

**TELECOMMUNICATIONS TOWER LICENSE
AT LAKE CITY ARMY AMMUNITION PLANT
JACKSON COUNTY, MISSOURI**

This **TELECOMMUNICATIONS TOWER LICENSE** (“**License**”), dated as of the 1st day of October, 2020 (the “**Effective Date**”) between Olin Winchester, LLC, a Delaware limited liability company, having a place of business at 25201 E 78 Hwy, Independence, Missouri 64056 (“**Winchester**”), and the City of Independence, Missouri, a Missouri municipal corporation existing under and by the virtue of the laws of the State of Missouri with its principal offices at 111 East Maple Avenue, Independence, Missouri 64050 (the “**City**”, and together with Winchester, each a “**Party**” and collectively, the “**Parties**”).

WHEREAS, Winchester has been granted the use of certain facilities located in the County of Jackson, the City of Independence, and the State of Missouri, known as the Lake City Army Ammunition Plant (“**LCAAP**”), by the United States Government, through the United States Army Industrial Operations Command (the “**Government**”), under contract number W52P1J-19-D-0085 (the “**Operating Contract**”);

WHEREAS, Winchester has been granted the right by the Government to enter into agreements with third parties for the use of portions of LCAAP, subject to certain limitations set forth in the Operating Contract;

WHEREAS, City desires a license for the use of certain land located at LCAAP, together with other related rights as described in this License, for the purpose of operating and maintaining a radio tower, subject to the terms of this License and Winchester’s obligations to the Government under the Operating Contract;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **License Space.** The City licenses the space indicated in the site plan in Exhibit A attached hereto (the “**License Space**”) for the operation and maintenance of a steel telecommunications tower, associated antennas and equipment and a generator with a containment system (collectively, the “**Radio Tower**”) and a non-exclusive right of ingress and egress from a public right-of-way as required for the City to service the Radio Tower. The use and occupation of the License Space for the purposes herein granted shall be subject to such rules and regulations of Winchester and the Administrative Contracting Officer (the “**ACO**”) as provided to the City and which may be modified from time to time by Winchester or the ACO. Further, the City acknowledges that the land occupied by the Radio Tower, including, without limitation, the License Space, is an Armament Retooling and Manufacturing Support (“**ARMS**”) designated Government asset and shall therefore comply with any rules and regulations with respect to the ARMS program, as same may be provided to the City and which may be modified from time to time.

2. **Term.**

(a) This Agreement shall be effective as of the Effective Date and shall expire on September 30, 2045, unless sooner terminated (the “**Term**”). If the Operating Contract is terminated or not extended, Winchester shall endeavor to provide no less than ninety (90) days’ notice to the City. The Initial Term shall automatically renew for one additional period of twenty-five years (25) years through September 30, 2070 (the “**Renewal Period**”) unless either Party provides written notice to the other Party no less than ninety (90) days but no more than one hundred eighty (180) days prior to the expiration of the Initial Term electing to terminate this License at the end of the Initial Term. The Renewal Period shall be subject to the terms and conditions hereof unless otherwise agreed in writing by the Parties. For purposes of this Agreement, “**Term**” shall refer collectively to the Initial Term and the Renewal Period.

(b) Winchester may terminate this License at any time during the Term, with or without cause, by giving at least thirty (30) days’ notice to the City.

(c) Winchester may immediately revoke or terminate this License, in whole or in part, in the event that there is a national emergency declared by the President or Congress, or the Secretary of the Army determines that a termination is necessary or the Secretary of the Army determines that termination of the License is required for military purposes, including closure or realignment, or is necessary in the interest of national defense.

3. **Consideration.** Consideration will be in-kind such that the City will provide access and use of the Radio Tower to Winchester and the Government for purposes of a digital radio control station for the Emergency Operations Center at LCAAP and will additionally permit access to the emergency net for federal, state and local governments. The City shall provide unlimited access to the Radio Tower by any agent, contractor, representative, or employee of Winchester or the Government for emergency operation to local, state and other federal agencies and to utilize the system and existing “talk groups” on the network, provided that such access does not materially negatively impact the operations of the communications network. For purposes of clarity, Winchester and the City shall cooperate to avoid any interference of either Party’s operations of the communications network and the City shall make every reasonable effort to provide additional “talk groups” upon request. The City shall include Winchester and the Government in overseeing the use and oversight of the Radio Tower.

