

**REGULAR MEETING OF WASHINGTON, MISSOURI CITY COUNCIL**  
**November 7, 2016 – 7:00 P.M.**

**1. INTRODUCTORY ITEMS:**

Roll Call /Pledge of Allegiance  
Approval of the Minutes from the October 17 & 27, 2016 Council Meetings

**SUGGESTED  
COUNCIL ACTION:**

Need Motion/Mayor                      Memo

Approval and Adjustment of Agenda including Consent Agenda:

Need Motion/Mayor                      Memo

- a. Payments greater than \$40,000
- b. Lewis, Rice L.C. invoice for September 2016 services
- c. Final Pay Request – Midwest Pool Management – Pool Operations & Management
- d. Final Pay Request – Professional Touch Painting – Airport Metal Roof Painting
- e. Final Pay Request – KJ Unnerstall – Repair of Sink Hole & Replace Pipe-Elbert Drive

**2. PRIORITY ITEMS:**

**Mayor’s Presentations, Appointments & Re-Appointments:**

- a. Police Department Reappointments
- b. Phoenix Center II CID Reappointments

Accept/Approve/Mayor                      Memo  
Accept/Approve/Mayor                      Memo

**3. PUBLIC HEARINGS:**

**CITIZENS DISCUSSIONS:**

**4. UNFINISHED BUSINESS:**

**5. REPORT OF DEPARTMENT HEADS:**

- a. Request for addition of Court/Police Interface
- b. Request for addition of Firehouse Interface

Accept/Approve/Mayor                      Memo  
Accept/Approve/Mayor                      Memo

**6. ORDINANCES/RESOLUTIONS:**

- a. An ordinance rezoning 1000 Duncan Heights Drive from R1-A, Single Family Residence District to C-4, Planned Commercial District in the City of Washington, Franklin County, Missouri.

Read &Int/Read&Vote/Mayor

- b. An ordinance requesting voluntary annexation of 14.49 acres south of the Malvern Hill Subdivision into the City of Washington, Missouri, Franklin County, Missouri. Read &Int/Read&Vote/Mayor
  - c. An ordinance authorizing and directing the execution of a contract with Roscoe Mayer Contracting, Inc. for the 316 Lafayette Building Demolition, in the City of Washington, Franklin County, Missouri and amend the 2017 Budget. Read &Int/Read&Vote/Mayor Memo
  - d. An ordinance authorizing and directing the execution of a contract agreement between the City of Washington, Missouri and Flynn Drilling Co., Inc., Troy, Missouri. Read &Int/Read&Vote/Mayor
  - e. An ordinance authorizing the City of Washington, Missouri to issue its Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B, in a principal amount not to exceed \$16,000,000 for the purpose of providing funds to pay the costs of equipping an industrial development project in the City; and authorizing the City to enter into certain agreements and take certain other actions in connection with the issuance of the bonds.
  - f. A resolution authorizing the acceptance of Federal Assistance from the Recreational Trails Program for Phase II of the Rotary Riverfront Trail in the City of Washington, Missouri. Read &Int/Vote/Mayor
7. **COMMISSION, COMMITTEE AND BOARD REPORTS:**
- a. An ordinance approving a boundary adjustment in the City of Washington, Franklin County, Missouri. Read &Int/Read&Vote/Mayor
8. **MAYOR'S REPORT:**
9. **CITY ADMINISTRATOR'S REPORT:**
10. **CITY ATTORNEY'S REPORT:**
- a. Public vote on whether or not to hold a closed meeting to discuss personnel, legal and real estate matters pursuant to Section 610.021 RSMo (2000). Roll Call Vote
11. **INFORMATION:**
12. **ADJOURNMENT:**

NOTICE: COPIES OF THE PROPOSED ORDINANCES ON THIS AGENDA ARE AVAILABLE FOR PUBLIC INSPECTION  
PRIOR TO THE TIME THE BILL IS UNDER CONSIDERATION BY THE CITY COUNCIL.  
POSTED BY MARY TRENTMANN, CITY CLERK NOVEMBER 3, 2016

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL  
CITY OF WASHINGTON, FRANKLIN COUNTY, MISSOURI  
MONDAY, OCTOBER 17, 2016**

**INTRODUCTORY ITEMS:**

The Regular Meeting of the City of Washington, Missouri, City Council was held on Monday, October 17, 2016 at 7:00 p.m. in the Council Chamber. Mayor Sandy Lucy opened the meeting with roll call and Pledge of Allegiance.

<b>Mayor:</b>	Sandy Lucy	Present	
<b>Council Members: Ward I</b>	Steve Sullentrup	Present	
	Walter Meyer	Present	
	<b>Ward II</b>	Jeff Mohesky	Present
	Mark Hidritch	Present	
<b>Ward III</b>	Jeff Patke	Present	
	Greg Skornia	Present	
<b>Ward IV</b>	Josh Brinker	Present	
	Joe Holtmeier	Present	
<b>Also Present:</b>	City Attorney	Mark Piontek	
	City Administrator	James Briggs	
	Assistant City Administrator	Brian Boehmer	
	City Clerk	Mary Trentmann	
	Police Chief	Ed Menefee	
	City Engineer	John Nilges	
	Economic Development Director	Darren Lamb	
	City Planner	Sal Maniaci	
	Street Supervisor	Tony Bonastia	

Originals and/or copies of agenda items of the meeting, including recorded votes are available on record in the office of the City Clerk. Each ordinance is read a minimum of twice by title, unless otherwise noted.

**Approval of Minutes:**

\* Approval of the Minutes from the October 3 & 12, 2016 Council Meetings

A motion to accept the minutes with the correction of Councilmember Meyer and Councilmember Mohesky being absent at the October 12, 2016 Special Meeting was made by Councilmember Patke, seconded by Councilmember Holtmeier, passed without dissent.

**Approval and Adjustment of Agenda including Consent Agenda:**

\* Payments of over \$40,000 (+): *United Health Care \$130,000.00 Estimated November Health Insurance premium; LAGERS \$60,000.00 Estimated October wage benefits; Ameren UE \$101,400.00 Estimated September energy usage; UMB Bank, NA. Trust \$97,048.59 October debt service payment. Sewer Revenue Bonds---2007B; Washington Volunteer Fire Company \$100,000.00 Annual VAER payment.*

\* Treasurer's Report – August 2016

\* Liquor License Application

\* Final Pay Request – Donohue & Associates, Inc. – Hydraulic Study

A motion to accept and approve the agenda including the consent agenda accordingly was made by Councilmember Hidritch, seconded by Councilmember Meyer, passed without dissent.

**PRIORITY ITEMS:**

**Mayor's Presentations, Appointments & Re-Appointments**

\* Police Department Re-appointments

*October 12, 2016*

*To The City Council*

*City of Washington*

*Washington, Missouri*

*Dear Council Members:*

*I herewith submit for your approval the following for re-appointment:*

<u>Name</u>	<u>Appointed</u>	<u>Term Expires</u>
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<i>Greg Garrett</i>	<i>Nov. 3, 2016</i>	<i>Nov. 3, 2017</i>
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*Patrol Officer*

<i>Casey Hill</i>	<i>Nov. 3, 2016</i>	<i>Nov. 3, 2017</i>
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*Patrol Officer*

*Respectfully submitted,*

*Sandy Lucy*

*Mayor*

*MT:*

A motion to accept and approve the re-appointments was made by Councilmember Patke, seconded by Councilmember Hidritch, passed without dissent.

\* Washington Area Highway Transportation Committee Re-appointment/Appointment

*October 12, 2016*

*To The City Council*

*City of Washington*

*Washington, Missouri*

*Dear Council Members:*

*I herewith submit for your approval the following for re-appointment to the Washington Area Highway Transportation Committee:*

*Mark Wessels – term expiring July 2019*

*I herewith submit for your approval the following for appointment to the Washington Area Highway Transportation Committee:*

*Dan Cassette – term expiring July 2019 (bio attached)*

*Respectfully submitted,*

*Sandy Lucy*

*Mayor*

*MKT:*

A motion to accept and approve the re-appointment/appointment was made by Councilmember Hidritch, seconded by Councilmember Holtmeier, passed without dissent.

### **PUBLIC HEARINGS**

\* Rezone 355 McLean Avenue from R-2 Overlay to R-1C Single-Family Attached

*October 10, 2016*

*Honorable Mayor & City Council*

*405 Jefferson Street*

*Washington, MO 63090*

*RE: File No. 16-0904-Rezoning of 355 McLean Avenue, Apt. B*

*Dear Mayor & City Council Members:*

*At a regular meeting of the Planning & Zoning Commission, held on Monday, October 10, 2016, the Commission reviewed and approved the above request.*

*Sincerely,*

*Tom Holdmeier*

*Chairman*

*Planning & Zoning Commission*

**Mayor:** Okay, so, before we go any further, I just want to welcome you all this evening. I should have done that early on. But, thank you for being here. I know that there's a number of different items on the agenda tonight for Public Hearing, and some are just curious as to what's going on because something might be taking place in your neighborhood or whatever. So anyway, thank you for being here and we appreciate your attendance. Sal, I think this is you.

**Maniaci:** Yes, the first one is 355 McLean Avenue, close to the intersection of McLean and Fourth Street, just south of the apartments there. This is an existing duplex that has been zoned R-2, 2-Family Residential since it has been built. We've seen this happen all the time, where a duplex has been split into two different ownerships and sell one parcel. Before they can do that, they have to rezone to R-1C Single-Family Attached. Here's the zoning map, you can see the part in blue is the multi-family, yellow is currently R-2, so you can see most of the neighborhood is the R-2 overlay which will have Single-Family in. 2-Family and the only other, the closest R-1C is this corner here it's not a duplex that was changed a couple of years ago. The use won't change, it's going to stay residential, and so staff has no issue and recommends approval. There will be a Plat for this later on in the Agenda as well.

**Mayor:** Okay, do Councilmembers have any questions or comments regarding this item? Okay, it's a Public Hearing, right? Okay, this is a Public Hearing, is there anyone here tonight who would like to address the Council on this particular item? Okay, I don't see anyone, right? Okay, we can accept this item into the minutes. I guess we need a motion to accept this item into the minutes.

A motion to accept the Public Hearing into the minutes was made by Councilmember Patke, seconded by Councilmember Meyer, passed without dissent.

**Bill No. 16-11557, Ordinance No. 16-11579, an ordinance rezoning 355 McLean Avenue from R-2 Overlay to R-1C Single Family Attached Zoning District in the City of Washington, Franklin County, Missouri.**

The ordinance was introduced by Councilmember Holtmeier.

With no further discussion, the ordinance was read a second time and approved on the following vote; Mothesky-aye, Hidritch-aye, Brinker-aye, Skornia-aye, Holtmeier-aye, Meyer-aye, Sullentrup-aye, Patke-aye.

\* Voluntary annexation of 14.49 acres south of the Malvern Hill Subdivision

*October 10, 2016*

*Honorable Mayor & City Council*

*405 Jefferson Street*

*Washington, MO 63090*

*RE: File No. 16-0802-Jerome Weber-Voluntary annexation of 14.49 acres south of the Malvern Hill Subdivision with a Zoning designation of R-1D, Single Family Residence*

*Dear Mayor & City Council Members:*

*At a regular meeting of the Planning and Zoning Commission, held on Monday, October 10, 2016, the Commission reviewed and approved the above request.*

*Sincerely,*

*Tom Holdmeier*

*Chairman*

*Planning & Zoning Commission*

**Maniaci:** This is a voluntary annexation of about 15 acres just south of the existing Malvern Hill on Rabbit Trail. As you can see in the aerial here, you can see the Victorian Manor Assisted Living, and the existing Malvern Hill, basically Phase 1. This would be Phase 2 of Malvern Hill. They are requesting, so, with voluntary annexation, if you have no request, it comes in as R1-A Single Family Attached, or you can attach a different zone district as part of your request. Applicant has asked for R-1D, Single Family Residential which is a little bit smaller lots down to 7,500 square feet, that is what the existing Malvern Hill as you can see here. So that zoning is not out of character for the area. We are recommending approval of this, this is the Public Hearing for this, and then we have to wait 15 days before we can bring the ordinance back to you, which would be the first meeting in November.

**Mayor:** Okay, any questions or comments regarding this item? Mr. Schulte, come forward.

**Don Schulte:** I'd like to speak up please.

**Mayor:** Okay, come on up.

**Don Schulte:** I am against the rezoning

**Mayor:** Okay, hold on. You have to give us your name and address.

**Don Schulte:** My name is Don Schulte, and I live at 76 Rabbit Trail Drive in Washington Missouri. I've been there over a year.

**Mayor:** Very good.

**Don Schulte:** However, when I moved right in, I didn't realize the vast amount of traffic that Rabbit Trail carries. Now, you're going to put 14.49 acres and put more houses there, there is going to be at least 60 more cars everyday using Rabbit Trail as an ingress and egress. It's a community of more or less retired people, who are not here tonight because they are probably got in their jammies and their rabbit foot, feet watching the football game.

**Mayor:** That's why I like you so much Don.

**Don Schulte:** I am not against progress as such, but I know I'm here probably flying a dead horse because I know that this is a done deal; however, I do have a solution. We have a

bamboozle at the junction of Rabbit Trail and Hwy 100. That traffic light there is preposterous, people can't hardly get across the highway, or want to make right or left turns. I don't know how we can alleviate that problem; however, we can do one way. We can make Rabbit Trail a one way street from the south entrance of Wenona to the Lake Washington Drive, and from there it would go north and south. That would be one way to alleviate the problem. Like I say, I am not against progress and such, but I think that Rabbit Trail, the traffic there is preposterous. Especially where the concrete goes into the asphalt, their trucks go by there and boom, boom, boom, nobody can sleep. So, this is one of the things that should be taken care of. As I said, I am not against progress, but I think I should at least voice my opinion.

**Mayor:** Okay

**Don Schulte:** Thank you very much Sandy.

**Mayor:** Thank you.

**Sullentrup:** Don, getting back to your problems at Rabbit Trail and 100. I sit on the Traffic Committee, and we bring this up three months in a row now. We are actually trying some new ways of trying to get rid of the traffic, so bear with us on that.

**Don Schulte:** I know, I know that you are and I want to thank the Council for everything that you do because I know that you have a thankless job and listen to people like me.

**Sullentrup:** Thank you for coming.

**Mayor:** Thank you Don.

**Steve Richardson:** My name is Steve Richardson, and I live at 2404 Rabbit Trail. I don't really have a problem with the subdivision going in. The problem is, is that the top, I don't have a pointer, but as you go up the hill on Rabbit Trail there's at least four condos, um, whoops, hit the red one, somewhere in, where's the, right in here there is a hump in the road and a lot of people in the morning, I don't know if they're going to work there, it's like a race track and there's at least five units, if they back out of their driveway they can't see over the hump. And as Mr. Schulte pointed out, these are not real young people, and I mean, somebody's going to get killed there because they're just going up and down that street way too fast. And I agree the Hwy 100 and Rabbit Trail is a circus, you see people coming in off of 100 that are going east, they'll make a right turn and they'll go across all two lanes as people are coming down the street, and they'll go into that side road that goes to the Creek. My proposal would be just to make Rabbit Trail, right only into there and make it a one way street from the alley behind the show. So you couldn't come in and make a right turn on to Rabbit Trail or left turn in there, the only way that you would be able to go is coming off Rabbit Trail because it's, I don't know how there isn't a wreck there a day. So, my two cents as well. Thank you.

**Mayor:** Okay, thank you Steve. John, that's a MoDOT intersection, correct? What's the position on that? I mean I know you've been talking about it in traffic but what.

**Nilges:** Rabbit Trail and 100 is obviously a MoDOT intersection where we do have a City street that obviously intersects into Hwy 100. We are currently looking at doing some things with the stop bar going north at the intersection to add essentially two more cars to stack in the left turn lanes onto 100. So we are working with MoDOT right now to just move that stop bar closer to 100 to get us two more cars in there, which would alleviate two vehicles. We constantly look at signal timing in that area when we get a call if something's not working well, we'll evaluate that with MoDOT. That is a MoDOT signal, in addition, we are always looking at new ideas as far as

Phoenix Center Drive, going east west parallel to 100. The issue is that Phoenix Center Drive is actually an ingress egress easement for the City, so we actually don't own that as a City street. So that makes things a little more difficult as far as what we can do at that location, we constantly as Steve mentioned, constantly looking at it and evaluating what can and can't be done. So, I think that we do have something in the positive direction as far as moving that stop bar, we're just waiting on MoDOT approval.

**Hidritch:** And to you Don and Steve, I don't sit on that Committee but I'm always bringing things forward and that's one of my main issues that I bring to the Committee every other month and I've come up with that idea like you said Steve and it got voted down and that's why John's stating why. I've talked to MoDOT numerous times, they've extended that light three-quarter of a second, that's all they'll give me, you know, to go across. Now, three-quarter second isn't a lot to us, but it is to them.

**Nilges:** I would also add, and Sal may be able to speak to this, as part of this annexation, maybe it's something in the future to talk about this.

**Mayor:** Yeah, that was going to be my next question. Are there some future plans for connectivity here?

**Maniaci:** Yeah, and you'll see one of the last items on the agenda is the Plat for this area. So, we show what the layout is going to look like and we will talk about the three connections getting Rabbit Trail down to Bieker, then Malvern Hill over to Weber Hill Estates, and connecting Rabbit Trail to Phoenix Center and Stone Crest. So that will not only will get people on Rabbit Trail away from 100 on to Bieker, but also if someone is trying to get to Phoenix Center out of Lake Washington, or Malvern Hill, or Weber Estates, they hopefully would be able to cut across the east west road here into Phoenix Center rather than having to go down to 100. But again, that is all subject to additional development and annexation or a City push facilitating that.

**Hidritch:** We've been talking about this for years, the long range. How long of a range is this going to be?

**Maniaci:** The comp plan shows all of the connections, where they are proposed. But all three of those right now are outside city limits so we have to wait for voluntary or involuntary annexation.

**Mayor:** Will that answer some of their questions if they hang around?

**Maniaci:** Yeah, I can show the connection right now if you want me to.

**Mayor:** Yeah, can we do that?

**Steve Richardson:** If that is an egress road, why can't that, I mean understand where you're coming in to Hwy 100, but why can't Rabbit Trail be made right only on the egress road? Stop the egress road at the end, and only make it a right turn because the biggest problem is these people are coming out of the egress going across the two lanes right into the left as people are coming in. So if there's a right in, the rest of the people could go up to the stoplight and come right back into Phoenix Center. It would alleviate a lot of problems.

**Mayor:** John may have something for that.

**Nilges:** It's an ingress egress road, that's in and out.

**Steve Richardson:** But you can go in from Rabbit Trail right

**Nilges:** I absolutely understand. Since we don't necessarily have ownership of that road, for us to put infrastructure on that piece of payment, if you will, it makes it very difficult for us to do that without approvals from the property owner. That's where the situation comes in, we have had conversations with that property owner to do that exact thing, right in and right out situation, and that's something that has not been taken very positively on that end. So, we are aware of it, I know that we actually spoke with the Police Department trying to get accident data, I know there's close calls, but we don't have any data that supports it's dangerous.

**Steve Richardson:** Two weeks ago, there were two cars that hit. One coming out of the right, and one coming out left, and they hit. I mean, there was two people that got hit at the same time.

**Nilges:** I totally understand, and we definitely evaluate every situation. It's been on there for three months in a row and we are doing everything we can.

**Steve Richardson:** Okay

**Nigles:** I do feel like we have a step in the right direction with the stop bar, trying to get one more car staking in there, two more cars actually.

**Steve Richardson:** Well, the other problem too is that interchange. People will be coming down Rabbit Trail, and it's a short light to begin with on the left, there's that gap so they don't block the entrance to the place. People will come out of there like it's their right-of-way and you're trying to get to the left hand, and they're pulling out right in front of you. It's a bad place.

**Mayor:** Alright, let us keep working on it in traffic.

**Steve Richardson:** Thank you.

**Mayor:** And then, we can go from there. Don did you have, or someone else has something?

**Don Schulte:** I want to say something else, if Rabbit Trail goes through Bieker Road, it's going to be a speedway, because it's going to be the first north and south road from Bieker Road to the highway, and I don't know how we are ever going to stop that. The only way you do that, is to make Rabbit Trail a one way street going to the south.

**Mayor:** Thank you. Did you have something? Your name and address please.

**Justin Beil:** Justin Beil, I live at 2289 Bellars Lane. I'm at the very last street in Phase 1 of Malvern Hills. Little background on me, I'm a Production Manager at Boeing, we strive for first time quality no matter what we do. If we make a mistake, we eat that cost and we make it right. My concern is, I'm all about expanding the subdivision to Phase 2; however, myself as well as a few other home owners that here have concerns with the way that the land is layed out in terms of drainage, standing water, run-off, things of that nature that I personally believe, as well as the rest of the second row sitting back here, just a small quorum of us home owners in this Phase 1 that believe that before this expansion is approved, these drainage issues need to be fixed. Because I am sure that you as a City Council, don't want to hear other members of this new part of this subdivision come in and speak about this stuff. So, that's my two cents. I think that before this is approved, I think that the builder should come in, should not turn over the HOA to the home owners. They need to fix this, because if the HOA gets turned over to us, then it falls on our hands. We didn't create this land, the way it's layed out, so I believe that it should be corrected first.

**Mayor:** Okay, thank you. Do we have a comment on that?

**Nigles:** Specifically, I have a question for you actually. Specifically, drainage concerns. What specifically are those?

**Justin Bell:** In between, for instance, I live at Bellars Lane. The house right behind me Denise Lowes, in between our homes, and up next to Denise is Linda. In between those houses, the land is always soggy. When it rains, the water doesn't run-off properly into the culvert at the base of the hill at Rabbit Trail in between my house and Denise's house. I know that there's other home owners that have issues in between the homes with the way that the land is graded. That's just a small example, and Vic, not to call you out but there was a proposed fix that allegedly had been completed that looked like somebody walked between two houses and accidentally spilled a small bucket of dirt and had some grass seed mixed in it, and then ran out of straw to cover it up. So, if that's a fix, that you know the builder is going to say it's complete to fix a drainage issue; I am not satisfied with that in any way, shape or form. So,

**Nigles:** I appreciate that.

**Mayor:** Okay, thank you.

**Dave Schneider:** My name is Dave Schneider, I live at 11 Edward Place, which is off of Mike Allen which is off Rabbit Trail. Not so much the traffic, although you can only fit two cars through the 100 and Rabbit Trail Drive on green, and three on yellow if you hurry. I have two small children who like to ride their bikes in the area, seven and eight years old, and right now we ride up on our cul-de-sac but they are starting to ride a little further through our neighborhood, which is now become a thoroughfare. I would encourage us to just look at it. I don't have a solution, I don't have a proposal, but just look at it from a neighborhood point of view and it is becoming more of a thoroughfare and less of a neighborhood. It's not safe, there's no sidewalks, there's no anything, so just look at it before we add more houses to the thoroughfare as to what the neighborhood will be. Thank you.

**Mayor:** Thank you. Anyone else?

**Skornia:** John can we put those choker pipes like they put on Lexington to slow down traffic?

**Nilges:** Well, we can evaluate any traffic you know to slow traffic down. Any kind of infrastructure would do that. I would not necessarily recommend that way of doing it. We are evaluating, Council actually approved the speed radar signs on Front Street which were, Engineering is working on trying to come up with how that does impact traffic but those will be put on Front Street. Now, those things could be utilized at other locations around town in the future.

**Skornia:** I think that this would be a good place for that.

**Nigles:** We haven't evaluated specific locations other than on Front Street, but that would be an option to notify people the speed they're going. Chief, I don't know as far as the enforcement thing. What we do if we typically get a call for speed, I immediately call Chief and let him know that we've received some calls and we work together to step-up enforcement and do what we can do.

**Menefee:** I know several years ago, we did a zero tolerance. Anybody that was speeding five miles or over got a ticket. We ended up issuing more tickets to the residents that we did to anybody else. We do enforce it now and then, it's not an accident factor, we don't have accidents there. The radar speed display signs, studies have shown that when those are up and people can see that their speed, they slow down. You keep those up for a month or two, and your traffic will slow. If you take them away, you maintain that speed, and people keep slowing down for another month or two, then they start speeding up, so you have to put the sign back.

But those signs may be something we can look at that's an easy way to try to get people to slow down.

**Mayor:** Okay.

**Justin Beil:** May I submit to the Council, I have photos just as a visual representation of the drainage. And second thing, how does the Council feel about speed bumps along the road?

**Hidritch:** It's against the ordinance.

**Justin Beil:** What would it take to add that? Is that a possibility?

**Menefee:** I can tell you, I am speaking for the Chief Halmich the Fire Chief, but I can tell you he is totally against speed bumps.

**Justin Beil:** Understood.

**Menefee:** That interferes with the emergency response for the big fire trucks.

**Justin Beil:** Gotcha, okay.

**Menefee:** It causes damage to them if they go over them too fast. It'll damage a police car too.

**Justin Beil:** Thank you for your time.

**Mayor:** You're welcome, thank you. Thanks for being here.

**Cameran Lueken:** My name is Cameran Lueken with Wunderlich Surveying & Engineering. I guess specifically I just want to speak to the voluntary annexation I guess if you guys have any questions about that we can go through that later on, if you got questions I guess related to the infrastructure plans we can talk about that. So, I guess kinda just looking at things as Sal and John have mentioned, the existing Malvern Hill are already R-1D lots and that was the 7,500 square foot minimum lot size, basically it's a detached Villa is what it is, maintenance free and that first phase has been successful so as Vic moves on, the proposal tonight is voluntary annex the 14.50 acres as R-1D and to do about 31 lots. When you look at this, as already been identified, this is Keunzel Drive to the west, this is Rabbit Trail Drive to the north, and Bieker Road is down here to the south. Only the area in blue is being annexed right now. So to give you an idea to where this lays at, in relation to the existing City limits, everything in yellow or color is existing City limits. So like this is the Kleekamp farm, this was the area that was turned into Victoria Manor. This is Malvern Hill, this is the rest of Weber Farm, this is Weber Estates to the west. This is the preliminary Plat, so I guess that we will back away from that right now but basically, there is a Bieker Road connection mentioned, and I think that this was mentioned already tonight, this is outside the City limits. It's been pretty much fair to say, that throughout probably the last 15 to 20 years, the City of Washington has not built a residential connector street other than a street like Vossbrink Drive, where it serves like an industrial facility. So, I guess what I am saying is that if it helps, hurts, whatever, this Bieker Road connection it may be awhile. I know that it was mentioned, and there was concern about Bieker Road connection from the gentleman that lives further to the north. You know that's going to take some time to possibly do that. So I guess, to the relation of the voluntary annexation, you know, we don't intend to change anything. Malvern Hill has been pretty successful, so therefore, Vic's intention is to keep doing some of the same that he has done before. Any questions relating to that?

**Mohesky:** Not to that, but to the infrastructure part of it.

**Cameran Lueken:** So, do you want to talk about that now or later you think Jeff?

**Mohesky:** It's up to everybody.

**Mayor:** Let's go ahead and talk about it now, if that's alright.

**Mohesky:** My question pertains to drainage real quick, if I can just address that. So, in this new piece that we're wanting to zone in, does any of that affect the current issues that they're having with drainage?

**Cameran Lueken:** To answer that question for you Jeff, I'm just going to use the slide here, I'm just gonna go off my memory, basically your guys' stormwater ordinances in such that I think it's a three and a half feet per second in a swale and a four CFS. So anyway, we've submitted all the calculations to the City related to the protection of what exists here so, by way of example, the area that's identified that gentleman identified, there's a swale, an earth and berm swale above that to the west, so that any development to the west would not exacerbate his situation any further than already what it is. So the new development in this phase, or future phases, will not dump any more water on that situation. So, if I had to guess, I'm not trying to make excuses, but an example would be this past year July/August, has been a very wet year. I don't know of the situation, this is the first that I've heard about it night. I don't know what the situation is, but I'm sure that Vic wants to maintain his good name. If he or we need to look at that situation, we'll look at it and take care of it. It's just, what happens is that between the wet year, the footing drains, and all of the situations that are going on I don't know what the situation is.

**Mohesky:** Okay, but I'm hearing that this new addition should not affect them currently there.

**Cameran Lueken:** Correct.

**Nilges:** Engineering department is currently in the process of reviewing the construction plans, and we were made aware at P&Z of a concern of drainage on the western cul-de-sac. We're reviewing that, we're ensuring that the water coming from the west because that is up hill, coming from the west, is collected in two berms west of the subdivision, the existing subdivision, and then routed in the underground storm sewer. So, as of right now, and like I said, we're preliminary in review of this. We know what's going on with that, and we are going to make sure that it does not make the problem any worse.

**Mohesky:** Okay.

**Nilges:** As far as this drainage situation that the gentleman discussed, I was not made aware of that neither so.

**Mohesky:** Okay.

**Nilges:** We'll work through that as the plans get reviewed.

**Mohesky:** Thank you.

A motion to accept the Public Hearing into the minutes was made by Councilmember Mohesky, seconded by Councilmember Patke, Hidritch-nay, passed without dissent.

**Mayor:** Do we want to jump down to that preliminary Plat at this point? Can we do that? Can we go ahead and jump down to the preliminary Plat approval for Malvern Hills, and then that way you folks can go home.

\* Preliminary Plat Approval – Malvern Hills Phase 2  
*October 10, 2016*  
*Honorable Mayor & City Council*  
*405 Jefferson Street*  
*Washington, MO 63090*

*RE: File No. 16-0901-Malvern Hills Phase 2-Preliminary Plat 4*

*Dear Mayor & City Council Members:*

*At a regular meeting of the Planning & Zoning Commission, held on Monday, October 10, 2016, the Commission reviewed and approved the above request.*

*Sincerely,*

*Tom Holdmeier*

*Chairman*

*Planning & Zoning Commission*

**Maniaci:** So this is the plat on that proposed annexation. It is 31 homes, approximately the same size as to what's existing in Malvern Hill. They vary from 7,500 square feet to some above 10,000 on those bigger lots on the cul-de-sac. So the main things I wanna point out are the proposed stubs first all. So, as you can see this is Rabbit Trail. It is part of the comp plan as a major road, which means it has to be 40' wide instead of 35 which it does show that, and the improvements do not extend fully to the property line as they normally would be required. You can see that dotted line is actually a flood plain that goes along here; there is a creek that runs along the southern boundary of this annexation. And so, to be able to extend those improvements to the property line they would need some off-site grading easements, not only outside the City limits but off of the property they own so that's one item that would need to be addressed that I'll bring up the end here.

The second stub is shown to the west, so this road is proposed to be called Keunzel Drive which will connect to the existing Keunzel Drive and Weber Hill Estates. You can see this area of a different color, it is a proposed turn-around, temporary turn-around obviously it will not stay there as the development continues, it is required to meet the existing cul-de-sac requirements as well as being able to hold, it has to be a hard surface and hold 75,000 lbs. for fire apparatus.

The third stub is the proposed road here which is Halls Green Drive. It is proposed to go north towards the existing Malvern Hill, and I guess wrap around there but we have not seen a future phasing plan. I do want to point out, here's where we're at, this is one stub that will go down to Bieker, the second, this is the existing Keunzel it'll wrap around and then Halls Green will wrap up behind the existing homes. This road here Betony Court, is a proposed cul-de-sac and I want to point that out because if you look in the comp plan we do have a connection to Bieker Road as well as one, this number 11, is proposed to connect over to Stone Crest and that does line up pretty much exactly where this Betony Court is. But as you can tell, the developer is proposing a cul-de-sac there instead of a stub for future connection. I do want to point out that there is an existing right away that was dedicated to the City as part of the Victorian Manor Subdivision when this first came in, and it's only 25' wide which is half of what we need for that connection; but there is a possible connection across the creek there. So there are a couple of reasons that staff is recommending approval of this plat with this cul-de-sac instead of a stub. The first one is that, in this location farther north the flood plain is much narrower. So you can see here, the flood plain widens, it's kinda a wider valley, it's not as deep but it does extend longer and it would be a more costly connection there.

The second is that we do have a portion of the right away already dedicated to the City. We would have to require additional land there, but we do have half of the right away essentially between what is this property that is proposed as part of Stone Crest and on existing Bieker Road. And the third real reason why we're recommending this connection farther north rather than what the comp plan shows here in number 11, is that if you move this connection farther north, it does provide a much more direct route to Phoenix Center because you are going to have if Rabbit Trail connects to Bieker, you're going to have traffic off of Bieker, you're going to have existing traffic off of Lake Washington, this new Malvern Hill, and the connection off of Weber Estates; all having quick access to Phoenix Center, and if we do have this connection farther south all of the traffic will have to make multiple turns through Stone Crest. If we did have it farther north it would be much more direct access. A bridge would still have to be built regardless, but it will be a shorter bridge because the valley is deeper there and narrower and it does keep traffic from making multiple turns in a residential subdivision, and this way we have the ability when this gets platted to make sure that connection happens.

So we are recommending approval of the plat as a whole, there are a number of conditions that staff is acquiring most of these I kind of touch already. Keunzel Drive must terminate in that temporary turn-around that is hard surfaced and can have fire apparatus.

A 200' corridor must be recorded on the property to the west, which is on the existing Weber Farm, showing that general connection from the existing Keunzel Drive to the proposed Keunzel and the reason for that is say a different developer comes in and decides to finish the Weber Farm, we wanna make sure that we have that connection in place. So this would be a corridor recorded to make sure that the roads do connect and we've done that before on High Street when it was annexed in High Street going south.

No additional plats proposing access to Keunzel Drive, Halls Green Drive, or Rabbit Trail Drive shall be approved until the second access point is constructed. Like some of the concerns we've heard tonight, Staff does share that concern. That is a lot of traffic going to Rabbit Trail that only has one way in and one way out. After this plat, we propose that second access has to be connected rather it's to Weber Estates or Bieker Road before any additional phases of Malvern Hill, or any other development are approved.

The plat does not show Rabbit Trail Drive improvements extending to the property like I mentioned. We would recommend that requiring a separate guarantee agreement than we normally would with a letter of credit or some other type of financial insurance to make sure that the connection is done, so that way if the property to the south on Bieker Road is developed, we don't have someone just putting improvements up to the property line and then we have 50' that's not connected then we have the monetary insurance to be able to connect that.

A revised plat for Victorian Manor showing the right of way dedication, I actually forgot to point that out. The plat does show half of this Betony Court on the Victorian Manor property. We don't have that recorded, so they would need to revise that plat on Victorian Manor, which wouldn't be an issue as long as Victorian Manor obviously signs off on that.

A 12" waterline is required along Keunzel Drive. This is just to ensure the loop, and is a request from Public Works to ensure the loop from existing Weber Estates down to the subdivision. The City will participate in paying for the difference of the upsizing provided that the water test shows the 10" line will meet the requirements of what's proposed, which we have done in the past as well.

A note must be added to the plat that the maintenance of the stormwater will not be taken over by the City, it will be maintained by the property owner which is a standard note in our preliminary plat requirements.

Future development signs must be posted at the end of each stub street. This will keep from homeowners buying homes and coming to these future meetings saying I never knew that this road was gonna be extended, so they know when they're buying a home that there's gonna be more development.

These last two are pretty standard, construction plans must be submitted. They actually have been since I made this PowerPoint, and approved prior to any construction beginning obviously. And then a final plat will not be approved until the improvements are either completed or per approved, or we do have a guarantee agreement with some additional financial insurance that it'll be completed per approved plans.

This was submitted, that corridor I spoke of between the existing Keunzel and the proposed Keunzel, they have drawn up what that would look like, so it's 200' wide and because it doesn't necessarily have to be exactly in the center line but it can be somewhere in that area, and that will be recorded on the Weber Farm just to ensure that any future development connection is made.

**Patke:** How far is that?

**Maniaci:** It's about 1,000' I believe

**Mohesky:** Can anything be built on either side of that?

**Maniaci:** On either side of this?

**Mohesky:** Yeah, Keunzel.

**Maniaci:** I would assume so. You would have to ask the developer if he has any phasing plans, but this connection that's farther north, again, we have not seen any phasing plans. We would like to see Weber Heights Drive extended, and possibly connected as well so we minimize the amount of cul-de-sacs; but we haven't seen a plan for that but I'm assuming the rest of this is going to be utilized as well for connections.

**Nilges:** Maybe to answer your question, it's a 200' corridor once the road connection gets made, which we have a condition where you can't move to phase 3 until the road actually gets constructed. Once that's done, the right away width will then be granted in that corridor essentially goes away.

**Maniaci:** Okay, I am sorry I didn't follow your question. That 200' will not remain once the road is built.

**Nilges:** That just assures that, it's there if another developer came in. It's essentially a dedication of the corridor.

**Hidritch:** So, still at this time you cannot tell any of the residents up there any time frame of when any other street will get connected?

**Maniaci:** No, not until we have proposed plans going. If a plat for Weber Estates connection, maybe Keunzel Drive if that, if a plat comes in, then you have two years to put it in or else you have to come back in and re-ask for everything. It would be tough to tell someone that they have to have the road connected in so many years and it's not connected and the homes are in. What's the repercussion there?

**Sullentrup:** I think it was Don that mentioned earlier that, I guess it was Rabbit Trail, the elderly people live out there. My question probably would be for Vic or Cameran, on this new phase what do you project for people buying these homes, the ages?

