
CITY OF ARNOLD, CITY COUNCIL, DECEMBER 17, 2015 MEETING

TO: THE MAYOR AND CITY COUNCIL
FROM: MARY P. HOLDEN, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: 2015-25, REZONING A PORTION OF PROPERTY FROM R-4 TO M-2, MCC, 42 TENBROOK INDUSTRIAL COURT, PLANNING COMMISSION RECOMMENDATION
DATE: DECEMBER 9, 2015
CC:

Request

The City of Arnold is initiating this request to rezone a portion of MCC property from R-4 residential to M-2 Industrial at 42 Tenbrook Industrial Court. Attached are two aerials of the site, one indicating the portion in question, and an email from Mr. VonderHaar of ABInBev CapEx Group giving their approval for the City to rezone that portion of property.

Summary and Planning Commission Recommendation

The Planning Commission held a public hearing and considered this request at the December 8, 2015 meeting. Three people spoke against the rezoning at the public hearing voicing their concerns about the construction noise, standing water in detention basin, and the possibility of building on this portion of the property. During the meeting, discussion centered on how two different zone district designations came about on one parcel (discussed in below paragraph); how rezoning this portion of lot will not change the construction taking place nor prevent any potential plans for the future; and the City zoned the one parcel two zone designation without the owners request. After discussion the Commission voted 9-0 to forward a recommendation of approval based on the below findings:

1. The extension of the M-2 Industrial will not be detrimental since this the bulk of the lot is zoned M-2 Industrial with no negative effect on adjacent properties. The rezoning is necessary to create one zone district on a single lot.
2. There has been change to our Codes to warrant the rezoning.
3. At the time, it was not a mistake, however, it is not recommended to have dual zoning on one lot for the purpose of establishing buffers.
4. This zone change reflects the Land Use in the Comprehensive Plan.

5. The rezoning is in the best interest of the City to eliminate confusion for the owner, nearby residents and the City.

Analysis

During research for ratification of the zoning map earlier this year, it came to light a portion of the MCC property is zoned R-4. We thought the line was misplaced since it was originally maintained by hand on mylar. However, further review revealed the 1977 Zoning map (Bill No. 285) showed the portion of property in question was zoned PDA. Then in 1985, (Bill No 803) a new Zoning Map was approved and the PDA zone designation was changed to R-4 residential. We have no record of the owner requesting the dual zoning or precise information on how it came to exist.

Typically what we have seen in the past when a lot is dual zoned by the City was to establish a buffer between residential and non-residential zone districts. While this was common in the past, the practice is not recommended. It creates confusion for all parties involved and is difficult to apply rules to this and adjacent properties. Our Codes have requirements establishing buffers between the different residential and commercial zone districts.

Staff has no concerns with re-zoning this portion of property back to M-2 Industrial.

When considering a request for rezoning, the below criteria must be taken into consideration:

The extension of an existing boundary where said change will not be detrimental and where it is shown that such change is necessary for public convenience or necessity. The extension of the M-2 Industrial will not be detrimental since this the bulk of the lot is zoned M-2 Industrial with no negative effect on adjacent properties. The rezoning is necessary to create one zone district on a single lot.

There has been significant change in the area to warrant a change in zoning classification. There has been change to our Codes to warrant the rezoning.

It is shown that a mistake was made in the original zoning map. At the time, it was not a mistake, however, it is not recommended to have dual zoning on one lot for the purpose of establishing buffers.

A change that would make the zoning classification reflect the proposed use in the Land Use Plan of the City of Arnold. This zone change reflects the Land Use in the Comprehensive Plan.

Other changes where it is shown to be in the best interest for the health, safety, and welfare of the citizens of the City of Arnold. The rezoning is in the best interest of the City to eliminate confusion for the owner, nearby residents and the City.

In addition to the above criteria, we look to our Comprehensive Plan for additional guidance (attached) and the example decision-making factors. Please review them.

AN ORDINANCE APPROVING A REZONING OF THE WESTERN PORTION OF LOT 1, TENBROOK INDUSTRIAL PARK AND LOT 5, TENBROOK INDUSTRIAL PARK 2, 42 TENBROOK INDUSTRIAL COURT AND FURTHER IDENTIFIED ON EXHIBIT A, CITY OF ARNOLD, JEFFERSON COUNTY, MISSOURI FROM R-4 TO M-2

WHEREAS, an application to rezone the western portion Of Lot 1, Tenbrook Industrial Park and Lot 5, Tenbrook Industrial Park 2, 42 Tenbrook Industrial Court and further identified on Exhibit A, City Of Arnold, Jefferson County, Missouri from R-4 to M-2; and

WHEREAS, the proper public hearings have been held, pursuant to City Ordinance and the laws of the State of Missouri, and

WHEREAS, the Planning Commission has submitted its report and recommendation of approval to the City Council on the proposed rezoning of the western portion Of Lot 1, Tenbrook Industrial Park and Lot 5, Tenbrook Industrial Park 2, 42 Tenbrook Industrial Court and further identified on Exhibit A, City Of Arnold, Jefferson County, Missouri from R-4 to M-2; and

WHEREAS, the Council finds the proposed rezoning will not be detrimental since this the bulk of the lot is zoned M-2 Industrial with no negative effect on adjacent properties; the rezoning is necessary to create one zone district on a single lot; there has been change to our Codes to warrant the rezoning; at the time, it was not a mistake, however, it is not recommended to have dual zoning on one lot for the purpose of establishing buffers; this zone change reflects the Land Use in the Comprehensive Plan; and the rezoning is in the best interest of the City to eliminate confusion for the owner, nearby residents and the City.

