

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of this 8<sup>th</sup> day of July, 2015 (the "Effective Date"), by and among Franklin County ("County"), Union Electric Company d/b/a Ameren Missouri ("Ameren"), and the Labadie Environmental Organization ("LEO"), Ruth Campbell, Nancy Campbell, Edwin Elzemeyer, Jr., Euline Elzemeyer, Richard Stettes, Loraine Stettes, Kara Carter, Jennifer Carter Norris, and Katherine Carter Thomas (collectively, "Relators").

### Recitals

1. Ameren plans to construct and operate a utility waste landfill adjacent to its Labadie Energy Center in Franklin County, Missouri ("Proposed UWL").
2. Ameren plans to construct and operate the Proposed UWL in four cells totaling approximately 167 acres.
3. On October 25, 2011, the County Commission of Franklin County adopted amendments to the Unified Land Use Regulations of Franklin County that made the Proposed UWL a permitted use and imposed various requirements regarding the construction and operation of the Proposed UWL ("2011 landfill zoning amendments").
4. Relators challenged the County's adoption of the 2011 landfill zoning amendments, and Ameren intervened as a Respondent in that case. *State ex rel. Campbell v. County Commission of Franklin County*, No. 11AB-CC00286 and 11AB-CC00286-01 (Franklin Co. Cir. Ct.), on remand from *Campbell v. County Commission of Franklin County*, 453 S.W.3d 762 (Mo. banc 2015) ("2011 Landfill Zoning Amendments Case").
5. In 2013, Ameren submitted a Construction Permit Application to the Missouri Department of Natural Resources ("MDNR") and the County that described the constructions of the Proposed UWL in four cells (1-4).
6. On July 2, 2014, as amended August 6, 2014, the Missouri Public Service Commission ("PSC") issued a report and order granting to Ameren a certificate of convenience and necessity "to expand the boundaries of its existing Labadie Energy Center to allow it to construct and operate a utility waste landfill and related facilities." *In the Matter of the Application of Union Electric Company, d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Main, and Otherwise Control and Manage a Utility Waste Landfill and Related Facilities at its Labadie Energy Center*, File No. EA-2012-0281. LEO participated in that proceeding and did not appeal the PSC's decision.
7. On July 22, 2014, Relators filed a Verified Petition for Writ of Certiorari challenging the County's determinations that Ameren's Construction Permit Application complied with



the provision in the County's 2011 landfill zoning regulations requiring at least two feet of separation between the bottom of the landfill liner and the Natural Water Table. *State ex rel. Campbell v. Board of Zoning Adjustment of Franklin County*, No. 14AB-CC00155 (Franklin Co. Cir. Ct.). After the events described in Paragraphs 8 and 9 below, Relators dismissed this action without prejudice. Collectively the matters described in paragraphs 4, 6, and 7 above are hereinafter called "Relators' Litigation Claims."

8. On January 2, 2015, MDNR ("Department") issued to Ameren ("Permittee") a construction permit for the Proposed UWL, Permit Number 0907101 ("MDNR Landfill Construction Permit"), that included the following provision ("Site Specific Condition 3"):

New federal rule regarding disposal of CCR from electric utilities

Permittee's authorization to commence construction is contingent upon the initial cell and all subsequent lateral expansions being constructed with a landfill base no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer. With respect to the site, such distance shall be measured from the ground surface as determined by the most recent land survey performed by the Permittee. As required by section 260.205.6 RSMo, prior to construction of the landfill base, Permittee shall submit to the Department by a registered professional engineer licensed by the State of Missouri, updated plans, designs, and relevant data in order to demonstrate compliance with this condition and to demonstrate the suitability of the fill material to be used to increase the elevation of the landfill base, and obtain Department approval prior to such construction.