**Vic Hoerstkamp:** We would expect a similar clientele than what we have at Malvern Hill which ranges from I guess in age from 30 to 60 or 70 even. But I do believe, you guys were asking about further extensions and stuff, I know I am not prepared to put more streets in but it is a step towards getting access to the west into Weber Estates but it's just pieces at a time. It's about as fast as I can go. But it will help eventually I know right now it's tough and it's adding more traffic to Rabbit Trail, but eventually it will help ease it up.

**Mayor:** Thank you Vic.

**Cameran Lueken:** I want to answer a few questions; I can tell that you guys have questions about. Sal mentioned that up here to the north at the end of Rabbit Trail Drive when Barkley stopped building there, that was in the master plan about connecting that street to the east and he dedicated 25' to do that. That's recorded on Rabbit Trail, and I can't think of name of the development there at the top of my head. When we did Victorian Manor, these lots here for Mr. Quick, we dedicated an additional 50'; there's actually a 75' strip dedicated when you put those two together, if you look on there. A 25' strip and a 50' strip so you can check that out. I just wanted to correct that, if you look there's 75' dedicated to the City there to make that connection, and I guess for explaining it, as a mention, when you look at the grades going east at the Kleekamp farm, compared to the width compared to the vertical alignment, this is a much easier connection to the north here as well as the reasons why Sal mentioned that. I just wanted to mention it.

**Patke:** Does that connection come to the south or the north of the Phoenix Park?

**Cameran Lueken:** To the south.

**Patke:** It is to the south of that? So behind it.

**Cameran Lueken:** It would not go through the park.

**Patke:** It just seems like a great place to go, and it would alleviate some of the traffic at Hwy 100, anybody going to the shopping center. It seems like the next obvious way to go, and I was just kind of curious if was on the north side it's going to be closer to the shopping center.

**Cameran Lueken:** Correct. So there's that question and there's this corridor connection here, and basically Mark, it's the same thing we did, this is the same situation where you've got property that's outside the City and the County and the City wants to be sure of the connection we made so that's exactly the same issue we had on the Jasper Farm and High Street, so we propose the same type of corridor connection agreement that we did with the City back in 2000.

**Piontek:** The one difference with this is because each end of it would end, if this gets annexed, each end of it would end in the City limits and because it's less than 1,200' in

length the City could go, not that we do, but the City could go through and actually build that road and charge the cost against the property owner which in this case, I would presume to be Weber.

**Hidritch:** Would that be charged at the time or when lots or sold?

**Piontek:** At the time the street is built, you can charge it against the property owners. Now we don't do that.

**Hidritch:** Right, it just seems cost prohibited for the owner.

**Piontek:** It's more expensive for the City to build a road than for the developer because if the City does it you have to pay prevailing wage, and that typically is a higher wage than what they can get it done for.

**Hidritch:** Right.

**Piontek:** If the development ended right there and nothing further ever happened, you could put that road in, if you wanted to.

**Mayor:** The City could.

**Piontek:** Yes.

**Cameran Lueken:** Let's see what other questions you guys have related to, I guess, like I said as far as the infrastructure plans are concerned, we kinda went over some of that, I guess, like I said, they all have been submitted to John for his review. Like I said, our intention is to not exacerbate any situation here, like I said, there will be a structural berm built here as well as piping underground, piping that is going to be directed to, the detention basin is going to be built right here, basically on this southern part of this right here so there is going to be another detention basin built. I don't want to get into the technical details. I'll answer any questions you guys have about it, but I don't want to bore you with all of the details.

**Briggs:** Can you back up to the Master Street Plan? So staff is recommending that we eliminate L from the Comprehensive Plan?

**Lamb:** No, move it north.

**Briggs:** Just on drawings, it's going to go north so it's eliminated there and moves up to there. My question is to Mark, do we not have to amend our comp plan then, which is adopted by a Public Hearing and been recorded in the County?

**Piontek:** We can look at it, I don't think we have to, but we can look at that, it would be fairly simple to do.

**Briggs:** I just want to make sure we follow procedure.

**Maniaci:** When you look at the actual, when you go through all of the numbers, the verbiage in the comp plan just says east west connection from Rabbit Trail to Stone Crest. So, if we just make the east west connection I thought that maybe it would suffice for the comp plans.

**Lamb:** It's purposely left vague for just that very reason, so that you could move it wherever you felt the development needed to occur. It was just to make an east west connection.

**Mayor:** So the stormwater issue that was brought up earlier will be addressed in site plan review and things like that, or as the development.

**Nilges:** Correct, we'll review that specific situation. Like I said, I was not made aware of the situation.

**Mayor:** Right, but the others for the new development will be addressed when you're doing infrastructure design work.

**Nilges:** Yes, all the design work and everything will be reviewed as planned.

**Cameran Lueken:** Yes

**Nilges:** And the actual inspection process to ensure that we don't have issues like this moving forward.

**Mayor:** Does anyone else have questions of Cameran? Okay, thank you.

**Cameran Lueken:** Thank you.

**Mayor:** Someone else has one more comment. Say your name again.

**Dave Schneider:** 11 Edward Place. Just a question, I'm a real logical thinker, Electrical Engineer by trade, but all of this traffic will alleviate corridors between like, over at Weber Estates over to Stone Crest, and everyone going to everyone's houses, but all of the major thoroughfares to all of the shopping districts, which is where everyone is going, is still going to go down Rabbit Drive to get to Walmart, to get to the movie theatre, to get to Target, it's still the shortest distance between two points. Is there anything that is going to alleviate the natural flow of traffic that is going to be the shortest distance between two points and the fastest distance to get to the major shopping areas where all of these residential people are going to go to shop, is my question.

**Nilges:** Like I stated earlier, we are constantly reviewing different ideas and things at Rabbit Trail and Hwy 100. I would note that Rabbit Trail is considered a collector, so to be surprised there's additional traffic on Rabbit Trail, I don't think we can say that. It is a collector street; it will see a higher amount of traffic than your local access streets that connect to these collector type streets, sorry a major street.

**Sullentrup:** Have we done a traffic count on Rabbit Trail?

**Nilges:** I have not done one, I'm not aware of one that's done in the past 10 months, but that's something that can be easily done. We can get it started tomorrow.

**Sullentrup:** It would be nice to have it at a Traffic Meeting.

**Nilges:** Yep, we can discuss it then.

**Mayor:** Okay, any other questions regarding this item?

A motion to accept the Public Hearing into the minutes was made by Councilmember Brinker, seconded by Councilmember Sullentrup, Hidritch-nay, passed without dissent.

\* Rezone 2 parcels located at 1000 Duncan Heights Drive from R-1A Single-Family Residential to C-4 Planned Commercial and Development Plan Approval

*October 11, 2016*

*Honorable Mayor & City Council*

*405 Jefferson Street*

*Washington, MO 63090*

*Dear Mayor & City Council Members:*

*At their October 10, 2016, meeting, the Planning and Zoning Commission voted to approve the request to rezone two parcels located at 1000 Duncan Heights Drive from R1A to C-4 Planned Commercial. At the same time, the Commission voted to postpone the proposed development plan for the Duncan property to the November 14<sup>th</sup>, 2016 meeting.*

*Sincerely,*

Sal Maniaci  
City Planner  
October 10, 2016  
Honorable Mayor and City Council  
City of Washington  
Washington, Missouri

RE: File No. 16-0801-(a) Daryl L. Duncan. Applicant is seeking to rezone 1000 Duncan Heights Drive from R1-A, Single Family Residence to C-4, Planned Commercial District

Dear Mayor and Council Members:

At the regular meeting of the Planning and Zoning Commission, held on October 10, 2016 the Commission reviewed and approved the above request with the following contingencies subject to the contingencies listed in the staff report.

Sincerely,  
Tom Holdmeier  
Chairman

Planning & Zoning Commission

**Maniaci:** Okay, so this is the Duncan property. I know that you are all aware of that it went through zoning about a year ago; I think it was in September, and now they're back with a C-4 zoning request. I will preface this whole presentation with the original request was a rezoning from R1-A Single Family Residential to C-4 Planned Commercial as well as a development plan approval. At last week's Planning & Zoning Commission Meeting, the Commission did vote to approve the rezoning but they tabled or postponed the development plan. They did not make any motions on that, so I am just gonna talk about the zoning here and then we can get to public comment.

This aerial shows the subject properties, it's actually two parcels, I think three acres total in size and it's got the existing Duncan Avenue you can see the portion here is not yet right away dedicated. It does access technically, there is a portion off of Duncan and then there was driveway connected to Rainbow as well.

So here is the existing zoning and the surrounding zoning, this hash mark are the subject properties. You can see all of the areas to the rear, I guess to the east of the property are R1-A Single Family Residential, the blue is Multi-Family, this gray on top is Mercy is actually zoned commercially, but that's Mercy south. You can see the high school right across the highway and then as you go south on Hwy 47, all that red is C2 General Commercial and that does extend past Heritage Hills and then into obviously the Washington Square, 100 and 47 intersection. So, I will point out that this is the future land use map that is part of the comp plan; it does show the subject property as C2, which shows it as commercial. We don't designate between the different zoned districts, we just have residential and commercial, but it does show this area as commercial for future development.

So quickly jumping into it, the analysis of the actual rezoning request and not the development plan itself but actually the rezoning to C4, the property is front along highway 47 which is a generally commercial corridor throughout the City limits. The property does have adequate ingress and egress onto Duncan Avenue. Duncan Avenue it is not a residential street, there are no single-family homes that actually directly access Duncan

Avenue. The adjoining property to the north was approved for C4 zoning in 2015, which is the Wilson property. We have not had a development plan been approved for that, they would have to have that come in the future; that does have a two year expiration date so that would expire in I believe, July of 2017 unless it is extended or the development plan is approved.

So the future land use map does designate this property as commercial. There is, this is shown on the comprehensive plan as such, and given its proximity of the highway, its frontage along the highway, and it does have some topographical issues that you are aware of, it does slope upwards pretty rapidly as you get to the eastern property line. It is unlikely that the property will be developed residentially; it has been zoned residentially for quite some time, and now with this Duncan Avenue, and I believe in 2007 being built as quick access to the highway.

So with all of that being said, there is an argument that I think it should be zoned commercial. It is a suitable zoning, and then just on top of that the C4 zoning does allow for extra requirements that can keep the development from being a large detriment to the neighboring properties. So the C4 allows you to not only take usages out of the list of permitted usages as part of the ordinance, but it also requires the development plan to be submitted and approved as part of that.

So, we are recommending approval the rezoning to C4, staff is recommending two conditions of approval. First of which is based on the applicant actually submitted in their proposal that they would voluntarily take out a gas station from a list of uses that was proposed. We agreed with that and said okay, well if the applicant is wishing to take that out, and I looked at the list of uses that I thought were equally as intensive or also had outside storage. And the two on there that I had outside storage or could have as intensive as a gas station my opinion would be equipment repair facility and retail lumber store. So that's why those seem kind of random, but they are on the list of approved usages in C4 so I removed those as well to be on par with the gas station.

The second condition for approval would be that right away for Duncan Avenue must be recorded prior to the rezoning actually taking place; so, just for zoning, those were our two conditions. I want to also mention that a protest petition was filed and it was validated. If you have at least 30% of the property owners within 185' sign a petition and submitted to the City Clerk, you can require a super majority; they did have about 13 of the 24 signatures on there so. I'll take any questions you guys have.

**Mayor:** Okay, are there any questions of Sal?

**Maniaci:** Okay, thank you.

**Mayor:** Okay. So this is a Public Hearing tonight, obviously, and how we're going to handle this this evening, we are going to hear from the opposition first, and when that's completed we will hear from the petitioner, Ray Frankenberg is here to represent the Duncan's. If after you hear Ray's presentation, if you have any new information that wasn't mentioned the time before, when you were up here before, you have some new information, you'll be invited to come back and add new information, add anything that you would want to add onto what was previously said. Just to make you aware, we are not, there is no ordinance on the agenda tonight to vote. Again, tonight is a fact finding night. We will not

be voting on this this evening. It will come for a vote at our next Council Meeting, which is November 7. So that will be the night the Council will vote, and again we are just voting tonight on whether it should be zoned C4, we're not really voting on the plan. Excuse me, I am sorry, I have that wrong. We are just talking about C4 zoning tonight, but we are not voting.

**Skornia:** Sandy, can he maybe give the plan first so they can see the plan before they.

**Mayor:** I think that.

**Piontek:** Well the plan hasn't even made it through Planning and Zoning yet, so it's premature to even talk about the plan today. The only thing that should be the topic of discussion tonight is whether it should be rezoned to C4 or not, because the plan hasn't even made it through Planning and Zoning.

**Mayor:** Okay, so, any Council Members have any questions here?

**Mohesky:** Just real quick, before we start, is there a reason we're not voting on that tonight? Just for clarification.

**Mayor:** The feeling was that there was a lot of information that is being disseminated and I think that there's a lot going on with Sal with the City's side of it as far as with Sal's presentation and everything, and there's also a lot of information from the home owner's. So, we just feel like the Council Members should be able to kind of digest it somewhat before we take the vote. It will be on the agenda in November. So, who wants to go first?

**Lloyd Miesner:** My name is Lloyd Miesner, and my wife and I live at 3 Fieldstone Court which is approximately 200' from the Duncan property, and before I get into it, I would like to ask can we vote tonight? Can we change and vote tonight? Why not?

**Piontek:** Because there is no ordinance that's even included in the agenda. There's nothing, there's no ordinance to be voted on; it's not in the packet. It would of had to be on the agenda at least 24 hours prior to the meeting tonight, it's not on the agenda, and it's not in the packet.

**Lloyd Miesner:** Can I ask why it wasn't on the agenda?

**Piontek:** Well I think for the reasons the Mayor described.

**Lloyd Miesner:** Alright, well anyway, last Monday, October 12, I emailed a letter to all of the Council Members stating my concerns in rezoning this property. It will have a detrimental effect on the property values in our area. A residential area such as ours needs a commercial business like Downtown Washington needs a Mobile Home Park. I not being, I guess I being a little bit being facetious, but I'm lettin you know how sincere I feel about this. There's no doubt in my mind that it would lower the values of our homes by as much as 20%. We don't need a rock quarry in our backyard with a commercial business creating noise and light pollution with parking for over 100 cars. The other point of interest that I want to mention is that traffic already exists on Duncan Avenue, and Mr. Frankenberg, at his pitch to our last Planning and Zoning Meeting mentioned this numerous times himself. This afternoon, I was at the stop sign behind 12 cars at 2:45, at 3:00 is when Lourdes lets out, so you can imagine how much more traffic was added after that. If you've not looked at the property on Fieldstone Court, the neighboring, I myself and all the neighbors would be happy to show it to you from our perspective. I think you'll agree that it would be an eye sore, and I think you would be surprised on how close three of these houses are and would be to a 34' rock bluff. At our last appearance before the Council, we received a favorable vote which we

appreciate very much, and since nothing significantly has changed, we ask for your consideration once again. Thank you.

**Mayor:** Thank you Lloyd. Anybody has questions of Lloyd?

**Joe Wildt:** Good Evening, my name is Joe Wildt, I live at #4 Fieldstone Court. Thanks for giving me the opportunity to express my opinion regarding the proposed rezoning of the Duncan property. I presented my reasons of opposing the rezoning during last year's meetings; therefore, I will briefly summarize my position which has not changed since last year. First, I am a registered, professional Engineer in the State of Missouri, after reviewing the site plan submitted, is my opinion that there could be serious issues regarding drainage and water detention if a property is developed as commercial. Second, I am a certified Appraiser with the Institute of Business Appraisers, it is my professional opinion that the value of nearby residential properties would decrease substantially, if the subject property was rezoned commercial. Third, it is my opinion that additional traffic resulting from the development of property is commercial, would add to the present existing traffic problems at this location, and would be a safety hazard. Last, it is my opinion there presently is an excess of commercial property in Washington, and a need for more residential property is what is really required. This is obvious by the large amount of vacant commercial land for sale, as compared to the availability of residential property. There's no logical reason to change this property from residential to commercial. In conclusion, it is my opinion that the rezoning of the Duncan property is not needed, not wanted, and not desirable for the general benefit of the community and the neighborhood. Thanks for allowing me the opportunity to express my concerns.

**Mayor:** Thank you Joe.

**Brinker:** Joe I have a question for you.

**Mayor:** Joe, Josh has a question for you.

**Brinker:** As for as your detailing potential property value reductions with neighboring residential facilities or properties, when Bedford Center was developed and they cut the bluff there, how were the property values effected in the Meriwether Estates Subdivision? That would be the most similar type situation here in Washington.

**Joe Wildt:** Well, I don't know I didn't research that. It depends on facts and circumstances, but to give you a little history in my background, I worked for 30 years for the Internal Revenue Service as an Evaluation Engineer and quite frequently I was involved in situations very similar to this and through extensive surveys and research, we did identify the fact that the property value of nearby residents was reduced considerably. Now this, granted depends upon the fact and circumstances of each individual situation.

**Brinker:** Correct. I guess going into property evaluation, going through the basics of a property appraisal, how would you start the evaluation of this property? What would be at its highest and best use? Is it physically possible, legally permissible, financially feasible, and what would be maximally productive for this property if you went in to do an appraisal of this?

**Joe Wildt:** Sure, well I would take all of those factors into consideration. I think that it depends on the developer, someone that would purchase it. I can visualize somebody buying the four acres and putting up a half-million dollar house there. It's done quite frequently on

270 in Des Peres, where people tear down old homes, sell the lot and the homes are considerably at higher value as placed there.

**Brinker:** That is correct but, will that be maximally productive for this parcel of ground in this instance?

**Joe Wildt:** Well, I don't know. Like I say, it would depend upon facts and circumstances. Are you talking about what it would sell for the most money? Financially it would be a commercial property.

**Brinker:** Just the whole theory, the highest and best use for a particular piece of property.

**Joe Wildt:** For who though, the property owner or the community?

**Brinker:** Specifically the property owner.

**Joe Wildt:** Well, obviously for the property owner, it's best to go commercial; but my opinions about the neighbors and the community in general.

**Brinker:** Okay, I would just like to see, if we had, and maybe I will do some research on my own to see what happened to the Meriwether homes when the Bedford Center bluff was cut.

**Joe Wildt:** Well, I don't know. I suspect the survey would have to be done and compare before values to the after values. Being an appraiser, that's a procedure I would use it's not gonna be easy would be very difficult; but I think that I can ask each of you individually if you owned John Hillermann's house that adjoined this property, would you pay more or less for it if you knew property next to it was zoned commercial? I think that's the obvious answer.

**Brinker:** That I don't know. You go back into, like I said, the Meriwether homes and just wonder if the home across the street that wouldn't back up to it, did that one sell more being everything equal besides that specific location?

**Joe Wildt:** Right, I don't know. When I worked for the IRS, I had a lot of time to do these issues. To get an Appraiser to do it now would be very expensive. I do want to say also, there are numerous court cases that go both ways, but basically its facts and circumstances. Like I said, first I want to say, you know, Frankenberg Engineering, they do an excellent job and I remember working for them 50 years ago when I was in college doing surveys. I know Ray, and I know that they're an excellent Engineering firm; however, there's still that possibility of problems with drainage and water retention. Secondly, from the view point of the neighbors, I don't think there's any neighbors here that feel that it would increase the value of their house, if there is, I would like to see a show of hands, nobody.

**Brinker:** And there could be no affect in value as well.

**Joe Wildt:** I know.

**Brinker:** Then, it would just have to be analyzed

**Joe Wildt:** Sure, it's a difficult situation.

**Brinker:** Correct, thank you Sir.

**Joe Wildt:** You're welcome.

**Mayor:** Thank you Joe. Okay, next, John.

**John Hillermann:** My name is John Hillermann and I live at the house that Joe was talking about. First of all, I would like to thank the Council, most of you have probably been, quite a few of you have been up at our place like a year ago so you kind of know where we are, what we are about, and what kind of residential area we have. It's a very nice area, but to tag onto

what Joe said about the property values especially to you Josh since you asked the most questions, my property backs up to the Kathleen Duncan Property and I would love to have anyone come up there that thinks they could build a commercial property 25' from my back yard and tell me that it's going to increase my property value. There's just no way, in fact, this is kind of a separate subject, but I think they've already decreased the property values by the creative landscaping that they've attempted up there whatever you want to call it. It is an eye soar for the City for a whole year, the stump sitting out by the highway; you should be back where I live, come and tell me that is increasing my property value or that someone would even want to consider buying my house, not that I am selling it. You don't need a survey to do this, you can just look at it, we don't need a meeting for that.

Okay, so I need to move on from that. I'd like the people that are in support of voting C4 to please stand, it's a really good showing considering there's people that live in our neighborhood, around our neighborhood supporting us. I am not the spokesman for this group, Joe isn't, Lloyd isn't but there's four or five of us property owners. The Lutheran Church starting at the south end, Tom Smith, Charlie Heart, myself, and Denny Whitworth, and we all share some of the same concerns, some of them already have been brought up. Rather than go into detail to each one, but I would like to mention some of them, some of them have been piggy-backed to what's been said already. I've got on here that we don't want at 25'-30' rock bluff in our backyard, virtually a rock quarry, you see those along the highway. It's pretty easy to see when it's cut along the highway and the ground's kind of matchin up whatcha gonna end up with. The removal of the rock, as close as we are, has been concerns for our neighbors about how it will be removed. Is it safe to remove it, will it affect our foundations, or driveways? If they approve this, and we hopefully they won't, the type of tenants that they'll let in there; there is no guarantee what type of tenants you can get in there. We're talking the other night and there's a development on Jefferson Street where Aldo's is, and when that was built it was probably made for offices like Walde, or somebody like you know small businesses, now you have Aldo's up there which is a great place but Aldo's is not made to be there. It's too high of traffic, there's not enough parking, we're concerned that we could end up with something like that; in fact, I drove down to McDonald's tonight just as a side note and I counted the parking spaces in McDonald's all the way around; there's 58 parking spaces there. In our development, Steve is it about 140?

**Steve Reuther:** 140

**John Hillermann:** 140, its three times as many parking places that are in McDonald's and they wanna put it in our backyard. Another thing that would concern us is the hours of operation, and once again the property values. In closing, last time the City Council voted eight to nothing in our favor. I think nothing has changed, in fact, if anything, it's worse because the plan that they brought to the P&Z the building is bigger and the parking's doubled. So if anything's changed, they made it worse. Last time you voted eight to nothing in our favor, so I would like to propose that nothing's changed and the vote shouldn't change. Thank you.

**Mayor:** Thank you John. Does anybody have any questions of John?

**Tom Smith:** Good Evening Everyone. Once again, Tom Smith 4 Scenic Drive. My property happens to be 13' from the corner of this proposed effort. Buescher Frankenberg is

representing the Duncan properties and wish to convince this board once again the need to remove residential zoning from a section of our neighborhood to C4 commercial development. BFA implied, of course this last week, that they had a list of clients were interested in development. This meeting and the meetings previous we have heard about increase traffic onto Rainbow Drive and Duncan Drive. Last week, 10/10/16, last Monday, BFA wanted to have us believe traffic would be too dangerous to access Duncan and Rainbow Drive if one were to develop these two properties as residential; yet at the same time, BFA thought there would be no danger in having traffic from 165, maybe I stand corrected on this, 140 parking spaces, either way quite a few parking spaces, surrounding a proposed business building that there would be no danger in having that kind of traffic coming out onto those same drives and that it would be actually safer than having a residential development. Now, I may be putting words into Mr. Frankenberg's mouth, but it was to that effect, he was presenting that argument. But when the P&Z permitted the Duncan request to move forward to C4, it eliminated anyone, if you all decide to go the way with P&Z, for presenting a fair market value for residential development.

Also, BFA, when pressed by P&Z at the meeting last week for more restrictions, as we see there were three for on-site development, one of the restrictions that was proposed was food service. BFA was very quick to come up and speak up on keeping food services at all into the mix, and understandable, but which leads me with some eyes our neighborhood and maybe one of these developers in the background wherever they are, we'll all be smelling fast food in the near future if this request is granted okay. I've stated this before, my and wife and I and our neighbors are appealing to the better nature on all of us as a community, striving to maintain quality, residential life, and ask you to vote no on this rezoning request. Again, we feel, and hope, and know this community continues to promote quality neighborhoods that help all of Washington; however, this proposed C4 designation on this particular property and assuming development will have a deteriorating effect upon our community, I feel. We and those of you on this Board must realize in the aggregate, quality neighborhoods in the long run, provide a more sustainable long term revenue base than any small commercial speculation. I thank you for your time.

**Mayor:** Thank you Tom. Is there anyone else or anyone here that had a question? Okay.

**Pastor Aimee Appell:** Good Evening. I'm Pastor Aimee Appell, I'm Pastor at Peace Lutheran Church. We're the property that is just to the south of the Duncan Property. I spoke last year and I spoke last week at the P&Z Meeting; just concerned for the overall welfare of our neighborhood and of our City. Our mission statement is that we are bound by Christ to break boundaries. It is our goal to be a Church that is present and serving our community and we do that with a lot of different things that we have on our property including Community Gardens, that serve people who are not members of our Church, serve our neighbors and others in the community. We have Butterfly Gardens and we open those to the public for people to come and learn how to improve their own properties. What we would like to see is property this just next to us there, to be developed for the best interest of the entire community. I think that there are ways to do that that would both benefit the property owner and the neighborhood, and would like to see those avenues explored more.

Specific concerns that we have had to do with safety, having a wall, a drop off 25 or more feet immediately off of our parking lots is a big concern for us. We have families that come to the church also using the property, they're families that use the Community Gardens, and small children and others, and so have concerns about that. The traffic issue that has been mentioned on Duncan Drive, that's one of our major ways in and out of our Church. Already, we can't turn left out of our driveway. At three in the afternoon, five in the afternoon, there are times when it's impossible to turn left out of our driveway.

So those are concerns, and then I mentioned this at the Planning and Zoning Commission, to echo I think that it was John had said the concerns about rock removal in that area. We have a stain glass window in our building that was done by Emil Frei, a very well known Stain Glass Artist. There was an article in the St. Louis paper recently about the need to preserve his work at Churches across the country, and that stain glass window would be at risk as well as the rest of our ceilings and whatever, but that window in particular is irreplaceable.

I know that BFA has said that there are ways to remove rock that are not gonna damage the neighboring properties, but I would imagine, I'm not an expert by any means, but I would imagine that those are the more expensive ways to remove rock, and I wonder what kind of recourse do we have to be able to insist that those are the ways that are used on this property. If they are going to remove rock, I'm assuming they're gonna go with what's the most economic for the property owner not for the neighbors, and I wonder is there a way to guarantee that the rock removal is going to be the most beneficial to the people that are right next door. So I would encourage to find a different way to use this property besides a straight commercial use, I think that there are creative things and we have a lot of very creative minds in this community that would like to work on that idea so thank you.

**Mayor:** Okay, thank you Amy. Any questions?

**Charlie Heart:** Good Evening, my name is Charlie Heart and I live at 6 Fieldstone Court and I'm gonna keep this brief. I just wanna say that I am fully in support of my neighbors, me and my neighbors, all of us in the neighborhood actually that join or surround the Duncan Property, but we're talkin about the C4 now and one issue that I have is the children that play on Duncan Avenue. My wife goes to the high school every morning and every morning their children on their way to school some are riding bikes, some are walking but it's not a good situation and that's all I have tonight. Thank you for your consideration.

**Mayor:** Okay, thank you Charlie.

**Tara Steffens:** Hi, my name is Tara Steffens, I live at 805 Rainbow Drive; I've emailed you all multiple times. I have lived on Rainbow in some capacity since I was born. I was raised at 814 Rainbow, I left, moved to Kansas City and specifically moved back to Rainbow Drive when a house was available and that's because of these people back here who think all but maybe three of them were my neighbors at the time. They made it and Josh, Bedford Center is where Joe's Bike Shop is Ferguson's Bike Shop, my guess is proximity Kathleen Duncan's property is not a backyard and 25' away, it is completely surrounded by three houses now yes, the front property of Duncan is separate but they are trying to combine these into one. To reiterate what I have emailed everybody, it would be a huge detriment on multiple levels

and to as one of my neighbors spoke its long standing citizens that make the City profitable, and I specifically moved back to live in this neighborhood so thank you.

**Mayor:** Thank you Tara.

**Steve Ruether:** Good Evening, my name is Steve Ruether and my wife and I live at 3 Scenic Drive, been there for about 30 some years. We are within the 185' of the Duncan Property. Like everyone else, appreciate the opportunity to talk to you. Gail and I are here as we are to voice our continued opposition against the rezoning of this property. Just quickly, we've all said it; nothing has changed since your vote in September 2015. Other than Mr. Duncan has done significant amounts of landscaping and recently he cleaned up his property but only after he was issued a citation from the City of Washington, that finally enough people got sick and tired of it, that the City filed a citation and made him clean it up, thank you for that, we appreciate that.

A couple of things, the fact that this property is on the future land use map is not a new revelation, it has been there forever, 18 months ago the first time it came up. The property is no more suitable for commercial development now than when it was the last time you voted, and the lack of suitability was one of the reasons that the City Council voted it down a year ago, and the statement says rezoning from a residential to a commercial property would not significantly impact the surrounding properties, is in direct conflict of what Joe Wildt, who is a professional has given you. Nothing substantial has changed in the property but you did change the development plan as it was noted. A year ago the building was 13,000 square feet and 65 parking spaces, the plan that was presented at the P&Z, I know that we're not gonna talk about the plan, but the recent plan is over 32,000 square feet with a 140 parking spaces. That's two and a half times larger with more than double the parking spaces; the building was also set back as far east as you can go to get to the bare minimum set back and everything else.

More trees will have to come down, the building has been moved as I said as far east as possible and the only restrictions are you can't have a gas station, lumber yard, or a repair facility. That just about opens it up to absolutely everything else you guys have the City Codes, and I know you can read them. There's everything that is available and I know they said well if it goes in C4, we'll conduct all that and we'll worry about that, but once somebody starts to move out somebody will say well we need to rent that space so let's put in a coffee shop, let's put in a restaurant, let's put in something because I have that space that has to be rented out.

We've beaten the idea of traffic to death, but I would have to say, also remember that the traffic that comes out, if you have to go right coming out of this place, you're gonna go and cut through Rainbow Drive to get over to Madison to go up to get in and out. So there's gonna be more traffic through the residential areas in the neighborhood.

Fire and rescue and safety is a concern. With the amount of excavation I think that's always a risk. Access to any type of emergency vehicles has to be a strong consideration. We're talking about high retaining walls in the middle of the parking lots, a quarry wall, over 27' quarry cliff with a vinyl fence to crawl over. We got kids in the neighborhood, we got grandkids in the neighborhood and the Pastor said they've got children there all the time, and that line is just right, its 10 or 12' off where their parking lot goes.

Worst case scenario, some young person comes into the Church a little too fast on an icy, winter night, hits the breaks, skids off the parking lot, crashes through the vinyl fence and lands 30' on the parking lot. Now you can tell me that's not going to happen, but it could.

We've talked is it a benefit to Washington, is rezoning this property in the best interest of the entire community? Again, the City Planner says it will be suitable for commercial development, if appropriately developed, if the appropriate measures are taken. I would also say it's suitable for residential development, if the appropriate measures are taken. And actually, a residential developer approached Mr. Duncan to buy it, offered him money on it but Mr. Duncan doesn't even have the courtesy to respond back to that commercial developer, residential developer, thank you. There was a residential developer that had approached Mr. Duncan about buying it to do a residential development and he hasn't even replied.

John Borgmann asked the question at the P&Z, how much unoccupied commercial space is available right now and how much commercial property is available. The City Planner and Darren Lamb were asked to find out how much commercial space is unoccupied and how much undeveloped commercial property is available. It would be certainly worth knowing within the community of Washington how much is out there that is vacant right now. It seems like there is a lot of open store fronts. Again, do we really need more commercial property in a residential area?

And we've gone on and one about this on the corridor, it's in the master plan. Any master plan can be and should be modified, if it needs to be. Why not review this plan and possibly change it. I would make note of one comment in the earlier discussions about the development Malvern, is what it's called? Did you notice more than once, it was mentioned that the comp plan had been changed; the comp plan had been changed. They said, this what we're gonna do with that property, this is where all of the roads are going to be, this is where all the easements are going to be; but you know what, somebody said that's really not the best way anymore and so they changed the comp plan. They just moved it. Pretty interesting, I thought.

When our neighborhood was built 30 years ago, the Duncan was residential, there was no 14<sup>th</sup> Street Intersection, nor was there Duncan Avenue running along Hwy 47. We knew that Hwy 47 would eventually develop into a major thoroughfare, but nothing was hinted as to having a major intersection at 14<sup>th</sup> Street and moving Duncan Avenue down to Rainbow Drive. Now because of that intersection and that avenue, it just seems perfectly natural to have it zoned commercial. We strongly disagree. It is on an avenue leading to residential properties, and borders residential properties.

Again, a year ago you voted eight to zero to oppose the commercial development. Nothing has changed that we can see. All of you have received emails and phone calls and we appreciate what you do for the City, and we appreciate you taking those emails and those calls, and thank you very much for taking the time to read those and for call us back and answer our questions, and put up with what we have been talkin about for a year and a half now.

And I close by saying; we are the citizens of Washington. We cut our lawns, we work at Church Festivals, we go to the Downtown events, supporting everything that goes on. We work at our community events and our dinners, we walk at all of the Walk-A-Thons for every cause that there is, we do our shopping and entertaining in Washington. We live here, we pay our taxes, I don't think the people that own that piece of property are in that category.

I thank you, I would appreciate you putting all of this in your minutes and actually I would appreciate it if you just determined to vote tonight but if not, we will be back again. Thank you very much. Any questions?

**Mayor:** Thank you Steve. Any questions of Steve?

**Debbie Obermark:** My name is Debbie Obermark. My husband and I live at 1306 Zero. We're adjacent to the Peace Lutheran Church. I just have a question. One of the supporting facts that keeps being mentioned is that the long range plan is that this is commercial and all along 47 is commercial, but I question, I just want know why and can that not be changed because this is all residential. If that one's commercial then you moved to Peace Lutheran, and then you start working your way down the street, it's a huge rock bluff that's nothing but houses across from the top of that rock bluff, so are you proposing eventually you would take the whole rock bluff down and dozens of homes because it's supposed to be commercial along 47? And I don't know who can answer that question, but because it's a long range plan commercial.

**Maniaci:** I can show you.

**Debbie Obermark:** I mean I understand that's what you're showing, but why?

**Maniaci:** This is not proposed to be commercial, if that's what you are asking.

**Debbie Obermark:** Okay. So why would you have to go to this one piece of property in the middle of that whole section.

**Maniaci:** I think it was in 2013 when this was adopted. I think but this was because of the access to 47 and its frontage along 47. These all access residential streets that go out to Madison when this portion did not access Madison and it accessed the highway, which was an easier choice for future commercial development. Is what I believe was the thought process when it came in so.

**Debbie Obermark:** Looks like (inaudible). Thank you.

**Mayor:** You're welcome, thank you.

**John Hillermann:** I'm sorry but I can't let this go, so one thing real quick. We have, I don't know 40 people here, I didn't count them. We've been at every meeting, and I understand, I don't know why we can't vote tonight if you can't you can't, but I don't know why we can't. We did this one other night, and we ended up voting.

**Mayor:** Well we are not voting tonight.

**John Hillermann:** Well, I would, I don't know why. That being said, once again, all the citizens are here and the Duncan's aren't here. Years ago I had to go to Court, there was an old Judge named Judge Schafer or Schaefercutter. He would call like, is Mr. Hillermann there, and if Mr. Hillermann wasn't there, Mr. Hillermann was going to lose. He said that anybody that doesn't show up in my Court loses. That's exactly what he said. And I think that this is such a big deal, that the other property owners should be here to represent themselves. Now we're not gonna take another vote again tonight, so we'll be back here in a

couple of weeks again, and I guess we'll be here but I'd like to see us take a vote. Thank you.

**Mayor:** Thank you John. Is there anyone else?

**Moheksy:** Mark just to clarify, that's it's a legal thing right?

**Piontek:** Yes.

**Mohesky:** As much as I would like to vote too, it is a legal thing.

**Tara Steffens:** Can you clarify that, what does it mean by legal?

**Brinker:** We have to give 24 hours posted notice to vote on ordinances.

**Tara Steffens:** Was it not?

**Brinker:** It was not.

**Tara Steffens:** Has it not been posted on the property for the rezoning request in the letter that we, the two letters we received from the City Planner's office that this was on the agenda.

**Piontek:** It is on the agenda for a Public Hearing, but it's not on the agenda to vote on the ordinance to rezone the property either yay or nay, that is not on the agenda.

**Tara Steffens:** The letter I received this time was worded almost exactly how it was last time, and we voted last time.

**Piontek:** It's not on the agenda.

**Tara Steffens:** Then you make want to check the form letter just as a heads up because they were exactly the same except the date, and now Sal, so.