4. **Notices.** Notwithstanding any provision to the contrary, all notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent, postage prepaid, by registered, certified or express mail or overnight courier service. All notices sent by hand shall be effective when delivered; all notices sent postage prepaid, by registered, certified or express mail, shall be effective three (3) business days after the date mailed; all notices sent by overnight courier services shall be effective the following business day. Notices to the City shall be sent to the City of Independence, Missouri, 111 East Maple Avenue, Independence, MO 64050, Attention: City Manager, with a copy sent in like manner to (a) Chief of Police, 223 Memorial Drive, Independence, MO 64050, and (b) Law Department, 111 East Maple Avenue, Independence, MO 64050. Notices to Winchester shall be sent to Olin Winchester, LLC, 25201 E 78 Hwy, Independence, Missouri 64056, with a copy sent in like

manner to (i) Law Department, Olin Winchester, LLC, 600 Powder Mill Road, East Alton, IL 62024-1273, Attention: Michael D. Bokermann, and (ii) Purchasing Department, Olin Winchester, LLC, 600 Powder Mill Road, East Alton, IL 62024-1273, Attention: Victor D. Levin. Either Party may change its mailing address by giving the other Party written notice thereof in accordance with this Section.

5. **Supervision by the ACO.** The operation, maintenance, repair or replacement of the Radio Tower, including culverts and other drainage facilities, shall be performed at no cost or expense to Winchester or the Government and are subject to the approval of the ACO at LCAAP, hereinafter referred to as said officer. The City shall maintain the License Space in good condition and repair, subject to Winchester's and/or the ACO's reasonable satisfaction, normal wear and tear excepted.

6. **Applicable Laws and Regulations.** The City shall comply with all applicable federal, state, county and municipal laws, ordinances and regulations wherein the License Space is located and shall not conduct or permit to be conducted any activity which would constitute a nuisance.

7. **Condition of Premises.** The City agrees that by the City's own inspection and investigation, the City is thoroughly familiar with the License Space and the Radio Tower, their condition, state of repair and everything connected therewith, and the City accepts the License Space and the Radio Tower in their "As Is", "Where Is" condition as of the Effective Date of this License, without any representation by Winchester as to the condition of same, or as to the use to which they may be put, and with all risks, known or unknown. Neither Winchester nor the Government shall be liable for any damage or injury caused by or arising from any defect(s) in the License Space, the Radio Tower or at the LCAAP, latent or patent, as of the Effective Date or which may thereafter develop. Neither Winchester nor the Government shall be liable for any damage or injury caused by or arising from the current, past or future operation of LCAAP. The City understands that LCAAP is an Army ammunition plant built in the 1940s at which explosives and other dangerous materials are regularly used, manufactured and stored and that facilities at LCAAP may contain hazardous materials, including but not limited to lead paint and asbestos.

8. **Transfers and Assignments.** The City shall not transfer, assign or sub-license this License, in whole or in part, without the prior consent of Winchester. The City acknowledges that no for profit commercial use of the Radio Tower is permitted, and that all use is reserved for city, state or federal government use. If the Operating Contract is terminated or not extended, Winchester shall reasonably cooperate with the City to assign its rights and interests in this License to the Government, subject to the Government's approval.

9. **Protection of Property.** The City shall keep the License Space and Radio Tower in good order and in a clean, safe condition by and at the expense of the City. The City shall be responsible for promptly repairing any damage that may be caused to property of Winchester or the Government by the activities of the City under this License, to the reasonable satisfaction of Winchester or the Government, as applicable, and shall exercise due diligence in the protection of all property located at the LCAAP, including, without limitation, against fire or damage from any and all other causes. At the discretion of Winchester or the Government, if such property cannot

be sufficiently repaired, then the City shall reimburse Winchester or the Government, as applicable, in an amount necessary to restore or replace the property to a condition satisfactory to Winchester or the Government.