9. Pursuant to Site Specific Condition 3, Ameren submitted revised drawings regarding Cell 1 and a Technical Memorandum regarding Cell 1 to MDNR on or about February 13, 2015 and April 16, 2015, respectively. MDNR approved the revised drawings for Cell 1 on March 4, 2015 and the Technical Memorandum for Cell 1 on May 14, 2015. MDNR's May 14, 2015 approval letter states: "This approval only relates to the construction of Cell 1 of the UWL. Ameren will need to conduct additional surveying prior to the construction of additional cells or lateral expansions of the site in order to comply with Site Specific Condition Number 3 of the construction permit." Ameren intends to resubmit such Construction Permit Application to MDNR, in advance of requesting an operating permit, for the sole purpose of making revisions in accordance with Site Specific Condition 3.
10. On February 3, 2015, Ameren and the County filed suit against LEO seeking a declaratory judgment that the PSC order referenced in Paragraph 6 above precludes the County from exercising certain zoning authority over the Proposed UWL. *County of Franklin, Missouri, et al. v. Labadie Environmental Organization*, No. 15AB-CC00033 (Franklin Co. Cir. Ct.) ("Declaratory Judgment Action"). LEO filed a Motion to Dismiss.



11. In March 2015, the County stated that it was proposing amendments to the 2011 landfill zoning amendments. The County held a public hearing on such amendments on June 11, 2015, and received written comments thereon from June 1-22, 2015. Ameren supported such amendments, subject to suggested further changes. Relators opposed such amendments. Pursuant to the foregoing, on July 7, 2015, the County passed Commission Order No. 2015-275 effective immediately (the "2015 Ordinance").

#### **Agreement**

Now therefore, in consideration of the foregoing and in the interest of reaching a mutually-agreeable resolution of these disputes regarding the Proposed UWL, the County, Ameren, and the Relators, and in the case of Labadie Environmental Organization, on behalf of each of its members, hereby agree:

12. If Ameren obtains permission from MDNR to construct cells 2-4 of the Proposed UWL, and any potential future lateral expansions of the Proposed UWL, and regardless of future changes in county, state, and/or federal law and regulations, Ameren will construct the landfill base no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer. Such distance shall be measured from the ground surface as determined by the most recent land survey performed by Ameren as of the proposed construction of such cell(s) and/or lateral expansion.
13. Regardless of any future changes in county, state, and/or federal law and regulations, Ameren will not deposit coal ash from any plant other than the Labadie Energy Center in the Proposed UWL, and Ameren will not use coal ash from any plant other than the Labadie Energy Center for any other purpose regarding the construction or operation of the Proposed UWL, specifically including but not limited to the berm. For purposes of this Agreement, "coal ash" (also known as "utility waste" and "coal combustion residuals") means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated primarily from the combustion of coal or other fossil fuels.
14. In the event that the 2015 Ordinance is challenged in court by the filing of an action within 30 days following the adoption of the 2015 Ordinance, then Ameren will have the right to terminate, rescind and void this Agreement (collectively "Ameren Termination Right") by notifying the County and Relators, care of counsel for the same, in writing within 5 business days of such suit. Ameren will provide such notice to such counsel as follows:

Counsel for the County:

Mark S. Vincent  
203 E. Main St., Suite C



Union, MO 63084

[marksvincent13@gmail.com](mailto:marksvincent13@gmail.com)

Counsel for Relators:

Maxine I. Lipeles

Washington University School of Law

One Brookings Drive – CB 1120

St. Louis, MO 63130

[milipele@wustl.edu](mailto:milipele@wustl.edu)

15. If Ameren does not exercise the Ameren Termination Right, then Relators will dismiss with prejudice the 2011 Landfill Zoning Amendments Case, and Ameren and the County will dismiss with prejudice the Declaratory Judgment Case, within five (5) days of receipt of written notice that Ameren has not exercised its option. The parties' respective Notices of Dismissal shall include a provision that the parties have agreed that each party shall bear its own costs.
16. Excepting the Non-Released Claims (defined below), Relators, jointly and severally, on their own respective behalves and on behalf of their heirs, successors, representatives, members, agents, co-owners, co-tenants or tenants of any real state owned or occupied by them (collectively "Releasers"), hereby release and forever discharge Ameren and the County, and their respective past, present, and future affiliates, subsidiaries, commissioners, officers, directors, agents, successors and assigns, (hereafter "Ameren and County Released Parties") from any and all claims demands, obligations, losses, causes of action, costs, expenses, attorney's fees, and liabilities of any nature whatsoever, whether known or unknown, which Releasers (including any of them) have, had, or might have as of the Effective Date, which arise from, relate to, or are in any manner connected with: (a) the design or construction of the Proposed UWL (including cells 1-4), as described in the Construction Permit Application and permit documents regarding Cell 1 and the MDNR Landfill Construction Permit; (b) claims regarding the validity of the 2015 Ordinance or process by which it was enacted; (c) claims regarding the validity of the 2011 landfill zoning amendments or process by which they were enacted; (d) the County's issuance of a floodplain permit, zoning permit, and zoning verification letters; (e) the MDNR Landfill Construction Permit and permit modifications to the Effective Date; (f) Relators' Litigation Claims; and (g) in the event MDNR requires future revisions to the design or construction of the Proposed UWL, provided such revisions do not amend the obligations set forth in paragraphs 12 and 13, any claims relating thereto, excepting only any challenge to such MDNR permit revisions as may be allowed under Section 536 of the Missouri Revised Statutes. Notwithstanding the foregoing, Relators reserve the right (i) with respect to future cells 2-4 of the Proposed UWL, to make claims that Ameren has not complied with the obligations set forth in Paragraphs 12 and 13 above, (ii) to make any claims arising after the Effective Date, that Ameren has not