**Mayor:** Is there anybody else? Okay, so Ray is representing the Duncan's, Ray Frankenberg.

**Ray Frankenberg:** Yes, yes.

**Mayor:** So you ready?

**Ray Frankenberg:** Yes. Handouts were passed out by Ray Frankenberg to all Council.

**Steve Reuther:** Can I ask a question?

**Ray Frankenberg:** It's up to her I guess.

**Steve Reuther:** Can I ask a question, may I?

**Mayor:** What did you need?

**Steve Reuther:** I just want to make sure that this is not a development plan because the development plan was tabled at the P&Z. So, is this the development plan, we weren't going to speak of this. I thought.

**Piontek:** This is Planning and Zoning not the development.

**Steve Reuther:** Okay.

**Ray Frankenberg:** Mayor and Council, thank you for the time this evening. I have a couple of packets in front of you they're divided into three categories. I'm kinda gonna walk right through them and try to keep my comments to the zoning issues only, and I think most of the comments that I've heard already tonight were plan issues and can be developed by or answered with the plan. So what I am going to do is try and talk about zoning, a little about the zoning in the City, I'm going to show similar examples within the City of Washington, I'm not going to try to reach out to other communities or anything like that so that was my reason for my presentation.

First of all, I want to thank staff also for their review, their time and their comments and historic generations of Councils before you guys that developed the plans, the zoning, and everything that we are going to be looking at and following through.

Starting off with the first set of drawings, on here is an overview of the City of Washington. This one has the City limits on it and the major roadways, and if I had a little bit more time, the closing one is the same one we've maybe would've shown all the other sites on here that I'm gonna walk through and show you. But right now, it's just the City of Washington, if have used a 2013 aerial photo because it was one where the leaves were off the trees and the houses and streets and everything just showed up better. So I think that it's a good overview of our community.

If you go to the next slide, I am looking at commercial here on West 5<sup>th</sup> Street. On the north or upper side of 5<sup>th</sup> Street you have the old Patke's Store that was there many, many years ago. The large buildings, below 5<sup>th</sup> Street or south of 5<sup>th</sup> Street are the old Phillip's Transit Buildings, their Administration Building. There are several buildings here that were factories in either commercial or industrial; there is residents all around it, backed up to these. Very little code requirements at the time when these were made, most of these backyards look right into the walls of the buildings. There's very little buffer zones, if you were to zoom in on this aerial photo or walk in these neighborhoods, pretty much these buildings are built just a few feet off of the property line. That's not what we are proposing, but I want to talk a little bit how Washington has evolved. It started with 5<sup>th</sup> Street being Hwy 100 on a ridge years ago and we've done a good job on developing past that to where we are.

The next slide is Brookview Estates, which is up off Hwy 100. The large white roof you see at the bottom photo there is the Target Store, and so that's the Phoenix Development there. I wanna call your attention to the large building on the north side of the highway, which would be directly above the Target Store and that is what I used to know as the JB Distributing or Droege's Distributing House or whatever that was up there, I can't think, Big D there we go. Thanks, I knew it had a common name, I wasn't getting it all. The houses that you see around it are all the Brookview Development, and they all developed after that building was there. If you see some of them they're within 15-20' of the pavement in the parking lot for that warehouse development, it's now occupied by I believe, or last I heard it was occupied by a food service, they were making some sort of packaged food in there for shipment. Whether it's still there I don't know, someone can answer that better than I could.

The next slide you're gonna look at is the Meriwether Development, and this is the overall development. On the right side the white roof, which is to the east, would be where the bike shop is, and the cleaners and a few things that are in that little strip center there with the dark roof just above that, that is the Bank. But I want to call your attention first to the left side of this or the west side, and show you that those two commercial buildings were there before Meriwether developed, and they developed right up to them and right up around them. As far as a zoning issue, I can stick with that, but I think the appraisal you've heard about tonight is a zoning issue and I think that if there are studies out there about developments around commercial developments and what happens to retail cost, we should have those and not just say that they are there and they do say it's horrible; because these developers who

were going to sell the retail property or the residential property developed right up around them.

If you look at the next slide it's a closer view. When these houses are built, right next to the property line with very little buffer zone, I think that you can see it better in paper picture better than you can see it on the screen right now, but that upper building the buffer zone is just mowed grass and that's not at all what we're proposing.

The next slide, I'm gonna go to the Town and Country Industrial Park. The title on that one is mislabeled; we are on the east side of Hwy A. I don't know how I got west, I was puttin this together rather fast when I did so I believe we all know where Town and Country Industrial Park is. Large white building in the middle is kinda the center of the Industrial Park, and if you go to the right side or the east side of the photo, that is the old or the original Dawn Valley. So Dawn Valley was there and preceded the Industrial Park and the Industrial Park was built right up next to it, and I don't know that the value has dropped significantly there, these are still nice homes back there when you go back into the back of Dawn Valley. What I do want to point out is the upper right building which would be the furthest north east building in the Industrial Park, was there before all of the development that surrounded it and they built right up to it. There is somewhat of a buffer zone there as per the codes. This is a 2013 photo as I said, so I didn't get all of the trees shading the buildings and the streets, but that building has since expanded and they have most of the grass you see on their lot right now is a large equipment lay down area for the Enbridge Pipeline Company.

The next slide is Hwy 100 at High Street and I think that we are all very familiar with this. This does have food in it, our Blue Duck started there and they've grown and expanded down on to Front Street and I believe that now they're starting another restaurant in toward the City; we have what I think might have been the Smokey Duck was in there for a while so there was food in this. If you look how close the residents' are to this, it's a good example of commercial and residential co-existing together. The white roof in the middle of it is the Napa Building and if you look behind it that property owner's fence behind that Napa Building is only about one parking space away from the building. We're not proposing anything like that. It'll have the full 25' buffer zone and it was pointed out the other day, and I kinda gettin into the site plan so I will drift back away from that.

The other thing that I wanna point is out right now, and I hope it's with the City's approval, there is a tractor trailer sign parked at the southwest corner at the intersection of High and Hwy 100 indicting that there is going to be a combination residential and commercial development coming soon, advertising this like it's a great thing. I think it is. I think when I studied Community Commercial and the future development going through to the early 2000's they wanted people to not have to drive very far to get to the things that they need. Now I realize our whole shopping is only a mile away or so from the site we're talking about.

The next slide is the State Farm property is actually on Madison Street, and between Madison and Hwy 100. The distance between the property line and that building there can't be more than 20', I didn't take the time to go out and measure it but you see the driveway of the resident's beside that and the new State Farm Building not far from it, and now we're getting back into the area where we are.

The next slide is the Ghosh Pain Clinic is the next slide. It is across Madison from the State Farm Building we were just looking at. It has existed here for quite some time also, again residential and commercial co-existing

The next slide is Quail Run and Quail Runs been there for a long time. I remember that as a kid, as one of the big upper class developments that's where all of the houses were gonna be bigger and nicer etc., etc. It has one entrance onto 14<sup>th</sup> Street and is almost completely surrounded by commercial and institutional.

The next slide takes you to the east side of Quail Run. The white roof in the middle of the slide is, got multiple uses in it. It's had a restaurant in it before and I don't think that it was for very long and the Mexican Restaurant, I believe it's called Ernesto's is still in the building to the east of it and I believe that it is currently being rehabbed for some sort of Medical and Chiropractic type clinic is the rumor I'm hearing anyway. If you look at the property line which we can see better on our photo behind that building and the house with the little swimming pool on it, there isn't but about 30-40' between the property line and that building. There are old growth trees that remain there as there would be on our property as well; but again, residential and commercial existing together.

And another point here is that you have Hwy 47 on the right side of the photo, then you have an outer road, just like Duncan Drive, and then you have the commercial development. These people don't have to drive down that drive to get to their houses any more than the people have to drive down Duncan Drive to get to their houses on our development. They can come off of Madison and go other directions. I am gonna get to the rating of the roads also here in just a little bit.

The last slide here is on Quail Run also, it is south north of Hwy 100, and if you can see the highlighted area, it looks like two triangles back together, the entrance between them is the entrance behind Orscheln's to get you oriented a little bit. The white roof at the bottom of the screen is the north end of the Lowe's roof, and the black roof which is hard to see is the Post Office. So if you can get your bearings on where you're at, if you were going into the Orscheln's development you would turn north into that entrance, and then make a very sharp right turn to loop back around to the front of the Orscheln's not just similar to the Duncan Drive; but my point is you drive straight forward to the dead end at that triangular piece and there is an intersection turning off to the left or to the west another large triangular piece. There's no difference between this piece of property and the relationship to the backyards than there is on the development we're talking about. When someone comes to ya and says it's time for me to develop my commercial property, you're gonna be setting a precedent for that.

Finally, I close back to the City of Washington, as I said we can show all of these spots on there if I had more time which I did not. So with that, I think that I have entered into a few areas in town that are very, very similar to the development that we're proposing and I think there are also a few more.

I'm now going onto the second group of attachment. I want to make sure that everybody is aware, and that we've discussed, and that I have said to you as the Representative of the

Duncan's that the master plan exists, and we feel that master plan when it was created showed this as being proposed commercial.

To that end, I've copied the first, I believe eight pages, I go to page seven and the cover page wasn't numbered that gets us through all the Tables of Contents and I would like to say that basically I've looked through and reviewed that master plan and feel that our requests complies with it. I also at this point and time want to talk about the effort that went into a master plan and the planning of it, the staff's effort, this Council's effort, and your Planned Commission's effort. I would bet that probably very few of you have the full 250 pages of this master plan that you've thumbed through or took home, but I also bet that the Plan Commissioners have all been given one, so I hope that they would have anyway. That's all I got on that one, it moves a lot faster now.

Exhibit 3A, I gotta click through eight sheets of the master plan. Exhibit 3A is the City of Washington's Comprehensive Major Street Plan, and you can't see it unfortunately and it's the one that I want to talk about, but the second item in the legend. You have the legend write under the title, the first item is existing major streets and those are in blue. We can track a few of those. Hwy 47 and Hwy 100 are pretty prominent; you can spot those pretty easily. There are others portions of 5<sup>th</sup> Street and so forth that our major streets.

The yellow line right below that's a little bit more difficult to see, it's called existing collector streets, and what's even a little bit more difficult to see is that Duncan Drive is a collector street. I was involved with Patients First at the time Duncan Drive was being created and negotiated and the goal was to provide a drive that could handle a fairly high traffic flow to get to and from Patients First. We also have Madison Avenue who saw a fairly high traffic volume and through conversations the last couple of months, I have been made aware that the East West Gateway identifies Madison Avenue as a high traffic street. That's a report that I am going to have to tell you is hearsay right now, I don't have that correspondence with them but the discussion was that there may be money available for improving the characteristics of Madison Avenue. So my point here is that Duncan Drive was created to be a collector street, it is known as an existing collector street in our plan.

Next item takes a little bit to open up; it is the City of Washington's Zoning Map. I will let you know because it's hard to read on the screen anyway that all of the red on there is commercial. I will also let you know that the gray, there's two different gray's, M1 and M2. So you have the large grays on the west end of town or the upper left of the screen and you have some grays down where the Town and County Industrial Park is and so forth, but I'm gonna draw your attention in just a minute to the gray that is Patients First. Not sure why that was never rezoned to commercial when they changed it from Zero Manufacturing to Patients First but I do believe that at least at that time, industrial accommodated all lighter uses; that's very possible and that's common in most towns. So that is what I want to call your attention to here the current zoning map, and I'm gonna talk about the line of commercial and industrial that runs up Hwy 47 today.

As you look up on Hwy 47, there's the date July 2013, right down below that is the bridge. That little dash line that is the bridge, that's the end of 47. Right below that is the medical center and the hospital and some other medical establishments along Fifth Street.

Exhibit one is just the same draw zoomed in on. What I am going to do is call your attention in the middle of it to that gray area that I just discussed. If you can find Fourteenth Street, if not I can try and describe it. There is a large area above it, that is the high school and I think that does a little dis-justice to my case because it is zoned residential and a high traffic volume, high traffic generator. So a lot of people in our community go to that come off Hwy 47 and to get there they use 14<sup>th</sup> Street to get there and 14<sup>th</sup> Street is signalized and Duncan Avenue hits that location as a collector street for the reason of getting people around.

It the next slide I have, now turn the gray, that was Patient's First in red so it is easier to spot the commercial and industrial aspects of this area. I have also outlined the Duncan parcel in red and colored green so it will stand out to you. I submit to you that zoning this commercial is not anything to do with spot zoning. There was a zoning last year that rezoned the parcel next to us and all of the red there is currently being used to accommodate the traffic flow to and from a major medical facility. And also, accommodates the traffic flow to a fairly private school, Our Lady of Lourdes.

Next item I want to put in is the future land use plan. I think we have all seen it, I think it was on Sal's report. But it does show our property as commercial. It does not show the property north of us as commercial but it was rezoned commercial.

The last slide I have is to point out the Duncan parcel. I zoom in a little closer on the exhibit as 3C2 so you can see the parcel on a little larger scale. Unfortunately, I couldn't find the full map if you will, have the high resolution I was hoping to have so it gets fuzzy the more I zoom so I put an arrow pointing to the Duncan parcel. Again, back to the drawing for the last one that shows the Duncan parcel and feel that is very definitely commercial and we had the right to expect it to be commercial based on what happened in the community before. We feel that zoning it commercial does not harm the community or citizens as a whole. We have no doubt that the people whose back yards that are backed up to woods and wanted to have woods forever but we can't restrict a property owner to maintaining somebody's view of a woods. I respectfully request the zoning to C-4 and allow us to move on to work out all the site plan issues that were mentioned tonight. And I do represent the Duncan's and I want to point out that we did tell them not to come. I pointed that out to the Planning Commission. Tonight at various times they would have been quite insulted and that is not what this is all about. I know most of the people behind me and that I have volunteered with them and have respected for the last 30 years as volunteers for different areas of our community. So, I don't think they would intentionally do that they say that a certain person is not good for Washington. It is easier to keep that separated. And they are represented. Anything that you tell me or that goes on tonight, I bring right back to them first thing in the morning. Thank you.

**Mayor**-Thank you Ray. Is there anyone that has any questions for Ray? Is there someone that wants to speak in favor?

**Steve Kuenzel**-I also represent the Duncan's and I guess I do have a couple of questions here protocol wise and then just a few comments. I promise not to be that long as late as it is. First of all, Mark, in terms of introducing exhibits into the record here, are we ok with where we are at with what Ray just presented or do you request something more in terms of introducing those into the record?

**Mark Piontek**-I think we understand that you want those to be part of the record.

**Steve Kuenzel**-One of things that we have not done is we would introduce the entire City Master Plan, the very last one and we only run the first seven pages because it is obviously it is on file here. We would like to have the entire Master Plan be deemed part of this record. Do you see any problem with that? We can run a copy up here tomorrow or however you want to do that.

**Mark Piontek**-That's fine.

Steve Kuenzel-I have a question for Darren Lamb. Darren, are you certified in City Planning?

**Darren Lamb**-Yes.

**Steve Kuenzel**-And how long have you been so certified?

**Darren Lamb**- The first answer was yes and since 2001.

**Steve Kuenzel**-And in terms of the Master Plans, how many have you recommended that this parcel be zoned commercial in this area?

**Darren Lamb**-I would say that this would have to be the second one that we had. I think the first one that I took part in was in 2003. I would have to go back and look at that map to see what this specific parcel was at that time. My guess is that it was zoned commercial at that time because it was close to the time when Patient's First was doing the redevelopment.

**Steve Kuenzel**-That's fine thank you. Madam Mayor I would submit back in the mid 80's I was part of a master planning process up in New Haven. I know that Jim Briggs was around at that time. Probably a City Engineer at the time and I can tell you that the arteries of Hwy 100 and Hwy 47 were identified as early as that as clearly being commercial arteries for this town. I believe on every plan since then they have been identified in that capacity. I noticed the news article last week and it had a quote from you that kind of called out on behalf our City, the St. Clair and Union as not being big picture players on the Hwy 47 corridor for transportation. I say that because what are you being asked to do tonight is not to be a big picture player. That is what you guys are being asked to do. We just called out St. Clair saying how dare you only worry about the St. Clair end of Hwy 47. How dare Union only worry about their intersection over there. We all need to look at the big picture in our region. Now is there a bigger picture in our City then the two major arteries of Hwy 100 and 47 being zoned commercial. They are simply not. If you look at the big picture and you stand back from this and say if these two arteries are not destined to be commercial, in fact they are 90% commercial right now then what is. You have before you the recommendation of the staff, you have your own Master Plan in that exhibit. I don't know if Ray went through the list of names but many of you up here voted for that the last Master Plan and called out this area to be commercial. You didn't have a special interest group looking over your shoulder, you looked at the town as a whole and you voted and passed a Master Plan that called this out to be commercial. You gave C-4 a year ago to the property right next door. And there is no major difference between that and this one. It is in the same corridor that you recommended commercial for a year ago. There are essentially five people that touch this piece of property. Three people are here and they are opposed to it. Dr. Grimes and Jeff Wilson are not here but they told me that they are in favor of it. They just don't want to get involved in this kind of high profile activities. So, three people bring their friends, relatives,

other people up here and ask you to ignore the other 13,000 to 15,000 people that you adopted a Master Plan for just three years ago. That is not looking at the big picture. That is going to affect us a couple of different ways. First of all, when the Mayor next talks to the Mayor of St. Clair, they are liable to say you are just being a little bit hypocritical Madam Mayor, because you are not just looking at the picture in your own town, you just took one little area and that is what we are going to do for St. Clair or that is what we are going to do for Union. Second of all, the next time that you want to promote annexation, you are basically going to tell the people outside of town that we are going to plan the outer road; we are going to plan development. Trust us to have an organized plan for this town to grow. They are going to turn around and say hey you didn't even follow your last couple of Master Plans, probably 30 years of Master Plans when it comes to zoning. So how can we trust you to treat us fairly and to follow the plan that you are going to lay out in front of us? Many of you were up here just a few years ago, when meeting after meeting after meeting people came up and said how devastating it will be to put the Camp Street Bridge in. You know, probably twice if not three times as many people as they are here tonight. But finally after several years I think many of you did it, adopted and put the Camp Street Bridge in and what do you think you hear now. What do you hear about traffic jams on Camp Street? What do you hear about the devastation of that neighborhood? Nothing. Same thing, all the meetings up here and I know some of you were around when the people on Karen Lane said, oh my god if you open the back gate to Wal-Mart, we are going to have nothing but traffic going down Karen Lane and through our neighborhood. The back gate gets opened up because the Police Chief, or not so much the Police Chief, but the Fire Chief says that we need that for safety. Police Chief at that time was with him and the City Council did it. How many people are coming back up here now saying, oh the traffic on Camp Street is so bad terrible right now because the back gate is open. You have to have a bigger view than just a few people on one street when you are making decisions that are going to impact the town for a long time. It's simply common sense that anything on that parcel, 90% of the traffic is going to come in off Hwy 47 and it is going to go out on Hwy 47. There is going to be minimal, minimal, impact. There is more of an impact when we built the new church at Lourdes and expanded the congregation and expanded the school than anything you are going to see from this development. What I would ask you to do is take a dose of the Mayor's medicine and have a big picture point of view when you make this particular decision. Thank you.

**Mayor**-Thank you Steve. Does anyone have any questions of Steve? Is there anyone that would like to speak for? Is this new information?

**Rodney Stoyer**-406 Cedar Street-Clearly not one of the three affected house but a citizen of Washington and speaking out on the best interests of the City. I have a couple of questions for Mr. Frankenberg. The reason I have the question is, I as a citizen have some questions for Mr. Frankenberg. I don't know if that is appropriate but I will just ask them. He can choose to answer or not. How many of the examples he gave, we went through slide and slide and specifically stated that the commercial was there first and residential was built later. Hopefully you all were paying attention to that. That is one of the largest concerns these residents have. They built their homes first and now you are looking to go the other way. So I believe it was the vast majority, there were maybe a couple of examples in there where some

commercial and/or industrial happened after the fact but the vast majority of those slides that were supposed to be proving that case are the exact opposite. The commercial was already there, and the residents knew full well when they built their property and what they were getting. The other example I would argue is that the final, or when he was ending he used Quail Run as the prime example. I would argue that that is not a prime example. The reason is that they are truly not connected. Quail Run, as he mentioned, truly isolated. In other words, there is no connecting street, there is not flow from any of those traffic flow, there is not traffic flow going into Quail Run or even past Quail Run because you can't hit directly 14<sup>th</sup> Street. So, again I am saying that I would question him that I don't believe any of those are technically not very good examples again because the format that came about.

A couple of other things that I noticed....

**Mayor**-We are looking for new information Rodney. Just go on.

**Rodney Stoyer**-As far as new information, I don't think it was mentioned by anyone that there wouldn't be any argument that a school and a church and a parochial school are not a decent alternative for a residential neighborhood. I think it was kind of implied that those were kind of heavy traffic. I think that is understood. It is definitely not commercial. They definitely have their boundaries and restrictions and I would think that people would think that it was a viable part of the neighborhood. The last thing again, just to reiterate what I said at Planning and Zoning, so this will be new to this group, you can say all you want on where the traffic flow is supposed to go. Do you want to go a right in and right out. I have said this over and over again and it is the same as Camp Street. People will use what makes sense and what the easiest way to get from one place to another. So saying that none of the traffic from this new development is going to go in or go through Madison on Rainbow, I think that is naïve. You can say that all day long but I think we have plenty of examples that people will find the best way to go no matter where that is. Thank you.

**Mayor**-Thank you.

**Josh Brinker**-When that neighborhood was developed wasn't Duncan Dairy or Zero and Clemco already basically established in that neighborhood and it was built around farm industrial and then...

**Rodney Stoyer**-I am sorry I started to walk away. I don't know if I have the answer to your question.

**Josh Brinker**-There was originally the Duncan Dairy Farm and when the original factory was built on there I guess they made milk tanks. Then it went to Zero and the Clemco. That factory was commercial/industrial where basically the residential was built around it because they worked there, am it right? So the neighborhood developed around a commercial/industrial neighborhood.

**Steve Ruether**-And we knew that that industrial development was there. Which is what Mr. Frankenberg talks about where the Big D was and that whole development came out after that building was there. We talked about the other properties, as Rodney pointed out, those developments were there and look at the maps and find out the industrial plants were there and the other residential came around it and backed up to it. They knew full out that it was going to be there. When Mr. Whitworth developed that we knew that was there. We knew Lourdes was there. We knew the hospital was up the street. We knew the high school was

across the street. There wasn't anything that would have had us believe that that property was going to turn commercial, until the 14<sup>th</sup> Street and Duncan Avenue was put there. And then all of a sudden it needs to be commercial. It makes sense. Well, it made sense on the residential along Hwy 47 so we built according to what was there. So what you are saying is that you are going to change the dynamics of what is there. If you said 30 years ago we are going to put an industrial development there probably a lot of us would look differently at that and we could be living out of town.

**Josh Brinker**-Correct. I was just thinking back to when the neighborhood was developed. It was an industrial manufacturing area from Zero and Clemco.

**Steve Ruether**-Correct, it was Zero, Clemco and now Patient's First. So the question was, was it there and did we know it, the answer is yes and we made that decision but we did not make that decision based on another large potentially commercial development right next door to us, our properties. Ok? Is that a fair enough answer?

**Mayor**-Yes.

**Steve Ruether**-Any more questions?

**Mayor**-Thank you Steve.

**Tom Smith**-Some of you may already know this. When Zero went in, to give you the background, to that location I remember seeing the original plat when we bought the lot up there from Mr. Whitworth it was originally platted as aluminum city. Mr. Duncan, back in the 30's and 40's aluminum was the new best thing and the idea that we will make aluminum houses and he platted it all out. This area was platted for a residential area but with aluminum houses. Of course reality set in and it would be pretty much of a hot box. To get a history on why that is there and when we moved in there Clemco had taken over Zero and then of course phased out down there so we had that left. Mr. Whitworth had the property that he had acquired from Mr. Duncan and Mr. Duncan's father and was developing that property into the residence that we have. So, I guess in one sense we do have platted, it was residential and the intent to keep it residential. I think Leon, Mr. Duncan's father wanted to keep it that way as well and that is why he made those accommodations for Mr. Whitworth to develop all of this site. As it went on Clemco we have the remains of this industrial park there or building and fortunately enough Patient's First interested people is why what we see today.

**Mayor**-Very good. Thank you Tom.

**Tara Steffens**-To reiterate what I said, when I was born and growing up in the 80's the open lots were there which was right next to my house, an open lot which is now residential. The parking lot for Zero Manufacturing is now also residential, small condos. And the other open lot was next to the house that I grew up in which is now also residential. So all of the open lots in that space were developed residential. The industrial that you are referring to is simply where Patient's First is now. My house that I live in now was the third house built in aluminum city subdivision. I back up to the parking lot of Patient's First. So 805 Rainbow backyard is down the hill onto their parking lot.

**Mayor**-The south side?

**Tara Steffens**-Yes. That is correct and that was the line for industrial. Everything past that is residential and developed as residential since then.

**Mayor**-Ok. Thank you Tara.

**John Hillermann**-I don't know if this is new but I kind of resent the fact that someone said that this is all about 3 people. If I had the power over all these people, I wish I had that kind of power. These people came here on their own free will because they are against it. There is more than three people. So I want that set straight. I resent that fact that that was brought up over and over again. It is about more than three people. I could say Duncan's is about one person because it is about money. Thank you.

**Mayor**-Thank you John. Thank you all for being here. This concludes the Public Hearing.

A motion to accept the Public Hearing into the minutes was made by Councilmember Sullentrup, seconded by Councilmember Brinker, passed without dissent.

### **CITIZENS DISCUSSIONS**

\* None

### **UNFINISHED BUSINESS**

\* None

### **REPORT OF DEPARTMENT HEADS**

\* **Engineering-**  
Discussion on Sink Hole.  
Discussion on 6<sup>th</sup> Street.  
Discussion on Burnside & MacArthur.

### **ORDINANCES/RESOLUTIONS**

**Bill No. 16-11558, Ordinance No. 16-11580, an ordinance authorizing and directing the execution of a contract with SCS Engineers for the Semi-Annual Groundwater Monitoring Program at the Washington Sanitary Landfill in the City of Washington, Franklin County, Missouri.**

The ordinance was introduced by Councilmember Brinker.

This ordinance is for a third-party consultant to do the groundwater monitoring. After a brief discussion, the ordinance was read a second time and approved on the following vote; Mohesky-aye, Hidritch-aye, Brinker-aye, Skornia-aye, Holtmeier-aye, Meyer-aye, Sullentrup-aye, Patke-aye.

**Bill No. 16-11559, Ordinance No. 16-11581, an ordinance authorizing and directing the City of Washington to enter into a sales contract with Sydenstricker Implement Company for the purchase of a 2017 Cab Tractor and a 2017 10' Pull-type Center Drive Rotary Cutter.**

The ordinance was introduced by Councilmember Holtmeier.

With no further discussion, the ordinance was read a second time and approved on the following vote; Mohesky-aye, Hidritch-aye, Brinker-aye, Skornia-aye, Holtmeier-aye, Meyer-aye, Sullentrup-aye, Patke-aye.

**Bill No. 16-11660, Ordinance No. 16-11582, an ordinance authorizing and directing the execution of a lease agreement by and between the City of Washington, Missouri and L.B. Eckelkamp, Jr. and Bonnie J. Eckelkamp.**

The ordinance was introduced by Councilmember Patke.

This ordinance is for the Big Driver Lease. With no further discussion, the ordinance was read a second time and approved on the following vote; Mohesky-aye, Hidritch-aye, Brinker-aye, Skornia-aye, Holtmeier-aye, Meyer-aye, Sullentrup-aye, Patke-aye.

**Bill No. 16-11661, Ordinance No. 16-11583, an ordinance amending Schedule IV, Table IV-A, No Parking at Any time, of the Traffic Code of the City of Washington, Franklin County, Missouri, by adding thereto the following restriction.**

The ordinance was introduced by Councilmember Meyer.

With no further discussion, the ordinance was read a second time and approved on the following vote; Mohesky-aye, Hidritch-aye, Brinker-aye, Skornia-aye, Holtmeier-aye, Meyer-aye, Sullentrup-aye, Patke-aye.

**An ordinance establishing the salary of the City Administrator.**

Motion to table was made by Councilmember Sullentrup, seconded by Councilmember Patke, Hidritch-nay, passed without dissent.

**An ordinance establishing the salary of the Economic Development Director.**

Motion to table was made by Councilmember Sullentrup, seconded by Councilmember Patke, Hidritch-nay, passed without dissent.

#### **COMMISSION, COMMITTEE AND BOARD REPORTS**

\* Preliminary Plat Approval – Skyler Place

*October 10, 2016*

*Honorable Mayor & City Council*

*405 Jefferson Street*

*Washington, MO 63090*

*RE: File No. 16-0902-Ronald Glastetter-Skyler Place Preliminary Plat*

*Dear Mayor & City Council Members:*

*At a regular meeting of the Planning & Zoning Commission, held on Monday, October 10, 2016, the Commission reviewed and approved the above request.*

*Sincerely,*

*Tom Holdmeier*

*Chairman*

*Planning & Zoning Commission*

After a brief discussion, a motion to accept the preliminary plat approval for Skyler Place into the minutes was made by Councilmember Sullentrup seconded by Councilmember Brinker, passed without dissent.

**Bill No. 16-11662, Ordinance No. 16-11584, an ordinance approving the Final Plat of Skyler Place, in the City of Washington, Franklin County, Missouri.**

The ordinance was introduced by Councilmember Holtmeier.

With no further discussion, the ordinance was read a second time and approved on the following vote; Mothesky-aye, Hidritch-aye, Brinker-aye, Skornia-aye, Holtmeier-aye, Meyer-aye, Sullentrup-aye, Patke-aye.

**MAYOR'S REPORT**

- \* American in Bloom Conference was held and attended recently. We did really, really well. In the landscaped areas we were a runner up, won the award for the most impressive Pollinator Garden Program, and won the Circle of Champions for what would be called a Mid-Size City.
- \* Thursday is coffee for the Washington In Bloom volunteers.

**CITY ADMINISTRATOR'S REPORT**

- \* No Report

**CITY ATTORNEY'S REPORT**

Public vote on whether or not to hold a closed meeting to discuss personnel, legal and real estate matters pursuant to Section 610.021 RSMo (2000) passed at 9:52 p.m. on the following roll call vote;

The regular session reconvened at 10:34 p.m.

**ADJOURNMENT**

With no further business to discuss, a motion to adjourn was made at 10:34 p.m. by Councilmember Holtmeier, seconded by Councilmember Patke passed without dissent.

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council

Passed: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

**MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL  
CITY OF WASHINGTON, FRANKLIN COUNTY, MISSOURI  
THURSDAY, OCTOBER 17, 2016**

**INTRODUCTORY ITEMS:**

The Special Meeting of the City of Washington, Missouri, City Council was held on Thursday, October 27, 2016, at 5:00 p.m. in the Conference Room 2<sup>nd</sup> floor of City Hall. Mayor Sandy Lucy opened the meeting with roll call and Pledge of Allegiance.

<b>Mayor:</b>	Sandy Lucy	Present
<b>Council Members: Ward I</b>	Steve Sullentrup	Absent
	Walter Meyer	Present
<b>Ward II</b>	Jeff Mohesky	Present
	Mark Hidritch	Absent
<b>Ward III</b>	Jeff Patke	Present
	Greg Skornia	Present
<b>Ward IV</b>	Josh Brinker	Present
	Joe Holtmeier	Present
<b>Also Present:</b>	City Administrator	James Briggs
	Assistant City Administrator	Brian Boehmer
	City Clerk	Mary Trentmann
	Street Superintendent	Tony Bonastia

Originals and/or copies of agenda items of the meeting, including recorded votes are available on record in the office of the City Clerk. Each ordinance is read a minimum of twice by title, unless otherwise noted.

**Approval and Adjustment of Agenda:**

A motion to accept and approve the agenda was made by Councilmember Mohesky, seconded by Councilmember Meyer, passed without dissent.

**ORDINANCES/RESOLUTIONS**

**Bill No. 16-11563, Ordinance No. 16-11585, an ordinance authorizing and directing the City of Washington to enter into a sales contract with Sydenstricker Implement Company for the purchase of a 2017 Cab Tractor.**

The ordinance was introduced by Councilmember Skornia.

After a brief discussion, the ordinance was read a second time and passed on the following vote; Patke-aye, Meyer-aye, Skornia-aye, Mohesky-aye, Sullentrup-absent, Hidritch-absent, Holtmeier-aye, Brinker-aye.

**Bill No. 16-11564, Ordinance No. 16-11586, an ordinance authorizing and directing the City of Washington to enter into a Sales Contract with John Deere Company for the**

**purchase of a 2017 John Deere HX10 Pull-Type Center Drive Rotary Cutter-540 RPM PTO.**

The ordinance was introduced by Councilmember Holtmeier.

After a brief discussion, the ordinance was read a second time and passed on the following vote; Patke-aye, Meyer-aye, Skornia-aye, Mohesky-aye, Sullentrup-absent, Hidritch-absent, Holtmeier-aye, Brinker-aye.

**ADJOURNMENT**

With no further business to discuss, a motion to adjourn was made at 5:04 p.m. by Councilmember Brinker, seconded by Councilmember Meyer passed without dissent.

\_\_\_\_\_  
Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council

Passed: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

CITY OF  
**WASHINGTON**  
MISSOURI

November 7, 2016

Honorable Mayor and City Council:

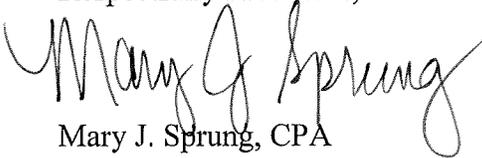
Re: Purchases of \$40,000 or more

I request your approval for payment of the following:

United Health Care	\$130,000.00	Estimated December Health Insurance premium
LAGERS	\$ 60,000.00	Estimated November wage benefits
Ameren UE	\$102,000.00	Estimated October energy usage
UMB Bank, NA. Trust	\$ 97,048.59	November debt service payment Sewer Revenue Bonds—2007B
NB West Contracting	\$480,462.84	Pay Request #3 – 2016 Asphalt Overlay & Concrete Replacement
Washington Missouri Tourism Commission	\$ 46,016.96	3 <sup>rd</sup> Quarter Tourism Tax

Invoices are attached for items other than payroll related, monthly utility, and monthly debt service payments.  
Thank you for your consideration.

Respectfully submitted,



Mary J. Sprung, CPA  
Finance Manager

N. B. WEST CONTRACTING CO.  
 2780 MARY AVE  
 ST LOUIS, MO 63144



Invoice No.	16049
Page	1

**314-962-3145**  
**www.nbwest.com**

B I L L T O	CITY OF WASHINGTON ATTN: ANDREA LUEKEN 405 JEFFERSON WASHINGTON MO 63090	J O B N O	2167 WASHINGTON 2016 OVERLAY-PW
----------------------------	---	-----------------------	------------------------------------

Invoice Date	Invoice No.	Customer No.	Payment Terms	Contract No.
10/14/16	16049	WAS104	UPON RECEIPT	

Quantity	Description	Unit Price	Extended Price
	STREET LS - SULLIVAN		480,462.84
PARTIAL BILLING #3			
PROJECT: 2016 WASHINGTON OVERLAY			
PLEASE SEE ATTACHMENT FOR DETAILED BILLING			
CONTRACT DATE: 07/05/16			
Thanks For Your Business!!!!			
		Gross	Retainage
		480,462.84	.00
		Tax	Net Amount
		.00	480,462.84



# LEWIS, RICE & FINGERSH, L.C.

ATTORNEYS AT LAW

1200 JEFFERSON, P.O. BOX 1040  
WASHINGTON, MISSOURI 63090  
WWW.LRF.COM  
MPIONTEK@LEWISRICE.COM

TEL (636) 239-7747  
FAX (636) 239-8450

MARK C. PIONTEK  
DIRECT (636) 239-4599

## MEMORANDUM

**TO:** Mary Trentmann  
Administrative Secretary

**FROM:** Janice Meyer  
Secretary for Mark C. Piontek

**DATE:** October 12, 2016

**SUBJECT:** Legal Services Rendered through September 30, 2016 for the City of Washington

*Total Bill*.....\$8,664.25

**Breakdown of Matters:**

700014.13025	General Counsel	8,134.75
700014.53902	Valent Aerostructures Chapter 100 Bonds <i>Pr # 10034-2</i>	484.50
700014.64970	Deana Ball	45.00
	<b>TOTAL</b>	<b>\$8,664.25.</b>

**CITY OF WASHINGTON, MISSOURI**

**Parks & Recreation Department  
405 Jefferson Street • Washington, MO 63090  
Phone 636-390-1080 • Fax 636-390-1080**

**FINAL PAY REQUEST**

NAME OF PROJECT: Pool Operations and Management

OWNER: City of Washington, Missouri

CONTRACTOR: Midwest Pool Management  
156 Weldon Parkway, Suite B  
Maryland Heights, MO 63043

The Parks and Recreation Department recommends acceptance of the final pay request from Midwest Pool Management.

