

**REVISED**  
**City of Mission**  
**Regular Meeting Agenda**  
**Wednesday, October 16, 2019**  
**7:00 p.m.**  
**Mission City Hall**

*If you require any accommodations (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-676-8350 no later than 24 hours prior to the beginning of the meeting.*

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**1a. PUBLIC HEARING - Roeland Park De-Annexation (page 4)**

- (1) Public Hearing Concerning the Exclusion of Certain Real Property from Mission's Corporate Limits Pursuant to K.S.A. 12-504 *et seq*
- (2) Ordinance Excluding Certain Portions of Land from the City of Mission's Corporate Limits (Roeland Park De-Annexation)

**1b. PUBLIC HEARING - 5399 Martway (page 9)**

Public Hearing to Appear and Show Cause Why the Structure at 5399 Martway Street Should Not be Condemned and Ordered Repaired or Demolished as an Unsafe Structure in Accordance with K.S.A. 12-1750 *et seq*

**2. SPECIAL PRESENTATIONS**

- Update from Johnson County Commissioner Becky Fast

**3. ISSUANCE OF NOTES AND BONDS**

**4. CONSENT AGENDA**

*NOTE: Information on consent agenda items has been provided to the Governing Body. These items are determined to be routine enough to be acted on in a single motion; however, this does not preclude discussion. **If a councilmember or member of the public requests, an item may be removed from the consent agenda for further consideration and separate motion.***

**CONSENT AGENDA - GENERAL**

- 4a. [Minutes of the September 18, 2019 City Council Meeting](#)

**CONSENT AGENDA - Finance & Administration Committee**

[Finance & Administration Committee Meeting Packet 10-2-19](#)  
[Finance & Administration Committee Meeting Minutes 10-2-19](#)

[Finance & Administration Committee Meeting Packet 10-9-19](#)  
[Finance & Administration Committee Meeting Minutes 10-9-19](#)

- 4b. Upgrade of Laserfiche Software
- 4c. Adoption of 2019 Standard Traffic Ordinance and Uniform Public Offense Code

**CONSENT AGENDA - Community Development Committee**

[Community Development Committee Meeting Packet 10-2-19](#)  
[Community Development Committee Meeting Minutes 10-2-19](#)

- 4d. Agency Participation Agreement with MARC and TTS for Data Authorization
- 4e. Demolition Contract for 5122 W. 60th Terrace Property

**5. PUBLIC COMMENTS**

**6. ACTION ITEMS**  
**Planning Commission**

**Miscellaneous**

**7. COMMITTEE REPORTS**

**Finance & Administration, Sollie Flora**

[Finance & Administration Committee Meeting Packet 10-2-19](#)  
[Finance & Administration Committee Meeting Minutes 10-2-19](#)

[Finance & Administration Committee Meeting Packet 10-9-19](#)  
[Finance & Administration Committee Meeting Minutes 10-9-19](#)

- 7a. Award of Contract for Solid Waste Collection Services ([page 48](#))
- 7b. Resolution Calling a Public Hearing on the Division of the Rock Creek Redevelopment (TIF) District ([page 112](#))
- 7c. Resolution Approving Amendment to Third Amended and Restated Redevelopment Agreement, The Gateway Project ([page 146](#))

**Community Development, Hillary Thomas**

[Community Development Committee Meeting Packet 10-2-19](#)  
[Community Development Committee Meeting Minutes 10-2-19](#)

**8. UNFINISHED BUSINESS**

**9. NEW BUSINESS**

- 9a. Changes in Dates for Upcoming Meetings
  - November City Council Meeting Moved to November 18, 2019, 7:00 p.m.
  - December City Council Committee Meetings Moved to December 11, 2019, 6:30 p.m.

- 9b. **Approval of De-Annexation Terms (NE Corner Johnson Drive and Roe Blvd)**  
(page 222)

**10. COMMENTS FROM THE CITY COUNCIL**

**11. MAYOR'S REPORT**  
**Appointments**

Drug & Alcoholism Council of Johnson County

- Liana Riesinger, Ward IV

Parks, Recreation & Tree Commission

- Ben Chociej, Ward IV
- Mary Ryherd, Ward IV
- David Schwenk, Ward III

Sustainability Commission

- Cathy Boyer-Shesol, Ward IV

CIP Committee

- Jacque Gameson, PRT Representative
- David Schwenk, PRT Representative

**12. CITY ADMINISTRATOR'S REPORT**

**13. EXECUTIVE SESSION**

**ADJOURNMENT**

<b>City of Mission</b>	Item Number:	1a.
<b>ACTION ITEM SUMMARY</b>	Date:	October 9, 2019
<b>Administration</b>	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

**RE:** An ordinance excluding certain lands from the City of Mission, Kansas in conformity with the provisions of K.S.A. 12-504 and K.S.A. 505 and all amendments hereto.