complied with legal requirements that may be adopted or revised after the Effective Date, and (iii) to make claims of enforcement of the 2015 Ordinance to the extent actual construction does not comply therewith (collectively items (i) through (iii) are called the "Non-Released Claims"); provided, however, that Relators stipulate and agree that construction in accordance with the MDNR Landfill Construction Permit (including modifications described in Paragraph 9 above) does comply with the 2015 Ordinance (as provided to Relators on June 30, 2015) as of the Effective Date. Notwithstanding the foregoing, for purposes of emphasis, upon any exercise by Ameren of the Ameren Termination Right, this release shall be void ab initio and of no further force and effect. The release set forth above does not apply to claims to the extent accruing after the Effective Date regarding personal injury or property damage.

17. Relators covenant and agree that they will not, at any time hereafter, either directly or indirectly, (a) initiate, assign, maintain or prosecute, or in any way knowingly aid or assist in the initiation, maintenance or prosecution of any claim, demand or cause of action at law or in equity or otherwise, against the County or Ameren or any other Ameren and County Released Parties for damages, loss or injury of any kind with respect to which a release has been given pursuant to Section 16 of this Agreement, or (b) induce, advocate, encourage, or fund other persons or organizations to oppose the Proposed UWL, including any operating permit therefor, excepting, however, to the extent included within the Non-Released Claims. Notwithstanding the foregoing, for purposes of emphasis, upon any exercise by Ameren of the Ameren Termination Right, for purposes of emphasis, this covenant shall be void ab initio and of no further force and effect.

In addition to the foregoing, and notwithstanding anything in this Agreement to the contrary, in the event MDNR requires future revisions to the design or construction of the Proposed UWL, Relators agree that, provided such revisions do not amend the obligations set forth in paragraphs 12 and 13, their sole remedy shall be to challenge such MDNR permit revisions as may be allowed under Section 536 of the Missouri Revised Statutes.

18. Effective upon receipt of written notice that Ameren has not exercised the Ameren Termination Right, County and Ameren each, on their own respective behalves and on behalf of their heirs, successors, and representatives, past, present, and future affiliates, subsidiaries, commissioners, officers, directors, agents, successors and assigns (collectively "Ameren and County Releasing Parties"), hereby release and forever discharge Relators and their respective past, present, and future affiliates, subsidiaries, officers, directors, agents, representatives, successors, heirs, and assigns, from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorney's fees, and liabilities, whether known or unknown, which Ameren and County Releasing Parties



(including any of them) have, had, or might have as of the Effective Date arising out of Relators' actions in opposing the Proposed UWL, including without limitation the pursuit of Relators' Litigation Claims and advocacy involving the 2011 landfill zoning amendments and 2015 Ordinance.