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

Section 1. The property identified as Lot 1, Tenbrook Industrial Park and Lot 5, Tenbrook Industrial Park 2, 42 Tenbrook Industrial Court and further identified on Exhibit A, City Of Arnold, Jefferson County, Missouri shall be rezoned from R-4 to M-2.

Section 2: This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and City Council.

(SIGNATURES ON FOLLOWING PAGE)

READ TWO TIMES, PASSED AND APPROVED THIS ____ DAY OF DECEMBER 2015.

Presiding Officer of the City Council

Mayor Ron Counts

ATTEST:

City Clerk Tammi Casey

1st reading: _____
2nd reading: _____

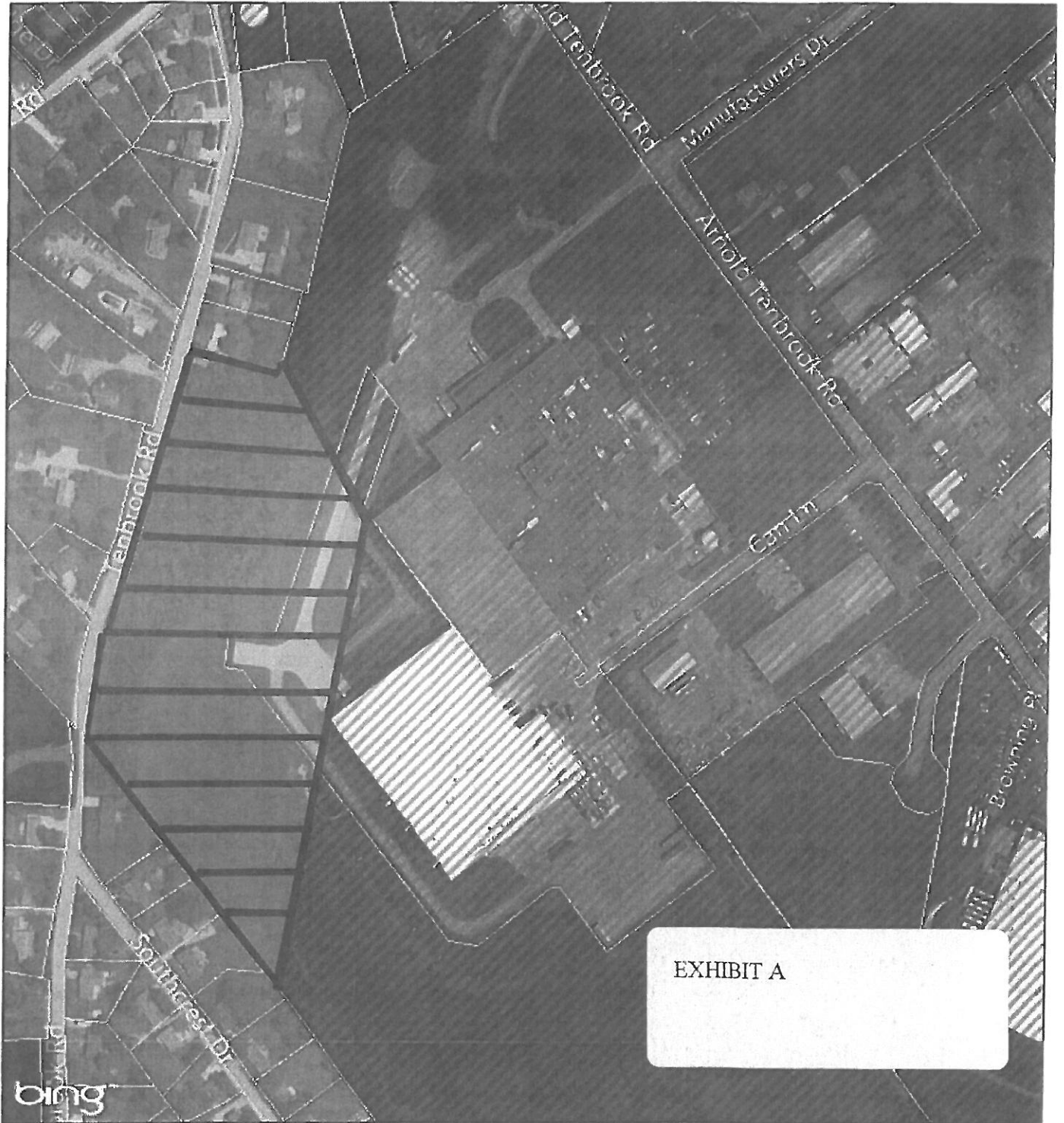
APPROVED AS TO FORM:

City Attorney Robert Sweeney

December 9, 2015

H:\CITYDOCS\ORDINANC\mccrezoning

City of Arnold MO Property and Zoning Records Viewer



November 17, 2015

Jefferson County Parcels

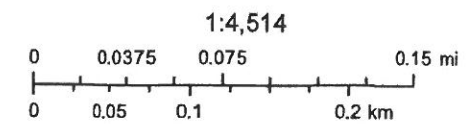


Image courtesy of USGS © 2015 Microsoft Corporation © 2010 NAVTEQ ©
AND
City of Arnold Community Development
City of Arnold Missouri, Jefferson County Missouri

City of Arnold MO, Website User
City of Arnold Missouri

2015-25

Mary Holden

From: VonderHaar, Ken [ken.vonderhaar@anheuser-busch.com]
Sent: Tuesday, October 27, 2015 9:32 AM
To: Mary Holden
Cc: Fry, Tad; Torlina, Don; Rogers, Cheryl; Ribeiro, Marcelo; Fisher, Kevin; Taylor, David
Subject: RE: MCC zoning

Mary,

Metal Container Corporation located at 42 Tenbrook Industrial Court in Arnold, MO would like the City of Arnold to initiate rezoning a portion of MCC's western property from zone R-4 Residential to M-2 Industrial for that portion of property. Please inform us of the status of this effort as it progresses.

I can be reached at 314-486-1197 if you have any questions.

Thank you,

Ken VonderHaar
ABInBev CapEx Group
Project Manager

From: Mary Holden [mailto:mholden@arnoldmo.org]
Sent: Tuesday, October 13, 2015 9:13 AM
To: VonderHaar, Ken
Subject: MCC zoning

Good Morning Ken,

As we discussed yesterday on the telephone, a portion of MCC's western property, located at 42 Tenbrook Industrial Court in Arnold, MO was zoned R-4 Residential at some point in the past. The City is initiating a rezoning for M-2 Industrial of that portion of property. All we ask of MCC/AB-In Bev is a letter or email providing approval of the City initiated rezoning.

Thank you and please call with any questions.

Respectfully,

Mary P. Holden
Director of Community Development
City of Arnold
2101 Jeffco Blvd.
Arnold, MO 63010
636-282-2378
mholden@arnoldmo.org



Please consider the environment before printing this email.

Anheuser-Busch InBev Email Disclaimer www.ab-inbev.com



540 270 0 540 Feet

Legend

Arnold_Parcels

AN ORDINANCE AUTHORIZING THE APPROPRIATION OF FUNDS FOR THE PURPOSE OF DEFEASING THE OUTSTANDING LEASEHOLD REVENUE BONDS (POMME CREEK GOLF COURSE), SERIES 2007, OF THE ARNOLD, MISSOURI, PUBLIC FACILITIES CORPORATION, AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH THE DEFEASANCE OF SAID BONDS.

WHEREAS, the City of Arnold, Missouri (the "City"), is a third-class city and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

WHEREAS, the Arnold, Missouri, Public Facilities Corporation (the "Corporation") is a nonprofit corporation duly organized and existing under the Missouri Nonprofit Corporation Act, Chapter 355 of the Revised Statutes of Missouri, as amended, for the purpose of benefiting and carrying out the purposes of the City, by providing for the acquisition, construction, reconstruction, improvement, extension, widening, repair, remodeling, renovation and financing of public sites, buildings, facilities, streets, roads, bridges, culverts, furnishings and equipment for the use of the City for City purposes; and

WHEREAS, the City has heretofore authorized the Corporation to issue, and the Corporation has outstanding, among others, the following series of leasehold revenue bonds (the "Series 2007 Bonds"):

<u>Series Designation</u>	<u>Date of Bonds</u>	<u>Original Principal Amount</u>	<u>Principal Amount Outstanding</u>
Series 2007	March 1, 2007	\$4,290,000	\$3,680,000

and the City desires to defease all of the outstanding Series 2007 Bonds scheduled to mature on December 1, 2016 and thereafter (the "Defeased Bonds") and to call for redemption prior to maturity on December 1, 2017 those Defeased Bonds maturing on December 1, 2018 and thereafter (the "Redeemed Bonds");

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

Section 1. Authorization of Escrow Agreement. The City is hereby authorized to enter into an Escrow Trust Agreement (the "Escrow Agreement") between the City and UMB Bank, N.A., as escrow agent (the "Escrow Agent") in substantially the form attached hereto as **Exhibit A**. The Mayor and City Clerk are hereby authorized and directed to execute the Escrow Agreement with such changes therein as such officials may deem appropriate, for and on behalf of and as the act and deed of the City. The Escrow Agent is hereby authorized to carry out, on behalf of the City, the duties, terms and provisions of the Escrow Agreement. The Escrow Agent, the Finance Director, the City Administrator, Stifel, Nicolaus & Company, Incorporated, as structuring agent to the City, and Gilmore & Bell, P.C., as bond counsel, are authorized to take all necessary actions for the purchase of the Escrowed Securities described therein, including the subscription for United States Treasury Securities – State and Local Government Series, if available.

