

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY

SONDRA B. MORGAN
CHARLES E. SMARR

PROFESSIONAL CORPORATION
312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427
E-Mail: RTCiottone@msn.com

DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
PAUL A. BOUDREAU
BRIAN T. MCCARTNEY
DALE T. SMITH
BRIAN K. BOGARD

OF COUNSEL
RICHARD T. CIOTTONE

September 28, 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED³
SEP 28 2001

Missouri Public
Service Commission

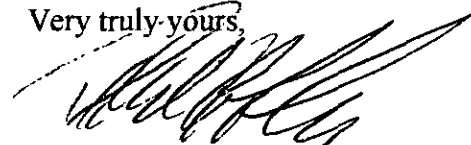
Re: Case No. WA-2001-288

Dear Secretary Roberts:

Enclosed for filing, please find an original and eight copies of a fully executed **UNANIMOUS SETTLEMENT AGREEMENT** in the above cause which is being herewith filed in lieu of the procedural schedule heretofore ordered. Please note that the signature pages are on counterparts, and although some pages display unexecuted signature blanks, signatures of all attorneys of record are in fact included on other counterpart pages in the filing.

Note also the request for expedited treatment in the prayer necessitated by the request of the City of Webster Groves for retail water service from the Applicant. That City executed a franchise agreement with the Applicant dated September 4, 2001, and only the absence of the requested Certificate of Convenience and Necessary stands in the way of serving the citizens of the City. Will you please bring this filing to the attention of the Commission at your earliest convenience, and thank you for your patience and cooperation.

Very truly yours,



Richard T. Ciottone MBE# 21530
Attorney for Applicant
949 E. Essex Ave.
St. Louis, MO 63122
(314) 822-2355

cc. All parties of record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²

SEP 28 2001

Missouri Public
Service Commission

In the Matter of the Application of St. Louis)
County Water Company, d/b/a Missouri-)
American Water Company, for Restatement)
And Clarification of its Certificate of)
Convenience and Necessity for St. Louis)
County, Missouri)

Case No. WA-2001-288

UNANIMOUS SETTLEMENT AGREEMENT

On October 31, 2000, the St. Louis County Water Company d/b/a Missouri-American Water Company filed an Application for Restatement and Clarification of Certificate of Convenience and Necessity (hereinafter the "Application"). By Order dated November 14, 2000, the Commission directed the Commission's Public Information Officer to provide notice of the Application to members of the General Assembly representing persons residing within St. Louis County, Missouri and to the newspapers which serve persons residing within St. Louis County. The Order also directed Applicant to provide a copy of the Application to every municipality in St. Louis County and every municipality outside of St. Louis County which is served in whole or in part by the Applicant, and to file proof of such service in this case. The Company filed with the Commission a certification that such notices had been completed on November 22, 2000.

Applications to intervene of various dates were thereafter filed by the Cities of Winchester and Maryland Heights, the City of Chesterfield, the City of St. Ann, and the Cities and Villages of Ballwin, Bel-Nor, Bel-Ridge, Bella Villa, Bellerive, Bellefontaine Neighbors, Breckenridge Hills, Clayton, Cool Valley, Crestwood, Des Peres, Green Park,

Hazelwood, Manchester, Maplewood, Normandy, Pasadena Hills, Pine Lawn, Richmond Heights, Riverview, Rock Hill, Town and Country, University City, Velda City, and Wildwood (hereinafter "Intervenor Cities"). The interventions were granted by Order of the Commission dated January 11, 2001.

Following a prehearing conference, a Unanimous Stipulation and Motion for Partial Settlement and Continuance of Remaining Issues was executed by all parties and filed on February 7, 2001. In said Stipulation, the concerns of the Intervenor Cities were summarized as follows:

2. Certain of the Parties have expressed concerns with regard to settlement of the Applicant's Application for various reasons, perhaps the most significant of which being the absence of municipal franchise agreements with various Intervenor Cities and the impact the Commission's grant of Applicant's prayer might have on that issue; and
3. The Parties believe, that given adequate time, these concerns may be resolved by, inter alia, the negotiation of franchise agreements with some or all Intervenor Cities acceptable to Applicant and those respective Cities...

Thereafter the Unanimous Stipulation was accepted by the Commission and the required procedural filing was extended upon requests of the Applicant and the Intervenor Cities culminating in the present requirement which states that a procedural schedule must be filed on or before September 30, 2001. In lieu of filing that schedule, the parties have successfully negotiated this Unanimous Settlement Agreement.