**RECOMMENDATION:** Approve the ordinance excluding certain lands from the City of Mission, KS in accordance with state statutes.

**DETAILS:** Since December 2018, the cities of Mission and Roeland Park have been discussing the benefits of annexation/de-annexation of approximately .7 of an acre at the northeast corner of Johnson Drive and Roe Boulevard. Earlier this month, the two cities agreed to proceed with the process and the first step was to adopt a resolution calling a public hearing.

Following submission of Roeland Park's petition, Mission adopted Resolution 1034 calling the public hearing at 7 p.m. on October 16, 2019. Required notice of the public hearing was published in the Legal Record on September 24. Immediately following the public hearing, the Council will consider an ordinance to exclude the property from Mission's corporate boundaries. The City of Roeland Park will also need to convene a meeting and adopt an ordinance to annex the same property in order to complete the de-annexation process.

The City of Roeland Park plans to hold a special meeting at 7:30 p.m. on October 16 for purposes of approving an ordinance to annex that portion just excluded from Mission into Roeland Park. The ordinances then will be published on October 22, and become effective upon publication.

Councilmember Flora and Councilmember Inman are working with two designated representatives from the Roeland Park City Council in an effort to negotiate acceptable financial terms for the de-annexation and resolve the remaining outstanding issues all at one time.

**CFAA CONSIDERATIONS/IMPACTS:** NA

Related Statute/City Ordinance:	K.S.A. 12-504 <i>et. seq.</i> , and K.S.A. 505
Line Item Code/Description:	NA
Available Budget:	NA



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

**AN ORDINANCE EXCLUDING CERTAIN LANDS FROM THE CITY OF MISSION, KANSAS IN CONFORMITY WITH THE PROVISIONS OF K.S.A. 12-504 AND K.S.A. 505 AND ALL AMENDMENTS HERETO.**

**WHEREAS**, the City of Roeland Park, Kansas has filed a petition requesting that the following real property (the "Land") be de-annexed from the City of Mission, Kansas:

All that part of the Northeast Quarter and Northwest Quarter of Section 9, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, being more particularly described as follows: Commencing at the Northwest corner of said Northeast Quarter; thence South 01°55'22" East, along the West line of said Northeast Quarter, a distance of 1,617.43 feet to a point of intersection with the centerline of vacated U.S. Highway 50, as said centerline was shown on the final plat of ROSELAND COURT, a subdivision in said City of Roeland Park, said point also being the Point of Beginning; thence North 67°56'55" East, along said centerline, a distance of 526.72 feet to a point on the Southerly extension of the East line of said ROSELAND COURT plat; thence South 01°55'37" East, along the Southerly extension of said East line, a distance of 155.77 feet; thence westerly, departing the Southerly extension of said East line, along a non-tangent curve to the right having an initial tangent bearing of South 61°57'03" West, a radius of 514.05 feet, and a central angle of 26°09'00", for an arc length of 234.62 feet; thence South 88°06'03" West a distance of 341.37 feet to a point of intersection with the Southwesterly extension of said vacated U.S. Highway 50 centerline; thence North 67°56'55" East, along the Southwesterly extension of said centerline, a distance of 78.16 feet to the Point of Beginning, containing 55,289 square feet, or 1.269 acres, more or less.

**WHEREAS**, a depiction of the Land the proposed new boundary lines of the City of Roeland Park, Kansas and City of Mission, Kansas is attached as Exhibit A;

**WHEREAS**, the City of Mission, Kansas has complied with the legal notice, publication, and public hearing requirements of K.S.A. 12-504;

**WHEREAS**, the governing body of the City of Mission, Kansas finds that no private rights will be injured or endangered by the de-annexation of the Land;

**WHEREAS**, the governing body of the City of Mission, Kansas finds that the public will suffer no loss or inconvenience by the exclusion and de-annexation of the Land;

**WHEREAS**, the governing body of the City of Mission, Kansas finds that in justice to the City of Roeland Park, the City of Mission, Kansas should grant the aforesaid petition for the exclusion or de-annexation of the Land;

**WHEREAS**, the governing body of the City of Mission, Kansas finds it advisable to exclude and de-annex the Land.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS:**

**SECTION 1.** Pursuant to K.S.A. 12-505(a), the Governing Body of the City of Mission, Kansas, deems it advisable to exclude and de-annex and hereby excludes and de-annexes the following legally described land, located in Johnson County, Kansas, to-wit:

All that part of the Northeast Quarter and Northwest Quarter of Section 9, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, being more particularly described as follows: Commencing at the Northwest corner of said Northeast Quarter; thence South 01°55'22" East, along the West line of said Northeast Quarter, a distance of 1,617.43 feet to a point of intersection with the centerline of vacated U.S. Highway 50, as said centerline was shown on the final plat of ROSELAND COURT, a subdivision in said City of Roeland Park, said point also being the Point of Beginning; thence North 67°56'55" East, along said centerline, a distance of 526.72 feet to a point on the Southerly extension of the East line of said ROSELAND COURT plat; thence South 01°55'37" East, along the Southerly extension of said East line, a distance of 155.77 feet; thence westerly, departing the Southerly extension of said East line, along a non-tangent curve to the right having an initial tangent bearing of South 61°57'03" West, a radius of 514.05 feet, and a central angle of 26°09'00", for an arc length of 234.62 feet; thence South 88°06'03" West a distance of 341.37 feet to a point of intersection with the Southwesterly extension of said vacated U.S. Highway 50 centerline; thence North 67°56'55" East, along the Southwesterly extension of said centerline, a distance of 78.16 feet to the Point of Beginning, containing 55,289 square feet, or 1.269 acres, more or less.

**SECTION 2.** The new northern boundary of the City of Mission, Kansas adjacent to the Land shall be the center line of the westbound lane for traffic on Johnson Drive, as shown on Exhibit A.

**SECTION 3.** The City Clerk of the City of Mission, Kansas shall file a certified copy of this Ordinance with the County Clerk, the Department of Records and Tax Administration, and the Election Commission of Johnson County.

**PASSED AND APPROVED** by the City Council this \_\_\_th day of \_\_\_\_\_ 2019.

**APPROVED** by the Mayor this \_\_\_th day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Ronald E. Appletoft, Mayor

ATTEST:

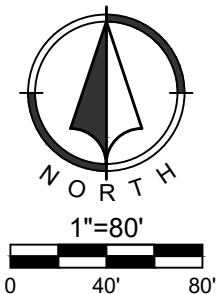
\_\_\_\_\_  
Martha M. Sumrall, City Clerk

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
David K. Martin, City Attorney

# De-annexation Exhibit

POINT OF COMMENCEMENT  
 NW. COR., NE. 1/4  
 SEC. 9, T12S, R25E  
 FND. 2" ALUMINUM CAP STAMPED  
 "JOHNSON COUNTY SECTION CORNER"



W. LINE, NE. 1/4  
 SEC. 9, T12S, R25E

S01°55'22"E 1617.43'

ROE BOULEVARD

2

25

27

1

26

ROSELAND COURT

N67°56'55"E 526.72'  
 VACATED R/W  
 U.S. 50 HWY

ROELAND PARK CITY LIMITS  
 MISSION CITY LIMITS

AREA  
 55,289 S.F.  
 1.269 Ac.

S01°55'37"E 155.77'

N67°56'55"E  
 78.16'

POINT OF BEGINNING

JOHNSON DRIVE

S88°06'03"W 341.37'

L=1336.65'  
 R=514.05'  
 Δ=26°09'00"

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 Sep 13, 2019 9:33am User: csprague



<b>City of Mission</b>	Item Number:	1b.
<b>ACTION ITEM SUMMARY</b>	Date:	August 7, 2019
<b>Administration</b>	From:	Jim Brown / Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

**RE:** Request to set a public hearing for the purpose of determining the structure at 5399 Martway Street to be a dangerous structure and to cause said structure to be either repaired or demolished.

**RECOMMENDATION:** Approve the attached resolution fixing a time and place for a public hearing to allow the owner, owner's agent and other parties of interest to appear and show cause as to why a certain structure located at 5399 Martway Street, Mission, Kansas should not be condemned and ordered demolished or repaired.

**DETAILS:** The structure at 5399 Martway Street is more commonly known as Mission Bowl - a bowling alley built in 1958. The structure experienced a fire on the afternoon of April 3, 2015, which resulted in extensive damage.

Shortly after the fire, the owners of the structure initiated plans to rebuild, but soon encountered an issue where, allegedly, the restoration company failed to properly secure the building from the elements resulting in further damage. This claim has resulted in protracted litigation, including bankruptcy, that is still ongoing. In the meantime, no action has been taken to restore the structure. The City has received numerous inquiries and complaints regarding the appearance and condition of the property.

The City's Land Use Attorney, Pete Heaven, entered a motion with the U.S. Bankruptcy Court requesting the Court's permission to allow the City to proceed with the process of declaring the structure a dangerous structure and having it either repaired or demolished. This motion was granted by the Court in June.