19. If Ameren does not exercise the Ameren Termination Right and MDNR issues an operating permit for Cell 1, then Relators will not challenge said operating permit provided that Cell 1 is constructed in accordance with the Construction Permit Application, revised drawings, and Technical Memorandum referenced in Paragraphs 5 and 9 above.
20. Effective upon receipt of written notice that Ameren has not exercised the Ameren Termination Right option to void this Agreement, Relators stipulate that the County has made the Proposed UWL a permitted use under its Unified Land Use Regulations.
21. Effective upon issuance of written notice that it has not exercised the Ameren Termination Right, Ameren stipulates that, based on present facts, it will not challenge the County's exercise of zoning jurisdiction to enact or enforce the 2011 landfill zoning amendments or the 2015 Ordinance. Nothing in this Section 21 is intended or shall be deemed to apply in defense of any enforcement action brought after the Effective Date including, for emphasis and not limitation, any action involving an interpretation of the 2015 Ordinance or any other ordinance of the County.
22. Any attorney signing this Agreement on behalf of his or her clients hereby stipulates that he or she is authorized to do so.
23. This Agreement represents and contains the entire Agreement and understanding of the parties hereto with respect to the subject matter of this Agreement, and supersedes any and all prior oral and/or written agreements and understandings between the parties. No representation, warranty, condition, understanding, or agreement of any kind with respect to the subject matter of this Agreement prior to the Effective Date shall be relied upon by the parties hereto, except those expressly provided herein.
24. This Agreement may not be modified or amended except by a writing signed by all parties.
25. In entering into this Agreement, the parties each acknowledge that they have sought and obtained the legal advice of their attorneys, who are attorneys of their own choice. They further represent that the terms of this Agreement have been completely read by them and that those terms are fully understood and voluntarily accepted by them.
26. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same

instrument.

27. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.
28. The undersigned representative of any corporation signing this Agreement represents and warrants that such execution is authorized by all required corporate action.

The County represents and warrants that such execution is pursuant to an appropriate authorizing ordinance, resolution or other lawful and proper approval from the governmental board or entity having the legal authority to authorize and approve the entry into this Agreement and accept, as binding, its terms.

WHEREUPON, the County, Ameren and Relators have set their hands as of the Effective Date.

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**County:**

Franklin County

By: John E. Griesheimer

Name Printed: John E. Griesheimer

Title: Presiding Commissioner

**Ameren:**

Union Electric Company d/b/a Ameren Missouri

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**Relators:**

Labadie Environmental Organization, Ruth Campbell, Nancy Campbell, Edwin Elzemeyer, Jr.,  
Euline Elzemeyer, Richard Stettes, Loraine Stettes, Kara Carter, Jennifer Carter Norris, and  
Katherine Carter Thomas

By: \_\_\_\_\_

Maxine I. Lipeles, Attorney for Relators

Labadie Environmental Organization,  
a Missouri not-for-profit corporation

By: \_\_\_\_\_

Patricia Schuba

President

\_\_\_\_\_  
Ruth Campbell



**County:**

Franklin County

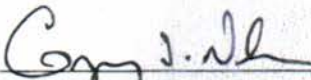
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**Ameren:**

Union Electric Company d/b/a Ameren Missouri

By:  \_\_\_\_\_

Name Printed: Gregory L. Nelson

Title: Sr. VP General Counsel & Secretary

**Relators:**

Labadie Environmental Organization, Ruth Campbell, Nancy Campbell, Edwin Elzemeyer, Jr.,  
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By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**Ameren:**

Union Electric Company d/b/a Ameren Missouri

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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Labadie Environmental Organization, Ruth Campbell, Nancy Campbell, Edwin Elzemeyer, Jr.,  
Euline Elzemeyer, Richard Stettes, Loraine Stettes, Kara Carter, Jennifer Carter Norris, and  
Katherine Carter Thomas

By: Max I. Lipeles

Maxine I. Lipeles, Attorney for Relators

Labadie Environmental Organization,  
a Missouri not-for-profit corporation

By: Patricia Schuba

Patricia Schuba

President

Ruth Campbell

Ruth Campbell

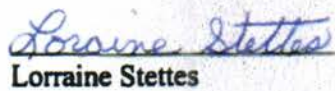


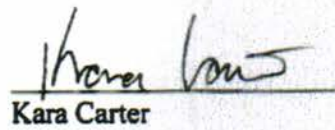
  
Nancy Campbell

Edwin Elzemeyer, Jr.

Euline Elzemeyer

  
Richard Stettes

  
Lorraine Stettes

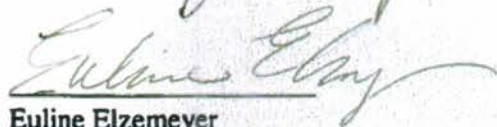
  
Kara Carter

Jennifer Carter Norris

Katherine Carter Thomas

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