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MEMORANDUM

Date: November 28, 2016

To: Kim Kimbrough , Westport Regional Business League

From: Charles G. Renner

Re: Westport Street Vacation

The purpose of this memorandum is to outline the contemplated vacation of the public right-of-ways that currently encumber portions of Westport Road and Pennsylvania Avenue as described in Exhibit A of this memorandum (the “ROWs Property”).

I. Vacating the Right-of-Way.

- A. Upon approval of a vacation ordinance by the City Council, City of Kansas City, Missouri (the “City”) will vacate its rights in the ROWs Property by executing the appropriate instruments in accordance with the original right-of-way documents, and upon such vacation, ownership of the ROWs Property will revert back to the individual, adjacent property owners (the “Owners”). At such time, the Owners will also record the appropriate instrument evidencing their claim of reversion rights.
- B. Following the claim of their reversion rights, the Owners will execute two conveyance documents:
 - i. Easement to City. The Owners will convey perpetual easement rights over the ROWs Property to the City by virtue of an easement agreement (the “Easement”). The Easement will be recorded prior to the Deeds (hereinafter defined), and the City will retain the following, subject to the obligations outlined herein:

- 1. Control over all drainage and sewer systems;

2. Control over all waterlines and fire hydrants;
3. Access to the ROWs Property at all times to provide fire safety, EMT, and all other public safety services;
4. Right to use the roadways constructed on the ROWs Property for all municipal and public purposes except during those times and events as specified in the Easement or as communicated by the CID (hereinafter defined).

ii. Quitclaim Deeds to Westport Community Improvement District. The Owners will convey ownership of the ROWs Property to Westport Community Improvement District I, or a solely owned subsidiary of Westport Community Improvement District I, (collectively referred to herein as the “CID”) by virtue of quitclaim deeds, which will be subject to the Easement (the “Deeds”).

II. Reversion Rights and Obligations. The Easement and the Deeds will contain specific provisions to effectuate the agreements contained herein. For clarification purposes, the Owners will be the Grantors and the CID will be the Grantee of the Deeds.

A. The Easement will contain the following clarifying language:

“For the avoidance of doubt, if the CID dissolves under Missouri Law or otherwise ceases to exist, the City's rights contained herein shall be free and clear of any restrictions.”

B. The Deeds will contain the following language reserving the easement rights of the City:

“SUBJECT, HOWEVER, to the rights and obligations contained in the Easement Agreement between Grantor and the City of Kansas City, Missouri dated [_____], 2016 and recorded with Jackson County, Missouri Recorder of Deeds as instrument No. [_____].”

C. The Deeds will also contain the following language granting reversionary rights to the Owners in the event the CID ceases to exist and ensuring that in the case of reversion the rights of the City are secure.

“TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said Grantee, and to its assigns, successors forever; provided, however, that in the event that Grantee shall dissolve under Missouri, Law or otherwise cease to exist, fee title to the above described property shall REVERT to the Grantor subject to all matters of record effective as of the date of dissolution including, but not limited to, the Easement Agreement between Grantor and the City of Kansas City, Missouri dated [_____], 2016 and recorded with Jackson County, Missouri Recorder of Deeds as instrument No. [_____].”

III. CID, City, and Owner Obligations. In addition to the terms and conditions contained within the Easement and Deeds outlined above, both documents will be subject to the obligations of the City, the CID, and the Owners as listed below:

A. City will continue to:

- i. Pave and strip the streets within the ROWs Property at intervals consistent with similarly used and traveled streets;
- ii. Reasonably maintain and update the street signs, traffic signs, and parking signs as required for the functionality of the ROWs Property;
- iii. Enforce traffic and parking laws within the ROWs Property.