Section 2. Redemption of Redeemed Bonds. The Redeemed Bonds are hereby called for redemption and payment prior to maturity on December 1, 2017, at the redemption price of 100% of the

principal amount thereof, plus accrued interest thereon to the redemption date. The officers and employees of the City are hereby directed to cause notice of the call for redemption and payment of the Redeemed Bonds to be given in the manner provided in the Trust Indenture dated as of February 1, 2007, between the Corporation and UMB Bank, N.A., as trustee, pursuant to which the Series 2007 Bonds were issued, and to take such other action as may be necessary to effect the redemption and payment of the Redeemed Bonds.

Section 3. Appropriation of Money. The City Council of the City hereby irrevocably budgets and appropriates money in an amount not to exceed \$3,650,000 to pay legal, financial and other costs of the transaction, with the balance to be transferred and deposited with the Escrow Agent for credit to the Escrow Fund (as defined in the Escrow Agreement), and to be used, together with the debt service reserve fund for the Series 2007 Bonds, to defease the Defeased Bonds.

Section 4. Further Authority. The officers, agents and employees of the City, including the Mayor and the City Clerk, are authorized and directed to execute all documents and take such actions, including, but not limited to, the execution of termination documents relating to the defeasance of the Defeased Bonds, as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance, and to carry out, comply with and perform the duties of the City, to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 6. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 7. Effective Date. This Ordinance shall take effect and be in full force from and after the date of its passage and approval.

PASSED by the City Council and **APPROVED** by the Mayor of the City of Arnold, Missouri this 17th day of December, 2015.

SIGNATURES ON FOLLOWING PAGE.

Presiding Officer of the Council

Mayor Ron Counts

(SEAL)

ATTEST:

City Clerk Tammi Casey

1ST Reading
2nd Reading

APPROVED AS TO FORM:

City Attorney Robert Sweeney

Z:\CITYDOCS\ORDINANC\2629 - Ordinance1 (Defeasance of Series 2007 Rev Bonds).docx

ESCROW TRUST AGREEMENT

Dated as of December 1, 2015

Between the

CITY OF ARNOLD, MISSOURI

and

UMB BANK, N.A.

**Entered in Connection with the Defeasance of
\$3,680,000
Leasehold Revenue Bonds (Pomme Creek Golf Course), Series 2007
of the Arnold, Missouri, Public Facilities Corporation**

ESCROW TRUST AGREEMENT

THIS ESCROW TRUST AGREEMENT dated as of December 1, 2015 (the “Agreement”), between the **CITY OF ARNOLD, MISSOURI** (the “City”), and **UMB BANK, N.A.**, a national banking association with a corporate trust office located in St. Louis, Missouri, and having full trust powers, as escrow agent (the “Escrow Agent”).

RECITALS:

1. The City has previously authorized the Arnold, Missouri, Public Facilities Corporation (the “Corporation”) to issue, and the Corporation has outstanding, among others, a series of leasehold revenue bonds designated as Leasehold Revenue Bonds (Pomme Creek Golf Course), Series 2007, dated March 1, 2007 (the “Series 2007 Bonds”).

2. The City desires to defease all of the \$3,680,000 outstanding principal amount of the Series 2007 Bonds scheduled to mature on December 1, 2016 and thereafter (the “Defeased Bonds”) and to redeem the Defeased Bonds maturing on December 1, 2018 and thereafter.

3. The Defeased Bonds will mature (or will be subject to redemption prior to maturity) and will have interest payable in the amounts and at the times shown on **Schedule 1** attached hereto.

4. The City intends to provide for the payment of the principal of and interest on the Defeased Bonds through the purchase of non-callable United States Treasury Obligations described in **Schedule 2** attached hereto.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth below, the parties to this Agreement agree as follows:

Section 1. Definitions. In addition to the capitalized words defined in this Agreement, the following capitalized words and terms used herein have the following meanings:

“**Agreement**” means this Escrow Trust Agreement.

“**Bond Counsel**” means Gilmore & Bell, P.C., or other firm of attorneys nationally recognized on the subject of municipal bonds.

“**Bond Payment Date**” means any date on which the principal of or interest on any of the Defeased Bonds is due and payable, including the Redemption Date.

“**City**” means the City of Arnold, Missouri.

“**Corporation**” means the Arnold, Missouri, Public Facilities Corporation.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Escrow Agent**” means UMB Bank, N.A. and its successor or successors at the time acting as Escrow Agent under this Agreement.

“**Escrow Fund**” means the fund by that name referred to in **Section 3** of this Agreement.

“Escrowed Securities” means the securities listed on **Schedule 2** attached hereto and any Substitute Escrowed Securities.

“Paying Agent” means the paying agent for the Defeased Bonds as designated in the Series 2007 Indenture, and any successor at the time acting as paying agent for the Defeased Bonds.

“Redemption Date” means December 1, 2017.

“Series 2007 Indenture” means the trust indenture between the Corporation and UMB Bank, N.A., as trustee, dated as of February 1, 2007, under which the Series 2007 Bonds were issued.