Description	Amount
Final Pay Request	\$5,851.78

THE CONTRACT SUMMARY FOLLOWS:

Original Contract Price	\$ 171,050.00
Net Change Orders	\$ (38,482.57)
Previous Payments	\$ 126,715.65
Final Pay Request	\$ 5,851.78
Balance Due	\$ 0.00

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of the City Council

APPROVED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

---

*CITY OF*

---

**WASHINGTON**

---

*MISSOURI*

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October 28, 2015

Honorable Mayor and City Council  
City of Washington  
405 Jefferson St.  
Washington, MO 63090

RE: Final Payment Request – Midwest Pool Management

Honorable Mayor and City Council:

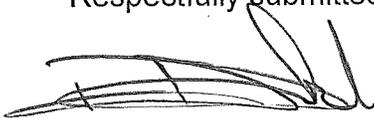
The Parks and Recreation Staff has reviewed the attached invoice from Midwest Pool Management requesting final payment for management and operational services for the Agnes Nolting Aquatic Complex, and has determined that the work has been completed per specifications.

The overall fees charged to the City are \$38,482.57 less than that of the Purchase Order. This is due to the fact that we were able to realize savings due to closings associated with weather, and that not all funds allotted for programs and rentals were utilized.

**Accordingly, the Parks and Recreation Department would recommend that the Council consider and approve Midwest Pool Management's request for final payment in the amount of \$5,851.78.**

As always, if you have any questions, concerns or need additional information, please feel free to contact me prior to the meeting.

Respectfully submitted,



Darren Dunkle, CPRP  
Director of Parks and Recreation

*PARKS AND RECREATION DEPARTMENT  
1220 SOUTH LAKESHORE DRIVE  
WASHINGTON, MO 63090*

**CITY OF WASHINGTON, MISSOURI**

**Administration**

**405 Jefferson Street • Washington, MO 63090**

**Phone 636-390-1000 • Fax 636-239-8945**

**FINAL PAY REQUEST**

---

NAME OF PROJECT:      Airport Metal Roofs Painting Project

OWNER:                      City of Washington, Missouri

CONTRACTOR:            Professional Touch Painting and Decorating, Inc.  
                                    14689 Bluff Valley Drive  
                                    Marthasville, MO 63357

Staff recommends acceptance of final pay request.

Description	Amount
Final Pay Request	\$ 6,230.00

THE CONTRACT SUMMARY FOLLOWS:

Original Contract Price	\$ 62,300.00
Previous Payments	\$ 35,000.00
Previous Payments	\$ 21,070.00
Final Pay Request	\$ 6,230.00
Balance Due	\$ 0.00

PASSED: \_\_\_\_\_

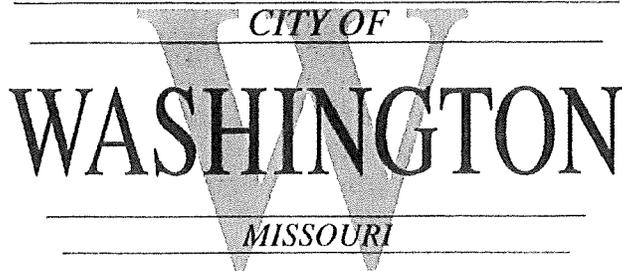
ATTEST: \_\_\_\_\_  
            City Clerk

\_\_\_\_\_  
President of the City Council

APPROVED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
            City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri



October 18, 2016

Honorable Mayor & City Council  
City of Washington  
Washington, MO60390

Re: Final Pay Request – Professional Touch Painting & Decoration, Inc. – Airport Metal  
Roofs Painting Project

Dear Mayor & Council Members:

Attached is a Final Pay Request from Professional Touch Painting & Decorating, Inc. for  
furnish labor, material and equipment to complete the Airport Metal Roofs Painting  
Project. The Final Pay Request is in the amount of \$6,230. This payment will close this  
portion of the project. Staff recommends payment.

Should you have any questions or concerns please do not hesitate to contact me. Thank  
you for your consideration in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Brian Boehmer', written in a cursive style.

Brian Boehmer  
Assistant City Administrator

Attachments

:mkt

# Professional Touch Painting and Decorating, Inc.

14689 Bluff Valley Dr.  
 Marthasville, MO 63357  
 636-239-3772

# Invoice

Date	Invoice #
9/16/2016	2100

Bill To
City of Washington

Project

Description	Amount
PROJECT: Airport Metal Roofs Painting Project - Total Contract = \$62,300 Partial payment draw #1	35,000.00
Thank you for your business.	<b>Total</b> \$35,000.00
Balance due in 15 days	<b>Balance Due</b> \$35,000.00

# Professional Touch Painting and Decorating, Inc.

14689 Bluff Valley Dr.  
Marthasville, MO 63357

636-239-3772

# Invoice

Date	Invoice #
10/14/2016	2105

Bill To
City of Washington

Project

Description	Amount
PROJECT: Airport Metal Roofs Painting Project - Total Contract = \$62,300 less 1st draw payment of \$35,000 = Balance Due of \$27,300	
Final draw on contract	27,300.00
Thank you for your business.	<b>Total</b> \$27,300.00
Balance due in 15 days	<b>Balance Due</b> \$27,300.00

**CITY OF WASHINGTON, MISSOURI**

Department of Planning and Engineering Services  
405 Jefferson Street · Washington, MO 63090  
Phone (636) 390-1010 · Fax (636) 239-4649

**Final Pay Request**

NAME OF PROJECT: Repair of Sink Hole and Replacing Pipe-Elbert Drive

OWNER: City of Washington, Missouri

CONTRACTOR: KJ Unnerstall

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

Original Contract Price.....	\$ 55,250.00
Final Payment Requested.....	\$ 29,383.99
Balance on PO to be closed out.....	\$ 25,866.01

Accepted: \_\_\_\_\_

Approval: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

KJ Unnerstall

CITY OF WASHINGTON, MISSOURI:

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

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

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

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

**AIA Type Document  
Application and Certification for Payment**

TO (OWNER): City Of Washington  
405 Jefferson St  
Washington, MO 63090

PROJECT: Elbert Drive Sinkhole  
Elbert Dr  
Washington, MO 63090

APPLICATION NO: 1  
PERIOD TO: 10/21/2016

DISTRIBUTION  
TO:  
\_ OWNER  
\_ ARCHITECT  
\_ CONTRACTOR

FROM (CONTRACTOR): K.J.U. Inc  
4923 South Point Rd  
Washington, MO 63090

VIA (ARCHITECT):

ARCHITECT'S  
PROJECT NO:

CONTRACT FOR:

CONTRACT DATE: 10/12/2016

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for Payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Type Document is attached.

1. ORIGINAL CONTRACT SUM .....	\$	<u>29,383.99</u>
2. Net Change by Change Orders .....	\$	<u>0.00</u>
3. CONTRACT SUM TO DATE (Line 1 + 2) .....	\$	<u>29,383.99</u>
4. TOTAL COMPLETED AND STORED TO DATE .....	\$	<u>29,383.99</u>
5. RETAINAGE:		
a. <u>0.00</u> % of Completed Work	\$	<u>0.00</u>
b. <u>0.00</u> % of Stored Material	\$	<u>0.00</u>
Total retainage (Line 5a + 5b) .....	\$	<u>0.00</u>
6. TOTAL EARNED LESS RETAINAGE .....	\$	<u>29,383.99</u>
(Line 4 less Line 5 Total)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) .....	\$	<u>0.00</u>
8. CURRENT PAYMENT DUE .....	\$	<u>29,383.99</u>
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	<u>0.00</u>

The Undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the owner, and that current payment shown herein is now due.

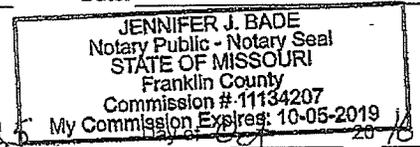
CONTRACTOR: K.J.U. Inc  
4923 South Point Rd Washington, MO 63090

By: Chris Cochran  
Chris Cochran PPM

Date: 10-25-16

State of: MO  
County of: Franklin

Subscribed and Sworn to before me this 25



Notary Public: Jennifer J. Bade

My Commission Expires: 10-5-19

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In Accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED .....

\$ 29,383.99

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: [Signature]  
By: [Signature]

Date: 10/25/16

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, Payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	0.00	0.00
Total approved this Month	0.00	0.00
TOTALS	0.00	0.00
NET CHANGES by Change Order	0.00	

AIA Type Document  
Application and Certification for Payment

TO (OWNER): City Of Washington  
405 Jefferson St  
Washington, MO 63090

PROJECT: Elbert Drive Sinkhole  
Elbert Dr  
Washington, MO 63090

APPLICATION NO: 1  
PERIOD TO: 10/21/2016

DISTRIBUTION  
TO:  
\_ OWNER  
\_ ARCHITECT  
\_ CONTRACTOR

FROM (CONTRACTOR): K.J.U. Inc  
4923 South Point Rd  
Washington, MO 63090

VIA (ARCHITECT):

ARCHITECT'S  
PROJECT NO:

CONTRACT FOR:

CONTRACT DATE: 10/12/2016

ITEM	DESCRIPTION	PLAN QTY	UNIT PRICE	SCHEDULED VALUE	PREVIOUSLY COMP QTY/%	PREVIOUS APPL	COMP QTY/% THIS PERIOD	COMP AMT THIS PERIOD	STORED MATERIAL	COMPLETED AND STORED	%	BALANCE	
1	Mobilization	1.000	500.0000	500.00	.000	0.00	1.000	500.00	0.00	500.00	100.00	.00	
2	Removals	1.000	644.0000	644.00	.000	0.00	1.000	644.00	0.00	644.00	100.00	.00	
3	30" HDPP, Triple Wall	100.000	130.0000	13,000.00	.000	0.00	100.000	13,000.00	0.00	13,000.00	100.00	.00	
4	MoDot Type 5 Aggregate Backfill	193.190	21.0000	4,056.99	.000	0.00	193.190	4,056.99	0.00	4,056.99	100.00	.00	
5	Concrete Collars	1.000	11,183.0000	11,183.00	.000	0.00	1.000	11,183.00	0.00	11,183.00	100.00	.00	
<b>REPORT TOTALS</b>				<b>\$29,383.99</b>		<b>\$0.00</b>		<b>\$29,383.99</b>		<b>\$29,383.99</b>			
									<b>\$0.00</b>				<b>\$0.00</b>

CITY OF  
**WASHINGTON**  
MISSOURI

October 12, 2016

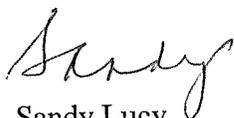
To The City Council  
City of Washington  
Washington, Missouri

Dear Council Members:

I herewith submit for your approval the following for reappointment:

<u>NAME</u>	<u>APPOINTED</u>	<u>TERM EXPIRES</u>
John Rutz Reserve Officer	Nov. 16, 2016	Nov. 16, 2017
Celia Rudolph Patrol Officer	Nov. 18, 2016	Nov. 18, 2017
Michael Grissom Patrol Officer	Nov. 22, 2016	Nov. 22, 2017

Respectfully submitted,



Sandy Lucy  
Mayor

MT:

405 JEFFERSON STREET  
WASHINGTON, MO 63090



# Washington Police Department

CHIEF EDWARD MENEFEE  
301 JEFFERSON STREET  
WASHINGTON, MISSOURI 63090  
(636) 390-1055 Fax: (636) 390-2455  
[emenefee@ci.washington.mo.us](mailto:emenefee@ci.washington.mo.us)

DATE: October 12, 2016

TO: Mayor Sandy Lucy  
City Council Members

SUBJECT: Reappointment of Police Officers

Honorable Mayor and Council Members,

I respectfully request the following police officers be reappointed with the Washington Police Department for a one year term:

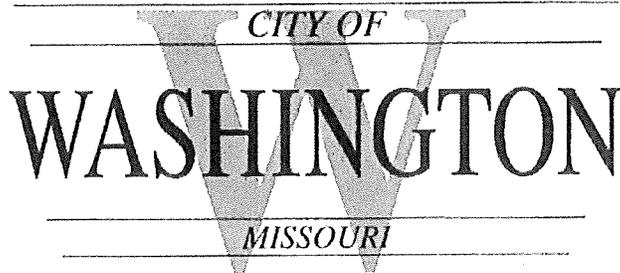
NAME	DATE EFFECTIVE	DATE EXPIRES
<b>JOHN RUTZ</b> Reserve Officer	<b>NOVEMBER 16, 2016</b>	<b>NOVEMBER 16, 2017</b>
<b>CELIA RUDOLPH</b> Police Officer	<b>NOVEMBER 18, 2016</b>	<b>NOVEMBER 18, 2017</b>
<b>MIKE GRISSOM</b> Police Officer	<b>NOVEMBER 22, 2016</b>	<b>NOVEMBER 22, 2017</b>

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Chief Edward Menefee" with a date "10/21" written to the right.

Edward T. Menefee  
Chief of Police



November 1, 2016

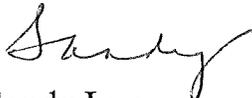
To The City Council  
City of Washington  
Washington, Missouri

Dear Council Members:

I herewith submit for your approval the following for re-appointment to the  
Phoenix Center Community Improvement District Board:

Jim Briggs – term expiring November 2020  
Josh Brinker – term expiring November 2020  
Wayne Drury – term expiring November 2020

Respectfully submitted,

  
Sandy Lucy  
Mayor

MKT:

405 JEFFERSON STREET  
WASHINGTON, MO 63090



Washington Municipal Court



301 Jefferson Street  
Washington, MO 63090  
Phone: (630)390-1060  
Fax: (630)390-2155

Craig E. Hellmann, Judge  
Mark C. Plontek, Prosecutor  
Cindy A. Buescher, Court Clerk

TO: Council Members, City of Washington  
Mayor Sandy Lucy  
Mr. James Briggs, City Administrator

FROM: Cindy A. Buescher  
Municipal Court Administrator

DATE: October 17, 2016

RE: Request for Addition of Court/Police (non-Incode) Interface  
Import or Export of Citation/Warrants/Dispositions

Council Members, Mayor and Mr. Briggs,

I would like to request to use additional funds from the Public Safety Computer Project to add what I believe to be an essential part to the ITI software. This request is for the interface from the ITI software to the court software. We have already purchased the interface from ITI but was never advised that we were needing to purchase an interface from INCODE.

The interface will allow the software to download the tickets that the officers issue through their in car ticketing directly into the INCODE court software. This will free up the clerk that has to now manually enter tickets into the system.

The total cost of the interface is \$5,500.00 as listed in the included quote document for INCODE. There will be a recurring annual maintenance cost of \$1,375.00 that will go in efft for the 2017,18 budget

I have attached the quote from INCODE that itemizes the pricing for the interface. I present this to you for your approval.

Thank you for your consideration

Craig Hallmann  
Municipal Judge

Cindy A. Buescher  
Court Administrator



## Proposal

Local Government Division

---

*Presented to:*

**Cindy Buescher**  
Court Administrator  
City of Washington  
301 Jefferson Street  
0.00  
Washington, MO 63090  
(636) 390-1060  
cbuescher@ci.washington.mo.us

*Proposal date:*

October 11, 2016

*Submitted by:*

David Latosinski  
(800) 646-2633  
david.latosinski@tylertech.com

Tyler Technologies  
Local Government Division  
5519 53rd Street  
Lubbock, Texas 79414

## Investment Summary

Cindy Buescher  
City of Washington  
October 11, 2016



### Investment Breakdown

Proposal Valid for 120 days

Software	Investment	Annual Fees
License Fees (Existing Customer)	5,500	1,375
	<b>5,500</b>	<b>1,375</b>
<b>Project Total</b>	<b>5,500</b>	<b>1,375</b>

*Tyler will invoice Client for the License Fees listed above upon delivery of the software.*

*Maintenance Fees listed above will be invoiced upon ninety (90) days of delivery and annually thereafter on the anniversary of that date*

*All payment terms are net thirty (30) days*

Software Licenses  
 Cindy Buescher  
 City of Washington  
 October 11, 2016



Application Software	QTY	Hours	Estimated Services	License Fee	Estimated Services	Annual Maintenance
Incode Court Case Management Suite Court/Police (non-Incode) Interface (Import or Export of Citations/Warrants/Dispositions)	5,500	Included	Included	5,500		1,375
Incode Application Subtotal				5,500		1,375
Application and System Software Total				5,500		1,375

CITY OF  
WASHINGTON  
MISSOURI

To: Mayor and City Council

From: Robert J. Douglas  
Information Technology Director

Date: October 31, 2016

Subject: Request of interface addition between ITI Software and Firehouse Software System.

Mayor and City Council Members,

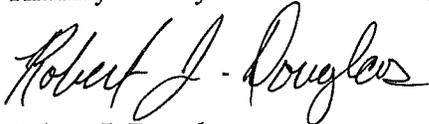
I would like to request to use additional funds from the Public Safety Computer Project to add an integral interface between the ITI software and Firehouse Software.

Firehouse Software was utilizing a legacy importation system with our previous AS400 system that is no longer supported. Firehouse has moved forward to a standardized importation software interface. This interface will improve production of the clerk that has to manually enter the fire calls in to the system since changing systems.

The total cost of the interface is \$2,035.00. There will be a recurring annual maintenance cost of \$360.00 that will go in to effect on the 17/18 budget.

I have attached the estimate from Firehouse Software(Xerox Government Systems, LLC). I present this to you for your approval.

Thank you for your consideration,



Robert J. Douglas  
Information Technology Director

405 JEFFERSON STREET  
WASHINGTON, MO 63090

Xerox Government Systems, LLC

13 Alice Drive  
Highland, IL 62249

# Estimate

Date	Estimate #
10/17/2016	105207

Name / Address
Washington Fire Dept Robert J. Douglas IT Mgr 405 Jefferson Street Washington, MO 63090 636-390-1021 fax, MO 636-390-1026

			Project
Description	Qty	Cost	Total
FH Std Generic CAD Monitor	1	1,675.00	1,675.00
NOTES: 1) Additional Software may also be required from your CAD Vendor, please contact your CAD Vendor for additional details 2) A communication path (live preferred) must be established between the CAD System and the FIREHOUSE Software system			
FH Std - CAD interface Update/Support	1	360.00	360.00
		<b>Total</b>	\$2,035.00

Customer Signature \_\_\_\_\_

BILL NO. \_\_\_\_\_

INTRODUCED BY: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REZONING 1000 DUNCAN HEIGHTS DRIVE FROM R1-A, SINGLE FAMILY RESIDENCE DISTRICT TO C-4, PLANNED COMMERCIAL DISTRICT IN THE CITY OF WASHINGTON, FRANKLIN COUNTY, MISSOURI.

WHEREAS, an application has been filed with the City of Washington to rezone 1000 Duncan Heights Drive to C-4, Planned Commercial.

WHEREAS, pursuant to the ordinances of the City of Washington, Missouri, a public hearing on such request was held in the City Council Chambers, 405 Jefferson Street, Washington, Missouri, On October 17, 2016 notice of said hearing having been duly published in the "Washington Missourian", and:

WHEREAS, the City Council has determined that allowance of said request would be proper and in the best interests of the City:

NOW, THEREFORE, be it ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The following described properties located at 1000 Duncan Heights Drive, Parcel Numbers: 10-5-22.0-4-000-253.000 and 10-5-22.0-4-000-253.100 is hereby removed from the R1A Single Family Residence District and placed in the C-4, Planned Commercial, under the following conditions:

1. The property may not be used as a gas station, an auto or equipment repair facility, or a retail lumber store.
2. The Right-of Way for Duncan Avenue must be recorded before the rezoning can take place.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall be in full force and effect from and after its passage and approval.

Passed: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council

Approved: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

To: Planning and Zoning Commission  
 From: Planning and Engineering Department  
 Date: September 12, 2016  
 Re: File # 16-0801–Duncan Property

Synopsis: The applicant is requesting approval of a rezoning of 2 parcels from R-1A Single Family Residential to C-4 Planned Commercial and approval of a Development Plan for the Duncan Property.

<b>Adjacent Land Use /Zoning Matrix</b>		
	Existing Land Use	Existing Zoning
North	Vacant Property, Single Family Home	C-4 and R-1A
South	Peace Lutheran Church	R-1A
East	Single Family Home	R-1A
West	Commercial Property and Washington School District	C-2 and R-1A

**Analysis:**

Zoning

The applicant is requesting approval of a rezoning from R-1A Single Family Residential to C-4 Planned Commercial. The C-4 zone district allows for general commercial uses typically permitted in a C-2 zone district, however, requires a development plan approved by City Council prior to any use occupying the site. The applicant has not specified what uses will utilize the site; however, they have stated that a gas station will be specifically prohibited. The property is located along Duncan Avenue just southeast of the Duncan Avenue and Highway 47 intersection. The property is mainly fronted along the Highway 47 commercial corridor, since there is not any developable land on the west side of Duncan Avenue. The future land use map set forth as part of the Comprehensive Plan designates this property as commercial as it develops and in 2015, the adjoining property to the north was approved for C-4 zoning; however it has not been developed.

Given its proximity to the highway, the neighboring commercial zoning, and its topographical layout, the subject property would be suitable for a commercial development. If appropriate measures are taken during the implementation of the development plan, staff believes that

approving this rezoning from a residential to a commercial designation would not significantly impact the surrounding properties.

### Development Plan

The applicant has submitted a development plan for approval that displays a 32,300 square foot commercial structure. The only proposed point of ingress and egress is shown off of Duncan Avenue with a 35 ft. wide driveway. The plan also shows a possible future access to the Wilson property to the north that went through a C-4 zoning in 2015. The plan shows a parking lot with approximately 140 parking spaces and demonstrates adequate landscaping requirements for the parking area. The number of parking spaces proposed is based on the 3 primary uses that could possibly occupy the building; business office, general retail, and furniture/appliance sales/ wholesales. Staff recommends approving this parking plan as long as the final product provides 1 parking space per every 250 square ft. of retail space (aprx. 137 spaces)

The plan also proposes a buffer area between the development and the neighboring properties zoned residentially. The plan shows a six foot sight proof fence along the church property, and then proposes a 25 foot landscape buffer along the remaining adjoining properties. The proposed buffer and landscape plan does meet the requirements set forth in Section 460.050 however; staff does recommend that some additional screening be implemented to lessen any possible nuisance to the neighboring properties. Staff is recommending that the 6 foot sight-proof fence be extended around the perimeter of the development that adjoins residential property and that landscaping is placed according to the proposed plan on the outside of the fence.

Some of remaining development plan notes are as follows: The proposed development plan will meet all stormwater needs and all designs will be submitted for approval by the City Engineer. A preliminary plat combining the parcels and designating the Duncan Avenue right-of-way will need to be submitted and approved by City Council. A boundary survey will be required and the proposed building materials must be either split face masonry, vinyl, or a combination thereof.

### **Recommendation:**

Given the above analysis, staff believes that the proposed rezoning from R-1A to C-4 Planned Commercial and a development plan approval for the Duncan Property are suitable for the subject property and would not significantly detriment the surrounding area given the following conditions of approval are imposed:

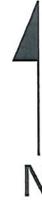
1. Onsite storm sewer system including detention must be provided as per city code and approved by the City Engineer
2. The property may not be used a gas station, an auto or equipment repair facility, or a retail lumber store.
3. Fire hydrant locations must meet the International Fire Code and approved during site review.
4. The dumpster location and screening must be approved during site review.

5. The parking requirements must meet the revised City of Washington Development Code of 1 parking space per 250 square feet of retail space.
6. The turning radius of any turn along the fire lane must be at least 30 ft.
7. The landscape buffer must be at least 25 feet in depth where adjoining residential uses.
8. The proposed 6 foot sight-proof fence must extend around the rear of the development along any adjoining property that is used residentially.
9. A boundary survey as well as a topographical survey must be completed as part of site plan approval.
10. The right-of-way for Duncan Avenue must be recorded prior to a building permit being issued.
11. A final plat must be approved combining the two effected parcels demonstrating the appropriate easements for public utilities.
12. The portion of land west of Duncan Ave. where signage is proposed must be part of the subject property. If dedicated to MODOT or the City of Washington, signage will not be permitted.
13. The development must be substantially completed within 2 years of the approval of the ordinance. A one year extension may be granted by Council if requested within 30 days of the expiration date.

# City of Washington Future Land Use

## Land Use

-  Open/Public Space
-  Mixed Use Areas
-  Commercial
-  Industrial
-  Residential
-  Institutional
-  City Limits



Highway 47

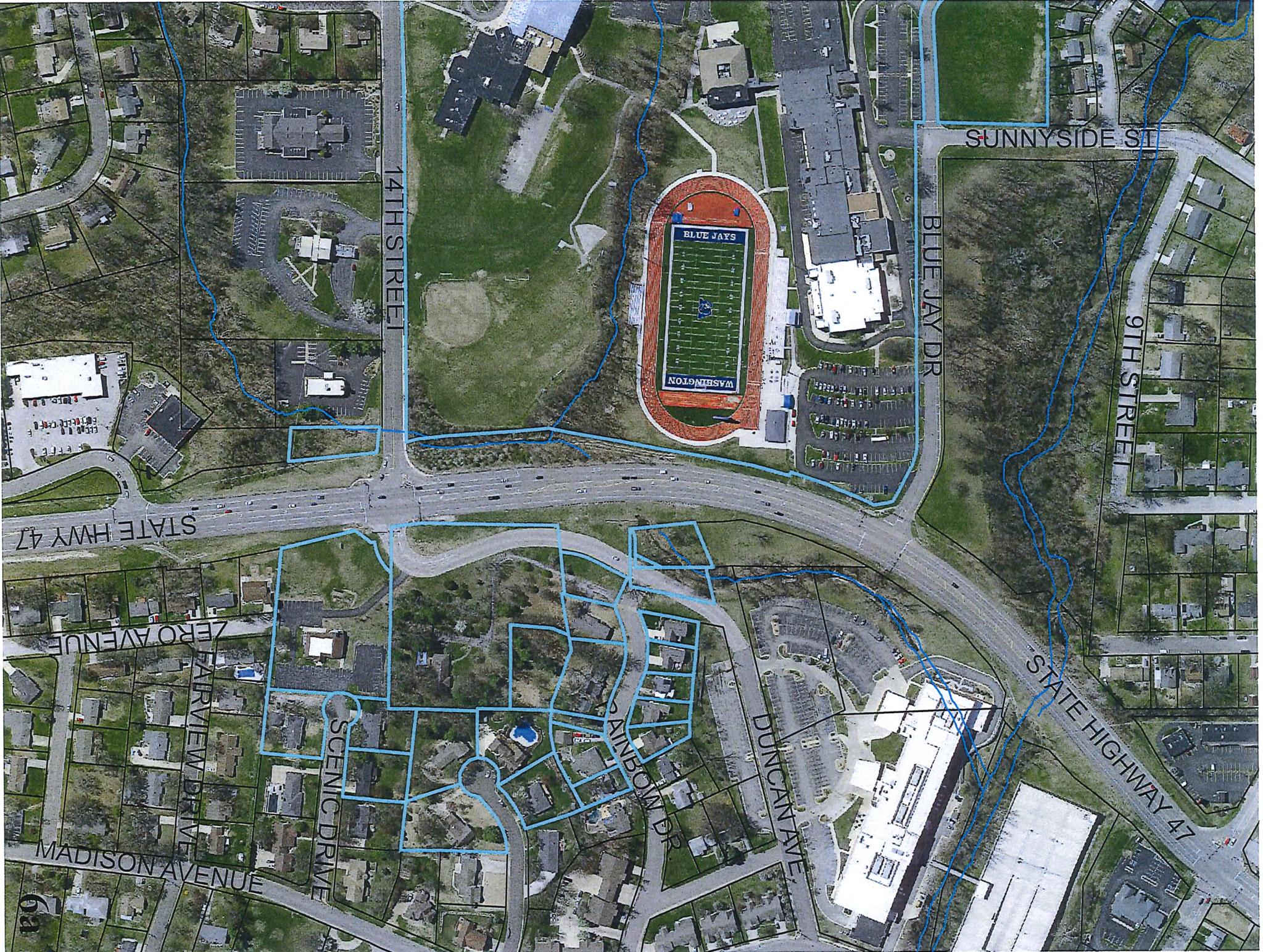
Duncan Ave

Rainbow Dr

Field

Scenic Dr

Fairview Dr



SUNNYSIDE ST

14TH STREET

BLUE JAY DR

9TH STREET

STATE HWY 47

ZERO AVENUE

FAIRVIEW DRIVE

SCENIC DRIVE

RAINBOW DR

DUNCAN AVE

STATE HIGHWAY 47

MADISON AVENUE

BLUE JAYS  
WASHINGTON

601

BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REQUESTING VOLUNTARY ANNEXATION OF  
14.49 ACRES SOUTH OF THE MALVERN HILL SUBDIVISION  
INTO THE CITY OF WASHINGTON, MISSOURI, FRANKLIN COUNTY,  
MISSOURI.

WHEREAS, on September 12, 2016, a verified petition signed by Jerome Weber, owner of the tract of real estate hereinafter described, requesting annexation of certain territory into the City of Washington, Missouri, was filed with the City Clerk; and

WHEREAS, said real estate as hereinafter described is adjacent and contiguous to the present corporate limits of the City of Washington, Missouri; and

WHEREAS, the Washington Planning & Zoning Commission has recommended that the subject property described in Exhibit A, attached hereto, should be annexed into the city limits of the City of Washington, and should be placed into a R1D, Single Family Residential Zoning District as requested by the applicant; and,

WHEREAS, the City Council held a public hearing concerning the matter of annexation of the land described in Exhibit A, at City Hall in Washington, Missouri, on Monday, October 17<sup>th</sup>, 2016, during a regular meeting of the City Council; and

WHEREAS, notice of said public hearing was given by publication of notice thereof, on September 28<sup>th</sup>, 2016 in the "Washington Missourian", a bi-weekly newspaper of general circulation in the County of Franklin, State of Missouri; and

WHEREAS, at said public hearing, all persons, corporations or political subdivisions were afforded the opportunity to present evidence regarding the proposed annexation of the land described this ordinance; and

WHEREAS, no written objection to the proposed annexation was filed with the City Council of the City of Washington, Missouri, within fourteen (14) days after said public hearing; and

WHEREAS, the City Council of the City of Washington, Missouri does find and determine that said annexation of the land described in this ordinance is reasonable and necessary to the proper development of the City; and

WHEREAS, the City is able to furnish normal municipal services to said area within a reasonable time after annexation.

NOW, THEREFORE, be it ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The boundaries of the City of Washington, Missouri, are hereby altered to encompass the tracts of land described in Exhibit A of this ordinance, lying adjacent and contiguous to the present corporate limits.

SECTION 2: Pursuant to the provisions of Section 71.012 RSMo, as amended, the land described and incorporated herein by reference, is hereby annexed into the City of Washington, Missouri, and zoned R1D, Single Family Residential Zoning District.

SECTION 3: The City Clerk of the City of Washington is hereby ordered to have three (3) certified copies of this ordinance filed with the Franklin County Clerk.

SECTION 4: This ordinance shall be in full force and effect from and after its passage and approval.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of the City Council

APPROVED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

“Exhibit A”

Description of Proposed R1-D Property Located in Franklin County

Applicant is requesting approval of a voluntary annexation of 14.49 acres south of the Malvern Hill Subdivision described as a tract of land being part of U.S. Survey 1912 and part of the North Half of the Northeast Quarter of Section 35, Township 44 North, Range 1 West of the 5th P.M., being more fully described as follows:

A tract of land being part of U.S. Survey 1912 and part of the North Half of the Northeast Quarter of Section 35, Township 44 North, Range 1 West of the 5th P.M., being more fully described as follows:

Beginning at an iron rod at the Southeast corner of Common Ground A of Washington Victorian Manor Plat 1 recorded in Doc. #1222297;

Thence S 0° 50' 32" W on the property line 261.87 feet to the quarter section line;

Thence N 89° 48' 56" W on the quarter section line 1527.06 feet;

Thence N 0° 11' 04" E 841.44 feet;

Thence S 59° 25' 45" E 485.84 feet to a point on the west line of Malvern Hill recorded in Doc. #1320141;

Thence S 30° 34' 15" W on the west line of said Malvern Hill 113.66 feet to an iron rod;

Thence S 63° 24' 54" E on the south line of Malvern Hill and the southwest line of the Washington I, LLC tract recorded in Doc. #1302189 for 529.87 feet to an iron rod;

Thence S 89° 47' 59" E on the south and southwest lines of Washington 1, LLC and the south line of Washington Victorian Manor Plat 1 recorded in Doc. #122297 693.84 feet to the POINT OF BEGINNING;

SUBJECT TO easements, conditions and restrictions of record.

To: Planning and Zoning Commission

From: Planning and Engineering Department Staff

Date: September 12, 2016

Re: File # 16-0802 – Voluntary Annexation – Weber Farm

Synopsis: The applicant is requesting to annex 14.49 acres off Rabbit Trial Drive. Legal Description attached as "Exhibit A"

<b>Adjacent Land Use / Zoning Matrix</b>		
	Existing Land Use	Existing Zoning
North	Single Family/Senior Living	R1-D / SCD
South	Vacant Land	N/A
East	Single Family/ Vacant Land	R1-D
West	Vacant Land	N/A

**Analysis:**

The applicant has submitted an application to annex 14.49 acres as shown with an attached survey and legal description. The application requests that the newly annexed property be zoned R1-D Single Family Residential. The future land use map of this specific area proposes single family residential uses as it develops. The proposed zoning of R1-D matches the vision of the comprehensive plan and the density requirements of this district are compatible with the surrounding area. The property to the north has developed as single family lots approximately 7,500 square feet in size under the R1-D zone district.

**Recommendation:**

Staff recommends approval of the proposed annexation as well as the proposed zoning designation of R1-D Single Family Residential.

**Exhibit A**

**DESCRIPTION OF 14.49 ACRE - TRACT I:**

A tract of land being part of U.S. Survey 1912 and part of the North Half of the Northeast Quarter of Section 35, Township 44 North, Range 1 West of the 5th P.M., being more fully described as follows:

Beginning at an iron rod at the Southeast corner of Common Ground A of Washington Victorian Manor Plat 1 recorded in Doc. #1222297;

Thence S 0° 50' 32" W on the property line 261.87 feet to the quarter section line;

Thence N 89° 48' 56" W on the quarter section line 1527.06 feet;

Thence N 0° 11' 04" E 841.44 feet;

Thence S 59° 25' 45" E 485.84 feet to a point on the west line of Malvern Hill recorded in Doc. #1320141;

Thence S 30° 34' 15" W on the west line of said Malvern Hill 113.66 feet to an iron rod;

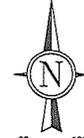
Thence S 63° 24' 54" E on the south line of Malvern Hill and the southwest line of the Washington I, LLC tract recorded in Doc. #1302189 for 529.87 feet to an iron rod;

Thence S 89° 47' 59" E on the south and southwest lines of Washington 1, LLC and the south line of Washington Victorian Manor Plat 1 recorded in Doc. #1222297 693.84 feet to the POINT OF BEGINNING;

SUBJECT TO easements, conditions, and restrictions of record.