The Community Development Department is responsible for ensuring all property in Mission meets various building and property safety codes and does not pose a risk to the general public. To meet this goal, department staff responds to citizen complaints and requests, as well as requests from the Mission Police Department and the Johnson County Consolidated Fire District #2 regarding possible dangerous structures. Staff also performs self-initiated inspections when a structure presents a clear danger to the public. Inspections are conducted using criteria listed in the 2012 International Property Maintenance Code Section 108.1.5.

In accordance with Kansas Statutes Annotated 12-1752, when staff determines that a structure is dangerous, a written report from the building official is prepared and presented to the City Council. This written report becomes the basis for the City Council to conduct a public hearing for the purpose of taking testimony from the owner,

Related Statute/City Ordinance:	K.S.A 12-1750 / Mission Code Section 510
Line Item Code/Description:	NA
Available Budget:	NA

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<b>Administration</b>	From:	Jim Brown / Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

and all other interested parties, as to the condition of the structure, and to determine whether the structure should be repaired or demolished, and the time frame for such.

On July 8th, an inspection of the structure at 5399 Martway was conducted by Mission’s Building Official, Jim Brown, and Consolidated Fire District #2 Fire Marshall, Todd Kerkhoff. (See *Exhibit A, 5399 Martway Street; Dangerous Structures Inspection dated July 8, 2019*).

A copy of the report was sent to the owner requesting a response as to the action they intended to take be presented to the building official by July 26th. (See *Exhibit B, Notice of Violation and Order to Abate dated July 10, 2019*). No response has been received as of this writing.

In accordance with Kansas Statutes Annotated, 12-1752, staff is now presenting the report to the City Council and requesting that the attached resolution be adopted scheduling a public hearing at which time interested parties may appear and show cause as to why the structure should not be condemned and ordered repaired or demolished pursuant to state statutes and the Building Official’s Request for Condemnation.

The resolution setting a public hearing is to be published for two consecutive weeks on the same day of the week at least 30 days prior to the date of the public hearing. If the City Council chooses to adopt the resolution at its August 21 meeting, the following schedule could be applied:

August 21	Adoption of the Resolution Setting the Public Hearing
August 27	First Publication of the Resolution in the Legal Record (notice sent to owners of record)
September 3	Second Publication of the Resolution in the Legal Record
October 16	Regular City Council Meeting (minimum of 30 days after the second publication).

At the conclusion of the public hearing, the Council will adopt “findings of fact” and direct staff to prepare a resolution for their consideration stating whether the structure should be repaired or demolished and time frame for same. This would be considered at the next regular meeting of the Council, which would on November 20. Once adopted, the resolution will need to be published for one week, and copies sent to all interested parties via certified mail. Following publication and notice, staff would be able to take

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Line Item Code/Description:	NA
Available Budget:	NA

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<b>Administration</b>	From:	Jim Brown / Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

bids for demolition if so directed by the resolution. Actual demolition would most likely occur after the first of the year. If the City were to demolish, the costs would be certified and assessed back against the property.

**CFAA CONSIDERATIONS/IMPACTS: N/A**

Related Statute/City Ordinance:	K.S.A 12-1750 / Mission Code Section 510
Line Item Code/Description:	NA
Available Budget:	NA



Community Development Department  
6090 Woodson Street  
Mission, KS 66202

## **Request for Condemnation and Evidentiary Hearing**

**Date:** August 21, 2019

**TO:** Governing Body

**Location of Violation (address):** 5399 Martway Street, Mission, KS 66202

**KS Uniform Parcel Number:** 0460620902028002000

**Legal Desc.** MISSION MART LT 3 & LT 4

**Tax Property ID:** KP32400000 0003      KP32400000 0004

**Zoning:** MS2

**\*Violations:** Dangerous Structure- [Mission Code- Chapter 510- Article I];

**History:** On July 8, 2019, an on-site investigation was performed on this property in response to complaints received regarding a dilapidated, abandoned, unsafe building thereby serving as an attractive nuisance to unauthorized individuals. The results of this investigation are as follows:

1. The structure suffered significant fire damage on April 3, 2015 and is currently boarded up.
2. Windows are broken out and evidence of trespassing/unauthorized entry is noted at several areas of the building and adjacent lot.

Pursuant to K.S.A 12-1752 and in support of the Dangerous Building Inspection Report (attached) the Building Official is hereby requesting that the Governing Body schedule an evidentiary hearing to allow the owner, the owner's agent, any lien holders of record and any occupant of the structures described above to appear and show cause why such structure should not be condemned and ordered repaired or removed.