“Substitute Escrowed Securities” means non-callable direct obligations of the United States of America which have been acquired by the Escrow Agent and substituted for Escrowed Securities in accordance with **Section 8** of this Agreement.

Section 2. Receipt of Documents. The Escrow Agent hereby acknowledges receipt of a true and correct copy of the Series 2007 Indenture, and reference herein to or citation herein of any provisions of said document is deemed to incorporate the same as a part of this Agreement in the same manner and with the same effect as if it were fully set forth herein.

Section 3. Creation of Escrow Fund. There is hereby created and established with the Escrow Agent the following special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the “Escrow Fund for the Arnold, Missouri, Public Facilities Corporation, Leasehold Revenue Bonds (Pomme Creek Golf Course), Series 2007 (2015 Defeasance)” (the “Escrow Fund”).

Section 4. Verification of Certified Public Accountants. Robert Thomas CPA, LLC, Shawnee Mission, Kansas, certified public accountants, has verified the mathematical computations performed by Stifel, Nicolaus & Company, Incorporated, as structuring agent to the City, which demonstrate that the cash held in the Escrow Fund, together with the maturing Escrowed Securities and interest to accrue thereon, will be sufficient to pay the principal of and interest on the Defeased Bonds on the respective Bond Payment Dates, a copy of which verification report has been delivered to the City and the Escrow Agent concurrently with the execution and delivery of this Agreement.

Section 5. Deposits to the Escrow Fund.

(a) The City herewith deposits with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of \$3,931,831.28 (consisting of \$3,605,862.28 from the City’s available funds and \$325,969.00 from the debt service reserve fund for the Series 2007 Bonds). The Escrow Agent shall apply such amount as follows:

(1) \$3,931,831.00 shall be used to purchase the Escrowed Securities described in **Schedule 2** hereto, which shall be delivered to and deposited in the Escrow Fund; and

(2) \$0.28 shall be held uninvested in the Escrow Fund as a beginning balance.

(b) If the Escrowed Securities consist of United States Treasury Securities - State and Local Government Series, the City certifies that any such Escrowed Securities will be purchased solely from moneys transferred to the Escrow Agent from the debt service funds maintained by the City for the Defeased Bonds and not from any amounts received from either (i) the sale or redemption before maturity of any marketable security, or (ii) the redemption before maturity of any time deposit Escrowed Securities

(other than a zero-interest Escrowed Securities). The City understands that, if it fails to settle on the subscription for such Escrowed Securities or makes an untimely or unauthorized change to subscription, the Bureau of Public Debt may bar the City from subscribing for Escrowed Securities for six months beginning on the earlier of (i) the date the subscription is withdrawn, or (ii) the proposed issue date for the Escrowed Securities.

Section 6. Creation of Lien. The escrow created hereby is irrevocable. The holders of the Defeased Bonds are hereby given an express lien on and security interest in the Escrowed Securities and the cash in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement. The matured principal of and earnings on the Escrowed Securities and any cash in the Escrow Fund are hereby pledged and assigned and must be applied solely for the payment of the principal of and interest on the Defeased Bonds.

Section 7. Application of Cash and Escrowed Securities in the Escrow Fund.

(a) Except as otherwise expressly provided in this Section or in **Section 8** of this Agreement, the Escrow Agent will have no power or duty to invest any money held hereunder or to sell, transfer or otherwise dispose of any Escrowed Securities.

(b) On or prior to each Bond Payment Date, the Escrow Agent shall withdraw from the Escrow Fund an amount equal to the principal of, redemption premium, if any, and interest on the Defeased Bonds becoming due and payable on such Bond Payment Date, as set forth in **Schedule 1** attached hereto, and shall forward such amount to the office of the Paying Agent, so that immediately available funds will reach the office of the Paying Agent on or before 12:00 Noon, Central Time, on such Bond Payment Date. In order to make the payments required by this subsection (b), the Escrow Agent is hereby authorized to redeem or otherwise dispose of Escrowed Securities in accordance with the maturity schedules in **Schedule 2** attached hereto. The liability of the Escrow Agent to make the payments required by this subsection (b) shall be limited to the cash and Escrowed Securities in the Escrow Fund.

(c) Upon the payment in full of the principal of and interest on the Defeased Bonds, all remaining money and Escrowed Securities in the Escrow Fund, together with any interest thereon, shall be transferred to the City.

(d) Cash held from time to time in the Escrow Fund will be held uninvested and must be fully collateralized by noncallable direct obligations of the United States of America maturing on or before the next Bond Payment Date that such cash will be needed.

Section 8. Substitute Escrowed Securities.

(a) If any of the Escrowed Securities are not available for delivery on the date of this Agreement, the Escrow Agent is directed to accept substitute securities in lieu thereof, provided:

(1) the substitute securities are non-callable direct obligations of the United States of America;

(2) the maturing principal of and interest on such substitute securities is equal to or greater than the maturity value of such unavailable Escrowed Securities;

(3) principal of and interest on the substitute securities is payable on or before the maturity date of the unavailable Escrowed Securities; and

(4) the City and Bond Counsel approve such substitution.