**EXHIBIT A**

PT. U. S. SURVEY 1912, PT. N 1/2  
NE 1/4 OF SEC. 35, T44N, R1W



SCALE 1" = 60'  
0 60 120 180

ACCURACY STANDARD - URBAN PROPERTY  
DEED REFERENCE DEED DC. 1488 PG. 1325  
MEASUREMENTS BASED ON PLAT 1 OF MALVERN HILL

**DESCRIPTION OF 14.49 ACRES - TRACT I:**

A tract of land being part of U.S. Survey 1912 and part of the North Half of the Northwest Quarter of Section 35, Township 44 North, Range 1 West of the 5th P.M., being more fully described as follows:

Beginning at an iron rod at the Southeast corner of Common Ground A of Washington Victorian Manor Plat 1 recorded in Doc. #1222297;

Thence S 0° 30' 32" W on the property line 281.87 feet to the quarter section line;

Thence N 0° 40' 56" W on the quarter section line 1527.06 feet;

Thence N 0° 11' 04" E 841.44 feet;

Thence S 0° 25' 45" E 485.84 feet to a point on the west line of Malvern Hill recorded in Doc. #1322141;

Thence S 20° 34' 15" W on the west line of said Malvern Hill 115.66 feet to an iron rod;

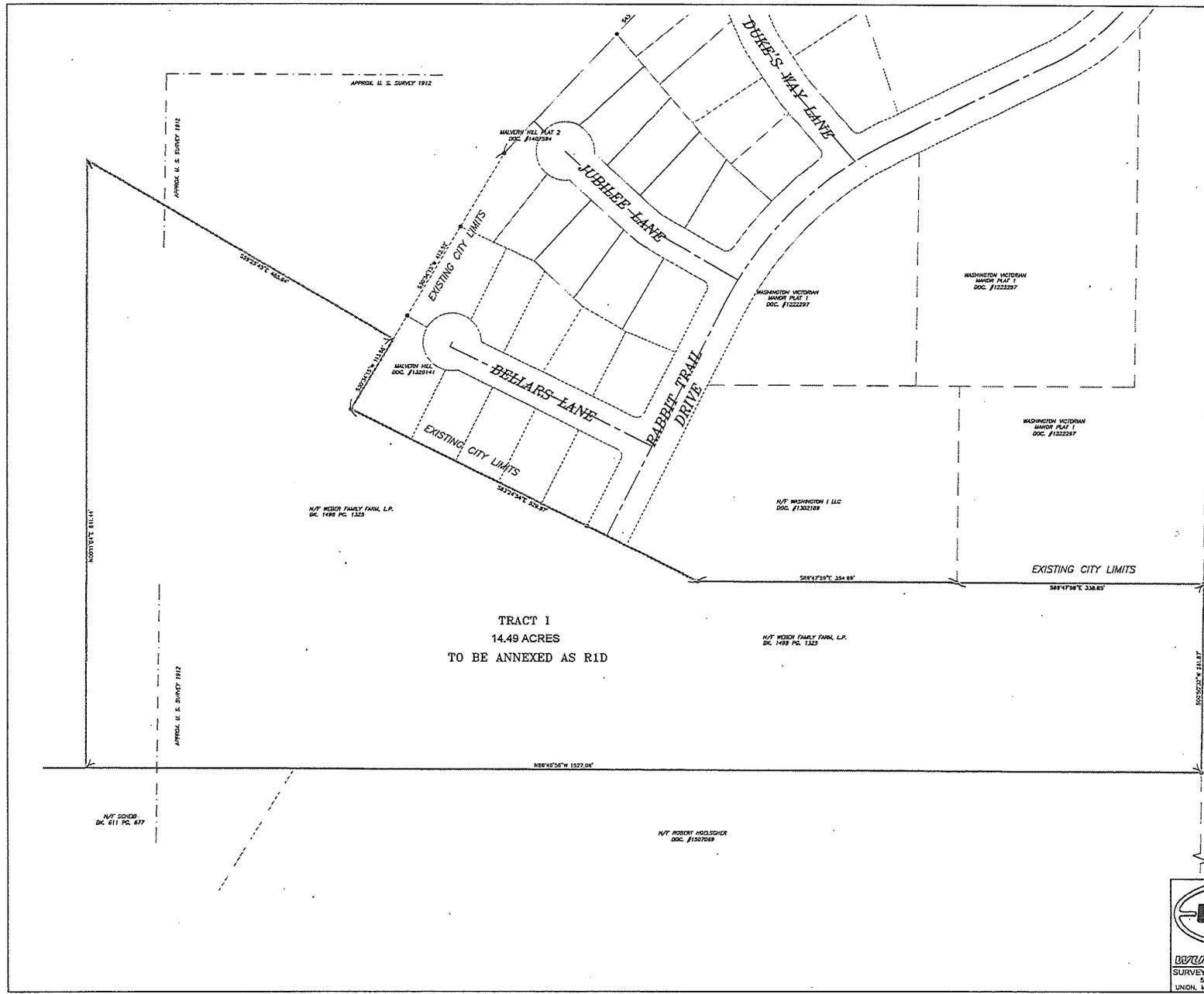
Thence S 63° 24' 54" E on the south line of Malvern Hill and the southwest line of the Washington I, LLC tract recorded in Doc. #1322141 for 329.87 feet to an iron rod;

Thence S 0° 47' 09" E on the south and southwest lines of Washington I, LLC and the south line of Washington Victorian Manor Plat 1 recorded in Doc. #1222297 683.84 feet to the POINT OF BEGINNING;

SUBJECT TO easements, conditions, and restrictions of record.

NY REVISED RECORD  
DOC. #10502

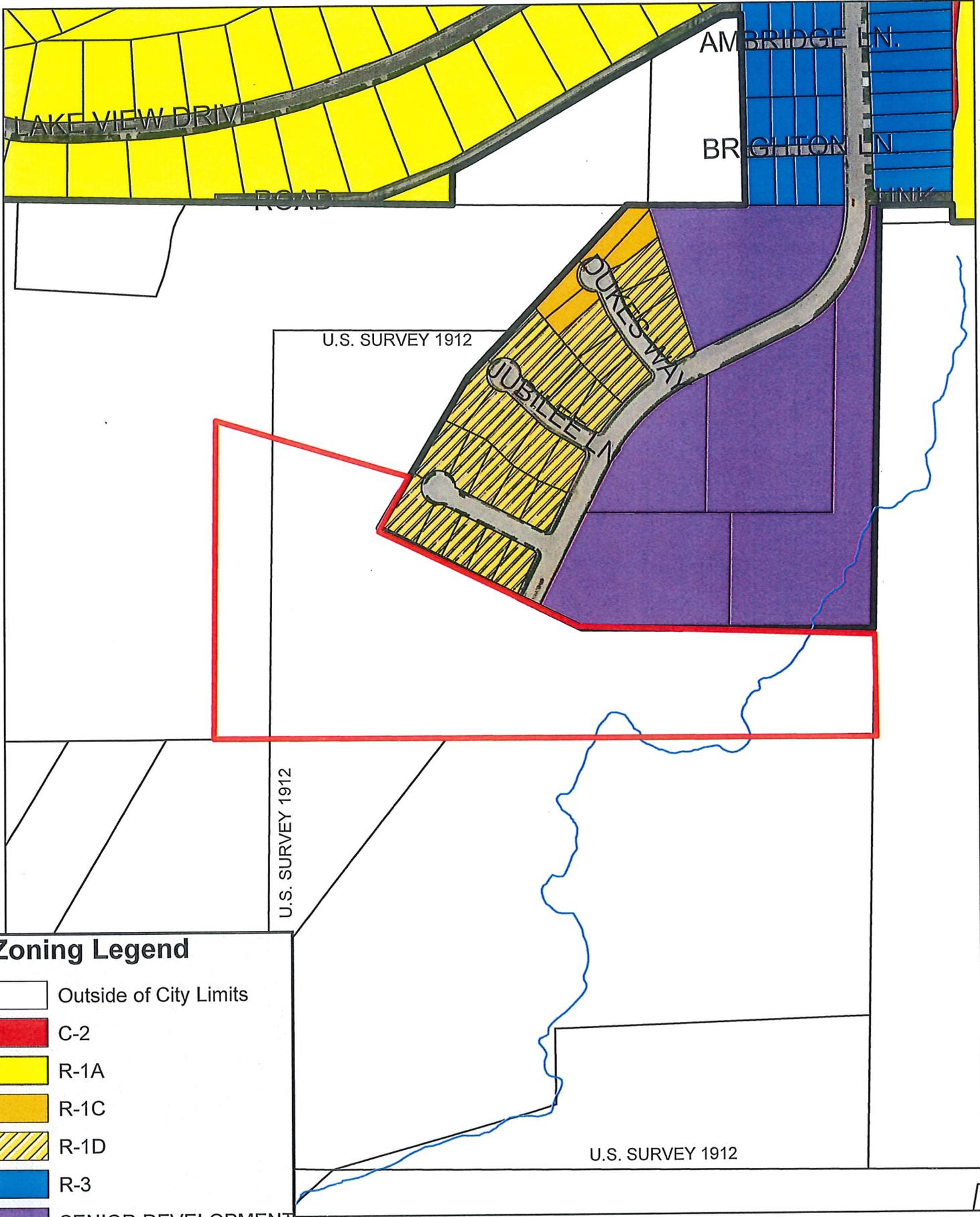
**TRACT I**  
14.49 ACRES  
TO BE ANNEXED AS R1D



**WUNDERLICH**  
SURVEYING & ENGINEERING INC.  
512 EAST MAIN STREET  
WILSON, MO 65384 (636) 563-8400

<b>ANNEXATION PLAN EXHIBIT A</b>	
PT. U. S. SURVEY 1912, PT. N 1/2 1/4 OF SEC. 35, ALL IN T44N, R1W OF THE 5TH P.M. IN FRANKLIN COUNTY, MO	
SCALE: 1"=60'	SHEET
JOB: 31588	
DATE: 8-23-2018	
BY:	
REV:	
BY: TERRY ANNEY	
<b>1 OF 1</b>	

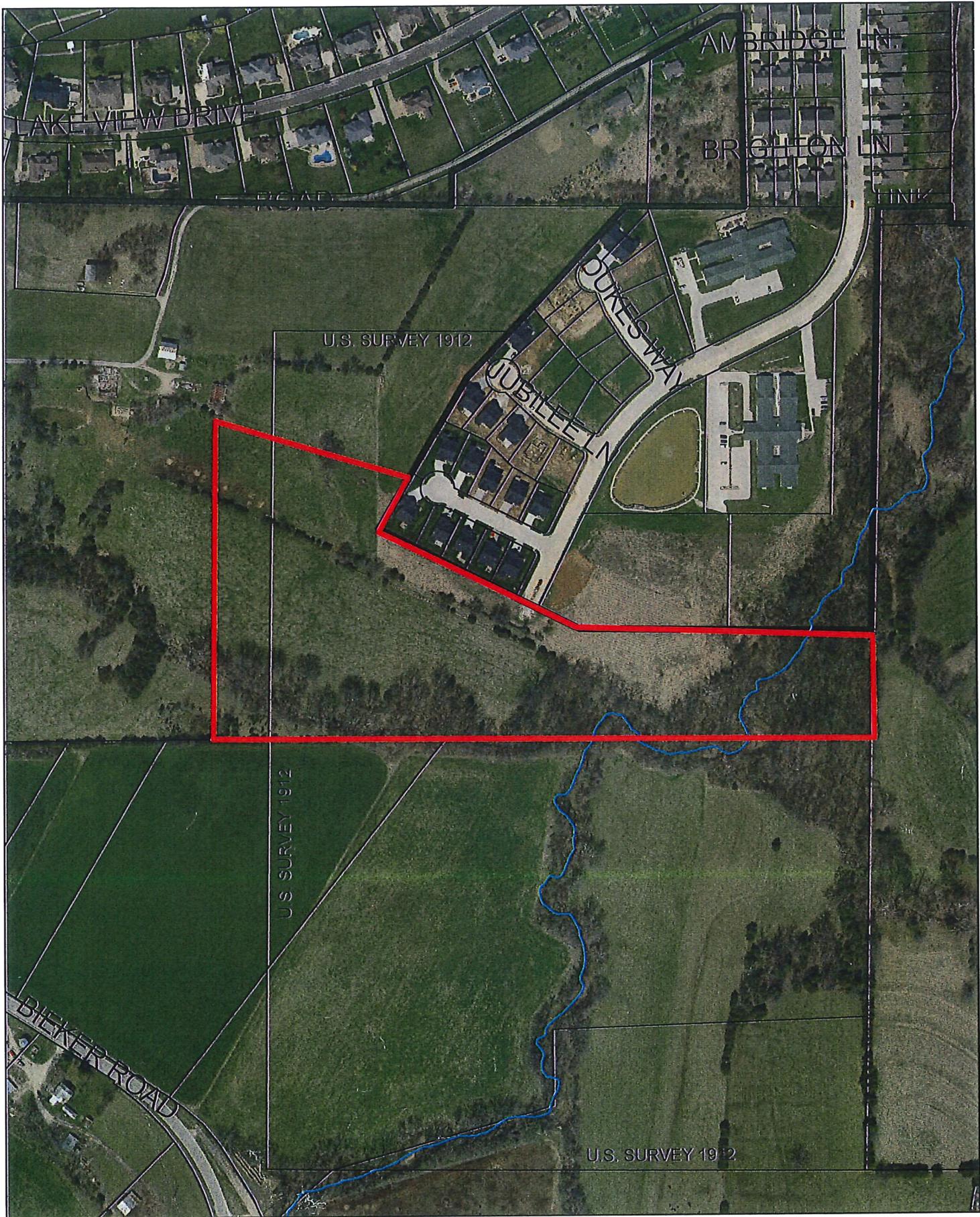
# Proposed Voluntary Annexation



**Zoning Legend**

- Outside of City Limits
- C-2
- R-1A
- R-1C
- R-1D
- R-3
- SENIOR DEVELOPMENT

# Proposed Voluntary Annexation



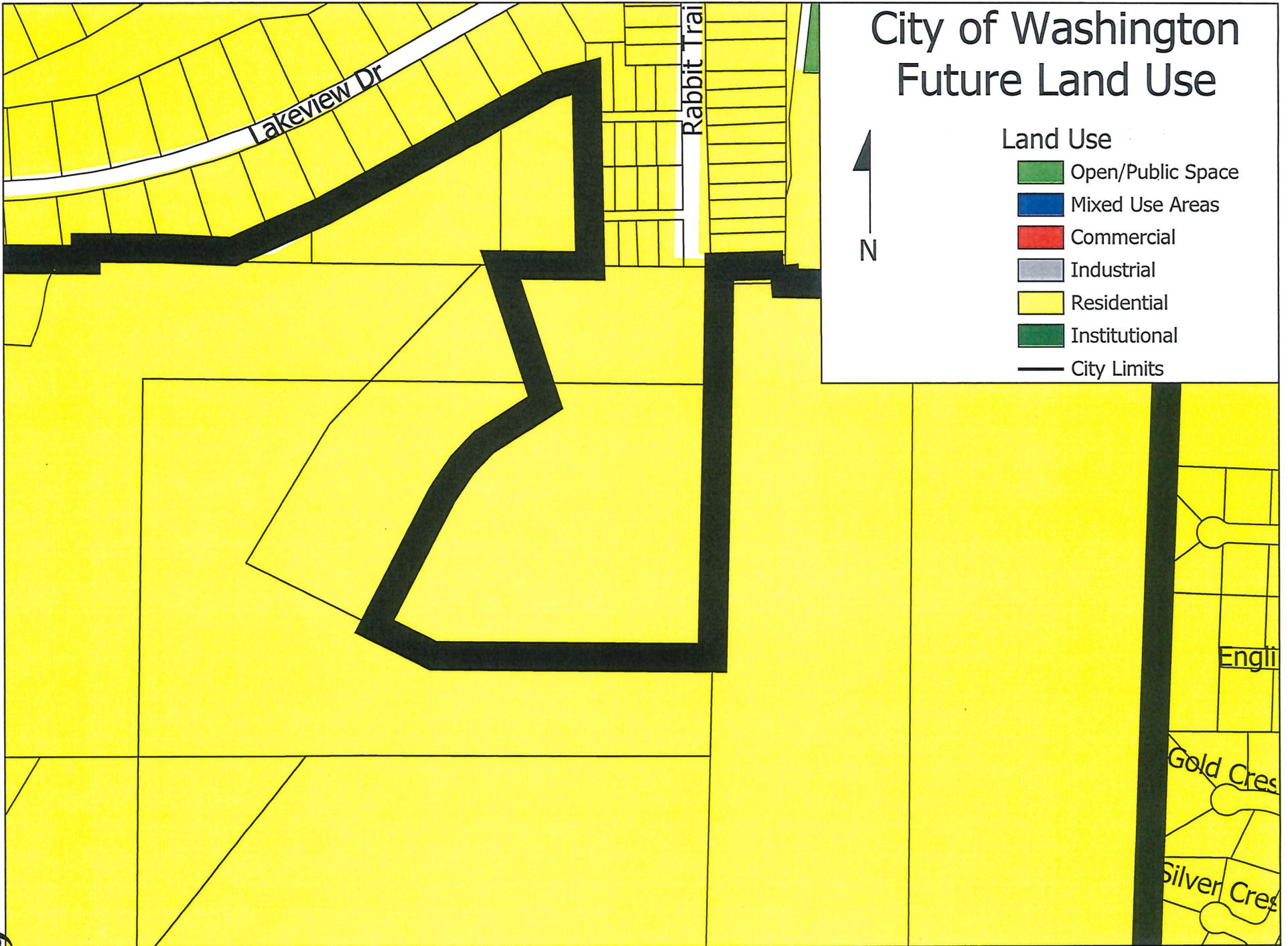
800 400 0 800 feet

# City of Washington Future Land Use



## Land Use

-  Open/Public Space
-  Mixed Use Areas
-  Commercial
-  Industrial
-  Residential
-  Institutional
-  City Limits



160826002

**CITY OF WASHINGTON, MISSOURI**

Department of Planning and Engineering Services  
405 JEFFERSON STREET • WASHINGTON, MO 63090  
636.390.1010 phone • 636.239.4649 fax

**VERIFIED PETITION FOR ANNEXATION**

1. The undersigned is the owner of all fee interest in that real property described in Exhibit "A", a copy of which is attached hereto and incorporated herein by reference.
2. Said property described in Exhibit "A" is contiguous and compact to the existing corporate limits of the City of Washington, Missouri.
3. The undersigned hereby petitions the City Council of the City of Washington, Missouri, for voluntary annexation of the real property described in Exhibit "A".
4. The undersigned hereby requests the City Council of the City of Washington, Missouri, zone the real property described in Exhibit "A" as     R1D
5. The following describes the fee involved with a voluntary annexation request, and the conditions of a refund, as called out in the City of Washington Codes:

**SECTION 400.015: VOLUNTARY ANNEXATION PETITIONS FEES & PROCEDURES**

- A. Any request for voluntary annexation submitted to the City of Washington, Missouri, pursuant to Section 71.012 of the Revised Statutes of Missouri shall be accompanied by a cost deposit of two hundred dollars (\$200.00) for processing said request.
- B. If the request for voluntary annexation is not approved by the City Council, the cost deposit shall be refunded to the applicant. If the request for voluntary annexation is withdrawn by the applicant, the cost deposit shall be forfeited to the City. If the request for voluntary annexation is contingent on the occurrence of one (1) or more events and these events do not transpire due to action or inaction by others than the City Council and the voluntary annexation is not approved by the City Council, then the cost deposit shall be forfeited to the City. (Ord. No. 00-8783 §1, 4-3-00)

WEBER FAMILY FARM L.P.

~~LEON WEBER~~ SEROME WEBER

Applicant Name (print)

*Serome A. Weber*

Applicant signature

Address & Phone 5576 WEBER ROAD, WASHINGTON, MO 63090

STATE OF MISSOURI     )  
  )  
  )     SS  
COUNTY OF FRANKLIN    )

On this 24<sup>th</sup> day of August, 2016, before me appeared Jerome Weber, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, in the County and State aforesaid, the day and year last above written.

Lorie A. Freitag  
Notary Public



LORIE A. FREITAG  
My Commission Expires  
March 16, 2018  
Franklin County  
Commission #14854781

BILL No. \_\_\_\_\_

INTRODUCED BY: \_\_\_\_\_

ORDINANCE No. \_\_\_\_\_

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF A CONTRACT WITH ROSCOE MAYER CONTRACTING, INC. FOR THE 316 LAFAYETTE BUILDING DEMOLITION, IN THE CITY OF WASHINGTON, FRANKLIN COUNTY, MISSOURI AND AMEND THE 2017 BUDGET

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The City of Washington, Missouri, is hereby authorized and directed to execute an Agreement by and between Roscoe Mayer Contracting, Inc. and the City of Washington, Missouri.. A copy of the agreement is attached and is marked as "Exhibit A".

SECTION 2: The Mayor and City Clerk are hereby authorized and directed to execute said contract, and to do all things necessary by the terms of said contract.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: and this ordinance shall amend the 2017 Budget by \$20,000.00

SECTION 4: This ordinance shall take effect and be in full force from and after its passage and approval.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

President of the City Council

APPROVED: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

\_\_\_\_\_

Mayor of Washington, Missouri

**EXHIBIT A**

**CONTRACT AGREEMENT  
316 LAFAYETTE BUILDING DEMOLITION**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF WASHINGTON, MISSOURI, party of the first part; hereinafter termed the "City", and Roscoe Mayer Contracting Inc., party of the second part, hereinafter termed in this agreement as the "Contractor".

WITNESSETH:

THAT WHEREAS, the City has caused to be prepared specifications and other contract documents for the work herein described, and has approved and adopted these contract documents and has invited proposals for the furnishing of materials, labor and equipment for, and in connection with, the construction of improvements in accordance with the terms of this contract; and,

WHEREAS, the Contractor, in response to the invitation, submitted to the City in the manner and at the time specified, a proposal in accordance with the terms of the contract; and,

WHEREAS, the City has opened, examined and canvassed the proposals submitted, and as a result of such canvass, has determined and declared the Contractor to be the lowest responsive and responsible bidder for constructing said improvements, and has duly awarded to the said Contractor contract therefore, for the sum or sums named in the proposal attached to and made a part of this contract;

NOW THEREFORE, THIS AGREEMENT WITNESSETH, that the parties to these presents, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, have agreed and hereby agree the City for itself, and its successors and the Contractor for itself, himself, or themselves, its, his or their successors and assigns, to its, his or their executors and administrators, as follows:

ARTICLE I: That the Contractor will furnish at his own cost and expense, all labor, tools, equipment and materials required, and construct and complete in a good first class and workmanlike manner, the work as designated, described and required by the plan, specifications and proposals for construction of the improvement, all in accordance with the specifications, general conditions, supplementary conditions, instructions to bidders, proposal, and other specified documents, all of which contract documents from the contract, and are as fully a part thereof as if repeated verbatim herein; all work to be done under the direct supervision, and to the entire satisfaction of the City.

Contractor shall provide (a) a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for its employees working onsite on the project. The program shall include a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. All employees working on the project are required to complete the program within sixty (60) days of beginning work on the construction project. (b) Any employee found on the worksite subject to this section without documentation of the successful completion of the course required under subsection (a) shall be afforded 20 days to produce such documentation before being subject to removal from the project. (c) Contractor shall require all onsite employees of any subcontractors to complete the ten-hour training program required under subsection (a). (d) Pursuant to Sec. 272.675 RSMo., Contractor shall forfeit as a penalty to the City \$2,500.00 plus \$100.00 for each employee employed by Contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time periods in subsections (a) and (b) have elapsed. City shall withhold and retain from the amount due Contractor under this contract, all sums and amounts due and owing City as a result of any violation of this section.

ARTICLE II: Specifically, the Contractor shall comply in all respects with the Anti-Discrimination Provisions.

ARTICLE III: That the Contractor shall be held to comply with all requirements of the Prevailing Wage Law of the State of Missouri, and shall forfeit as a penalty to the state, county, city and county, city town, district, or other political subdivision on whose behalf the contract is made or awarded, one hundred dollars (\$100.00) for each workman employed, for each working day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under this contract, by him or by any subcontractor under him.

ARTICLE IV: Contractor agrees to comply with Missouri Revised Statute Section 285.530.1 in that it shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this contract, the Contractor shall, by sworn affidavit, and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Contractor shall also sign the affidavit, attached hereto and made a part of this contract, affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Contractor shall require each subcontractor to affirmatively state in its contract with Contractor that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri and shall not henceforth do so. Alternatively, Contractor shall require each subcontractor to provide

Contractor with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

ARTICLE V: That the City will pay the Contractor for the performance of this Contract and the Contractor will accept in full compensation therefore, the sum of Nineteen Thousand three hundred dollars(\$19,300.00), for all work covered in the Base Proposal Bid.

IN WITNESS WHEREOF, the parties have made and executed this Agreement the day and year first above written.

CITY OF WASHINGTON  
COUNTY OF FRANKLIN  
STATE OF MISSOURI

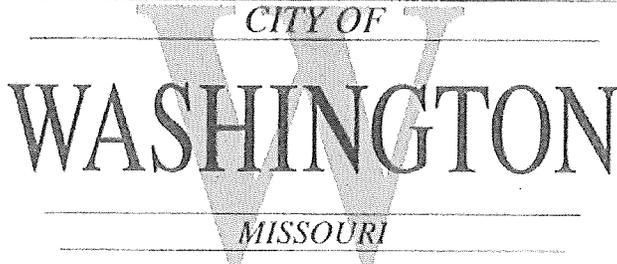
Roscoe Mayer Contracting Inc.

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

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Title



November 1, 2016

Honorable Mayor and City Council  
City of Washington  
Washington, MO 63090

RE: 2016 Building Demolition, 316 Lafayette Street Building

Dear Mayor and City Council Members:

On October 28, 2016 the City received the following bids:

Roscoe Mayer Contracting, Inc.	\$ 19,300.00
K.J.U., Inc.	\$ 23,815.00
Engineer's Estimate	\$25,000.00

Find in this packet an ordinance for your consideration that would allow the City to enter into a contract with Roscoe Mayer Contracting, Inc. Construction shall be completed on or before December 9, 2016.

I am also requesting a budget amendment for the amount of \$20,000 for this project.

Sincerely,

A handwritten signature in cursive script that reads 'Andrea F. Lueken'.

Andrea F. Lueken, P.E.  
Assistant City Engineer

*PLANNING & ENGINEERING SERVICES  
405 JEFFERSON STREET  
WASHINGTON, MO 63090*

BILL  
NO.

INTRODUCED BY:

\_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF A CONTRACT AGREEMENT BETWEEN THE CITY OF WASHINGTON, MISSOURI AND FLYNN DRILLING CO., INC., TROY, MISSOURI.

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to enter into a contract agreement between the City of Washington, Missouri and Flynn Drilling Co., Inc., 1340 Boone Street, Troy, Missouri. A copy of said contract is attached hereto and marked as Exhibit A and is attached hereto and incorporated herein by reference.

SECTION 2: Vendor shall meet all specifications as indicated in specifications.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall take effect and be in full force from and after its passage and approval.

PASSED:

ATTEST:

\_\_\_\_\_

City Clerk

\_\_\_\_\_  
President of City Council

APPROVED

:

ATTEST:

\_\_\_\_\_

City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

ARTICLE III: That the Contractor shall be held to comply will all requirements of the Prevailing Wage law of the State of Missouri, and shall forfeit as a penalty to the state, county, city and county, city town, district, or other political subdivision on whose behalf the contract is made or awarded, one hundred dollars (\$100.00) for each workman employed, for each calendar day, or portion thereof, such workman is paid less that the said stipulated rates for any work done under this contract, by him or by any subcontractor under him.

This Contract shall be based upon payment by the Contractor and his Subcontractors of wage rates not less than the prevailing hourly wage rate for each craft or type of workman engaged on the work. Prevailing wage rates shall be determined by the United States Department of Labor and the Industrial Commission of Missouri. In case of conflict, the wages paid by the Contractor shall be not less than the higher of the prevailing wage determinations. The determinations by the Department of Labor are incorporated in these contract documents.

During the life of this contract, the prevailing hourly rate of wages is subject to change by the Department of Labor and Industrial Relations of Missouri or by court decision, as provided by law. Any such change shall not be the basis of any claim by the Contractor against the City now will deductions be made by the City against sums due the Contractor by reason of any such change.

Missouri Law requires that during periods of excessive unemployment, all persons with the responsibility to contract for the construction of public works projects and all contractors involved in constructing such public works must only employ workers from Missouri or from nonrestrictive states on these projects. This restriction applies whether or not the contract for the project is let before or after Missouri enters a period of excessive unemployment.

Before final payment is made, an affidavit must be filed by the Contractor stating that he has fully complied with the Prevailing Wage Law. No payment will be made unless and until this affidavit is filed with the City of Washington.

#### ARTICLE IV: Employment of Unauthorized Aliens Prohibited

- (a) Contractor agrees to comply with Missouri Revised Statute section 285.530.1 in that it shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri.
- (b) As a condition for the award of this contract, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.
- (c) Contractor shall require each subcontractor to affirmatively state in its contract with Contractor that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri

IN WITNESS WHEREOF, the parties have made and executed this Agreement the day and year first above written.

CITY OF WASHINGTON  
COUNTY OF FRANKLIN  
STATE OF MISSOURI

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

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Title

(SEAL)

\_\_\_\_\_  
Business Address

\_\_\_\_\_

**BILL NO.** \_\_\_\_\_ **INTRODUCED BY:** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CITY OF WASHINGTON, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS (VALENT AEROSTRUCTURES, LLC PROJECT), SERIES 2016B, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$16,000,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF EQUIPPING AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY; AND AUTHORIZING THE CITY TO ENTER INTO CERTAIN AGREEMENTS AND TAKE CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.**

**WHEREAS**, the City of Washington, Missouri, a third-class city and political subdivision of the State of Missouri (the “City”), is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, improve and equip certain projects (as defined in the Act), to issue industrial revenue bonds for the purpose of providing funds to pay the costs of such projects, and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

**WHEREAS**, Valent Aerostructures, LLC, a Delaware limited liability company (the “Company”) has requested that the City issue its Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B, in the maximum principal amount of \$16,000,000 (the “Bonds”), for the purpose of acquiring and installing certain equipment and other personal property (the “Project Equipment”) to be used at the Company’s manufacturing facilities located at 6325 Avantha Drive in the City, as more fully described in the Indenture and in the Lease Agreement hereinafter authorized; and

**WHEREAS**, pursuant to the Act, the City Council passed Resolution No. 16-11542 on June 20, 2016, approving a plan for an industrial development project for the Company; and

**WHEREAS**, the City Council hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City: (1) issue the Bonds to finance the costs of acquiring and installing the Project Equipment from the proceeds of the Bonds, subject to certain terms and conditions set forth in this Ordinance; (2) lease the Project Equipment to the Company; and (3) enter into a Performance Agreement with the Company, under which the Company will make certain payments to the City in consideration of the City issuing the Bonds; and

**WHEREAS**, the City Council further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, MISSOURI, AS FOLLOWS:**

**Section 1. Authorization for the Project Equipment.** The City is hereby authorized to provide for the acquisition and installation of the Project Equipment, all in the manner and as more particularly described in the Indenture and the Lease Agreement hereinafter authorized.

**Section 2. Authorization of the Bonds.** The City is hereby authorized to issue and sell the Bonds as described in the recitals hereto for the purpose of providing funds to pay the costs of the Project Equipment. The Bonds shall be issued and secured pursuant to the Indenture described below and shall have such terms, provisions, covenants and agreements as are set forth in the Indenture.

**Section 3. Limitation on Liability.** The Bonds and the interest thereon shall be limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the Lease Agreement described below. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named therein (the "Trustee") as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State of Missouri (the "State") or any political subdivision thereof, and neither the City nor the State shall be liable thereon. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

**Section 4. Authorization of Documents.** The City is hereby authorized to enter into the following documents (the "City Documents") in substantially the forms presented to and approved by the City Council and attached to this Ordinance, with such changes therein as shall be approved by the officials of the City executing the documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture (the "Indenture") between the City and the Trustee, in substantially the form attached hereto as **Exhibit A**, pursuant to which the Bonds will be issued and the City will pledge the Project Equipment and assign certain of the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Indenture.

(b) Lease Agreement (the "Lease Agreement") between the City and the Company, in substantially the form attached hereto as **Exhibit B**, under which the City will lease the Project Equipment to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

(c) Bond Purchase Agreement between the City and the Company, in substantially the form attached hereto as **Exhibit C**.

(d) Performance Agreement between the City and the Company, in substantially the form attached hereto as **Exhibit D**.

**Section 5. Execution of Bonds and City Documents.** The Mayor is hereby authorized to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor is hereby authorized to

execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 6. Further Authority.** The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The Mayor is hereby authorized, through the term of the Lease Agreement, to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing of the Project Equipment by the Company, and such licenses and similar documents as may be requested) as may be required to carry out and comply with the intent of this Ordinance, the Indenture and the Lease Agreement. The Mayor is also authorized, unless otherwise expressly provided herein to the contrary, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, the Lease Agreement or the Performance Agreement, including extensions of the Completion Date, as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease Agreement or adversely affect the tax exemption as provided for therein, waive an Event of Default, or materially change the nature of the transaction unless approved by an ordinance of the City Council.

**Section 7. Severability.** If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer valid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force immediately after its passage and approval.

Passed: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
President of City Council

Approved: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Mayor of Washington, Missouri

**EXHIBIT A**  
**TRUST INDENTURE**

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**CITY OF WASHINGTON, MISSOURI**

**AND**

**UMB BANK, N.A.  
as Trustee**

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**TRUST INDENTURE**

**Dated as of November 1, 2016**

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**Relating to:**

**\$16,000,000  
(Aggregate Maximum Principal Amount)  
City of Washington, Missouri  
Taxable Industrial Revenue Bonds  
(Valent Aerostructures, LLC Project)  
Series 2016B**

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**TRUST INDENTURE**  
**TABLE OF CONTENTS**

	<u>Page</u>
Parties.....	1
Recitals.....	1
Granting Clauses .....	1

**ARTICLE I**

**DEFINITIONS**

Section 101.	Definitions of Words and Terms.....	3
Section 102.	Rules of Interpretation.....	8

**ARTICLE II**

**THE BONDS**

Section 201.	Title and Amount of Bonds .....	8
Section 202.	Nature of Obligation .....	8
Section 203.	Denomination, Number and Dating of the Bonds.....	9
Section 204.	Method and Place of Payment of Bonds .....	9
Section 205.	Execution and Authentication of Bonds.....	10
Section 206.	Registration, Transfer and Exchange of Bonds .....	10
Section 207.	Persons Deemed Owners of Bonds .....	11
Section 208.	Authorization of the Bonds .....	11
Section 209.	Mutilated, Lost, Stolen or Destroyed Bonds .....	13
Section 210.	Cancellation and Destruction of Bonds Upon Payment.....	13

**ARTICLE III**

**REDEMPTION OF BONDS**

Section 301.	Redemption of Bonds.....	13
Section 302.	Effect of Call for Redemption .....	14
Section 303.	Notice of Redemption .....	14

**ARTICLE IV**

**FORM OF BONDS**

Section 401.	Form Generally .....	14
--------------	----------------------	----

**ARTICLE V**

**CUSTODY AND APPLICATION OF BOND PROCEEDS**

Section 501. Creation of Funds.....15  
Section 502. Deposits into the Project Fund .....15  
Section 503. Disbursements from the Project Fund.....15  
Section 504. Completion of the Purchase and Installation of the Project Equipment.....15  
Section 505. Deposits into and Disbursements from the Costs of Issuance Fund .....16  
Section 506. Disposition Upon Acceleration .....16

**ARTICLE VI**

**REVENUES AND FUNDS**

Section 601. Deposits Into the Bond Fund.....16  
Section 602. Application of Moneys in the Bond Fund.....16  
Section 603. Payments Due on Days Other than Business Days .....17  
Section 604. Nonpresentation of Bonds.....17

**ARTICLE VII**

**SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS**

Section 701. Moneys to be Held in Trust.....18  
Section 702. Investment of Moneys in Project Fund and Bond Fund.....18  
Section 703. Record Keeping.....18

**ARTICLE VIII**

**GENERAL COVENANTS AND PROVISIONS**

Section 801. Payment of Principal and Interest .....18  
Section 802. Authority to Execute Indenture and Issue Bonds .....19  
Section 803. Performance of Covenants .....19  
Section 804. Instruments of Further Assurance .....19  
Section 805. Recordings and Filings.....19  
Section 806. Inspection of Books.....19  
Section 807. Enforcement of Rights Under the Lease .....19

**ARTICLE IX**

**DEFAULT AND REMEDIES**

Section 901. Events of Default; Notice; Opportunity to Cure .....20  
Section 902. Acceleration of Maturity in Event of Default .....20  
Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession ....21  
Section 904. Appointment of Receivers in Event of Default.....21  
Section 905. Exercise of Remedies by the Trustee .....21  
Section 906. Limitation on Exercise of Remedies by Owners.....22  
Section 907. Right of Owners to Direct Proceedings.....22

Section 908.	Application of Moneys in Event of Default.....	22
Section 909.	Remedies Cumulative .....	23
Section 910.	Waivers of Events of Default .....	24

**ARTICLE X**

**THE TRUSTEE**

Section 1001.	Acceptance of the Trusts .....	24
Section 1002.	Fees, Charges and Expenses of the Trustee.....	26
Section 1003.	Notice to Owners if Default Occurs.....	27
Section 1004.	Intervention by the Trustee.....	27
Section 1005.	Successor Trustee Upon Merger, Consolidation or Sale .....	27
Section 1006.	Resignation of Trustee.....	27
Section 1007.	Removal of Trustee .....	27
Section 1008.	Appointment of Successor Trustee.....	27
Section 1009.	Vesting of Trusts in Successor Trustee .....	28
Section 1010.	Right of Trustee to Pay Taxes and Other Charges.....	28
Section 1011.	Trust Estate May be Vested in Co-Trustee .....	28
Section 1012.	Accounting .....	29
Section 1013.	Performance of Duties Under the Lease .....	29

**ARTICLE XI**

**SUPPLEMENTAL INDENTURES**

Section 1101.	Supplemental Indentures Not Requiring Consent of Owners .....	29
Section 1102.	Supplemental Indentures Requiring Consent of Owners .....	30
Section 1103.	Company's Consent to Supplemental Indentures .....	30
Section 1104.	Opinion of Counsel .....	31

**ARTICLE XII**

**SUPPLEMENTAL LEASES**

Section 1201.	Supplemental Leases Not Requiring Consent of Owners .....	31
Section 1202.	Supplemental Leases Requiring Consent of Owners .....	31
Section 1203.	Opinion of Counsel .....	31

**ARTICLE XIII**

**SATISFACTION AND DISCHARGE OF INDENTURE**

Section 1301.	Satisfaction and Discharge of this Indenture.....	32
Section 1302.	Bonds Deemed to be Paid .....	32

**ARTICLE XIV**

**MISCELLANEOUS PROVISIONS**

Section 1401.	Consents and Other Instruments by Owners .....	33
Section 1402.	Limitation of Rights Under this Indenture .....	33
Section 1403.	Notices.....	33
Section 1404.	Severability .....	35
Section 1405.	Execution in Counterparts .....	35
Section 1406.	Governing Law.....	35
Section 1407.	Electronic Storage .....	35
Section 1408.	City Consent and Approvals.....	35
	Signature and Seals .....	36
Exhibit A - Project Equipment		
Exhibit B - Form of Bonds		
Exhibit C - Form of Representation Letter		

## TRUST INDENTURE

**THIS TRUST INDENTURE**, dated as of November 1, 2016 (the “Indenture”), between the **CITY OF WASHINGTON, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in St. Louis, Missouri, as Trustee (the “Trustee”);

### RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, improve and equip certain projects (as defined in the Act) and to issue industrial revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.
2. Pursuant to the Act, the City Council passed Ordinance No. \_\_\_\_ (the “Ordinance”) on November 7, 2016, authorizing the City to issue its Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B, in the maximum principal amount of \$16,000,000 (the “Bonds”), for the purpose of purchasing and installing certain personal property (the “Project Equipment,” as more fully described in **Exhibit A**) for use in the manufacturing facilities occupied by Valent Aerostructures, LLC, a Delaware limited liability company (the “Company”) located at 6325 Avantha Drive in the City (the “Project Site”).
3. The Ordinance authorizes the City to lease the Project Equipment to the Company.
4. Pursuant to the Ordinance, the City is authorized to execute and deliver this Indenture for the purpose of issuing and securing the Bonds, and to enter into the Lease Agreement of even date herewith (the “Lease”) with the Company, under which the City, as lessor, will, or will cause the Company to, purchase and install the Project Equipment and will lease the Project Equipment to the Company, as lessee, in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds.
5. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

**NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:**

### GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners (as defined herein) thereof, and of other

good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and Outstanding (as defined herein) under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns forever, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest of the City in and to the Project Equipment together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Lease (excluding the Unassigned Rights, as defined herein), and all rents, revenues and receipts derived by the City from the Project Equipment including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

**TO HAVE AND TO HOLD**, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

**PROVIDED, HOWEVER**, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH**, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as

hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

## ARTICLE I

### DEFINITIONS

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined in the Lease, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“**Act**” means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

“**Additional Rent**” means the additional rental described in **Section 5.2** of the Lease.