B. CID will continue to, see attached **Exhibit B** describing the 2016 Budget for certain services detailed below:

- i. Contribute proportional costs of the street paving and striping expenses incurred over time to maintain the ROWs Property; the **following formula** shall be used to compute CID’s contribution for street paving and striping expenses incurred to maintain the ROWs Property:

$$\begin{array}{c}
 \text{[Overall Cost of street} \\
 \text{Paving and/or striping ($)]} \times \left[\frac{\text{[ROWs Property (linear miles)]}}{\text{[Total linear miles included} \right. \\
 \left. \text{in Overall Cost]} \right]
 \end{array}$$

= CID Contribution Obligation (\$)

- ii. Operate and control traffic signals within the ROWs Property;
- iii. Reasonably maintain, repair, and replace the trees, trash cans, bollards, bicycle racks, and sidewalk planters located within or adjacent to the ROWs Property; CID shall also purchase from the City all street light fixtures (14 fixtures) currently installed on the ROWs Property for the estimated price of \$1052.00 per fixture for a total estimated price of \$ 14,7280.00.
- iv. Purchase, assemble, and arrange the gates at all alley entrances to the ROWs Property during those specified times that the CID restricts access to the ROWs Property;
- v. Maintain, update, and replace all banners, flags, and other signage on or over the ROWs Property;
- vi. Collect and remove all trash and debris from the ROWs Property;

- vii. Remove all leaves, other yard-like waste from the ROWs Property;
- viii. Oversee and administer the permitting process for all special events occurring on the ROWs Property including, but not limited to, all vendor permits to be issued for such events; Oversee and administer the permitting process for all street performers and street vendors who desire to perform, promote, operate, or provide services on or over the ROWs Property. The permits resulting from these processes will control during those times that the CID restricts access to the ROWs Property and those times when the ROWs Property is being used by the City.
- ix. Hire, as deemed necessary in the sole discretion of the CID, public safety and security personnel during those specified times that the CID restricts access to the ROWs Property. The public safety and security personnel shall put into place the following policies:
 - 1. No weapons or firearms will be allowed in the ROWs Property during those periods of time that the CID restricts access to the ROWs Property;
 - 2. No persons under the age of twenty-one (21) will be admitted to the ROWs Property during those periods of time that the CID restricts access to the ROWs Property;
 - 3. To support special events, public performances, or such other occurrences deemed beneficial by the CID and presented by the CID within the ROWs Property, public safety and security personnel under the direction of the CID may implement a cover charge program with all net proceeds from such program being invested in the costs associated or related to the procurement of increased public safety and security personnel
- x. Obtain insurance policies and/or coverage to protect against potential liabilities that may arise during those specified times of CID access restriction over the ROWs Property;
- xi. Provide a list of those reoccurring times and special events for which the CID will have the option to restrict access to the ROWs Property. A current list of these reoccurring times and special events is attached hereto as **Exhibit C**. The CID shall provide notice to the City of the CID's plans to exercise its right to restrict access to the ROWs Property in accordance with the Notification Process (hereinafter defined). Similarly, the CID shall provide notice of additional times and events for which the CID plans to restrict access to the ROWs Property to the City in accordance with the Notification Process.
- xii. Indemnification and Insurance
 - 1. The CID shall defend, indemnify and hold harmless City and its officers, employees and agents from and against all claims arising out of or resulting from all acts or omissions if such actions are made in connection with CID's control of

the ROW property, regardless of whether or not caused in part by any act or omission of City. For the avoidance of doubt, such indemnity shall not include actions or omissions of City or its officers, employees or agents arising out of or resulting from the performance of any freestanding obligations or duties of the City unrelated to the CID's control of the ROW property but performed within the ROWs property. The CID shall additionally defend, indemnify and hold harmless the City from any claims or litigation arising out of the City's vacation of the ROW as contemplated herein; provided however, the CID shall have the exclusive right to select the attorney or attorneys who shall provide such defense.

2. The CID shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section.

A. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- c. No Contractual Liability Limitation Endorsement.
- d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. The CID shall provide to City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

D. The CID's failure to maintain the required insurance coverage will not relieve it of its contractual obligation to indemnify the City pursuant to the indemnification provision in this contract. If the coverage afforded is cancelled or changed or its renewal is refused, the CID shall give at least thirty (30) days prior written notice to City. In the event of the CID's failure to maintain the required insurance in effect, City may pursue its remedies for breach of this Contract as provided for by law.