Subsequent to the filing of Applicant's Application, the General Assembly has enacted, and the Governor has signed into law, Senate Bill No. 369, which specifically addresses some franchise concerns of both Applicant and municipalities which were unresolved at the time the instant application was filed by Applicant. In addition, Applicant has negotiated a generic franchise form with Intervenor Cities and Applicant herewith commits to Intervenor Cities that it is willing to enter into a franchise agreement with any Intervenor so requesting in the form attached hereto as Exhibit A. Accordingly, Intervenor Cities have no further objections to the granting of the relief requested in the Application. Similarly, Staff and the Office of Public Counsel have no objection to the granting of the relief requested in the Application.


The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement and the other Parties shall have the right to file responsive suggestions or prepared testimony.

NOTHING FURTHER ON THIS PAGE

WHEREFORE, the undersigned being the attorneys of record for all of the parties in the instant case, herewith Stipulate and Agree that the Commission may issue its Order restating and clarifying Applicant's Certificate of Convenience and Necessity for St. Louis County, Missouri, and those portions of Jefferson County previously authorized in Case No. 15,297. Intervenor have no objection to inclusion of the Intervenor Cities identified herein within the certificated area or to inclusion of the remainder of St. Louis County and those other Cities who did not choose to intervene following receipt of notice as directed by the Commission's Order of November 24, 2000. In addition, Applicant herewith requests **expedited approval** of the instant Unanimous Settlement Agreement so that it may honor the request of the City of Webster Groves, Missouri, to provide water service within such city consistent with a franchise agreement heretofore awarded to Applicant by such City.

Respectfully submitted,

Cities of Winchester, et al



Howard Paperner
9322 Manchester Road
St. Louis, MO 63119

City of St. Ann

Shulamith Simon
Schlueter, Haywood, et al.
Suite 450 Bonhomme Place
7700 Bonhomme Ave.
St. Louis, MO 63105

City of Chesterfield

Douglas R. Beach

Frank B. Curtis
Beach, Stewart, et al
222 South Central Ave, Suite 900
St. Louis, MO 63105


WHEREFORE, the undersigned being the attorneys of record for all of the parties in the instant case, herewith Stipulate and Agree that the Commission may issue its Order restating and clarifying Applicant's Certificate of Convenience and Necessity for St. Louis County, Missouri, and those portions of Jefferson County previously authorized in Case No. 15,297. Intervenor have no objection to inclusion of the Intervenor Cities identified herein within the certificated area or to inclusion of the remainder of St. Louis County and those other Cities who did not choose ^{to} intervene following receipt of notice as directed by the Commission's Order of November 24, 2000. In addition, Applicant herewith requests **expedited approval** of the instant Unanimous Settlement Agreement so that it may honor the request of the City of Webster Groves, Missouri, to provide water service within such city consistent with a franchise agreement heretofore awarded to Applicant by such City.

Respectfully submitted,

Cities of Winchester, et al

Howard Paperner
9322 Manchester Road
St. Louis, MO 63119

City of St. Ann


Shulamith Simon
Schlueter, Haywood, et al.
Suite 450 Bonhomme Place
7700 Bonhomme Ave.
St. Louis, MO 63105

City of Chesterfield

Douglas R. Beach

Frank B. Curtis
Beach, Stewart, et al
222 South Central Ave, Suite 900
St. Louis, MO 63105

WHEREFORE, the undersigned being the attorneys of record for all of the parties in the instant case, herewith Stipulate and Agree that the Commission may issue its Order restating and clarifying Applicant's Certificate of Convenience and Necessity for St. Louis County, Missouri, and those portions of Jefferson County previously authorized in Case No. 15,297. Intervenor have no objection to inclusion of the Intervenor Cities identified herein within the certificated area or to inclusion of the remainder of St. Louis County and those other Cities who did not choose ^{to} intervene following receipt of notice as directed by the Commission's Order of November 24, 2000. In addition, Applicant herewith requests **expedited approval** of the instant Unanimous Settlement Agreement so that it may honor the request of the City of Webster Groves, Missouri, to provide water service within such city consistent with a franchise agreement heretofore awarded to Applicant by such City.