10. **Right to Enter.** The right is reserved to Winchester, the Government, and its or their respective officers, agents, and employees to enter upon the License Space at any time and for any purpose necessary or convenient, including, without limitation, to make inspections, to remove timber or other material, except property of the City, and/or to make any other use of the LCAAP as may be necessary in Winchester or the Government's discretion, and the City shall have no claim for damages on account thereof against the Winchester, the Government, or any officer, agent, or employee thereof.

11. **End of Term.** On or before the expiration or earlier termination of the Term, the City shall vacate the License Space, remove any property of the City which is not otherwise affixed and cannot be removed without causing damage, and restore the License Space to a condition satisfactory to Winchester and/or the Government, reasonable wear and tear excepted. The tower, antennas, generator, and any other equipment installed by the City in connection with the Radio Tower is the property of the City, and upon expiration or termination of this License shall remain the property of the City. If the City fails or neglects to remove said property and restore the License Space, then, at the option of Winchester or the Government, the property shall either become the property of the Government without compensation therefor, or the property may be removed by or on behalf of Winchester or the Government, without liability, and the City shall make no claim for damages, including, without limitation, on account of such removal and restoration work. The City shall also promptly remit to Winchester, or if so designated, the Government, on demand any sum which may be expended after the expiration, revocation, or termination of this License in restoring the License Space. Notwithstanding the foregoing, if the City needs additional time to remove any property from the License Space, the City shall notify Winchester prior to the expiration or earlier termination of the Term and the City and Winchester shall work together in good faith to provide reasonable supervised access to the City, provided that any remaining property shall be removed as soon as possible, but in any event within ninety (90) days after such expiration or termination.

12. **Indemnity.** To the maximum extent permitted by law, the City shall defend, indemnify and hold harmless Winchester and the Government, and its or their respective, parents, affiliates, officers, directors, employees, agents, advisors, successors and assigns (each an "**Indemnatee**") from any and all damages, claims, losses, demands, charges, actions, suits, proceedings and reasonable costs and expenses (including reasonable attorneys' fees and disbursements) (collectively "**Losses**") imposed on, incurred by, or asserted against any Indemnatee and arising out of or in connection with (i) any breach of this License, (ii) the City or its employees' or agent's negligence or misconduct or any breach of the City's obligations under this License, (iii) as a result of any suit, claim, or demand under any environmental, health, safety or other laws, rules, regulations or requirements, in connection with the Radio Tower or the use of the License Space, (iv) any property damage, personal injury or death to any third person caused by the City or its employees' or agents' negligence or wrongful acts or omissions in connection with this Agreement regardless of cause, or (v) or the City's failure to obtain, maintain,

or comply with any approvals or to comply with any laws. This Section shall survive the expiration or termination of this Agreement.

13. **Insurance.** The City shall procure and maintain the following types of insurance, in amounts at least equal to those specified below, and with a Best's rating of at least A-X or an established self-insured or risk retention group.

(a) Workers' Compensation Insurance covering all obligations imposed by federal (including but not limited to USL&H, if applicable), state or local law at statutory limits, and Employers' Liability Insurance with a minimum limit of \$1,000,000;

(b) Commercial General Liability Insurance with a \$3,000,000 combined single limit for bodily injury, and property damage occurring on, in or about the License Space,

(c) Commercial Automobile Liability Insurance providing coverage for all vehicles (owned, hired, borrowed, leased, or non-owned) with a combined single limit of \$3,000,000.

(d) All other coverage required by any Applicable Laws, including in addition to insurance, any other form of financial protection required by any Applicable Laws.

(e) The City shall obtain a waiver of subrogation in favor of Winchester and the Government under all policies of insurance for negligent acts of the City. All policies except Workers' Compensation and Employer Liability shall include Winchester and the Government as additional insureds for claims arising in whole or in part from the City's obligations under this Agreement up to the minimum insurance outlined herein. All insurance required above shall be primary and non-contributory to insurance purchased by or otherwise available to Winchester.