E. In no event shall the language in this Section or the provision of insurance constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

C. Owners agree to:

- i. Reasonably maintain, repair, and replace as necessary the sidewalks and curbs adjacent to the ROWs Property.
- ii. If and only if the CID ceases to exist, ensure the easement rights of the City over the ROWs Property constitute a full right-of-way dedication.

D. Restricted Access Notification Process, the following is collectively referred to herein as the "Notification Process":

- i. The City shall provide a list of contacts whom the CID shall notify via electronic mail of the CID's plans to exercise its rights to restrict access to the ROWs Property.
- ii. For all times and events listed on Exhibit C, the CID shall use reasonable best efforts to provide notice two (2) weeks prior to such event, but in no event, shall such notice be given less than one (1) week prior to the event if reasonably possible.
- iii. If the CID plans to restrict access to the ROWs Property during a time or event not listed on Exhibit C, the CID shall use reasonable best efforts to provide notice of such plans one (1) month prior to the event to inform the City of the additional event. The CID shall remain be responsible for providing notice of the additional event as outlined in Paragraph (ii) of this Section.

Please let us know your questions regarding the information contained herein or any further concerns.

Sincerely,

Charles Renner
Partner

Exhibit A

1. Westport Road between the westernmost edge of the intersection with Broadway Boulevard westward to the easternmost edge of the intersection with Mill Street.
2. Pennsylvania Avenue from the southernmost edge of the intersection with 40th Street southward to the northernmost edge of the intersection with Archibald Street.

Exhibit B

2016 Budget for services described in CID Covenants

Service:	Costs:
a) Street Trees (maintenance and replacement)	\$39,800
b) Trashcans (emptying daily, maintenance and repair), Bicycle Racks (maintenance only), Snow Removal, Leaf Removal, and Yard Waste Removal	\$154,194
c) Bollards (maintenance, repair and replacement)	\$70,000
d) Streetscape (maintenance and repair)	\$47,909
e) Banners and Flags	\$3,600

Exhibit C

Date and Times¹:

All Friday and Saturday evenings from 11:00 pm to 4:00 am the next morning. Plus:

- January 1st (12:00 am – 4:00 am)
- The day of the Super Bowl if the Chiefs are in the Super Bowl (24 hours) plus the first four hours of the following day
- The Saturday preceding St. Patrick's Day (24 hours)
- March 17th (24 hours) & March 18th (12:00 am – 4:00 am)
- Anytime during Middle of the Map Festival for a Middle of the Map Event (April and May)
- May 5th (24 hours)
- The first Saturday in May (24 hours)
- The Friday, Saturday, and Sunday (24 hours) immediately before Memorial Day
- The Second Saturday in June (24 hours)
- July 3rd and 4th (24 hours)
- The Saturday and Sunday immediately before Labor Day (24 hour)
- The first Monday in September (12:00 am to 4:00 am)
- The Friday, Saturday, and Sunday of Art Westport in September (24 hours)
- Anytime during September or October for an American Royal event
- Anytime during the seven day celebration of Oktoberfest in late September and/or early October (24 hours)
- Any day during the MLB World Series if the Royals are playing (24 hours) and the first four hours of each following day
- The second Saturday in October (24 hours)
- October 31st (24 hours)
- November 1st (12:00 am – 4:00 am)
- The second Saturday in November (24 hours)
- The Saturday after Thanksgiving (24 hours)
- The first Saturday in December (24 hours)
- December 31 (24 hours)

¹ The times and dates included on this exhibit are subject to change based on the calendar year and the dates certain events and holidays fall in that calendar year.

Special Events:

- a) Westport St. Patrick's Day Run
- b) Westport Roots Festival
- c) Kelly's & McCoy's Block Party
- d) Westport Summer Beer Festival
- e) Oktoberfest
- f) Strong Ale Festival
- g) Santa Dash

Price of Admission:²

\$30 to \$40
\$10 to \$30
\$5 to \$10
\$35 to \$40
\$16.82 to \$27.37
\$43.19
\$29 to \$39

² These admission costs will be treated as separate and apart from the cover charge program contemplated in Section III(B)(viii)(3) of the memorandum.