Respectfully submitted,

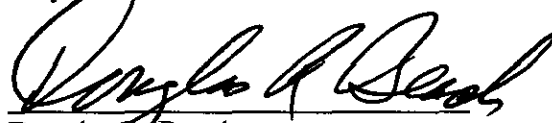
Cities of Winchester, et al

Howard Paperner
9322 Manchester Road
St. Louis, MO 63119


City of St. Ann

Shulamith Simon
Schlueter, Haywood, et al.
Suite 450 Bonhomme Place
7700 Bonhomme Ave.
St. Louis, MO 63105

City of Chesterfield



Douglas R. Beach



Frank B. Curtis
Beach, Stewart, et al
222 South Central Ave, Suite 900
St. Louis, MO 63105

City of Ballwin, Village of Bel-Nor,
Village of Bel-Ridge, City of Bella Villa,
Village of Bellerive, City of Bellefontaine
Neighbors, City of Breckenridge Hills,
City of Clayton, City of Cool Valley,
City of Crestwood, City of Des Peres,
City of Green Park, City of Hazelwood,
City of Maplewood City of Manchester,
City of Normandy, City of Pasadena Hills,
City of Pine Lawn, City of Richmond
Heights, Village of Riverview, City of Rock
Hill, City of Town and Country, City of
University City, City of Velda City and
City of Wildwood, being all of the
municipalities represented by the
undersigned.

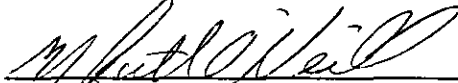


Leland B. Curtis, #20550
CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.
130 S. Bemiston, Suite 200
Clayton, MO 63105
(314) 725-8788
(314) 725-8789 FAX

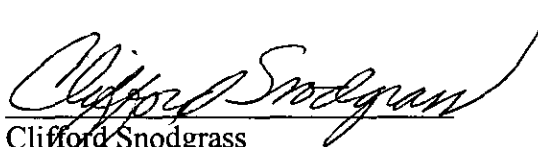
Cities of Ballwin, et al.

Leland B. Curtis
Curtis, Oetting, et al.
130 S. Bemiston, Suite 200
Clayton, MO 63105

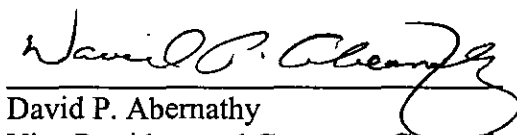
Office of Public Counsel

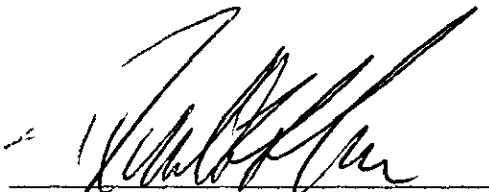

Ruth O'Neill
Office of the Public Counsel
P.O Box 7800
Jefferson City, MO 65102

**Staff of the Missouri Public Service
Commission**


Clifford Snodgrass
Assistant General Counsel
Box 360
Jefferson City, MO 65102

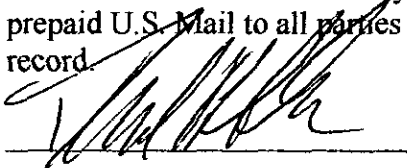
**St. Louis County Water Company
d/b/a Missouri-American Water Company**


David P. Abernathy
Vice President and Corporate Counsel
535 N. New Ballas Rd.
St. Louis, MO 63141



Richard T. Ciottone
Attorney for Applicant
949 E. Essex
St. Louis, MO 63141

Copies of the foregoing, with
counterparts bearing all signatures
have on the date below written been
either hand delivered or sent by
prepaid U.S. Mail to all parties of
record.



9/28/01

BILL NO. _____

Exhibit A

ORDINANCE NO. _____

AN ORDINANCE GRANTING THE FRANCHISE FOR THE ST. LOUIS COUNTY WATER COMPANY d/b/a MISSOURI-AMERICAN WATER COMPANY CONTAINING THE RIGHT TO USE, FOR A PERIOD OF TWENTY YEARS, THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF _____, ST. LOUIS COUNTY, MISSOURI, FOR THE PURPOSE OF INSTALLING, EXTENDING, MAINTAINING, AND OPERATING A WATER SYSTEM; REGULATING THE RIGHT TO USE AND EXCAVATE IN SAID STREETS AND OTHER PUBLIC PLACES, PROVIDING THAT THE COMPANY SHALL HOLD THE SAID CITY HARMLESS FROM ALL DAMAGES FROM NEGLIGENCE IN THE CONSTRUCTION AND MAINTENANCE OF SAID WATER SYSTEM AND PROVIDING FOR THE ACCEPTANCE OF THE FRANCHISE BY THE SAID COMPANY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____,
MISSOURI AS FOLLOWS:

Section 1. In recognition of the benefits to the City of _____, (hereinafter sometimes called the "City"), and to its citizens to be derived from the continuation, extension and operation of the system of water works and system of distribution mains and pipe lines within the City, now owned and operated by the St. Louis County Water Company d/b/a Missouri-American Water Company (hereinafter sometimes called the "Company"), and as an inducement to the said Company to carry out extension of said water works and distribution system, and to accept the terms and provisions of this franchise, the City hereby grants its franchise to the Company including the rights to use the public rights-of-way within the City as now bounded, and within any future extensions of its limits, for the purpose of putting down, laying, maintaining or using water mains, water pipes, fire hydrants and other appliances belonging to or connected with the water works for supplying water for a term or period of twenty (20) years after this Ordinance is passed and approved.

