may cause said **bridge attachment** and supporting equipment to be removed entirely from the bridge, and in either such event the Company shall reimburse the City for the cost.

(6) REINSTALLATION OR REMOVAL: In the event of any repair, widening,

improvement, or reconstruction of the bridge or work on it, the City shall provide reasonable protection to the **bridge attachment** and supporting equipment. If necessary, the City may require the removal and reinstallation or relocation of the **bridge attachment** and supporting equipment, and the **Company** shall at its own expense remove, reinstall or relocate said conduit and supporting equipment in accordance with plans and specifications approved by the City, its engineer, successors or assigns. Should the City replace the bridge with a new structure, the **Company** may at its own expense place its **bridge attachment** and supporting equipment on such new bridge in accordance with plans and specifications approved by the City, with no additional charge to be made during the term of this Agreement, provided such new structure is not a part of the National System of Interstate and Defense Highways.

(7) **TERMS OF AGREEMENT:** The terms of this Agreement shall be subject to alteration under any law or laws of the State of Missouri which may be enacted after this Agreement takes effect relating to the location, maintenance, operation, or removal of public utility facilities within the right of way or on the structure of the state highways.

(8) **ASSIGNMENT:** The **Company** shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the City.

(9) **INDEMNIFICATION:** The **Company** shall defend, indemnify and hold harmless the City, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the **Company's** performance of its obligations under this Agreement.

(10) **AMENDMENTS:** Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the **Company** and the City.

(11) **VENUE:** It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of St. Louis County, Missouri.

(12) **LAW OF MISSOURI TO GOVERN:** This Agreement shall be construed according to the laws of the State of Missouri. The **Company** shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

[Remainder of Page Intentionally Left Blank. Signatures Appear of Following Page.]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below.

Executed by the Company the _____ day of _____, 20____.

Executed by the City the _____ day of _____, 20____.

CITY OF CHESTERFIELD

MISSOURI AMERICAN WATER
COMPANY

By _____

By _____

Title _____

Title _____

Attest:

Attest:

City Clerk

By _____

Title _____

Approved as to form:

Approved as to form:

City Attorney

Title _____

Ordinance No. _____

Seal