“**Approved Investor**” means (i) the Company or (ii) any Person approved by the City Council of the City.

“**Authorized City Representative**” means the Mayor, the City Administrator or such other Person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such Person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

“**Authorized Company Representative**” means the Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Company Representative.

“**Basic Rent**” means the rental described in **Section 5.1** of the Lease.

“**Bond**” or “**Bonds**” means the Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B, in the maximum aggregate principal amount of \$16,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

“**Bond Fund**” means the “City of Washington, Missouri, Bond Fund -- Valent Aerostructures, LLC -- Project Equipment” created in **Section 501** of this Indenture.

“**Bond Purchase Agreement**” means the agreement by that name with respect to the Bonds by and between the City and the Purchaser.

“**Business Day**” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

“**City**” means the City of Washington, Missouri, a third-class city organized and existing under the laws of the State.

“**Closing Date**” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“**Closing Price**” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds before the Closing Date, and the costs of issuance of the Bonds if such costs are not paid from Bond proceeds.

“**Company**” means Valent Aerostructures, LLC, a Delaware limited liability company, and its successors or assigns.

“**Completion Date**” means the date of execution of the certificate required by **Section 4.5** of the Lease and **Section 504** hereof or December 31, 2019, whichever is earlier.

“**Costs of Issuance Fund**” means the “City of Washington, Missouri, Costs of Issuance Fund -- Valent Aerostructures, LLC -- Project Equipment” created in **Section 501** of this Indenture.

“**Cumulative Outstanding Principal Amount**” means the aggregate principal amount of all Bonds Outstanding under the provisions of this Indenture, not to exceed \$16,000,000, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“**Event of Default**” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“**Financing Document**” means any loan agreement, credit agreement, security agreement, mortgage, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document related to the Project Equipment executed by or on behalf of a Financing Party.

“**Financing Party**” means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with such financing or hedging arrangements, in connection with the ownership, lease, operation or maintenance of the Project Equipment or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person’s behalf.

“**Full Insurable Value**” means the reasonable replacement cost of the Project Equipment less physical depreciation, as determined at the expense of the Company from time to time.

“**Government Securities**” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“**Indenture**” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** hereof.

“**Investment Securities**” means any of the following securities:

(a) Government Securities;

(b) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;

(d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by Standard & Poor's and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

**"Lease"** means the Lease Agreement dated as of November 1, 2016 between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

**"Lease Term"** means the period from the effective date of the Lease until the expiration thereof pursuant to **Section 3.2** of the Lease.

**"Leasehold Security Agreement"** means any leasehold security agreement, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project Equipment permitted pursuant to the provisions of **Section 10.4** of the Lease.

**“Net Proceeds”** means, when used with respect to any insurance or condemnation award with respect to the Project Equipment, the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees, Trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

**“Outstanding”** when used with reference to Bonds, means, as of a particular date, all Bonds theretofore authenticated and delivered, except:

- (a) Bonds previously cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

**“Owner”** means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

**“Paying Agent”** means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

**“Payment Date”** means the date on which principal or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

**“Performance Agreement”** means the Performance Agreement dated as of November 1, 2016 between the City and the Company.

**“Permitted Encumbrances”** means, as of any particular time (a) liens for ad valorem taxes, special assessments and other governmental charges not then delinquent, (b) the Indenture, the Lease and the Performance Agreement, and (c) liens or security interests granted pursuant to any Leasehold Security Agreement or any Financing Documents.

**“Person”** means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

**“Project Costs”** means all costs of purchasing and installing the Project Equipment, including the following:

- (a) all costs and expenses necessary or incident to the acquisition of any portion of the Project Equipment which the Company conveys to the City;
- (b) fees and expenses of consultants for any preliminary investigations and items necessary to the determination of the necessary equipment replacements and upgrades, preparation of specifications for the Project Equipment and supervision of the installation of the

Project Equipment, as well as for the performance of all other duties of professionals and consultants in relation to the purchase and installation of the Project Equipment or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in purchasing and installing the Project Equipment, including the actual cost of labor, materials, machinery, furnishings and equipment as payable to contractors and materialmen in connection with the purchase and installation of the Project Equipment;

(d) interest accruing on the Bonds until the Completion Date;

(e) reasonable expenses of administration, supervision and inspection properly chargeable to the Project Equipment, legal fees and expenses of Bond Counsel and counsel to the City, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the purchase and installation of the Project Equipment;

(f) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the purchase and installation of the Project Equipment; and (3) the financing thereof; and

(g) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

**“Project Equipment”** means all items of machinery, equipment or other personal property described in **Exhibit A** attached hereto and by this reference made a part hereof.

**“Project Fund”** means the “City of Washington, Missouri, Project Fund -- Valent Aerostructures, LLC -- Project Equipment” created in **Section 501** of this Indenture.

**“Project Site”** means the real estate upon which the Company’s facilities are located at 6325 Avantha Drive in the City.

**“Purchaser”** means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds.

**“State”** means the State of Missouri.

**“Supplemental Indenture”** means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI** hereof.

**“Supplemental Lease”** means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

**“Trust Estate”** means the Trust Estate described in the Granting Clauses of this Indenture.

“**Trustee**” means UMB Bank, N.A., St. Louis, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“**Unassigned Rights**” means the City’s rights under the Lease to receive moneys for its own account and the City’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided in the Lease.

**Section 102. Rules of Interpretation.**

(a) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

**ARTICLE II**

**THE BONDS**

**Section 201. Title and Amount of Bonds.** No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Washington, Missouri, Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$16,000,000.

**Section 202. Nature of Obligation.** The Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project Equipment and the Lease, and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State nor any political

subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

**Section 203. Denomination, Number and Dating of the Bonds.**

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit B** hereto, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

**Section 204. Method and Place of Payment of Bonds.**

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206**. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company is the sole Owner of the Bonds, then the Company may set-off its obligation to the City as lessee under the Lease against the City's obligations to the Company as the bondholder under this Indenture. The Trustee may conclusively rely on the absence of any written notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

**Section 205. Execution and Authentication of Bonds.**

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit B** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

**Section 206. Registration, Transfer and Exchange of Bonds.**

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred to an Approved Investor only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit C** hereto. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the Outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

**Section 207. Persons Deemed Owners of Bonds.** As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 208. Authorization of the Bonds.**

(a) The Bonds are authorized in the aggregate maximum principal amount of \$16,000,000 for the purpose of providing funds to pay Project Costs, which Bonds shall be designated "City of Washington, Missouri, Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project) Series 2016B." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 1, 2029 (subject to prior redemption as provided in **Article III**) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit B** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

- (1) A copy of the Ordinance;
- (2) Executed counterparts of this Indenture, the Lease, the Performance Agreement and the Bond Purchase Agreement;
- (3) A representation letter from the Purchaser in substantially the form attached as **Exhibit C** hereto;
- (4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the written direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;
- (5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds constitute valid and legally binding limited and special revenue obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall authenticate and endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to the Company (or another purchaser designated by the Company).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Closing Price.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease. If the Purchaser does not pay to the Trustee the amount set forth in the requisition certificate, the Purchaser will be deemed to have advanced an amount equal to the amount set forth in the requisition certificate and the Trustee shall endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted for the Project Equipment, and shall notify the City if the requisitions submitted exceed the maximum principal amount of the Bonds.

(f) The Bonds shall bear interest at the rate of 5.0% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2016, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full, but not later than December 1, 2029. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount" on **Schedule I** to the Bonds. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records and **Schedule I** to the Bonds the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit B** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company on a monthly basis. After the Project Equipment has

been purchased and installed and the certificate of payment of all costs is filed as provided in **Section 4.5** of the Lease, the Trustee, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

**Section 209. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to save, defend and hold each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

**Section 210. Cancellation and Destruction of Bonds Upon Payment.**

(a) All Bonds that have been paid or redeemed or that the Trustee has purchased or that have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee in accordance with applicable laws and regulations and the Trustee's policies and practices. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

### ARTICLE III

#### REDEMPTION OF BONDS

**Section 301. Redemption of Bonds.**

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project Equipment and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (1) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (2) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project Equipment. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) At its option, the Company may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company shall receive a credit against the amounts payable by the Company for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

**Section 302. Effect of Call for Redemption.** Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

**Section 303. Notice of Redemption.** If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by first-class mail (or facsimile, if there is one Owner) stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

## ARTICLE IV

### FORM OF BONDS

**Section 401. Form Generally.** The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit B**. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

## ARTICLE V

### CUSTODY AND APPLICATION OF BOND PROCEEDS

**Section 501. Creation of Funds.** There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

(a) "City of Washington, Missouri, Project Fund – Valent Aerostructures, LLC -- Project Equipment" (herein called the "Project Fund").

(b) "City of Washington, Missouri, Costs of Issuance Fund – Valent Aerostructures, LLC -- Project Equipment" (herein called the "Costs of Issuance Fund").

(c) "City of Washington, Missouri, Bond Fund – Valent Aerostructures, LLC -- Project Equipment" (herein called the "Bond Fund").

**Section 502. Deposits into the Project Fund.** The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)** hereof), including Additional Payments as defined in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing and installing the Project Equipment shall pursuant to any written directions from the Person depositing such moneys also be deposited into the Project Fund.

#### **Section 503. Disbursements from the Project Fund.**

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)**, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

**Section 504. Completion of the Purchase and Installation of the Project Equipment.** The completion of the purchase and installation of the Project Equipment and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance

remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

**Section 505. Deposits into and Disbursements from the Costs of Issuance Fund.** Any money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or be refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum provided to the Trustee on or before the date of delivery of the Bonds and as a condition thereto, which shall have attached thereto the statements, invoices and related items described in said closing memorandum. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance by December 1, 2016 shall be refunded to the Company.

**Section 506. Disposition Upon Acceleration.** If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX**, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

## ARTICLE VI

### REVENUES AND FUNDS

**Section 601. Deposits Into the Bond Fund.**

(a) The Trustee shall deposit into the Bond Fund, as and when received, (i) all accrued interest on the Bonds, if any, paid by the Purchaser; (ii) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (iii) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (iv) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project Equipment or pursuant to **Section 506** hereof upon acceleration of the Bonds; (v) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (vi) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (vii) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (viii) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by written directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) The Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

**Section 602. Application of Moneys in the Bond Fund.**

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption thereof before maturity; provided,

however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such other items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before and until such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture, the Lease and the Performance Agreement, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

**Section 603. Payments Due on Days Other than Business Days.** In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

**Section 604. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

## ARTICLE VII

### SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

**Section 701. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

**Section 702. Investment of Moneys in Project Fund and Bond Fund.** Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee shall invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

**Section 703. Record Keeping.** The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all of the Outstanding Bonds.

## ARTICLE VIII

### GENERAL COVENANTS AND PROVISIONS

**Section 801. Payment of Principal and Interest.** The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project Equipment and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the

true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project Equipment as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project Equipment.

**Section 802. Authority to Execute Indenture and Issue Bonds.** The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

**Section 803. Performance of Covenants.** The City covenants that it will faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its City Council pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

**Section 804. Instruments of Further Assurance.** The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds, upon being first indemnified by the Company for the cost thereof. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project Equipment or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

**Section 805. Recordings and Filings.** The City shall cause to be kept and filed all financing statements, and hereby directs and authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder.

**Section 806. Inspection of Books.** The City covenants and agrees that all books and documents in its possession relating to the Project Equipment and the rents, revenues and receipts derived from the Project Equipment shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

**Section 807. Enforcement of Rights Under the Lease.** The Trustee, as assignee, transferee, pledgee, and owner of a security interest under this Indenture, in its name or in the name of the City, may enforce all assigned rights of the City and the Trustee and all obligations of the Company under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 901. Events of Default; Notice; Opportunity to Cure.** If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (c) Default as specified in **Section 12.1** of the Lease has occurred; or
- (d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail or a recognized overnight delivery service to the Company, and the Company has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company or the City (as the case may be) within such period and diligently pursued until the default is corrected.

**Section 902. Acceleration of Maturity in Event of Default.**

(a) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the City or the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest and all other amounts due hereunder shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the City under this Indenture are either paid or provisions satisfactory to the Trustee are made for such payment, then and in every such case the Trustee shall, but only with the approval of a majority of the Owners of the Bonds then Outstanding, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of installments of rent payments on the Bonds as provided in **Section 12.2** of the Lease.

(c) In case of any rescission, then and in every such case the City, the Trustee, the Company and the Owners shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project Equipment or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges before the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable under the Performance Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

**Section 904. Appointment of Receivers in Event of Default.** If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**Section 905. Exercise of Remedies by the Trustee.**

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested in writing to do so by (i) the City (in the case of an Event of Default pursuant to **Sections 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease), or (ii) the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery

of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

**Section 906. Limitation on Exercise of Remedies by Owners.** No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(i)**, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

**Section 907. Right of Owners to Direct Proceedings.**

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(i)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Sections 12.1(a)** (as it relates to Additional Rent), **(b)** (as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease.

**Section 908. Application of Moneys in Event of Default.**

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall first be applied to the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys' fees and expenses) or amounts to be paid pursuant to **Section 903** hereof, and second be applied to the obligations outstanding under the Lease and the Performance Agreement. Any remaining moneys shall be deposited in the Bond Fund and applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereof of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910**, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602** hereof.

**Section 909. Remedies Cumulative.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No

delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 910. Waivers of Events of Default.** The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on the Bonds, but only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Sections 12.1(a)** (as it relates to Additional Rent), **(b)** (as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless before such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

## ARTICLE X

### THE TRUSTEE

**Section 1001. Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(I)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or

refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project Equipment or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project Equipment, and all books, papers and records of the City pertaining to the Project Equipment and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project Equipment.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

**Section 1002. Fees, Charges and Expenses of the Trustee.** The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the

City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

**Section 1003. Notice to Owners if Default Occurs.** If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

**Section 1004. Intervention by the Trustee.** In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

**Section 1005. Successor Trustee Upon Merger, Consolidation or Sale.** With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

**Section 1006. Resignation of Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor trustee become effective until such time as a successor trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 1007. Removal of Trustee.** The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the City and the Owners and signed by the Company.

**Section 1008. Appointment of Successor Trustee.** If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the

Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust with a corporate trust office in the State, and having a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee, at the Company's expense, or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

**Section 1009. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

**Section 1010. Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project Equipment is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project Equipment, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

**Section 1011. Trust Estate May be Vested in Co-Trustee.**

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection

therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

**Section 1012. Accounting.** The Trustee shall render an annual accounting for the period ending December 31 of each year to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to any such party, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

**Section 1013. Performance of Duties Under the Lease.** The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

## ARTICLE XI

### SUPPLEMENTAL INDENTURES

**Section 1101. Supplemental Indentures Not Requiring Consent of Owners.** The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners (provided that in exercising such judgment, the Trustee may rely upon the advice or opinion of counsel);

(b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;

(c) To more precisely identify the Project Equipment;

(d) To conform the Indenture to amendments to the Lease made by the City and the Company; or

(e) To subject to this Indenture additional revenues, properties or collateral.

**Section 1102. Supplemental Indentures Requiring Consent of Owners.**

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

**Section 1103. Company's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company and any Financing Party at least 15 days before the proposed date of execution and delivery of the Supplemental Indenture.

**Section 1104. Opinion of Counsel.** In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

## ARTICLE XII

### SUPPLEMENTAL LEASES

**Section 1201. Supplemental Leases Not Requiring Consent of Owners.** The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project Equipment or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners; provided that in exercising such judgment, the Trustee may rely upon the advice or opinion of counsel.

**Section 1202. Supplemental Leases Requiring Consent of Owners.** Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

**Section 1203. Opinion of Counsel.** In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

## ARTICLE XIII

### SATISFACTION AND DISCHARGE OF INDENTURE

#### Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease and the Performance Agreement, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

#### Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust

pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

#### **Section 1401. Consents and Other Instruments by Owners.**

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(i) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Company or any affiliate thereof.

**Section 1402. Limitation of Rights Under this Indenture.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

**Section 1403. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of Washington, Missouri  
City Hall  
405 Jefferson Street  
Washington, Missouri 63090  
ATTN: City Administrator

with a copy to:

Lewis Rice LLC  
1200 Jefferson Street  
Washington, Missouri 63090  
ATTN: Mark C. Piontek, Esq.

(b) To the Trustee:

UMB Bank, N.A.  
2 S. Broadway, Suite 600  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Company:

Valent Aerostructures, LLC  
c/o LMI Aerospace, Inc.  
6325 Avantha Drive  
Washington, Missouri 63090  
ATTN: Perry Pecaut

with a copy to:

Polsinelli PC  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112  
ATTN: Korb Maxwell, Esq.

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 1404. Severability.** If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

**Section 1405. Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1406. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1407. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 1408. City Consent and Approvals.** Pursuant to the Ordinance, the Mayor is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing of the Project Equipment by the Company, and such licenses and similar documents as may be requested by the Company) as may be required to carry out and comply with the intent of the Ordinance, this Indenture and the Lease. The Mayor is also authorized, unless otherwise expressly provided herein to the contrary, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, this Indenture, the Lease or the Performance Agreement, including extensions of the Completion Date, as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or adversely affect the tax exemption as provided for therein, waive an Event of Default, or materially change the nature of the transaction unless approved by an ordinance of the City Council.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the City of Washington, Missouri, has caused this Indenture to be signed in its name and behalf by its Mayor and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A. has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

**CITY OF WASHINGTON, MISSOURI**

By: \_\_\_\_\_  
Sandy Lucy, Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Mary Trentmann, City Clerk

**UMB BANK, N.A., as Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Trust Indenture]

## **EXHIBIT A**

### **PROJECT EQUIPMENT**

All items of machinery, equipment or other personal property installed at the Project Site purchased on or before the Completion Date pursuant to **Article IV** of the Lease and paid for in whole from the proceeds of Bonds. The Project Equipment does not include any personal property owned by the Company before the initial issuance of the Bonds.

**EXHIBIT B**  
**FORM OF BONDS**

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR  
NEGOTIATED ONLY TO AN APPROVED INVESTOR AS DEFINED IN THE  
HEREIN-DESCRIBED INDENTURE.***

No. 1

Not to Exceed  
\$16,000,000

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**  
  
**CITY OF WASHINGTON, MISSOURI  
TAXABLE INDUSTRIAL REVENUE BOND  
(VALENT AEROSTRUCTURES, LLC PROJECT)  
SERIES 2016B**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>
5.0%	December 1, 2029	November __, 2016

**OWNER:** \_\_\_\_\_

**MAXIMUM PRINCIPAL AMOUNT:           SIXTEEN MILLION DOLLARS**

**CITY OF WASHINGTON, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2016, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term "Cumulative Outstanding Principal Amount" means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

**THIS BOND** is one of a duly authorized series of Bonds of the City designated "City of Washington, Missouri, Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B," in the maximum aggregate principal amount of \$16,000,000 (the "Bonds"), to be issued for the purpose of equipping an approximately 30,000 square foot addition to the existing facility located at 6325 Avantha Drive in the City with certain personal property (the "Project Equipment"). The City will lease the Project Equipment to Valent Aerostructures, LLC, a Delaware limited liability company (the "Company"), under the terms of a Lease Agreement dated as of November 1, 2016 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Lease"), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, and pursuant to proceedings duly had by the governing body of the City.

**THE BONDS** are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of November 1, 2016 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the City and UMB Bank, N.A., St. Louis, Missouri, as trustee (the "Trustee"). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

**THE BONDS** are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project Equipment and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease; provided, however, if only a portion of the Bonds are to be redeemed, Bonds aggregating at least 10% of the maximum principal amount of Bonds authorized under the Indenture shall not be subject to redemption and payment before the stated maturity thereof. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

**THE BONDS** are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(f) or 9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project Equipment. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph, money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

If the Bonds are to be called for optional redemption, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owner of this Bond at least 30 days (five days if there is one Owner) before the scheduled redemption date by first-class mail (or facsimile, if there is one Owner) stating the date upon which the Bonds will be redeemed and paid.

**THE BONDS**, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project Equipment and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project Equipment and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the "City of Washington, Missouri, Bond Fund -- Valent Aerostructures, LLC -- Project Equipment"

**THE OWNER** of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

**THIS BOND** is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

**THE BONDS** are issuable in the form of one fully-registered Bond in the maximum principal amount of \$16,000,000.

**THIS BOND** shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

**IN WITNESS WHEREOF**, the City of Washington, Missouri, has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon.

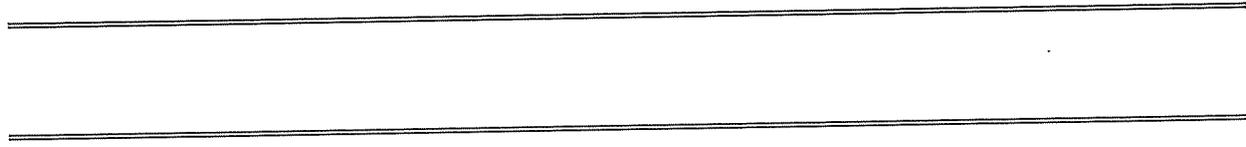
**CITY OF WASHINGTON, MISSOURI**

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

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk



**CERTIFICATE OF AUTHENTICATION**

This Bond is the Taxable Industrial Revenue Bond (Valent Aerostructures, LLC Project), Series 2016B, described in the Trust Indenture. The effective date of registration of this Bond is set forth below.

**UMB BANK, N.A., as Trustee**

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Authorized Signatory







## EXHIBIT C

### FORM OF REPRESENTATION LETTER

City of Washington, Missouri  
405 Jefferson Street  
Washington, Missouri 63090  
ATTN: City Administrator

UMB Bank, N.A.  
2 S. Broadway, Suite 600  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

Re: \$16,000,000 Maximum Principal Amount of Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B of City of Washington, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the "Bonds"), the undersigned purchaser of the Bonds hereby represents, warrants and agrees as follows:

1. The undersigned fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of November 1, 2016 (the "Indenture"), between the City of Washington, Missouri (the "City") and UMB Bank, N.A., as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project Equipment (as defined in the Indenture) to Valent Aerostructures, LLC, a Delaware limited liability company (the "Company"), under a Lease Agreement dated as of November 1, 2016 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

2. The undersigned understands that (a) the Bonds and the interest thereon are special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project Equipment and the Lease, and not from any other fund or source of the City, (b) the Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in the Indenture, (c) the Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and none of the City, the State or related political subdivision thereof shall be liable thereon, and (d) the Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

3. The undersigned understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a

view toward its distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The undersigned is an Approved Investor, as defined in the Indenture.

5. The undersigned agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and, if requested by the City, upon receipt of an opinion of counsel reasonably acceptable to the City, the Company and the purchaser that all registration and disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

6. The Company has (a) furnished to the undersigned such information about itself as the undersigned deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the undersigned, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested. [\*Delete Paragraph 6 if Company is the Purchaser of the Bonds.\*]

7. The undersigned is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bonds. [\*Delete previous sentence if Company is the Purchaser of the Bonds.\*] The undersigned believes that the Bonds which it is acquiring is a security of the kind that it wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The undersigned is fully aware of and satisfied with (a) the current status of the title to the Project Equipment and any issues related thereto and (b) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The undersigned understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The undersigned hereby directs the Trustee to hold the Bonds in trust pursuant to **Section 204(c)** of the Indenture.

Dated: \_\_\_\_\_, 20\_\_

**[PURCHASER OF BONDS]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B**  
**LEASE AGREEMENT**

---

**CITY OF WASHINGTON, MISSOURI,  
As Lessor,**

**AND**

**VALENT AEROSTRUCTURES, LLC,  
As Lessee**

---

**LEASE AGREEMENT**

**Dated as of November 1, 2016**

---

**Relating to:**

**\$16,000,000  
(Aggregate Maximum Principal Amount)  
City of Washington, Missouri  
Taxable Industrial Revenue Bonds  
(Valent Aerostructures, LLC Project)  
Series 2016B**

---

**Certain rights of the City of Washington, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of November 1, 2016, between the City and the Trustee.**

**TABLE OF CONTENTS**

Page

**ARTICLE I**

**DEFINITIONS**

Section 1.1. Definitions of Words and Terms..... 2  
Section 1.2. Rules of Interpretation ..... 2

**ARTICLE II**

**COVENANTS**

Section 2.1. Covenants of the City ..... 2  
Section 2.2. Covenants of the Company ..... 3

**ARTICLE III**

**GRANTING PROVISIONS**

Section 3.1. Granting of Leasehold Estate..... 4  
Section 3.2. Lease Term ..... 4  
Section 3.3. Possession and Use of the Project Equipment ..... 4

**ARTICLE IV**

**PURCHASE AND INSTALLATION OF THE PROJECT EQUIPMENT**

Section 4.1. Issuance of the Bonds ..... 5  
Section 4.2. Purchase and Installation of the Project Equipment ..... 5  
Section 4.3. Project Costs ..... 6  
Section 4.4. Payment for Project Costs..... 6  
Section 4.5. Establishment of Completion Date ..... 6  
Section 4.6. Surplus in Project Fund..... 6  
Section 4.7. Project Equipment Property of City..... 6  
Section 4.8. Machinery and Equipment Property of the Company ..... 7

**ARTICLE V**

**RENT PROVISIONS**

Section 5.1. Basic Rent..... 7  
Section 5.2. Additional Rent..... 7  
Section 5.3. Obligations of Company Absolute and Unconditional ..... 8  
Section 5.4. Prepayment of Basic Rent..... 8

**ARTICLE VI**

**MAINTENANCE, TAXES AND UTILITIES**

Section 6.1. Maintenance and Repairs..... 9  
Section 6.2. Taxes, Assessments and Other Governmental Charges..... 9  
Section 6.3. Utilities ..... 10  
Section 6.4. Property Tax Exemption..... 10

**ARTICLE VII**

**INSURANCE**

Section 7.1. Casualty Insurance..... 10  
Section 7.2. Public Liability Insurance..... 11  
Section 7.3. Blanket Insurance Policies..... 11  
Section 7.4. Worker’s Compensation ..... 11  
Section 7.5. Sovereign Immunity ..... 11

**ARTICLE VIII**

**ALTERATION OF THE PROJECT EQUIPMENT**

Section 8.1. Additions, Modifications and Improvements to the Project Equipment..... 11  
Section 8.2. Removal of Project Equipment..... 12  
Section 8.3. Permits and Authorizations..... 12  
Section 8.4. Mechanics’ Liens..... 12

**ARTICLE IX**

**DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 9.1. Damage or Destruction ..... 13  
Section 9.2. Condemnation..... 15  
Section 9.3. Bondowner Approval..... 16

**ARTICLE X**

**SPECIAL COVENANTS**

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification 16  
Section 10.2. Surrender of Possession..... 16  
Section 10.3. Right of Access to the Project Equipment..... 16  
Section 10.4. Leasehold Security Agreements and Financing Arrangements ..... 17  
Section 10.5. Indemnification of City and Trustee..... 19  
Section 10.6. Depreciation and Other Tax Benefits ..... 19  
Section 10.7. Company to Maintain its Existence ..... 20  
Section 10.8. Security Interests..... 20

**ARTICLE XI**

**OPTION AND OBLIGATION TO PURCHASE THE PROJECT EQUIPMENT**

Section 11.1.	Option to Purchase the Project Equipment .....	20
Section 11.2.	Conveyance of the Project Equipment.....	21
Section 11.3.	Relative Position of Option and Indenture.....	21
Section 11.4.	Obligation to Purchase the Project Equipment.....	21
Section 11.5.	Right to Set-Off .....	22

**ARTICLE XII**

**DEFAULTS AND REMEDIES**

Section 12.1.	Events of Default .....	22
Section 12.2.	Remedies on Default.....	23
Section 12.3.	Survival of Obligations.....	23
Section 12.4.	Performance of the Company's Obligations by the City .....	23
Section 12.5.	Rights and Remedies Cumulative.....	24
Section 12.6.	Waiver of Breach.....	24
Section 12.7.	Trustee's Exercise of the City's Remedies .....	24

**ARTICLE XIII**

**ASSIGNMENT AND SUBLEASE**

Section 13.1.	Assignment; Sublease.....	24
Section 13.2.	Assignment of Revenues by City.....	25
Section 13.3.	Restrictions on Sale or Encumbrance of Project Equipment by City .....	25

**ARTICLE XIV**

**AMENDMENTS, CHANGES AND MODIFICATIONS**

Section 14.1.	Amendments, Changes and Modifications .....	25
---------------	---	----

**ARTICLE XV**

**MISCELLANEOUS PROVISIONS**

Section 15.1.	Notices .....	25
Section 15.2.	City Shall Not Arbitrarily Withhold Consents and Approvals .....	26
Section 15.3.	Net Lease .....	27
Section 15.4.	Limitation on Liability of City.....	27
Section 15.5.	Governing Law .....	27
Section 15.6.	Binding Effect.....	27
Section 15.7.	Severability .....	27
Section 15.8.	Execution in Counterparts .....	27
Section 15.9.	Electronic Storage.....	27
Section 15.10.	City Consents and Approvals .....	27
	Signatures and Seal.....	29

Exhibit A - Form of Requisition Certificate

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of November 1, 2016 (the "Lease"), between the **CITY OF WASHINGTON, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the "City"), as lessor, and **VALENT AEROSTRUCTURES, LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the "Company");

### RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend, equip and improve certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed Ordinance No. \_\_\_\_\_ (the "Ordinance") on November 7, 2016, authorizing the City to issue its Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B, in the maximum principal amount of \$16,000,000 (the "Bonds"), for the purpose of acquiring and installing certain personal property (the "Project Equipment") for use in the Company's manufacturing facilities located at 6325 Avantha Drive in the City (the "Project Site").

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture") with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the "Trustee"), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will acquire and install the Project Equipment and will lease the Project Equipment to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

4. In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Bonds and certain other agreements, the City and the Company, have concurrently herewith entered into a Performance Agreement of even date herewith (the "Performance Agreement") pursuant to which the Company has agreed to make certain payments in lieu of taxes.

5. Pursuant to the foregoing, the City desires to acquire the Project Equipment from the Company and the Company desires to lease the Project Equipment from the City, for the rentals and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged; the City and the Company do hereby represent, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to any words and terms defined elsewhere in this Lease, capitalized words and terms used in this Lease shall have the meanings given to such words and terms in **Section 101** of the Indenture (which definitions are hereby incorporated by reference).

**Section 1.2. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

## ARTICLE II

### COVENANTS

**Section 2.1. Covenants of the City.** The City covenants as the basis for the undertakings on its part herein contained, that:

(a) The City is a third-class city duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its City Council, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) As of the date of delivery hereof, the City agrees to purchase and install the Project Equipment or cause the Project Equipment to be purchased and installed at the Project

Site. The City agrees to lease the Project Equipment to the Company, and sell the Project Equipment to the Company, if the Company exercises its option to purchase the Project Equipment, upon termination of this Lease, all for the purpose of furthering the public purposes of the Act.

(c) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

(d) To finance the costs of the Project Equipment, the City proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(e) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project Equipment and the net earnings therefrom, consisting of all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project Equipment, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to the Lease.

(f) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project Equipment or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative.

(g) The City will not operate the Project Equipment as a business or in any other manner except as the lessor thereof; provided, subsequent to an Event of Default hereunder, the City or its designee may, but is not obligated to, operate the Project Equipment in such manner as the City deems best.

**Section 2.2. Covenants of the Company.** The Company covenants, as the basis for the undertakings on its part herein contained, that:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to conduct business and is in good standing in the State of Missouri.

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature

whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party.

(d) The estimated costs of the purchase and installation of the Project Equipment are in accordance with sound engineering and accounting principles.

(e) The Project Equipment will be located at the Project Site and will comply in all material respects with all applicable laws, rules and regulations.

### ARTICLE III

#### GRANTING PROVISIONS

**Section 3.1. Granting of Leasehold Estate.** The City hereby exclusively rents, leases and lets the Project Equipment to the Company, and the Company hereby rents, leases and hires the Project Equipment from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

**Section 3.2. Lease Term.** This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project Equipment shall terminate on December 31, 2029.

**Section 3.3. Possession and Use of the Project Equipment.**

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2** hereof following the occurrence and continuance of an Event of Default, as defined in **Section 12.1** hereof, the Company shall have sole and exclusive possession of the Project Equipment (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall peaceably and quietly have, hold and enjoy the Project Equipment during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Equipment during the Lease Term and will, at the request and expense of the Company, cooperate with the Company to defend the Company's quiet and peaceable possession and enjoyment of the Project Equipment.

(b) Subject to the provisions of this Section, the Company shall have the exclusive right to use the Project Equipment for any lawful purpose contemplated by the Act and consistent with the terms of the Performance Agreement. The Company shall use its best efforts to comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project Equipment, as to the manner of use or the condition of the Project Equipment. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company may, at its own cost and expense, contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

## ARTICLE IV

### PURCHASE AND INSTALLATION OF THE PROJECT EQUIPMENT

**Section 4.1. Issuance of the Bonds.** To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture to be used and applied as hereinafter provided in this Lease and in the Indenture.

**Section 4.2. Purchase and Installation of the Project Equipment.** The City and the Company agree that the Company, as the agent of the City, shall, but solely from the Project Fund, purchase and install the Project Equipment as follows:

(a) The Company will purchase and install the Project Equipment at the Project Site. Title to the Project Equipment shall be evidenced by bills of sale in substantially the form attached to the form of the requisition certificate attached hereto as **Exhibit A** or other instruments of transfer including purchase orders or other instruments pursuant to which the City acquires title to personal property directly from the vendor thereof. Such bills of sale or other instruments of transfer, along with a requisition certificate pursuant to **Section 4.4** hereof, must (i) be dated by no later than December 31 of each year to be treated as Project Equipment (and therefore to be exempt from property taxes) in the next succeeding year and (ii) be submitted to the City by no later than January 31.

(b) On or before March 1 of each year or such other date required by law for reporting personal property declarations, the Company shall furnish to the City and the Trustee a list of items comprising the Project Equipment as of January 1 of such year as required by the personal property declarations provided by the Assessor's Office of Franklin County, Missouri. The Company shall provide such information to the City and the Trustee as may be requested in order to ensure that such list corresponds to the list of Project Equipment maintained by the Trustee pursuant to **Section 4.4** hereof.

(c) Each bill of sale or other instrument of transfer and each personal property declaration form shall be of sufficient specificity so as to enable the City's officials and the Assessor's Office of Franklin County, Missouri to determine which personal property as reported on the annual personal property declaration constitutes Project Equipment (and therefore is owned by the City) and which personal property does not constitute Project Equipment (and therefore is owned by the Company).

(d) The City and the Company agree that, pursuant to **Section 4.8** hereof, property purchased in whole or in part by the Company with its own funds, and not Bond proceeds, shall not constitute part of the Project Equipment and shall remain the property of the Company and therefore subject to taxation.

(e) The Company will cause the purchase and installation of the Project Equipment to be completed on or before the Completion Date.

**Section 4.3. Project Costs.** The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date. The maximum amount of Project Equipment for which requisition certificates may be submitted is \$16,000,000. All other machinery and equipment installed at the Project Site shall be subject to *ad valorem* taxes.

**Section 4.4. Payment for Project Costs.**

(a) The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund and endorse the Bonds, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit A**, signed by an Authorized Company Representative and approved by an Authorized City Representative. The Company agrees that the information in each certificate will be accurate in all respects when given, and that the Company will notify the City if the Company becomes aware of any material inaccuracies in a certificate after the date on which it is given.