14. **Non-Discrimination.** The City shall not discriminate against any person or persons or exclude them from participation in the City operations, programs or activities conducted on the License Space, because of race, color, religion, sex, age, handicap or national origin. The City will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

15. **Subject to Easements and Mineral Interests.** This License is subject to all existing easements and mineral interests, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, at the LCAAP.

16. **Use.** The City may only use the License Space to operate and maintain the Radio Tower and for no other purpose. The City shall not construct or place any structure, improvement advertising or other sign or allow or permit such construction or placement without the prior written approval of Winchester and the Government. In the event of the violation of the foregoing by the City, Winchester may remove same without any liability, and may charge the expense incurred by such removal to the City. If the City receives permission to install a sign, the City shall, at its own cost and expense, keep such sign in good and clean condition.

17. **Disputes.**

(a) The Parties shall attempt in good faith to resolve any controversy, dispute, claim or question arising out of or in relation to this License, including, without limitation, its interpretation, performance or non-performance by either Party, termination, or any breach thereof (“**Controversy**”) promptly by negotiation. If the Controversy has not been resolved within thirty (30) days then, upon written notice, either Party may elect to submit the Controversy to a court of proper jurisdiction as provided in subsection (b) below.

(b) This License shall be governed by, construed and interpreted in accordance with the laws of the State of Missouri, excluding its conflicts of laws rules. Any legal action, suit or proceeding arising out of or with respect to this License shall be brought solely and exclusively in the Federal District Court for the Eastern District of Missouri or the 21st Circuit Court of St. Louis County, Missouri, and, by execution and delivery of this License, each Party hereby irrevocably accepts the exclusive jurisdiction of the aforesaid courts. Each Party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim, in any legal action or proceeding with respect to this License brought in any of the aforesaid courts, that any such court lacks jurisdiction over it. Each Party further irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to such Party at its address designated pursuant to this License, with such service of process to become effective ten (10) days after such mailing.

18. **Environmental Protection.** The City shall protect the License Space against pollution of its air, ground, and water and shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the License Space or at LCAAP is specifically prohibited. The City shall not discharge waste or effluent from the License Space in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The City will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the City, the City shall be liable to restore the damaged resources. The City must obtain approval in writing from said officer before any pesticides or herbicides are applied to the License Space.

19. **Taxes.** Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the City with respect to the License Space or the Radio Tower shall be paid promptly by the City.

20. **No Commission.** The City represents that no broker or other agent was utilized or instrumental in negotiating or consummating this License, and that no conversations or prior negotiations were had with any broker concerning the license of the License Space. The City agrees to indemnify, defend and hold Winchester and the Government harmless against and from any claims for brokerage commissions or fees arising out of any conversations or negotiations had by the City with any broker regarding the License Space or the Radio Tower. The City’s indemnity

shall include any claims and all of Winchester and the Government's expenses arising out of such claims, including, but not limited to, attorney's fees

21. **Officials Not to Benefit.** No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this License or to any benefits that arise therefrom.

22. **Modifications.** This License contains the entire agreement between the Parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing signed by Winchester and the City.

23. **Disclaimer.** This License is effective only insofar as the rights of Winchester in the License Space are concerned such that the City shall obtain any permit or license which may be required by federal, state, or local statute in connection with the use of the License Space. It is understood that the granting of this License does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S. C. § 403), and Section 404 of the Clean Water Act (33 U.S. C. § 1344).

24. **Records.** Winchester or the Government or any of its or their duly authorized representatives shall, during the Term and until expiration of five (5) years after the expiration or earlier termination of this License, have access to and the right to examine any books, documents, papers and/or records of the City involving transactions or other matters relating to this License, the License Space or Radio Tower Records. "Radio Tower Records" shall be defined as limited to the Radio Tower with respect to LCAAP, the US Army Corps of Engineers, Winchester (or any successor or assign), their security contractors, or other federal purpose. Records may be destroyed by the City in accordance with the Missouri Secretary of State Local Government Records Retention Schedule.