If the original Escrowed Securities become available and are tendered to the Escrow Agent, the Escrow Agent shall accept such Escrowed Securities, shall return the substitute securities as directed by the tendering party in writing and shall notify Bond Counsel and the City of the transaction.

(b) At the written request of the City and upon compliance with the conditions hereinafter stated, the Escrow Agent will have the power to sell, transfer, request the redemption of or otherwise dispose of the Escrowed Securities and to substitute for the Escrowed Securities solely cash or Substitute Escrowed Securities. The Escrow Agent shall purchase such Substitute Escrowed Securities with the proceeds derived from the sale, transfer, disposition or redemption of the Escrowed Securities together with any other funds available for such purpose. The substitution may be effected only if:

(1) the substitution of the Substitute Escrowed Securities for the original Escrowed Securities occurs simultaneously;

(2) the Escrow Agent receives from an independent certified public accountant acceptable to the Escrow Agent in its reasonable judgment a certification, satisfactory in form and substance to the Escrow Agent, to the effect that after such substitution:

(A) the principal of and interest on the Escrowed Securities to be held in the Escrow Fund after giving effect to the substitution (including Substitute Escrowed Securities to be acquired), together with any other money to be held in the Escrow Fund after such transaction, will be sufficient to pay all remaining principal of and interest on the Defeased Bonds as set forth on **Schedule 1** hereto; and

(B) the amounts and dates of the anticipated transfers from the Escrow Fund to the Paying Agent for the Defeased Bonds will not be diminished or postponed thereby; and

(3) the Escrow Agent receives an opinion of Bond Counsel to the effect that such substitution is permitted under this Agreement and will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation under then existing law.

(c) If any substitution permitted in paragraph (b) above results in cash held in the Escrow Fund in excess of the amount required to fully pay the Defeased Bonds, as certified in subparagraph (b)(2) above, the Escrow Agent shall, at the request of the City, withdraw such excess from the Escrow Fund and pay such excess to the City for deposit in the City's Debt Service Fund, to be applied as provided by law; provided that, in the opinion of Bond Counsel, such withdrawal and application will not be contrary to Missouri law and will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation under then existing law.

Section 9. Redemption of Defeased Bonds.

(a) Pursuant to the Series 2007 Indenture, the City has elected to call the Defeased Bonds maturing on December 1, 2018 and thereafter for redemption and payment prior to maturity on the Redemption Date. In accordance with the provisions of the Series 2007 Indenture, the City has provided the Paying Agent with irrevocable instructions to provide notice of redemption of the Defeased Bonds maturing on December 1, 2018 and thereafter as required by the Series 2007 Indenture.

(b) The City hereby directs the Escrow Agent to direct the Paying Agent in writing, not more than 90 days prior to the Redemption Date, to give additional notice of redemption of the Redeemed Bonds as provided in the Series 2007 Indenture, said additional notice to be given not more than 60 days nor less than 30 days prior to the Redemption Date, it being understood, however, that said additional notice is for convenience in facilitating said redemption and failure to give any such notice shall not affect the validity of the call for redemption of the Redeemed Bonds. The City hereby directs the Escrow Agent to take such further action as may be necessary under the Series 2007 Indenture to redeem the Redeemed Bonds in the principal amounts and at the times set forth in **Schedule 1** hereof.

Section 10. Reports of the Escrow Agent. As long as any of the Defeased Bonds, together with the interest thereon, have not been paid in full, the Escrow Agent shall, at least 60 days prior to each Bond Payment Date or the Redemption Date, determine the amount of money which will be available in the Escrow Fund to pay the principal of, redemption premium, if any, and interest on the Defeased Bonds on the next Bond Payment Date and certify in writing to the City (1) the amount so determined, and (2) a list of the money and Escrowed Securities held by it in the Escrow Fund on the date of such certification, including all money held by it which were received as interest or profit from Escrowed Securities.

Section 11. Liability of Escrow Agent.

(a) The Escrow Agent will not be liable for any loss resulting from any investment, sale, transfer or other disposition made in compliance with the provisions of this Agreement. The Escrow Agent will have no lien whatsoever on any of the money or Escrowed Securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent will not be liable for the accuracy of the calculations as to the sufficiency of the Escrowed Securities and money to pay the Defeased Bonds. So long as the Escrow Agent applies the Escrowed Securities and money as provided herein, the Escrow Agent will not be liable for any deficiencies in the amounts necessary to pay the Defeased Bonds caused by such calculations. Notwithstanding the foregoing, the Escrow Agent will not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Agreement.

(c) If the Escrow Agent fails to account for any of the Escrowed Securities or money received by it, said Escrowed Securities or money will be and remain the property of the City in trust for the holders of the Defeased Bonds, and, if for any reason such Escrowed Securities or money are not applied as herein provided, the assets of the Escrow Agent will be impressed with a trust for the amount thereof until the required application is made.

(d) The Escrow Agent shall not be responsible for any action or failure to take action on the part of the Paying Agent.

(e) The Escrow Agent may rely and shall be protected in acting upon or refraining from acting upon in good faith any ordinance, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, verification, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(f) The Escrow Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement.