Section 2. The financial responsibility for relocations of the Company's facilities within the City's rights-of-way shall be determined by State law as shall be specified by Statute or common law at the time of the relocation, and nothing herein shall be construed to confer upon the Company or the City any rights inconsistent therewith.

.The City will not vacate any public right-of-way containing any Company facilities without first advising the Company of its intention to vacate the right-of-way and cooperating with the Company in reasonable attempts to obtain the necessary property rights to maintain its facilities in the right-of-way.

Section 3. The Company shall obtain a right-of-way permit prior to conducting work on its facilities within the public rights-of-way unless such work must be performed on an emergency basis, then the Company shall notify the city of the location of the work by telephone call to a number provided by the City upon beginning an excavation, and shall then apply for the required permit within three weeks following the commencement of the facilities work.

There shall be no unreasonable or unnecessary obstruction of the public rights-of-way of said City by the said Company in constructing any of the work herein provided for, and in placing, taking up and repairing any mains, hydrants, conduits, structures and devices requisite for the service of water. After using said public rights-of-way, the Company shall restore them to a condition of safety immediately, and depending on weather and other restoration obligations, Company shall restore them as nearly as practicable in accordance with the reasonable standards of the City within six months. The Company shall hold the City harmless for any and all damage arising from negligence or mismanagement of said Company or its subcontractors in constructing, extending, restoring or maintaining the said works. All excavations and work areas are to be safeguarded throughout the duration of work. Traffic controls should be placed and maintained as required by the Manual on Uniform Traffic Control Devices. For any failure on the part of the Company to comply with any of the provisions of this Section within forty-eight hours following written notice delivered to a supervisor or manager at either the main offices or

the service center for said Company of the existence of said failure, said notice to be signed by the Mayor or City Administrator or his or her designee, said Company shall, in addition to saving the City harmless from any such negligence or mismanagement, owe and be indebted to the City in the sum of \$100 for each and every day for which said Company shall refuse, fail or neglect to remedy the defects and failure specifically mentioned in such notice. The Company may appeal the imposition of the foregoing sanction on the basis of legality or reasonableness of the City's requirements by certified letter to the City Administrator or other primary municipal official, during which appeal the foregoing sanctions shall be tolled. The appeal shall be presented to the Board, Council or other designated governing body of the City for a determination of legality and reasonableness, and may thereafter be pursued to the St. Louis County Circuit Court of equity by either party within ten days following a final determination by City's Board, Council or other designated governing body. During the pendency of such appeal, the Company shall not be absolved of its obligation to indemnify the City from and against any claims or causes of actions by others arising out of the actions or inactions of the Company or its subcontractors in the use of the City's rights-of-way and if said penalty is upheld, the Company may be ordered to pay any amount due that had not been tolled due to the appeal. This Section shall not affect or repeal any ordinance of the City that contains any reasonable regulations for the control and maintenance of the streets, avenues, alleys, parks, rights of way and other public places of the City. All general ordinances for the control and maintenance of public rights-of-way in the City shall be effective against the Company so far as such ordinances are reasonably applicable to the condition and business of the Company, and charges to the Company for any use of the public rights-of-way shall be limited to reasonable rights-of-way management costs. Nothing herein shall prohibit a City from imposing a gross receipts tax otherwise authorized by law.

Section 4. In consideration of the right to use the public rights-of-way as herein provided, the Company shall supply consumers within the limits of the City under the applicable

schedule of water rates as now or hereafter approved by the Public Service Commission of Missouri.

Section 5. The Company may control the availability and use of its fire hydrants as described in its Rules and Regulations on file with and approved by the Missouri Public Service Commission. To the extent that hydrants are available for uses other than fighting fires as described in such Rules and Regulations, the Company will institute special rules for use of such hydrants by City employees which do not require the City employees to visit the Company more frequently than annually to obtain permits, pay fees or otherwise accommodate the Company's reasonable requirements for the use of such hydrants. The Company may make reasonable requirements for telephone notification by City with respect to each hydrant accessed and may require the payment of appropriate usage fees in advance, which such fees shall not be in excess of those charged to other governments or as permitted by the Company's tariffs, Rules and Regulations on file with and approved by the Missouri Public Service Commission. Such special accommodations shall not be available to City's agents or subcontractors, but are available only to City's employees.