25. **Radio Frequency Interference.** The City represents and warrants that the operation and maintenance of the Radio Tower and the City's equipment will in no way damage the License Space and that the Radio Tower shall operate on a frequency that will not cause harmful interference with any electrical equipment of Winchester, the Government, or other occupants at LCAAP. In the event of such interference, Winchester shall notify the City and the City shall eliminate such interference and not re-use the Radio Tower or other equipment until such time as the interference is eliminated, *provided*, however, that the City may power up such equipment for reasonable intermittent testing.

26. **Coordination of Electrical Connection.** Installation of any antennas, cabling, and related equipment shall be done in accordance existing federal, state and municipal codes, including the National Electrical Code and any other codes which directly relate to the issues of communication equipment and/or antennas; in any case where codes differ, the more stringent application shall prevail. All work shall be done by personnel who are bonded and licensed tradesman. The City is required to coordinate installation of all electrical connections that tie into building systems that would be affected. Nothing in this paragraph shall be construed as

diminishing the right of Winchester or the Government to review and approve all such work, nor does it absolve City from its obligation to obtain such review and approval.

27. **Cost of Utilities.** The City shall pay the cost, as determined by Winchester or a Government agent, of producing and/or supplying any utilities and other services furnished for the use of the City, including the City's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. Neither Winchester nor the Government shall be under an obligation to furnish utilities or services. The City will be responsible for the maintenance and operational expenses associated with utility servicing of the site and the City shall have no claim against Winchester or the Government for reduction or elimination of said services. The City shall coordinate with the ACO for maintenance, operation and use of utility services.

28. **Special Conditions.**

(a) The City shall make no additions, alterations, improvements or construction at the License Space without the prior authorization of Winchester and the Government. The City shall obtain approval of the plans and specifications for any additions, alterations, improvements or construction at the License Space prior to the start of any work.

(b) The City shall comply with the special procedures, requirements, and restrictions that may be imposed by the Federal Aviation Administration (FAA), Federal Communication Commission (FCC), the ACO, or other appropriate authority and shall notify the FAA of frequency(ies) prior to commencement of operation. Tower lighting equipment and materials shall comply with FAA specifications and shall have the prior approval of the FAA and District Engineer.

(c) The City shall protect from disturbance or damage all land monuments, perimeter fencing and property markers resulting from the activities of the City.

(d) Any and all generators installed by the City or other users must meet the Diesel Engine Generator Specifications, as may be modified by Winchester or the Government from time to time.

29. **Review by Attorney.** The City acknowledges that they have been advised that this License is a legal document and that the City is entitled to have this License reviewed by an attorney independently advising or representing the City. The City has either obtained independent legal advice regarding this License from an attorney of their own choosing or has voluntarily chosen to read, sign, make and enter into this License without a review, advice and/or counsel of an attorney. The City represents and warrant that they have had an adequate opportunity to review this License, understands the terms and conditions of this License, has investigated all issues to their satisfaction, has had the opportunity for their personal attorney to review this License and the other documents to be executed with the transactions contemplated hereby, and does not rely, and has not relied, on Winchester for an explanation of the terms or conditions of this License.

30. **Headings.** The headings in this License are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

31. **Integration.** This License contains all agreements, promises, and understandings between Winchester and the City and no verbal or oral agreements, promises, or understandings shall be binding upon either Winchester or the City in any dispute, controversy, or proceeding at law, and any addition, variation, or modification to this License shall be void and ineffective unless made in writing and signed by the Parties. In the event any provision of the License is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this License. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the License shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this License, either in law or in equity.

32. **Counterparts.** This License may be executed in multiple counterparts (including by way of electronic transmission), each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

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IN WITNESS WHEREOF, the Parties have executed this License as of the Effective Date.

OLIN WINCHESTER, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE CITY OF INDEPENDENCE, MISSOURI,
a Missouri municipal corporation

By: _____
Name: _____
Title: _____

Exhibit A

License Space