(g) No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except

that the Escrow Agent shall not be liable for any error of judgment made in good faith by an authorized officer, employee or agent of the Escrow Agent, unless it shall be proved that the Escrow Agent was negligent in ascertaining the pertinent facts.

(h) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Escrow Agent shall be subject to the provisions of this section.

Section 12. Fees and Costs of the Escrow Agent.

(a) The aggregate amount of the costs, fees and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms or provisions of this Agreement is a one time acceptance fee in the amount of \$500 and an annual fee of \$500 per year, which amounts shall be paid by the City upon receipt of an invoice from the Escrow Agent.

(b) Notwithstanding the preceding paragraph, the Escrow Agent will be entitled to reimbursement from the City of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Agreement. Claims for such reimbursement may be made to the City and in no event will such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement.

Section 13. Resignation or Removal of Escrow Agent; Successor Escrow Agent.

(a) The Escrow Agent may at any time resign and be discharged from its duties and responsibilities under this Agreement by giving written notice, by registered or certified mail, to the City, Paying Agent and all of the owners of record of the Defeased Bonds at least 60 days before the date when the resignation is to take effect. Such resignation will take effect immediately upon:

- (1) the acceptance of the City of the resignation;
- (2) the appointment of a successor Escrow Agent (which may be a temporary Escrow Agent) by the City;
- (3) the successor Escrow Agent's acceptance of the terms, covenants and conditions of this Agreement;
- (4) the transfer of the Escrow Fund, including the money and Escrowed Securities held therein, to the successor Escrow Agent; and
- (5) the completion of any other actions required for the principal of and interest of the Escrowed Securities to be made payable to such successor Escrow Agent instead of the resigning Escrow Agent.

(b) The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and the City and signed by the owners of a majority in principal amount of the Defeased Bonds then outstanding. The Escrow Agent may also be removed by the City if the Escrow Agent fails to make timely payment on any Bond Payment Date to the Paying Agent of the amounts required to be paid by it on such Bond Payment Date by **Section 7(b)** of this Agreement. Any removal pursuant to this paragraph will become effective upon:

(1) the City sending, by registered or certified mail, on or before the date of such removal, written notice to the Paying Agent and all registered owners of the Defeased Bonds;

(2) the appointment by the City of a successor Escrow Agent (which may be a temporary successor Escrow Agent);

(3) the acceptance of such successor Escrow Agent of the terms, covenants and conditions of this Agreement;

(4) the transfer of the Escrow Fund, including the money and Escrowed Securities held therein, to such successor Escrow Agent; and

(5) the completion of any other actions required for the principal of and interest on the Escrowed Securities to be made payable to such successor Escrow Agent instead of the Escrow Agent being removed.

(c) If the Escrow Agent resigns or is removed, dissolved, or in the course of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or if the Escrow Agent is taken under the control of any public officer or officers, or of a receiver appointed by a court, the City shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent is appointed by the City in the manner above provided, and any such temporary Escrow Agent so appointed by the City will immediately and without further act be superseded by the successor Escrow Agent so appointed.

(d) If no appointment of a successor Escrow Agent or a temporary successor Escrow Agent has been made pursuant to the foregoing provisions of this Section within 60 days after the Escrow Agent has given written notice of its resignation to the City, the holder of any of the Defeased Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it deems proper, appoint a successor Escrow Agent.

(e) Any successor Escrow Agent must be a bank or trust company with trust powers authorized to do business in the State of Missouri and organized under the banking laws of the United States or the State of Missouri and have at the time of appointment capital and surplus of not less than \$25,000,000.

(f) Every successor Escrow Agent appointed under this Agreement shall execute, acknowledge and deliver to its predecessor and to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor Escrow Agent without any further act, deed or conveyance will become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the City, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall deliver all securities and money held by it in the Escrow Fund to its successor. Should any transfer, assignment or instrument in writing from the City be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing will, on request, be executed, acknowledged and delivered by the City.

(g) Any bank or trust company into which the Escrow Agent, or any successor to it of the duties and responsibilities created by this Agreement, may be merged or converted or with which it or any

successor to it may be consolidated, or any bank or trust company resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it may be a party, will, unless the City objects, be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of the parties hereto. If the City files with the Escrow Agent a written objection to such succession within 30 days of notice to the City of the merger, conversion, consolidation or reorganization, then the Escrow Agent will be treated as though it has resigned under the terms of paragraph (a) of this Section.

Section 14. Limitation on Liability of the City. The City will not be liable (1) for any loss resulting from any investment made pursuant to this Agreement, (2) for the accuracy of the calculations as to the sufficiency of the Escrowed Securities and money in the Escrow Fund to pay the principal of and interest on the Defeased Bonds, or (3) for any acts of the Escrow Agent.

Section 15. Amendments to this Agreement.