(b) The Trustee may rely conclusively on any such certificate and shall not be required to make any independent inspection or investigation in connection therewith. The approval of any requisition certificate by the Authorized Company Representative and an Authorized City Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

(c) The Trustee shall maintain a file showing a description of all Project Equipment, said file to be compiled from the certificates furnished to the Trustee pursuant to this Section. The Trustee may conclusively rely upon such certificates and the information submitted by the Company pursuant to **Section 4.2(b)** hereof in compiling a list of Project Equipment.

**Section 4.5. Establishment of Completion Date.** The Completion Date shall be evidenced to the City and the Trustee by a certificate signed by the Authorized Company Representative stating (a) that the purchase and installation of the Project Equipment has been completed, (b) the date of completion thereof, and (c) that all costs and expenses of the purchase and installation of the Project Equipment have been incurred. Notwithstanding the foregoing, the certificate shall be deemed given on December 31, 2019 if not actually filed with the City by December 31, 2019. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

**Section 4.6. Surplus in Project Fund.** Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (a) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (b) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect in writing. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

**Section 4.7. Project Equipment Property of City.** The Project Equipment which the Company desires to convey to the City, all Project Equipment as acquired, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project Equipment, and the Project Equipment as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of

this Lease, except as otherwise specifically provided herein, shall immediately when installed become the absolute property of the City, subject only to this Lease, the Indenture, Permitted Encumbrances and the Leasehold Security Agreement, if any. Nothing herein shall limit the Company's right to own personal property which is not part of the Project Equipment to be acquired by the City pursuant to **Section 4.2** hereof.

**Section 4.8. Machinery and Equipment Property of the Company.** Any items of machinery or equipment which do not constitute part of the Project Equipment and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project Equipment for purposes of **Section 6.4** and therefore are subject to taxation, to the extent otherwise provided by law.

## ARTICLE V

### RENT PROVISIONS

**Section 5.1. Basic Rent.** The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, on or before 11:00 a.m., Trustee's local time, on each Payment Date, as Basic Rent for the Project Equipment, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Bonds and the interest thereon as provided in the Indenture. Except as offset pursuant to the right of the Company set forth below, all payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Company is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the City's obligation to the Company as Bondholder under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any written notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be cancelled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

**Section 5.2. Additional Rent.** The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

(a) all fees, charges and expenses, including agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, this Lease or the Performance Agreement, including but not limited to claims by contractors or subcontractors, as and when the same become due;

(b) all costs incident to the issuance of the Bonds (which are to be paid on the Closing Date) and the payment of the principal of and interest on the Bonds as the same become

due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, charges and expenses incurred in connection with the enforcement of any rights under this Lease, the Indenture or the Performance Agreement by the City, the Trustee or the Owners, including counsel fees and expenses; and

(d) all other payments of whatever nature which the Company has agreed in writing to pay or assume under the provisions of this Lease, the Performance Agreement or the Indenture.

### **Section 5.3. Obligations of Company Absolute and Unconditional.**

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off (subject to **Section 11.5** hereof), counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project Equipment has been purchased or installed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project Equipment or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project Equipment, legal curtailment of the Company's use thereof, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this Section is intended or shall be deemed to affect or impair in any way the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project Equipment as provided in **Article XI**.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company, at the Company's expense, and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

### **Section 5.4. Prepayment of Basic Rent.**

(a) The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then

remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

(b) At its option, the Company may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

## ARTICLE VI

### MAINTENANCE, TAXES AND UTILITIES

**Section 6.1. Maintenance and Repairs.** Throughout the Lease Term the Company shall, at its own expense, keep the Project Equipment in reasonably safe operating condition and keep the Project Equipment in good repair, reasonable wear, tear, depreciation and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof it determines to be necessary.

**Section 6.2. Taxes, Assessments and Other Governmental Charges.**

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project Equipment, or any part thereof or interest therein (including the leasehold estate of the Company therein) or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project Equipment; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (i) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (ii) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against the PILOT Payments (as defined in the Performance Agreement) to be made by the Company under the Performance Agreement to the extent of

any ad valorem taxes imposed with respect to the Project Equipment paid pursuant to this Section, except as otherwise provided in the Performance Agreement.

**Section 6.3. Utilities.** All utilities and utility services used by the Company in, on or about the Project Site shall be paid by the Company and shall be contracted by the Company in the Company's own name, and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

**Section 6.4. Property Tax Exemption.** The City and the Company expect that while the Project Equipment is owned by the City and is subject to the Lease, the Project Equipment will be exempt from all ad valorem property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties. The City and the Company further acknowledge and agree that the City's obligations hereunder are contingent upon the Company making the payments and otherwise complying with the terms of the Performance Agreement during the term of this Lease. The terms and conditions of the Performance Agreement are incorporated herein as if fully set forth herein.

## ARTICLE VII

### INSURANCE

#### Section 7.1. Casualty Insurance.

(a) Prior to acquisition of any Project Equipment, the Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term a policy or policies of insurance to keep the Project Equipment constantly insured against loss or damage by fire, lightning, theft and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of not less than "A-" or the equivalent thereof as may be selected by the Company. The Company shall deliver certificates of insurance for such policies to the City and the Trustee before submitting the initial bill of sale and requisition certificate to the City for the acquisition of Project Equipment and promptly after renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as the insured, the City as an additional insured, and shall name the Trustee as loss payee and, to the extent such agreement is available from the insurer, shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 10 days after written notice of cancellation to the City, the Company, the Trustee and each other insured or loss payee named therein.

(b) In the event of loss or damage to the Project Equipment, the Net Proceeds of casualty insurance carried pursuant to this Section shall be (i) paid over to the Trustee and shall be applied as provided in **Article IX** of this Lease, or (ii) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, subject to the rights of any Financing Party under any Financing Documents.

**Section 7.2. Public Liability Insurance.**

(a) The Company shall, at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible clauses). The policies of said insurance shall, to the extent such agreement is available from the insurer, contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer such policy or contract shall continue in force for at least 10 days after written notice of cancellation to the Company, the City, the Trustee and each other insured or loss payee named therein. Certificates of such policies shall be furnished to the City and the Trustee on the date of execution of this Lease and promptly after renewal of each insurance policy.

(b) In the event of a general liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 7.3. Blanket Insurance Policies.** The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

**Section 7.4. Worker's Compensation.** The Company agrees throughout the Lease Term to maintain or cause to be maintained the worker's compensation coverage required by the laws of the State of Missouri.

**Section 7.5. Sovereign Immunity.** Notwithstanding anything to the contrary contained herein, nothing in this Lease shall be construed to broaden the liability of the City beyond the provisions of Sections 537.600 to 537.610 of the Revised Statutes of Missouri, as amended, or abolish or waive any defense at law that might otherwise be available to the City or its officers, agents and employees.

**ARTICLE VIII**

**ALTERATION OF THE PROJECT EQUIPMENT**

**Section 8.1. Additions, Modifications and Improvements to the Project Equipment.**

(a) The Company may make such additions, modifications and improvements to any part of the Project Equipment as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (i) be made in a good and workmanlike manner and in strict compliance with all laws, orders and ordinances applicable thereto and (ii) when commenced, be prosecuted to completion with due diligence.

(b) Following the Completion Date, any additions of machinery and equipment installed on the Project Site by the Company shall remain the property of the Company and shall not become part of the Project Equipment. Such machinery and equipment shall be subject to *ad valorem* taxes.

## **Section 8.2. Removal of Project Equipment.**

(a) The Company may, if no uncured Event of Default (as defined in **Section 12.1** hereof) exists and is continuing, remove from the Project Site and sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the City or the Trustee with respect thereto, any items of machinery and equipment, or parts thereof, which constitute a part of the Project Equipment and which have become inadequate, obsolete, worn out, unsuitable, undesirable, unnecessary or damaged or destroyed by casualty or otherwise notwithstanding the provisions of **Article IX** hereof, or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations. Before any such removal of any item of equipment or machinery with a then-market value of greater than \$1,000,000, the Company shall deliver to the City and the Trustee a certificate signed by an Authorized Company Representative containing a complete description of any machinery or equipment that the Company proposes to remove. Upon request by the Company, the City will execute and deliver a bill of sale that transfers full and complete title to the Company of the Project Equipment removed. Notwithstanding anything contained herein to the contrary, title to any item of the Project Equipment removed from the Project Site as provided herein shall automatically vest in the Company without further instrument or action, and such vesting of title shall be self-operative effective upon removal. Any Project Equipment removed from the Project Site shall no longer be entitled to the tax exemption afforded by virtue of the City's ownership thereof.

(b) In all cases, the Company shall pay all of the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Company's facilities and Project Site caused thereby. The Company's right under this Section to remove machinery and equipment constituting a part of the Project Equipment is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment that is no longer suitable for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project Equipment.

**Section 8.3. Permits and Authorizations.** The Company shall not do or permit others under its control to do any work on the Project Site related to any repair, rebuilding, restoration, replacement, modification or addition to the Project Equipment, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests for such municipal permits and authorizations. The City shall cooperate with the Company to obtain, amend, or maintain any existing or future municipal or other governmental permit or authorization for the Project Equipment which requires the City's signature, certification, or consent as the owner of any part of the Project Equipment, including executing any required applications, certifications, or reports. All such work shall be done in a good and workmanlike manner and in strict compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

## **Section 8.4. Mechanics' Liens.**

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project Equipment, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project

Equipment, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project Site, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project Equipment or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (i) within 60 days after the Company becomes aware of any such lien notifies the City and the Trustee in writing of its intention so to do, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official or judicial sale of the Project Equipment, or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (v) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project Equipment will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall defend, save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 9.1. Damage or Destruction.

(a) If the Project Equipment is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) make the determination described in subsection (f) below, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project Equipment is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, purchase and install all new machinery, equipment and fixtures which are to be used in connection with the operation or maintenance thereof, provided that (i) the value thereof shall not be less than the value of such destroyed or damaged Project Equipment immediately before the occurrence of such damage or destruction and (ii) the nature of such new machinery, equipment and fixtures will not impair the character of the Project Equipment as an enterprise permitted by the Act.

If the Company elects to repair, restore or replace the Project Equipment, for all purposes of this Lease, any reference to the words "Project Equipment" shall be deemed to also include any such new machinery, equipment and fixtures.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project Equipment shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project Equipment or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or

retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project Equipment or any part thereof, or (ii) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any Financing Party. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt written notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site causing (in the Company's opinion) damage of more than \$1,000,000.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project Equipment is not practicable or desirable, or if the Company does not have the right under any Leasehold Security Agreement to use any Net Proceeds for repair or restoration of the Project Equipment, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the secured party under the Leasehold Security Agreement (if any) and the Financing Party under the Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project Equipment is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project Equipment during any period in which the Project Equipment is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the

Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

**Section 9.2. Condemnation.**

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project Equipment is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City in writing, the Trustee, the secured party under the Leasehold Security Agreement (if any) and the Financing Party under the Financing Document (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to purchase or install substitute equipment.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition of such substitute equipment, so as to place the Project Equipment in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition of other equipment suitable for the Company's operations at the Project Site (which equipment will be deemed a part of the Project Equipment and available for use by the Company without the payment of any rent other than herein provided, to the same extent as if such other equipment were specifically described herein and demised hereby); provided, that such equipment will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project Equipment or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire substitute equipment, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, all subject to the rights of the secured party under the Leasehold Security Agreement (if any) and Financing Party under the Financing Documents (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project Equipment during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Equipment or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Equipment or any part thereof without the prior written consent of the Company.

**Section 9.3. Bondowner Approval.** Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may before the application thereof by the City or the Trustee be applied as directed in writing by the Owners of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under the Performance Agreement.

## ARTICLE X

### SPECIAL COVENANTS

**Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification.** The City makes no warranty, either express or implied, as to the condition of the Project Equipment or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project Equipment or the Company's use thereof, unless such loss is the result of the City's or the Trustee's (or their respective employees and agents') willful misconduct. This provision shall survive termination of this Lease.

**Section 10.2. Surrender of Possession.** Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)**, the Company shall peacefully surrender possession of the Project Equipment to the City in good condition and repair; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project Equipment. All repairs to and restorations of the Project Equipment required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project Equipment. All furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project Equipment before the expiration of said period shall be the separate and absolute property of the City.

**Section 10.3. Right of Access to the Project Equipment.** The City may conduct such periodic inspections of the Project Equipment as may be generally provided in the City's Code. In addition, the Company agrees that the City and the Trustee and their duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two Business Day's prior notice, subject to the Company's usual business proprietary, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project Equipment without interference or prejudice to the Company's operations, (b) to monitor the purchase and installation provided for in **Section 4.2** hereof as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Company's possession pertaining to the purchase, installation or maintenance of the Project Equipment, (d) upon either (i) the occurrence and continuance of an Event of Default or (ii) the Company's failure to purchase the Project Equipment at the end of the Lease Term, to exhibit the Project Equipment to prospective purchasers, lessees or trustees.

#### **Section 10.4. Leasehold Security Agreements and Financing Arrangements.**

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the City agrees that it will execute and deliver and will cause and direct the Trustee in writing to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any sublease, license, or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project Equipment, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance, and that the Company will defend, indemnify and save and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the execution and delivery of any instrument, agreement or arrangement pursuant to this Section. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project Equipment by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The Company may pledge the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such pledge, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The sale of the Company's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Security Agreement or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least fifteen (15) days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under the Performance Agreement are paid.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project Equipment, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1**.

(d) Upon notice by the Company to the City in writing that the Company has executed one or more Financing Documents under which it has granted rights in this Lease to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party and any Financing Party existing as of the date of the execution and delivery hereof:

(i) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project Equipment, notwithstanding that this Lease or said leasehold interest and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Financing Party;

(ii) the City shall serve upon each such Financing Party (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Financing Party;

(iii) each Financing Party shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Financing Party as timely performance by the Company;

(iv) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default. Without limiting the generality of the foregoing, the holder of the Leasehold Security Agreement may cause the sale of the leasehold interest of the Company to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Leasehold Security Agreement, to accept assignment of this Lease in lieu of foreclosure and to appoint a receiver for the Project Equipment, all without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

(v) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such Event of Default shall continue beyond any period set forth in the Lease to effect said cure so long as the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default;

(vi) the Financing Parties (and their designees, nominees, assignees or transferees) may enter, possess and use the Project Equipment at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents; and

(vii) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without prior written consent of such Financing Party, which consent shall not be unreasonably denied or delayed.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a

Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Company's obligations under any Financing Document relating to the Project Equipment shall be subordinate to the Company's obligations under this Lease.

**Section 10.5. Indemnification of City and Trustee.** The Company shall defend, indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Performance Agreement, this Lease (or any instrument requested by the Company pursuant to **Section 10.4** hereof) or the Indenture and from the conduct or management of, or from any work or thing done in or on the Project Equipment during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project Equipment, (b) any breach or default on the part of the Company in the performance of any of its obligations under the Performance Agreement, this Lease or any related document, (c) any contract entered into in connection with the purchase and installation of the Project Equipment (including mechanics' liens), (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)** hereof, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project Equipment, and (g) any violation of Section 107.170 of the Revised Statutes of Missouri, as amended; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City or Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are (i) the result of work being performed at the Project Site by employees of the City, or (ii) the result of willful misconduct by the City or the Trustee. Upon written notice from the City or the Trustee of any such claims or demand, the Company shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any termination of the Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

**Section 10.6. Depreciation and Other Tax Benefits.** The City and the Company hereby acknowledge and agree that:

(a) this Lease is intended to be and shall be treated as a "financing lease" for federal income tax purposes;

(b) the Company shall be treated solely for federal income tax purposes, as the owner of the Project and, as such, shall be entitled to claim all depreciation and amortization deductions and other tax benefits attributable to the ownership of the Project;

(c) each party shall report and file all federal income tax returns consistent with the intended tax treatment; and

(d) the City will fully cooperate, at the Company's expense, with the Company in any effort by the Company to avail itself of any such depreciation, amortization deductions and benefits.

**Section 10.7. Company to Maintain its Existence.** The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, or may sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee Person (a) expressly assumes in writing all the obligations of the Company contained in this Lease, and (b) has a long-term-debt rating in any of the top 3 long-term-debt rating categories by any nationally recognized rating service.

**Section 10.8. Security Interests.** The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture. Upon the written instructions of the Owners or pledgees of 100% of the Bonds then Outstanding, the Trustee shall file all continuation instruments the Owners deem necessary and shall continue or cause to be continued such instruments for so long as the Bonds are Outstanding. The City and the Company shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to renew such statements.

## ARTICLE XI

### OPTION AND OBLIGATION TO PURCHASE THE PROJECT EQUIPMENT

**Section 11.1. Option to Purchase the Project Equipment.** The Company shall have, and is hereby granted, the option to purchase all or any portion of the Project Equipment at any time, upon payment in full or redemption of the Outstanding Bonds to be redeemed or provision for their payment or redemption having been made pursuant to **Article XIII** of the Indenture. To exercise such option, the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing of such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and, in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a "Remedies Notice"), the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or before the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

(a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all or a portion of the then-Outstanding Bonds on the

earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus

(b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(c) an amount of money equal to the City's reasonable charges and expenses incurred in connection with the Company exercising its option to purchase all or a portion of the Project Equipment; plus

(d) an amount of money equal to all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus

(e) the sum of \$10.00.

**Section 11.2. Conveyance of the Project Equipment.** At the closing of the purchase of the Project Equipment pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

(a) a release from the Trustee of the Project Equipment from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) documents, including without limitation a bill of sale, conveying to the Company legal title to the Project Equipment, as it then exists, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project Equipment was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreement on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease; and (v) if the Project Equipment or any part thereof is being condemned, the rights and title of any condemning authority.

**Section 11.3. Relative Position of Option and Indenture.** The option to purchase the Project Equipment granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease, provided that such option will not result in nonfulfillment of any condition to the exercise of any such option (including the payment of all amounts specified in **Section 11.1** hereof) and further provided that all options herein granted shall terminate upon the termination of this Lease.

**Section 11.4. Obligation to Purchase the Project Equipment.**

(a) The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project Equipment upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due under the Performance Agreement. The amount of the purchase price under this Section shall be an amount sufficient to redeem all the then Outstanding Bonds, plus all

payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

(b) The Company hereby agrees to purchase, and the City hereby agrees to sell, portions of the Project Equipment pursuant to **Section 3.2(f)** of the Performance Agreement. The amount of the purchase price under this subsection shall be an amount sufficient to redeem the Bonds attributable to the Project Equipment being purchased, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

**Section 11.5. Right of Set-Off.** At its option, to be exercised at least 5 days before the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon. The Company may set-off any payment obligation under this Article by tendering a corresponding amount of the Bonds to the Trustee for cancellation.

## ARTICLE XII

### DEFAULTS AND REMEDIES

**Section 12.1. Events of Default.** If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an "Event of Default" under this Lease:

(a) default in the due and punctual payment of Basic Rent or Additional Rent within 10 days after written notice thereof from the City to the Company; or

(b) default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default continues for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as is reasonably required to cure such default, provided that (i) the Company has commenced such cure within said 60-day period, and (ii) the Company diligently prosecutes such cure to completion); or

(c) the Company: (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (iii) makes an assignment for the benefit of creditors; or (iv) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the

day of entry or commencement; or (vii) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) an Event of Default under the Performance Agreement, as defined in **Section 6.1** thereof.

**Section 12.2. Remedies on Default.** If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions, in addition to the remedies provided in **Section 12.5** hereof:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; or

(b) give the Company written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the Outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof, the Company's rights to possession of the Project Equipment shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Project Equipment; provided, however, if the Company has paid all obligations due and owing under the Indenture, this Lease and the Performance Agreement, the City shall convey the Project Equipment in accordance with **Section 11.2** hereof.

**Section 12.3. Survival of Obligations.** The Company covenants and agrees with the City and Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that except for the indemnification contained in **Article X** hereof, upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Company's exercise of the purchase option contained in **Article XI** hereof, the Company's obligation under this Lease shall thereupon cease and terminate in full, except that obligations with respect to compensation and indemnification of the City and the Trustee shall not so terminate.

**Section 12.4. Performance of the Company's Obligations by the City.** Upon an Event of Default, the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 60 days after written notice of such failure is given the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorney's fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee

shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

**Section 12.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this Section or elsewhere in this Lease to the contrary, however, the Company's option to re-purchase the property as provided in **Article XI** above shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)** above. The parties agree that no provision of this Lease shall be construed to allow the City to require the Company to purchase or install the Project Equipment or to retain or create jobs.

**Section 12.6. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults of the Company which were in existence at the time such payment or payments were accepted by the City.

**Section 12.7. Trustee's Exercise of the City's Remedies.** Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

## ARTICLE XIII

### ASSIGNMENT AND SUBLEASE

#### **Section 13.1. Assignment; Sublease.**

(a) The Company may sublease, assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act upon providing written notice to the City. Except as otherwise provided in this Section or in **Section 10.4** hereof, the Company must obtain the City's prior written consent to any such disposition, unless such disposition is to an entity controlled by or under common control with or controlling the Company.

(b) With respect to any assignment, the Company shall comply with the following conditions:

- (i) the Company shall notify the City and the Trustee of the assignment in writing;
- (ii) such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(iii) such assignment shall include the entire then unexpired term of this Lease; and

(iv) a duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee and in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(c) Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease, the Performance Agreement and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease, the Performance Agreement and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease, the Performance Agreement or any agreement related to the issuance of the Bonds.

**Section 13.2. Assignment of Revenues by City.** The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment.

**Section 13.3. Restrictions on Sale or Encumbrance of Project Equipment by City.** During the Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture and except to enforce its rights under **Section 12.2(b)** hereof, it will not sell, assign, encumber, mortgage, transfer or convey the Project Equipment or any interest therein, except as provided in **Section 10.4** hereof.

## ARTICLE XIV

### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 14.1. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld, and the written consent of all of the Owners.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

**Section 15.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (a) mailed by registered or certified mail, postage prepaid, or (b) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) To the City:

City of Washington, Missouri  
City Hall  
405 Jefferson Street  
Washington, Missouri 63090  
ATTN: City Administrator

with a copy to:

Lewis Rice LLC  
1200 Jefferson Street  
Washington, Missouri 63090  
ATTN: Mark C. Piontek, Esq.

(b) To the Trustee:

UMB Bank, N.A.  
2 S. Broadway, Suite 600  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Company:

Valent Aerostructures, LLC  
c/o LMI Aerospace, Inc.  
6325 Avantha Drive  
Washington, Missouri 63090  
ATTN: Perry Pecaut

with a copy to:

Polsinelli PC  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112  
ATTN: Korb Maxwell, Esq.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided, however, that notice to the Trustee shall be effective only upon receipt. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Company to the other shall also be given to the Trustee. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 15.2. City Shall Not Arbitrarily Withhold Consents and Approvals.** Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not arbitrarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any

additional project or matter unrelated to the Project Equipment, and the Project Equipment remains subject to zoning, building permit or other regulatory approvals by the City.

**Section 15.3. Net Lease.** The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

**Section 15.4. Limitation on Liability of City.** No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

**Section 15.5. Governing Law.** This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 15.6. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

**Section 15.7. Severability.** If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 15.8. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 15.9. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 15.10. City Consents and Approvals.** Pursuant to the Ordinance, the Mayor is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing and refinancing of the Project Equipment by the Company, and such licenses and similar documents as may be requested by the Company) as may be required to carry out and comply with the intent of the Ordinance, the Indenture and this Lease. The Mayor is also authorized, unless otherwise expressly provided herein to the contrary, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, this Lease or the Performance Agreement, including extensions of the Completion Date, as may be requested during the term thereof; provided, such

consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or adversely affect the tax exemption as provided for herein, waive an Event of Default, or materially change the nature of the transaction unless approved by an ordinance of the City Council.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

**CITY OF WASHINGTON, MISSOURI**

By: \_\_\_\_\_  
Sandy Lucy, Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Mary Trentmann, City Clerk

**VALENT AEROSTRUCTURES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

FORM OF REQUISITION CERTIFICATE

Requisition No. \_\_\_\_\_  
Date: \_\_\_\_\_

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF NOVEMBER 1, 2016, BETWEEN THE CITY OF WASHINGTON, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF NOVEMBER 1, 2016, BETWEEN THE CITY OF WASHINGTON, MISSOURI, AND VALENT AEROSTRUCTURES, LLC

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$\_\_\_\_\_ is requested to pay for Project Costs (as defined in the Indenture) of the Project Equipment (as defined in the Indenture). The total amount of this requisition and all prior requisitions are as follows:

<u>Date of Project Costs</u>	<u>Amount Submitted in this Requisition</u>	<u>Requisitions Submitted to Date (Including this Requisition)</u>

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Set forth on **Schedule 2** hereto is a description of the Project Equipment acquired, which is being paid for in whole with Bond proceeds pursuant to this Requisition Certificate. Attached hereto as **Exhibit A** is the Bill of Sale transferring said Project Equipment to the City.

4. Each of the items for which payment is requested are or were desirable and appropriate in connection with the purchase and installation of the Project Equipment, have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

5. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase and installation of the Project Equipment which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project Equipment or any part thereof.

**VALENT AEROSTRUCTURES, LLC**

By: \_\_\_\_\_  
Authorized Company Representative

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF WASHINGTON, MISSOURI**

By: \_\_\_\_\_  
Authorized City Representative

**SCHEDULE 1 TO REQUISITION CERTIFICATE**

**PROJECT COSTS**

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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**SCHEDULE 2 TO REQUISITION CERTIFICATE**

**PROJECT EQUIPMENT**

<u>Item (Description)</u>	<u>Serial, Identification or Account Number</u>	<u>Taxable Cost of Equipment</u>	<u>Non-Taxable Cost of Equipment</u>
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**EXHIBIT A TO REQUISITION CERTIFICATE**

**BILL OF SALE**

**VALENT AEROSTRUCTURES, LLC**, a Delaware limited liability company (“Seller”), in connection with that certain Lease Agreement dated as of November 1, 2016 (the “Lease Agreement”), between the Seller and the **CITY OF WASHINGTON, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (“Buyer”), for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, has **BARGAINED** and **SOLD**, and by these presents does now **GRANT** and **CONVEY**, unto Buyer and its successors and assigns, all of its right, title and interest, in and to all machinery, equipment and other personal property shown on **Exhibit A** hereto, and constituting the “Project Equipment”, as such terms are defined in the Lease Agreement.

**TO HAVE AND TO HOLD** the same unto Buyer, its successors and assigns, subject however to the terms of the Lease Agreement and those, security interests, liens and/or encumbrances as therein set forth.

The property is being conveyed “AS IS,” “WHERE IS” and “WITH ALL FAULTS” as of the date of this Bill of Sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability, or any other warranty, express or implied.

**IN WITNESS WHEREOF**, Seller has caused this Bill of Sale to be executed in its name by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**VALENT AEROSTRUCTURES, LLC**

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

**EXHIBIT A TO BILL OF SALE**

**EXHIBIT C**

**BOND PURCHASE AGREEMENT**

**\$16,000,000**  
**(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)**  
**CITY OF WASHINGTON, MISSOURI**  
**TAXABLE INDUSTRIAL REVENUE BONDS**  
**(VALENT AEROSTRUCTURES, LLC PROJECT)**  
**SERIES 2016B**

**Dated as of November 1, 2016**

**BOND PURCHASE AGREEMENT**

Honorable Mayor  
and City Council  
City of Washington, Missouri

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Valent Aerostructures, LLC, a Delaware limited liability company (the "Purchaser"), offers to purchase from the City of Washington, Missouri (the "City"), the above-referenced bonds (the "Bonds"), to be issued by the City under and pursuant to Ordinance No. \_\_\_\_\_ adopted by the City Council on November 7, 2016 (the "Ordinance") and a Trust Indenture dated as of November 1, 2016 (the "Indenture") by and between the City and UMB Bank, N.A., as trustee (the "Trustee"). *Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.*

**SECTION 1. REPRESENTATIONS AND AGREEMENTS**

(a) By the City's acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a third-class city duly organized and validly existing under the laws of the State of Missouri. The City is authorized pursuant to the Constitution, the laws of the State of Missouri, and the ordinances and resolutions of the City, and all necessary action has been taken to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by the Ordinance, this Bond Purchase Agreement, the Indenture, the Lease Agreement dated as of November 1, 2016 (the "Lease") by and between the City and the Purchaser, the Performance Agreement dated as of November 1, 2016 (the "Performance Agreement") by and between the City and the Purchaser, and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of acquiring and installing the Project Equipment and paying the costs incurred in connection with the issuance of the Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending and served or, to the City's knowledge, threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act taken in connection with the issuance of the Bonds or the constitutionality or

validity of the obligations represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease, the Indenture, the Performance Agreement or this Bond Purchase Agreement.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to transact business and is in good standing in the State of Missouri.

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound.

(3) *Documents Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies.

(4) *Purchaser's Certificates.* Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such parties as to the statements made therein.

## **SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS**

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions set forth herein and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be applied as provided in the Indenture and the Lease. From time to time after the Closing Date, the Purchaser shall make additional payments with respect to the Bonds ("Additional Payments") to the Trustee under the Indenture, which Additional Payments shall be applied to the payment of Project Costs or as provided in the Indenture and the Lease; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$16,000,000 plus the costs of issuance of the Bonds (if such costs of issuance are not paid with Bond proceeds).

As used herein, the term "Closing Date" shall mean November \_\_, 2016, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Purchaser from its own funds on or before the Closing Date, and, at the Purchaser's option,

the costs of issuance of the Bonds if such costs are not paid for from Bond proceeds. The Closing Price shall be transferred to the Trustee on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully-registered bond in the maximum aggregate principal denomination of \$16,000,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the records of the Trustee, absent manifest error, and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

### **SECTION 3. CONDITIONS TO THE OBLIGATIONS**

The obligations hereunder shall be subject to the due performance by the parties of the obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly certified copy of the Ordinance, the Indenture, the Lease, the Performance Agreement, this Bond Purchase Agreement and any other instrument contemplated thereby, and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending and served or, to its knowledge, threatened against the City wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof.

(c) The Purchaser shall execute a certificate, dated the Closing Date, to the effect that (1) no litigation, proceeding or investigation is pending against the Purchaser or its affiliates or, to the knowledge of the Purchaser, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Purchaser, (2) no litigation, proceeding or investigation is pending or, to the knowledge of the Purchaser, threatened against the Purchaser that could reasonably be expected to adversely affect its ability to perform its obligations under the Lease and the Performance Agreement, (3) the representations and warranties of the Purchaser herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (4) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds.

### **SECTION 4. THE PURCHASER'S RIGHT TO CANCEL**

The Purchaser may cancel its obligation hereunder to purchase the Bonds by notifying the City in writing at or before the Closing Date. The Purchaser shall reimburse the City for its actual reasonable

expenses incurred in connection with the transactions contemplated by this Bond Purchase Agreement upon such cancellation.

#### **SECTION 5. CONDITIONS OF OBLIGATIONS**

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

#### **SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY**

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

#### **SECTION 7. NOTICE**

Any notice or other communication to be given under this Agreement may be given in writing by mailing or delivering the same as follows:

(a) To the City:

City of Washington, Missouri  
City Hall  
405 Jefferson Street  
Washington, Missouri 63090  
ATTN: City Administrator

with a copy to:

Lewis Rice LLC  
1200 Jefferson Street  
Washington, Missouri 63090  
ATTN: Mark C. Piontek, Esq.

(b) To the Trustee:

UMB Bank, N.A.  
2 S. Broadway, Suite 600  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Purchaser:

Valent Aerostructures, LLC  
c/o LMI Aerospace, Inc.  
6325 Avantha Drive  
Washington, Missouri 63090  
ATTN: Perry Pecaut

with a copy to:

Polsinelli PC  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112  
ATTN: Korb Maxwell, Esq.

**SECTION 8. APPLICABLE LAW**

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri.

**SECTION 9. EXECUTION OF COUNTERPARTS**

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

[Remainder of page intentionally left blank]

Very truly yours,

**VALENT AEROSTRUCTURES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE OF EXECUTION: November \_\_, 2016

Accepted and Agreed to this \_\_\_\_ day of November, 2016.

**CITY OF WASHINGTON, MISSOURI**

By: \_\_\_\_\_  
Sandy Lucy, Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Mary Trentmann, City Clerk

[Bond Purchase Agreement]

**EXHIBIT D**

**PERFORMANCE AGREEMENT**

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**PERFORMANCE AGREEMENT**

**Dated as of November 1, 2016**

**BETWEEN THE**

**CITY OF WASHINGTON, MISSOURI**

**AND**

**VALENT AEROSTRUCTURES, LLC**

**Relating to:**

**\$16,000,000**

**(Aggregate Maximum Principal Amount)**

**City of Washington, Missouri**

**Taxable Industrial Revenue Bonds**

**(Valent Aerostructures, LLC Project)**

**Series 2016B**

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## PERFORMANCE AGREEMENT

**THIS PERFORMANCE AGREEMENT**, dated as of November 1, 2016, as from time to time amended and supplemented in accordance with the provisions hereof (this "Agreement"), between the **CITY OF WASHINGTON, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the "City") and **VALENT AEROSTRUCTURES, LLC**, a Delaware limited liability company (the "Company").

### RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend, improve and equip certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing, office industry and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed Ordinance No. \_\_\_\_\_ on November 7, 2016 (the "Ordinance"), authorizing the City to issue its Taxable Industrial Revenue Bonds (Valent Aerostructures, LLC Project), Series 2016B, in the maximum principal amount of \$16,000,000 (the "Bonds"), secured by a certain Trust Indenture (the "Indenture") by and between the City and UMB Bank, N.A., as Trustee, for the purpose of purchasing and installing certain personal property (the "Project Equipment") for use at the Company's facilities located in the City.

3. The City will lease the Project Equipment to the Company pursuant to a Lease Agreement dated as of the date hereof between the City and the Company (the "Lease"). Under the Lease, the City, as lessor, will purchase and install, or will cause the Company to purchase and install, the Project Equipment and will lease the Project Equipment to the Company, as lessee.

4. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of its desire to cause the purchase and installation of the Project Equipment upon the terms and subject to the conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company hereby represent, covenant and agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to the words and terms defined in the Recitals or in the Indenture, the following words and terms as used herein shall have the following meanings:

**"Additional PILOT Payment"** means the additional payments in lieu of taxes provided for in **Section 3.3** hereof.

“**Affiliate**” means any corporation, limited liability company, limited liability partnership, trust, partnership or other comparable entity which is directly or indirectly controlled by, under common control with, or which controls the Company.

“**Agreement**” means this Performance Agreement dated as of November 1, 2016, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“**Average County Wage**” means the most recently reported average annual wage (excluding benefits) for the preceding calendar year, for persons employed in Franklin County, Missouri, as calculated in the Census of Employment and Wages and reported by the Missouri Department of Economic Development. However, if for any year the computed average county wage for Franklin County, Missouri is above the statewide annual average wage for the State of Missouri, the statewide annual average wage shall be deemed the Average County Wage for such year.

“**Collector**” means the Collector of Revenue of Franklin County, Missouri.

“**County Assessor**” means the Assessor of Franklin County, Missouri.

“**Event of Default**” means any Event of Default as provided in **Section 6.1** hereof.

“**Job**” means a full-time equivalent position with the Company or one of its Affiliates of not less than 35 hours per week located in the City, which shall include normal full-time employee benefits offered by the Company or one of its Affiliates. “**Jobs**” does not include positions filled by workers who are not directly employed by the Company or one of its Affiliates.

“**PILOT Payments**” means the payments in lieu of taxes provided for in **Section 3.2** hereof.

“**Project Costs**” shall have the meaning set forth in **Section 101** of the Indenture.

“**Project Equipment**” shall have the same meaning as provided in **Exhibit A** to the Indenture.

“**Project Site**” means the real estate upon which the Company’s facilities are located at 6325 Avantha Drive in the City.

“**Test Date**” means December 31 of each year, beginning on December 31, 2016.

“**Test Period**” means the period from and including a Test Date to the next succeeding Test Date; provided, the first Test Period shall commence on December 31, 2015 and end on December 31, 2016.

## ARTICLE II

### ISSUANCE OF BONDS

**Section 2.1. Issuance of the Bonds.** As described herein, the City intends to issue the Bonds (to be purchased by the Company) under the Act for the purpose of paying a portion of the Project Costs. In connection with the issuance of the Bonds, the City will acquire title to the Project Equipment from the Company.

## ARTICLE III

### PROPERTY TAX EXEMPTION; PILOT PAYMENTS

**Section 3.1. Property Tax Exemption.** So long as the City owns title to the Project Equipment, the City expects that the Project Equipment will be exempt from ad valorem taxes on personal property.

**Section 3.2. Payments in Lieu of Taxes.**

(a) The Company covenants and agrees that, during each year the Project Equipment is exempt from ad valorem personal property taxes by reason of the City's ownership thereof, the Company will make PILOT Payments in such amounts and at such times set forth in this **Article III**.