Section 6. The Company shall provide the City with a telephone number for emergencies which will be directed to a human respondent (as opposed to an answering machine) at all times, twenty-four hours per day, seven days per week. The Company will also provide the City with at least one back-up number not available to the general public for emergency use at any time, provided that the City agrees that it will not use any back-up number during non-business hours except in cases of emergency and not until efforts to obtain satisfaction with the primary emergency number have not proved fruitful.

Section 7. Except in cases of main breaks, damage to facilities by others or some other condition affecting the integrity of the water supply or the health and safety of the public, the Company will not begin an excavation within the City's public rights-of-way without prior notification to the City and application for appropriate excavation permits, the provision of

which by the City shall not be unreasonably delayed or withheld. In situations of the aforesaid emergencies, the Company's obligations are set forth in Section 3.

Section 8. The Company must respond to and investigate any notices of water leaks within the City's rights-of-way, whether in writing or by telephone, in a timely manner. The Company may allow water to leak temporarily in the interest of not denying the public access to a water supply pending repairs, unless the leak is jeopardizing the health and safety of the public or causing damage to City or private property to include but not be limited to the public streets. The Company must indemnify the City from and against any claims attributable to Company's decision to permit leaking to continue, pending the availability of crews to perform a repair. If at any time City determines that a leak is endangering the health and safety of the public or damaging property, (including undermining public streets), it may instruct the Company in writing to discontinue the water supply to the leaking main or customer-owned service line and the Company will thereafter valve off the source of the leak as soon as reasonably possible. The Company will complete repairs to any of its mains and reinstitute water service as soon as reasonably possible, consistent with its statutory obligation to provide the public with safe and adequate service. Customer-owned service line repairs are not the responsibility of the Company.

Section 9. The Company shall at all times maintain a bond with a reputable surety company in the amount of \$500 that guarantees its financial ability to pay all valid and enforceable fines or judgments of the City. If at any time the Company either demonstrates or makes a claim of inability to pay any final and enforceable fine or judgment, the amount of this bond requirement shall thereafter be increased to \$50,000.

Section 10. The City shall, so far as possible, and within its corporate powers, adopt and enforce ordinances that will protect the Company in the safe and unmolested exercise of its franchise and rights hereunder, and against fraud and imposition, and against injury to the Company's property, nor shall the City enact any ordinances inconsistent with the rights and privileges herein granted. The City shall cooperate with the Company in the Company's effort to

prevent the waste of water by consumers. The Company may make and enforce, as part of the conditions upon which it may supply water to consumers, all necessary and reasonable rules and regulations governing the consumption of water, tapping of mains and the operation of works, not inconsistent with this Ordinance, it being understood that such rules and regulations must have been approved by the Public Service Commission before they become effective.

Section 11. After the passage and approval of this Ordinance, the Clerk shall supply to the Company a certified copy of this Ordinance. Thereupon within one hundred (100) days after the delivery of such certified copy of this Ordinance, the Company, by proper order and resolution of its Board of Directors, shall accept the terms and provisions of this Ordinance and shall sign and deliver an appropriate deed of acceptance thereof binding itself to carry out the terms and provisions of the Franchise as herein embodied, which deed of acceptance shall be duly signed by its President or Vice-President, sealed with its corporate seal and attested by the signature of its Secretary or Assistant Secretary, and the original thereof be delivered to the City Administrator or the Clerk of the City.

The term of twenty (20) years herein provided for shall commence upon the date of this Ordinance is signed and approved by the City Administrator and by the Clerk of the City.

Section 12. Neither acceptance of nor compliance with the provisions of this Ordinance, nor exercise of any right granted hereby, shall in any wise impair or affect, or constitute or be construed as a relinquishment or waiver of, any right, permission or authority which the City or the Company, their successors or assign, may have independently of this Ordinance.

Section 13. All Ordinances or parts of Ordinances, insofar as they conflict with this Ordinance, are hereby repealed.

Section 14. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 15. This Ordinance shall take effect as, from and after its passage by the City Council, and approval by the Mayor or City Administrator; provided, however, that the franchise granted hereby shall not be effective, and this Ordinance shall become null and void, if the terms hereof are not accepted by the Company as provided in Section 11.

Passed this _____ day of _____, _____.

MAYOR OR CITY ADMINISTRATOR

Signed and approved this _____ day of _____, _____.

MAYOR OR CITY ADMINISTRATOR

ATTEST:

City Clerk