(a) This Agreement is made for the benefit of the City and the registered owners from time to time of the Defeased Bonds, and it may not be repealed, revoked, altered or amended without the written consent of the registered owners of all of the Defeased Bonds, the Escrow Agent and the City. But the City and the Escrow Agent may, without the consent of or notice to such owners, enter into agreements supplemental to this Agreement if such supplemental agreements do not adversely affect the rights of such owners and are not inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (1) to cure any ambiguity or formal defect or omission in this Agreement;
- (2) to grant to, or confer upon, the Escrow Agent for the benefit of the owners of the Defeased Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such owners or the Escrow Agent; and
- (3) to subject to this Agreement additional funds, securities or properties.

(b) The Escrow Agent is entitled to rely exclusively upon an unqualified opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the owners of the Defeased Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

Section 16. Termination. This Agreement terminates when all transfers required to be made by the Escrow Agent under the provisions of this Agreement have been made.

Section 17. Notices. Except as otherwise provided herein, it is sufficient service of any notice, request, complaint, demand or other paper required by this Agreement to be given to or filed with the following parties if the same is duly mailed by first class, certified or registered mail addressed:

- (1) To the City at:
Arnold City Hall
2101 Jeffco Boulevard
Arnold, Missouri 63010
Attention: City Administrator

(2) To the Escrow Agent at: UMB Bank, N.A.
2 South Broadway, Suite, Suite 600
St. Louis, Missouri 63102
Attention: Corporate Trust Department

Section 18. Indemnification.

(a) Except as provided in **Section 14** of this Agreement, and only to the extent permitted by law, the City hereby assumes liability for and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and hold harmless the Escrow Agent and its respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Agent (whether or not also indemnified against the same by the City or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Escrow Fund established hereunder, the acceptance of the cash and securities deposited therein, the purchase of the Escrowed Securities, the retention of the Escrowed Securities or the proceeds thereof and any payment, transfer or other application of cash or securities by the Escrow Agent in accordance with the provisions of this Agreement; provided however, that the City shall not be required to indemnify the Escrow Agent against its own negligence or willful misconduct. In no event shall the City be liable to any person by reason of the transactions contemplated hereby other than to the Escrow Agent as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Agreement.

(b) Except as provided in **Section 11** of this Agreement, the Escrow Agent and its respective successors, assigns, agents, directors, officers, employees and servants shall not be held to any personal liability whatsoever, in tort, contract or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Escrow Fund, the acceptance of the money deposited therein, the purchase of the Escrowed Securities, the retention of the Escrowed Securities or the proceeds thereof or any payment, transfer or other application of the money or Escrowed Securities held by the Escrow Agent in accordance with the provisions of this Agreement or by reason of any non-negligent act, omission or error of the Escrow Agent made in good faith in the conduct of its duties. The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel who may or may not be counsel to the City and in reliance upon the opinions of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City.

Section 19. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Agent is determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement is required to be construed to be severable from the remaining covenants and agreements hereunder and will in no way affect the validity of the remaining provisions of this Agreement.

Section 20. Successors and Assigns. All of the covenants, promises and agreements in this Agreement contained by or on behalf of the City or the Escrow Agent are binding upon and inure to the benefit of their respective successors and assigns whether so expressed or not.

Section 21. Electronic Transaction. The transaction described herein may be conducted and related documents may be sent, received or 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 22. Governing Law. This Agreement is governed by the applicable law of the State of Missouri.

Section 23. Counterparts. This Agreement may be executed in several counterparts, all or any of which are regarded for all purposes as one original and constitute the same instrument.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers or elected officials and their corporate seals to be hereunder affixed and attested as of the date first above written.

CITY OF ARNOLD, MISSOURI

By: _____
Title: Mayor

(Seal)

ATTEST:

By: _____
Title: City Clerk

UMB BANK, N.A., as Escrow Agent

By: _____
Title: Vice President

**SCHEDULE 1
TO ESCROW TRUST AGREEMENT**

BOND PAYMENT SCHEDULE FOR THE DEFEASED BONDS

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
6/1/2016	-	\$78,600.00	\$ 78,600.00
12/1/2016	\$ 165,000.00	78,600.00	243,600.00
6/1/2017	-	75,300.00	75,300.00
12/1/2017	3,515,000.00*	75,300.00	3,590,300.00

* Consists of \$175,000 due on 12/1/2017 and \$3,340,000 principal amount being redeemed on 12/1/2017.

SCHEDULE 2
TO ESCROW TRUST AGREEMENT

DESCRIPTION OF ESCROWED SECURITIES

	Type of Security	Type of SLGS	Maturity Date	First Int Pmt Date	Par Amount	Rate	Max Rate
Jan 28, 2016:	SLGS	Certificate	06/01/2016	06/01/2016	68,300	0.170%	0.170%
	SLGS	Certificate	12/01/2016	12/01/2016	227,792	0.410%	0.410%
	SLGS	Note	06/01/2017	06/01/2016	60,278	0.610%	0.610%
	SLGS	Note	12/01/2017	06/01/2016	3,575,461	0.830%	0.830%
					3,931,831		

Presiding Officer of the Council

Mayor Ron Counts

(SEAL)

ATTEST:

City Clerk Tammi Casey

1ST Reading
2nd Reading

APPROVED AS TO FORM:

City Attorney Robert Sweeney