(b) The County Assessor will, until this Agreement is terminated, determine an assessed valuation with respect to the Project Equipment in accordance with Article X, Section 4(b) of the Missouri Constitution and Section 137.115 of the Revised Statutes of Missouri, as amended, as if title to the Project Equipment were in the name of the Company and not the City. Such assessment shall be performed as of January 1 of each year. To facilitate the assessment, the Company agrees to provide to the County Assessor each year, by the same date on which property declarations are required by law to be made, a report that includes (1) a list of the Project Equipment and the cost thereof, in form and content consistent with the personal property declarations that the Company makes with respect to any personal property located at the Project Site and (2) such other information as the County Assessor may reasonably require to complete the assessment of the Project Equipment. The itemization shall be consistent with the information provided to the City and the Trustee under **Section 4.2** of the Lease, and shall be of sufficient specificity so as to enable the City's officials and the County Assessor to determine which personal property as reported on the annual personal property declaration constitutes Project Equipment (and therefore is owned by the City) and which personal property does not constitute Project Equipment (and therefore is owned by the Company).

(c) The County Assessor shall notify the City and the Company of the assessed valuation in writing.

(d) On or about the same date on which the Collector notifies taxpayers of taxes due under Missouri law, the Collector shall notify the Company and the City of the amount of PILOT Payments due hereunder. Except as otherwise provided in **Sections 3.3** and **3.6** hereof, the PILOT Payments shall be calculated as follows:

(1) for the calendar years 2018 through 2027, 50% of the actual personal property taxes that would have otherwise been payable on the Project Equipment transferred to the City in 2017, but for the City's ownership thereof; plus

(2) for the calendar years 2019 through 2028, 50% of the actual personal property taxes that would have otherwise been payable on the Project Equipment transferred to the City in 2018, but for the City's ownership thereof; plus

(3) for the calendar years 2020 through 2029, 50% of the actual personal property taxes that would have otherwise been payable on the Project Equipment transferred to the City in 2019, but for the City's ownership thereof; plus

(4) for Project Equipment transferred to the City in 2017, in 2028 and each calendar year thereafter until such Project Equipment is transferred to the Company, 100% of the actual property taxes that would have otherwise been payable on such Project Equipment, but for the City's ownership thereof; plus

(5) for Project Equipment transferred to the City in 2018, in 2029 and each calendar year thereafter until such Project Equipment is transferred to the Company, 100% of the actual property taxes that would have otherwise been payable on such Project Equipment, but for the City's ownership thereof; plus

(6) for Project Equipment transferred to the City in 2019, in 2030 and each calendar year thereafter until such Project Equipment is transferred to the Company, 100% of the actual property taxes that would have otherwise been payable on such Project Equipment, but for the City's ownership thereof.

(e) Each PILOT Payment shall be payable to the Collector. The Company covenants and agrees to make such PILOT Payments on or before March 1 of the following year during the term of this Agreement. The Company's failure to receive notices under (c) or (d) of this Section does not relieve the Company of its obligations to make the applicable PILOT Payments by March 1 of the following year as provided herein.

(f) Pursuant to **Section 11.4(b)** of the Lease, the Company shall purchase the Project Equipment transferred to the City no later than December 31 of the 10<sup>th</sup> year following the Company's conveyance thereof to the City. If title to the Project Equipment as described in the preceding sentence has not been transferred by the City to the Company before January 1 of the year following the earlier of (1) the 10-year period, or (2) the expiration of the term of this Agreement, then on December 31 of such year and each year thereafter until title to such Project Equipment is transferred to the Company, the Company shall pay to the Collector a PILOT Payment equal to 100% of the amount that would otherwise be payable to each taxing jurisdiction but for the City's ownership thereof.

(g) Within 30 days after receipt of each PILOT Payment, the Collector shall, after deducting its customary fee for collection thereof and, if applicable, after deducting the percentage designated by Section 137.721 of the Revised Statutes of Missouri as if the PILOT Payment were a "property tax collection" and depositing such amount into the assessment fund, divide each PILOT Payment among the taxing jurisdictions in proportion to the amount of the then current ad valorem tax levy of each taxing jurisdiction.

(h) If the County Assessor fails to perform an assessment of the value of the Project Equipment, the following procedures will apply:

(1) The County Assessor shall notify the City and the Company within five days of any refusal by the County Assessor to perform an assessment. Within 30 days of such notice, the Company and the City shall each appoint an appraiser licensed by the State of Missouri (each of whom shall also be a member of the Appraisal Institute carrying the designation of "M.A.I.").

(2) Within 45 days of such appointment, each appointed appraiser shall examine the Project Equipment and, using the same methodology and factors that would be used by the County Assessor, render an opinion as to the assessed value thereof. The City and the Company

will cooperate in all respects to enable the appointed appraisers to perform the duties specified herein within the applicable timeframe.

(3) If the opinions rendered by each appointed appraiser are within 10% of each other, the assessed value for purposes of this Section shall equal the average assessed value of the two appraisers' opinions.

(4) If the opinions rendered by each appointed appraiser are not within 10% of each other, the two appraisers shall mutually appoint a third appraiser meeting the requirements of subparagraph (1). This appraiser shall perform an appraisal as provided by subparagraph (2) and the assessed value for the purposes of this Section shall equal the average assessed value of the two highest appraiser opinions.

(5) The Company will pay the costs and expenses incurred by all appraisers appointed pursuant to this Section.

(i) If the Company transfers any Project Equipment to the City in 2016 the Company shall pay a PILOT Payment in 2017 equal to 100% of the actual property taxes that would have otherwise been payable on such Project Equipment, but for the City's ownership thereof, and PILOT Payments in calendar years 2018 through 2027 equal to 50% of the actual personal property taxes that would have otherwise been payable on such Project Equipment, but for the City's ownership thereof.

**Section 3.3. Adjustment of PILOT Payments for Failure to Maintain Payroll.**

(a) Within 30 days after each Test Date, the Company shall file with the City (1) an executed copy of the Chapter 100 Annual Compliance Form in substantially the form attached hereto as **Exhibit A** and (2) supporting documentation in sufficient detail so as to enable the City to verify the aggregate annual payroll for the Jobs during the Test Period. The City Administrator or his designee shall monitor these requirements and shall promptly notify the Collector of the amount of the Additional PILOT Payments due. The Company shall make an Additional PILOT Payment (in addition to any payments required under **Section 3.2**) to the Collector on or before March 1 of the year following such calendar year in which the Company fails to maintain an aggregate annual payroll for the Jobs during the Test Period of at least (1) \$7,500,000 for calendar years 2016 through 2018 and (2) \$10,000,000 for the remaining term of this Agreement, in accordance with the following formula:

*For Calendar Years 2016 through 2018:*

$$\text{P.P.} \quad \times \quad \frac{\$7,500,000 - \text{A.P.}}{\$7,500,000} = \text{Additional PILOT Payment}$$

*For the Remaining Term of this Agreement:*

$$\text{P.P.} \quad \times \quad \frac{\$10,000,000 - \text{A.P.}}{\$10,000,000} = \text{Additional PILOT Payment}$$

P.P. = PILOT Payment under **Section 3.2** for Test Date year  
 A.P. = Aggregate payroll for the Jobs during the Test Period ending on the Test Date

(b) The calculations set forth in this **Section 3.3** shall be performed as of each Test Date, with any resulting increase in Additional PILOT Payments as a result of such recalculation to be applicable for the tax year in which such Test Date occurs. In no event shall the sum of the Additional PILOT Payments under paragraph (a) above, together with the PILOT Payment pursuant to **Section 3.2** hereof, exceed 100% of the actual property taxes that would have otherwise been payable on the Project Equipment, but for the City's ownership thereof, for the given year.

**Section 3.4. PILOT Payments if the Company Purchases the Project Equipment.**

(a) If the Company exercises its option to purchase the Project Equipment pursuant to **Section 11.1** of the Lease before the City notifies the Company of the PILOT Payments due under this Agreement, the Company shall make a PILOT Payment to the Collector equal to 100% of the amount that would have been payable to each taxing jurisdiction for the preceding calendar year but for the City's ownership of the Project Equipment. Once the City notifies the Company of the amount due under **Section 3.2** for the calendar year in which the Company purchases the Project Equipment, the Collector will refund the difference between the amount paid and the amount due to the Company.

(b) If the Company exercises its option to purchase the Project Equipment pursuant to **Section 11.1** of the Lease after receiving notification of the PILOT Payment due under this Agreement for the calendar year in which the Company purchases the Project Equipment, the Company shall pay that amount to the Collector (to be applied as provided in **Section 3.2(g)**) prior to closing on the purchase of the Project Equipment.

**Section 3.5. Obligation to Effect Tax Abatement.** The City shall, at the Company's request and at the Company's expense, take all actions, subject only to limitations imposed by applicable law, to obtain and/or maintain in effect the exemption referred to in **Section 3.1** above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of any other governmental taxing authority to recognize the exemption provided herein, and the City shall not be required to file or participate in any litigation to effect the exemption. The City covenants that it will not voluntarily take any action intended to cause or induce the levy or assessment of ad valorem taxes on the Project Equipment. If such a levy or assessment occurs, the City will, at the Company's request and at the Company's expense, cooperate with the Company in all reasonable ways to prevent and/or remove any levy or assessment against the Project Equipment.

**Section 3.6. Other Property Taxes in Connection with the Project Equipment; Credits.** The property tax exemption provided by the City's ownership of the Project Equipment is expected to apply to all interests in the Project Equipment during the period it is owned by the City. If any ad valorem property taxes are levied by or on behalf of any taxing jurisdiction against any interest in the Project Equipment during the period the City owns the Project Equipment (including, without limitation, any ad valorem taxes levied against the Company's rights in the Lease), the amount of the PILOT Payments the Company is obligated to pay pursuant to this Agreement shall be reduced by the amount of ad valorem tax payments paid by the Company and received by the Collector with respect to the Project Equipment. The Company is responsible for any taxes related to any interest in the Project Equipment that the Company owns in its own name or granted to the Company other than pursuant to the Lease.

**Section 3.7. No Abatement on Special Assessments, Licenses or Fees.** The City and the Company agree that the property tax exemptions described in this Agreement shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project Equipment. The Company agrees to make payments

with respect to all special assessments, licenses and fees that would otherwise be due with respect to the Project Equipment if the Project Equipment was not owned by the City.

**Section 3.8. The Company's Right to Protest Taxes.** No provision of this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law or otherwise which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment or classification of the Project Equipment.

**Section 3.9 Additional Personal Property.** The Company may acquire additional personal property on its own accord and such personal property need not be financed with the proceeds of the Bonds and shall not be subject to the terms of this Agreement; provided, however, any such personal property shall be subject to ad valorem taxes.

**Section 3.10. Cessation or Reduction of Operations at the Project Site.** If for any reason (unless the Company's facilities have been subject to a casualty and the Company is rebuilding its facilities and replacing or repairing the Project Equipment) the Company and its Affiliates vacate, abandon and cease operations and fail to occupy a portion of the Project Site during the term of this Agreement, and if the Company does not exercise its option to purchase the Project Equipment within 90 days after such vacancy, abandonment, cessation of operations or failure to occupy, the Company shall make a PILOT Payment to the Collector (to be distributed as provided in **Section 3.2**) equal to 100% of the amounts that would otherwise be payable to each taxing jurisdiction if the Project Equipment were not owned by the City. Such payment shall be made on or before December 31 in the year in which the Company and its Affiliates cease operations and on each December 31 thereafter for each year in which the Project Equipment is, on January 1 of such year, still titled in the name of the City, and the Company and its Affiliates have ceased operations or failed to occupy the Project Site. In addition, should the Company cease operations during the term of the Lease, the Company shall make an additional PILOT Payment to the Collector (to be distributed as provided in **Section 3.2**) on or before December 31 in the year in which the Company ceases operations, in an amount equal to the value of all prior ad valorem property taxes exempted because of the City's ownership of the Project Equipment less (a) the value of all prior PILOT Payments paid by the Company pursuant to **Section 3.2** and (b) the value of all prior Additional PILOT Payments paid by the Company pursuant to **Section 3.3**. Example for illustration purposes: taxes owing in years 1-4 would have been \$100,000 in each year (\$400,000 total); taxes were abated during those years and Company paid \$50,000 per year (\$200,000 total) in PILOT Payments; taxes owing in year 5 would have also been \$100,000; Company ceases operations in year 5. The Company would be required to make or cause to be made a PILOT Payment equal to \$300,000, which equals the value of all prior ad valorem property taxes exempted because of the City's ownership of the Project Equipment during years 1-4 (i.e. \$200,000) and 100% of the amount of ad valorem property taxes that would otherwise be due in year 5 but for the City's ownership of the Project Equipment (i.e. \$100,000).

## ARTICLE IV

### COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

**Section 4.1. Inspection.** The City may conduct such periodic inspections of the Project Equipment as may be generally provided in the City Code. In addition, the Company agrees that the City and its duly authorized agents may at reasonable times (during business hours but without disruption to the business), subject to at least five (5) Business Days' advance written notice and in observance of the Company's usual business proprietary, safety, confidentiality and security requirements, enter upon the

Project Site to examine and inspect the Project Equipment and the records of the Company that demonstrate compliance with this Agreement.

**Section 4.2. Representations and Warranties.**

(a) The Company represents that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is duly authorized to transact business and is in good standing under the laws of the State of Missouri.

(2) The Company has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement, and operate the Project Equipment.

(3) The execution, delivery and performance by the Company of this Agreement has been duly authorized by all necessary action, and does not violate the certificate of organization or limited liability company agreement of the Company, as the same may be amended and supplemented, or to the best of the Company's knowledge, any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Company or any Affiliate is now a party or by which the Company or any Affiliate is now or may become bound.

(4) There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, or to the best of the Company's knowledge, threatened or affecting the Company that would impair its ability to perform under this Agreement.

(5) The Company has obtained (or prior to the applicable time required will obtain) and will maintain all government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to purchase, install and operate the Project Equipment.

(6) To the best of the Company's knowledge, the Project Equipment is and will be in material compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project Equipment, including environmental laws, subject to all applicable rights of the Company to contest the same.

(7) The Project Equipment will be operated by the Company in a manner that is consistent with the description of the Project Equipment herein and in the Lease.

(b) The City represents that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The City is a third-class city duly organized and validly existing under the laws of the State of Missouri.

(2) The execution, delivery and performance by the City of this Agreement has been duly authorized by all necessary City actions.

(3) The City has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement.

(4) To the best of the City's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending and served, or to the best of the City's knowledge, threatened or affecting the City that would impair its ability to enter into or perform its obligations under this Agreement.

**Section 4.3. Survival of Covenants.** All representations of the Company and the City contained in **Section 4.2** hereof will survive the execution and delivery of this Agreement and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of this Agreement. The Company covenants and agrees that the obligations under **Section 4.4** hereof shall survive the cancellation and termination of this Agreement, for any cause, and that the Company shall continue to make the payments required hereunder and perform all other obligations specified herein, all at the time or times provided herein; provided, however, that when all payments required hereunder have been made, the Company's obligations under this Agreement (except for **Section 4.4** hereof) shall thereupon cease and terminate in full.

**Section 4.4. Indemnification of City.** The Company shall indemnify, defend and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or entity arising from the City's ownership, conduct or management of the Project Equipment, or from any work or thing done in, or injury occurred on or about, the Project Equipment during the term of the Lease, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the term of the Lease from any event described in **Section 10.5** of the Lease to the extent and subject to the limitations provided therein.

**Section 4.5. Costs of Issuance of the Bonds; Payment to City.** The Company agrees to pay or provide for the payment of on the issuance date of the Bonds, all costs of issuance incurred in connection therewith as more fully defined in **Section 101** of the Indenture. If this Agreement is terminated before the payment in full of the Bonds or the expiration of the Lease Term or the rights and interests of the Company under this Agreement are assigned pursuant to **Article V** hereof, the Company shall pay any costs of the City in connection therewith, including the City's legal fees and bond counsel fees.

**Section 4.6. Sales Tax Exemptions.** The City agrees to assist the Company in implementing the sales tax exemptions from the State of Missouri pursuant to Section 144.054 of the Revised Statutes of Missouri, as amended.

## ARTICLE V

### SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred, assigned, pledged or in any other manner hypothecated, except as provided in **Section 13.1** of the Lease; but nothing herein shall preclude the Company from (i) mortgaging the leasehold estate as provided in **Section 10.4(b)** of the Lease or (ii) assigning, pledging or subleasing its interest and obligations in the Project Equipment or any

obligation under this Agreement or the other Financing Documents as provided in **Section 10.4** of the Lease.

## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 6.1. Events of Default.** If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

(a) the Company fails to make any PILOT Payment required to be paid hereunder within 10 business days after written notice and demand given by the City to the Company;

(b) the Company fails to perform any of its material obligations hereunder for a period of 30 days (or such longer period as the City and such party or parties may agree in writing) following written notice to the Company from the City of such failure, or if such failure is not subject to cure within such 30 days after such notice, such party or parties fail to initiate action to cure the default within such 30 days after such notice is given and fail to pursue such action diligently;

(c) any representation of any party contained herein proves to be materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City and such party may agree in writing) after the City has given written notice to such party specifying the false or erroneous representation and requiring it to be remedied; provided, that if such matter is not subject to cure within such 30 days after such notice, such party fails to initiate action to cure the default within such 30 days after such notice is given and fails to pursue such action diligently; or

(d) the average wage of all Jobs is less than 90% of the Average County Wage for any Test Period.

**Section 6.2. Remedies on Default.** Any Event of Default referred to in **Section 6.1** hereof shall also constitute an Event of Default under the Lease, affording the City the remedies specified therein.

**Section 6.3. Interest on Late Payments.** Any amounts due hereunder that are not paid when due shall bear interest at the interest rate of 18% per annum from the date such payment was first due.

**Section 6.4. Enforcement.** In addition to the remedies specified in **Section 6.2**, upon the occurrence of an Event of Default, the City or any taxing jurisdictions that would benefit from the PILOT Payments provided for in this Agreement may bring an action for specific performance to enforce such payments. In the event of litigation pertaining to the enforcement of this Agreement, the Company shall pay all costs of litigation, including reasonable attorneys' fees.

## ARTICLE VII

### TERM OF AGREEMENT

**Section 7.1. Term of Agreement.** This Agreement shall become effective upon execution by the parties hereto and shall terminate upon the earliest to occur of the following:

- (a) the payment in full of the Bonds (or any bonds issued to refund the Bonds) and the payment of all amounts due under this Agreement;
- (b) the occurrence and continuance of an Event of Default beyond the cure period and the subsequent termination of this Agreement pursuant to the provisions of the Lease and this Agreement; or
- (c) the expiration of the Lease Term set forth in **Section 3.2** of the Lease.

**Section 7.2. Payments in Last Year.** The foregoing provisions of **Section 7.1** shall not relieve the Company of its obligation to make any PILOT Payment owing during the year in which the Bonds are paid, to the extent the Company receives the ad valorem tax exemption contemplated for that year.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

**Section 8.1. Mutual Assistance.** The City and the Company agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 8.2. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (a) mailed by registered or certified mail, postage prepaid, (b) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, or (c) with respect to assessed valuation information or the amount of PILOT Payments only, sent by facsimile or electronic mail, as follows:

- (a) To the City:

City of Washington, Missouri  
City Hall  
405 Jefferson Street  
Washington, Missouri 63090  
ATTN: City Administrator  
E-mail: [jbriggs@ci.washington.mo.us](mailto:jbriggs@ci.washington.mo.us)

with a copy to:

Lewis Rice LLC  
1200 Jefferson Street  
Washington, Missouri 63090  
ATTN: Mark C. Piontek, Esq.  
E-mail: [mpiontek@lewisrice.com](mailto:mpiontek@lewisrice.com)

(b) To the Company:

Valent Aerostructures, LLC  
c/o LMI Aerospace, Inc.  
6325 Avantha Drive  
Washington, Missouri 63090  
ATTN: Perry Pecaut  
E-mail: [ppecaut@lmiaerospace.com](mailto:ppecaut@lmiaerospace.com)

with a copy to:

Polsinelli PC  
900 West 48th Place, Suite 900  
Kansas City, Missouri 64112  
ATTN: Korb Maxwell, Esq.  
E-mail: [kmaxwell@polsinelli.com](mailto:kmaxwell@polsinelli.com)

**Section 8.3. Severability; Effect of Invalidity.** If for any reason any provision of this Agreement is determined to be invalid or unenforceable, such invalid or unenforceable term will be deemed severed from this Agreement and the validity and enforceability of the other provisions hereof shall not be affected thereby. If this Agreement, or any portion hereof, or any agreements related hereto, are determined to be invalid, the City may not recover or recapture any taxes subject to abatement as provided herein or benefits accruing to the Company prior to such determination if the Company has paid taxes in an amount at least equal to the PILOT Payments due under this Agreement.

**Section 8.4. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 8.5. Execution in Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 8.6. Waiver.** The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease executed in connection with the Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company in any bankruptcy court, and the filing of any such action not discharged within ninety (90) days of its filing shall constitute an Event of Default hereunder.

**Section 8.7. Entire Agreement.** This Agreement, together with the Lease, the Indenture and any other documents entered into of even date herewith in connection with the issuance of the Bonds, constitute the entire agreement of the parties with respect to the subject matter hereof. This Agreement

shall not be modified except by written agreement signed on behalf of the parties hereto by their duly authorized representatives.

**Section 8.8. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 8.9. Employee Verification.** The Company shall comply with and satisfy the requirements of Section 285.530.2 of the Revised Statutes of Missouri, as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavit and documentation to the City on or before November 15 of each year during the term of this Agreement, beginning November 15, 2016.

**Section 8.10. City Consents and Approvals.** Pursuant to the Ordinance, the Mayor is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing and refinancing of the Project Equipment by the Company, and such licenses and similar documents as may be requested by the Company) as may be required to carry out and comply with the intent of the Ordinance, the Indenture and the Lease. The Mayor is also authorized, unless otherwise expressly provided herein to the contrary, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, the Lease or this Performance Agreement, including extensions of the Completion Date, as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or adversely affect the tax exemption as provided for therein, waive an Event of Default, change the amount of PILOT Payments or Additional PILOT Payments due hereunder, or materially change the nature of the transaction unless approved by an ordinance of the City Council.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**CITY OF WASHINGTON, MISSOURI**

By: \_\_\_\_\_  
Sandy Lucy, Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Mary Trentmann, City Clerk

**VALENT AEROSTRUCTURES, LLC**

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

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

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

**JOINDER BY COUNTY ASSESSOR**

The Office of the Franklin County Assessor hereby joins in the foregoing Performance Agreement to the extent required to perform the obligations assigned to it pursuant to **Article III** thereof.

**OFFICE OF THE FRANKLIN COUNTY  
ASSESSOR**

By: \_\_\_\_\_  
Name: Tom Copeland  
Title: County Assessor

**EXHIBIT A**

**CHAPTER 100 ANNUAL COMPLIANCE REPORT**

To be filed on or before January 30 of each year during the term of the Lease

<i>Business Name and Address</i>	<i>MO. Tax I.D. Number</i>
<i>Name, Title, and Contact Information for Certifier</i>	<i>Federal Employer I.D. Number (FEIN)</i>
<i>Aggregate annual payroll for the Jobs during the Test Period</i>	<i>Test Date</i> December 31, 20__
<i>Average County Wage for the calendar year of the Test Date</i>	<i>Average Wage of the Jobs</i>

The undersigned, duly authorized representative of Valent Aerostructures, LLC, hereby states and certifies that the information set forth in this report is true and correct.

<i>Authorized Signature</i>	<i>Date</i>
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For questions, please contact Darren Lamb at (636) 390-1004.

Please send form to:

City of Washington, Missouri  
City Hall  
405 Jefferson Street  
Washington, Missouri 63090  
Attn: Economic Development Director

RESOLUTION NO. \_\_\_\_\_

INTRODUCED BY: \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF FEDERAL ASSISTANCE FROM THE RECREATIONAL TRAILS PROGRAM FOR PHASE II OF THE ROTARY RIVERFRONT TRAIL IN THE CITY OF WASHINGTON, MISSOURI

WHEREAS, the City of Washington, Missouri has applied for federal assistance in the amount of One Hundred Fifty Thousand Dollars (\$150,000) from the Recreational Trails Program for the purpose of Phase II of the Rotary Riverfront Trail;

NOW, THEREFORE, BE IT RESOLVED BY THE City of Washington, Missouri, that

1. Sandy Lucy, Mayor of City of Washington is authorized to sign the Project Agreement for federal assistance and any other official project documents that are necessary to obtain such assistance, including any agreements, contracts or other documents that are required by the State of Missouri or the Federal Highway Administration;
2. The City of Washington currently has the written commitment for the minimum 20% matching share for the project elements that are identified in the Project Agreement and will allocate the necessary funds to complete the project;
3. The City of Washington will commit the necessary financial resources to operate and maintain the completed project in a safe and attractive manner for public access for 25 years;
4. The City of Washington is prepared to complete the project within the time period identified on the signed Project Agreement; and
5. The City of Washington will comply with all rules and regulations of the Recreational Trails Program, applicable Executive Orders and all state laws that govern the Project Agreement during the performance of the project.

This resolution passed ordinance shall be in full force and effect from and after its passage and approval.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the City Council of the City of Washington, Missouri.

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Mayor of Washington, Missouri



October 5, 2016

Mr. Darren Dunkle  
City of Washington  
405 Jefferson  
Washington, MO 63090

Re: 2016-13 Phase II Rotary Riverfront Trail Expansion

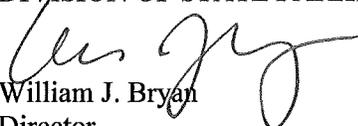
Dear Mr. Dunkle:

On behalf of the Missouri Department of Natural Resources, Division of State Parks, I am writing to congratulate you. Your 2016 Recreational Trails Program (RTP) grant application submitted for the above-referenced project has been reviewed and recommended by the Missouri Trails Advisory Board to the Federal Highway Administration (FHWA) and has been granted provisional approval, pending environmental clearance.

Enclosed are two copies of the Project Agreement. Please sign **both** copies and send one back to our office to the attention of Rebecca Young at 1659 E. Elm St., Jefferson City, MO 65101. Please keep the other copy in your grant file for the indicated timeframe on your agreement. If you specified in your budget table that you would be requesting reimbursement for costs associated with planning, engineering or environmental review, you may begin those processes once the agreement is signed. In addition, please complete the Sub Recipient Informational Form which was provided with your administrative guide binder. This is a federal requirement that all grant recipients must complete. Please return the completed form with your signed project agreement to the above address. As discussed during the grant administration workshop, please also ensure that you have completed the online State of Missouri Vendor Input/ACH-EFT Application (<https://oa.mo.gov/vendors>), if you have not done so already.

We received thirty-five grant applications with a total funding request of over \$3.1 million. Of those, fifteen projects were provisionally approved by the FHWA for grant assistance. It is quite an achievement by your organization to be recommended for funding. Thank you for participating in the Recreational Trails Program. We look forward to the successful completion of your project. If you have any questions or concerns, please feel free to contact the Grants Management Section at (573) 522-8191.

Sincerely,  
DIVISION OF STATE PARKS

  
William J. Bryan  
Director

WJB:ry

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CITY OF

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# WASHINGTON

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MISSOURI

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October 24, 2016

Honorable Mayor and City Council  
City of Washington  
405 Jefferson Street  
Washington, MO 63090

RE: Resolution – Recreation Trails Program Grant

Honorable Mayor and City Council,

I am pleased to report that the City has received notice from the Missouri State Parks, which has announced that our application for the 2016 Recreation Trails Program (RTP) has been reviewed and recommended by the Missouri Trails Advisory Board to the Federal Highway Administration (FHWA) and has been granted provisional approval, pending environmental clearance.

As you are aware, the Parks and Recreation Department recently submitted a grant application in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) for the Recreation Trails Program (RTP) through the Missouri State Parks (A division of the Missouri Department of Natural Resources) for the potential funding for Phase II of the Rotary Riverfront Trail.

RTP grants are federal funds budgeted through the FHWA and administered in Missouri through Missouri State Parks and are open to local and state governments, school districts, non-profit and for-profit organizations. Missouri receives between \$1 and \$1.5 million per fiscal year, with the maximum amount awarded is \$150,000 for trail projects and \$10,000 for educational projects. All applicants must have a minimum 20 percent match, and must be open to the general public for 25 years. In 2016, thirty-five grant applications with a total funding request of over \$3.1 million were submitted, with fifteen projects provisionally approved by the FHWA.

**Accordingly, staff recommends that City Council review and approves the attached Resolution Accepting the Project Agreement for Federal Assistance from the Recreational Trails Program for Phase II of the Rotary Riverfront Trail in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).**

As always, if you have any questions, concerns or would like additional information, please feel free to contact me prior to the City Council Meeting.

Respectfully,



Darren Dunkle, CPRP  
Director of Parks and Recreation

BILL NO. \_\_\_\_\_ INTRODUCED BY COUNCILMAN \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING A BOUNDARY ADJUSTMENT  
IN THE CITY OF WASHINGTON, FRANKLIN COUNTY,  
MISSOURI.

WHEREAS, the plat, attached as "Exhibit A" demonstrating the boundary adjustment in the City of Washington, Missouri has been submitted to the City for approval; and

WHEREAS, said plat meets the requirements of the applicable ordinances of the City of Washington, Missouri; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The boundary adjustment, as shown in the attached "Exhibit A" in the City of Washington, Missouri is hereby approved.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall be in full force and effect from and after its passage and approval.

Passed: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council

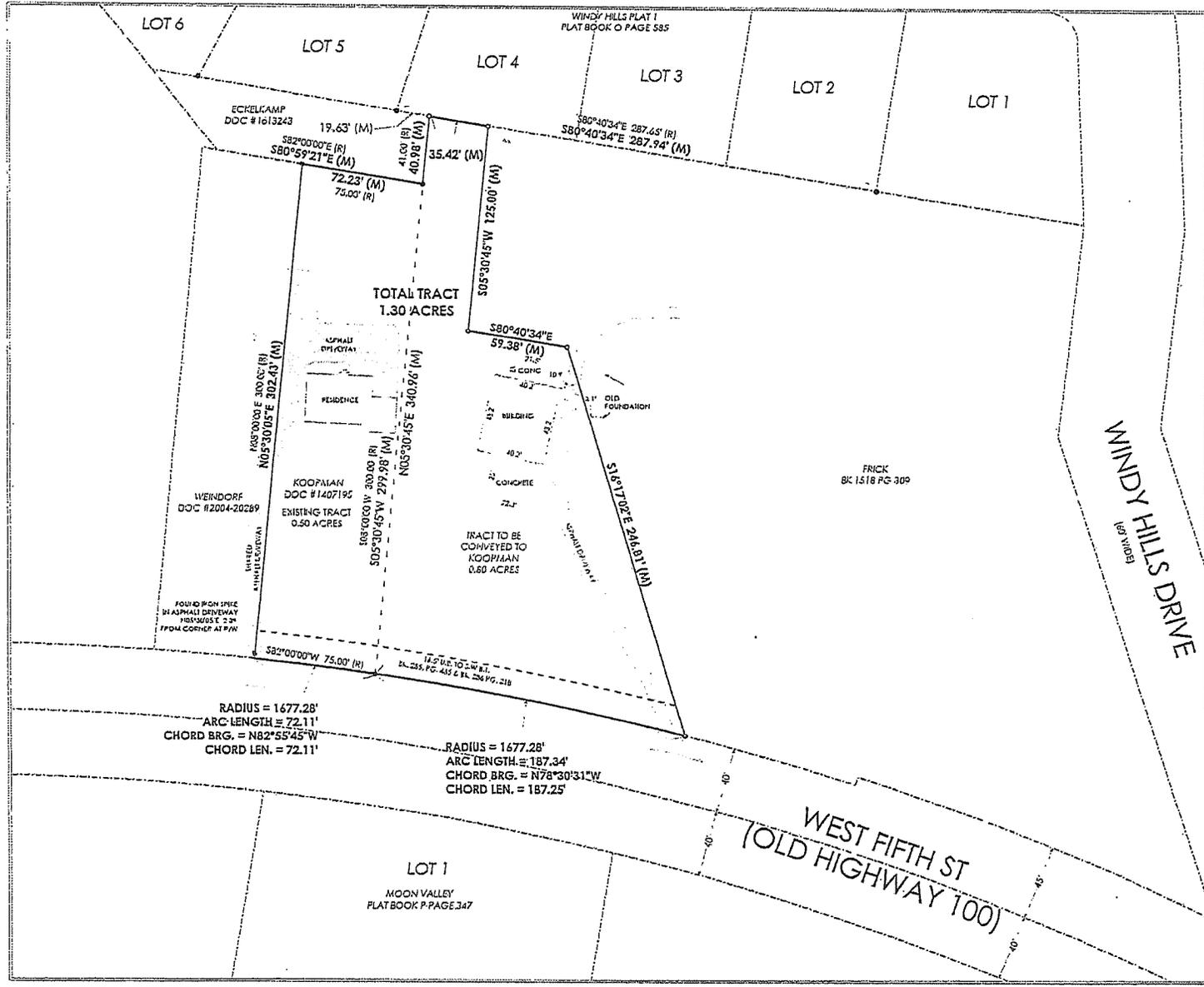
Approved: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of Washington, Missouri

# PLAT OF SURVEY

PART OF THE NW 1/4 OF THE NW 1/4 OF SECTION 21, TOWNSHIP 44 NORTH,  
RANGE 1 WEST OF THE 5TH P.M., IN THE CITY OF WASHINGTON, FRANKLIN COUNTY, MISSOURI



**LEGAL DESCRIPTION OF TRACT TO BE CONVEYED TO KOOPMAN**  
A tract of land being part of the Northwest quarter of the Northwest quarter of section 21, Township 44 North, Range 1 West of the Fifth P.M., in the City of Washington, Franklin County, Missouri, more fully described as follows:  
Commencing at the southwest corner of Lot 4 of Windy Hills Plat 1, a subdivision recorded in the Franklin County Recorder of Deeds office in Plat Book O, Page 585, thence along the south line of said lot, S89°40'34"E 19.63' to an iron rod at the point of beginning of the tract of land herein described, thence continuing along said south line, S89°40'34"E 35.42' to an iron rod, thence leaving said south line, S89°30'45"W 125.00' to an iron rod, thence S89°40'34"E 59.38' to an iron rod, thence S1°17'02"E 246.81' to an iron rod on the north R/W of West Fifth St. (A/K/A Old Highway 100), thence along said R/W on a curve to the left with a radius of 1677.28' for a distance of 187.34' (Chord = N78°30'31"W 187.25') to an iron rod, thence leaving said R/W, N85°30'05"E 340.96' to the point of beginning.  
Containing 0.60 Acres.  
Subject to any and all easements, restrictions, conditions, etc. of record.

**LEGAL DESCRIPTION OF TOTAL TRACT**  
A tract of land being part of the Northwest quarter of the Northwest quarter of section 21, Township 44 North, Range 1 West of the Fifth P.M., in the City of Washington, Franklin County, Missouri, more fully described as follows:  
Commencing at the southwest corner of Lot 4 of Windy Hills Plat 1, a subdivision recorded in the Franklin County Recorder of Deeds office in Plat Book O, Page 585, thence along the south line of said lot, S89°40'34"E 19.63' to an iron rod at the point of beginning of the tract of land herein described, thence continuing along said south line, S89°40'34"E 35.42' to an iron rod, thence leaving said south line, S89°30'45"W 125.00' to an iron rod, thence S89°40'34"E 59.38' to an iron rod, thence S1°17'02"E 246.81' to an iron rod on the north R/W of West Fifth St. (A/K/A Old Highway 100), thence along said R/W on a curve to the left with a radius of 1677.28' for a distance of 187.34' (Chord = N78°30'31"W 187.25') to a point from which an iron spike bears N85°30'05"E 237', thence leaving said R/W, N85°30'05"E 302.43' to an iron rod, thence S89°59'21"E 72.23' to an iron rod, thence N85°30'45"E 40.98' to the point of beginning.  
Containing 1.30 Acres.  
Subject to any and all easements, restrictions, conditions, etc. of record.

FOUR INCH ROD/PIPE  
 3/8" IRON ROD/CAP

NOTES:  
 1. North derived from the bearings of record of Windy Hills Plat 1 as recorded in the Franklin County Recorder of Deeds office in Plat Book O, Page 585.  
 2. Deeds of record for the subject property are Book 1518 Page 309 and Document #1407195 as recorded in the Franklin Co. Recorder's Office.  
 3. Subject to any and all easements, restrictions, conditions, etc. of record.

State of Missouri )  
County of Franklin )

This is to certify to Karen Koopman that we have during the month of October, 2014, executed a survey of a tract of land being Part of the NW 1/4 of the NW 1/4 of Section 21, Township 44 North, Range 1 West of the Fifth P.M., in the City of Washington, Franklin County, Missouri, to the best of my knowledge and belief this plat represents a true and accurate record of said survey and was executed in accordance with the current "Minimum Standards" for Property Boundary Surveys adopted by the Missouri Board of Architects, Professional Engineers and Professional Land Surveyors, witness my original signature and seal this 29th day of October, 2014.

Kurt J. Musser PLS Professional Land Surveyor State of Missouri  
PO Box 343 Washington MO 63070

MUSER AND ASSOCIATES LAND SURVEYING  
KURT MUSER REGISTERED LAND SURVEYOR  
204 OAK ST WASHINGTON MO 63070  
636-237-1247