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Jim Brown  
Building Official

(Attachments) (Photographs)

Cc: Laura Smith, City Administrator  
Brian Scott, Assistant City Administrator  
Pete Heaven, City Attorney





**DANGEROUS STRUCTURES INSPECTION**

2012 International Property Maintenance Code as adopted by:  
Mission Municipal Code Chapter 500 Article IX

**DATE OF INSPECTION:** July 8, 2019

**ADDRESS:** 5399 Martway Street (Lots 3 & 4)

**KS UNIFORM PARCEL NUMBER:** 0460620902028002000

**TAX PROPERTY ID:** KP32400000 0003      KP32400000 0004

**ZONING:** MS2

**PROPERTY OWNER:** Mission Mart Shopping Center LLC  
Commercial Ventures, Inc.  
5426 Martway Street  
Mission, KS 66205

**LESSEE/TENANT:** Mission Recreation Inc.  
Attn: Beverly O'Donnell  
1020 S Weaver St  
Olathe, KS 66061

**BUILDING OFFICIAL:** Jim Brown

**International Property Maintenance Code (IPMC) Sec. 108.1.5 Dangerous structure or premises.**

Any structure or premises which have any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdictions related to the requirements for existing buildings.  
**Extensive damage at the origin of the fire located adjacent to the front entrance to the building eliminates all points of safe entry/exiting.**
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.  
**The intensity of the fire and firefighting operations heavily damaged the means of egress.**

3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse or to become detached or dislodged. **The fire damaged several areas of the structure. An area of roof structure adjacent to the front entry which is composed of four (4) Warren/SJ type joists at approximately 5 feet on center with corrugated roof decking is reliant upon temporary shoring due to the fact the front exterior wall is heavily damaged and cannot carry the imposed roof loads.**

**In the area of the fire's origin all protective galvanized coating on the roof decking has burned away thereby exposing the roof decking to substantial rust and evidence of structural deflection is noted throughout this area. Evidence of several roof leaks exist which continue to allow rainwater into the building. Mold and mildew is present in several areas of the building with heaviest concentration toward the front of the building. The building continues to deteriorate from the fire event dating back to April 2015.**

4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value. **The front wall of the building adjacent to the entrance is incapable of supporting the imposed loads of the roof structure, thereby necessitating the temporary shoring which is in place.**
5. The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy. **Due to the extensive fire event and associated firefighting efforts, the temporary shoring, the evidence of damage, instability of the front wall to support the roof structure, and all utilities being disconnected, clearly demonstrates the building is unsafe for its intended use and occupancy.**
7. The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act. **The building is abandoned and the front door was discovered as being unlocked and unsecured, thereby contributing to its enticement as an attractive nuisance which leads to harboring of vagrants and other unauthorized persons. Evidence of unauthorized individuals occupying the rear storage building was also discovered.**
8. Any building or structure that has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
10. The above listed conditions are hereby deemed detrimental to the health, safety, and/or welfare of the city's residents, the existence of which constitutes a public nuisance. Any building or

structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health. **All utilities have been shut off since the fire event dating back to April 2015. There is no operating fire, mechanical or plumbing system.**

11. Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public. **The building is vacant and the front door was discovered as being open and unsecured thereby contributing to the determination the building in its present condition is an attractive nuisance and ongoing hazard. Evidence of unauthorized individuals occupying the rear storage building was also discovered.**

All dangerous buildings and structures are hereby declared to be a public nuisance and shall be vacated, repaired and/or demolished in accordance with the procedures specified in the Mission Municipal Code Chapter 510, Article I and under authority of Kansas Statutes Annotated KSA 12-1750 through 12-1756a.

# Exhibit A

## Photographs and Legend

### Photograph Legend:

1. View looking north toward main entrance. North wall damaged to the extent it cannot support the imposed roof loads. Temporary shoring supporting the roof loads in this area spanning four Warren type roof joists.
2. Additional view of temporary shoring and damage to exterior wall at the load bearing points of the roof joists.
3. View of exterior load bearing wall showing deflection in roof joists and corrugated roof decking.
4. Origin of the fire. Grease duct in kitchen. This area is located east of main entrance. Fire travelled from east to west the length of the building.
5. View looking east from main entrance. Extensive heat from the fire caused the roof decking and joists to deflect in numerous areas, which attributed to several roof leaks throughout the building.
6. View from existing restrooms looking north/northwest.
7. View from existing restroom looking north. Note: in all areas of the fire damage the intensity of the heat burned off all galvanized protective coating from the corrugated roof decking thereby leading to accelerated rusting, deterioration and failure in multiple areas.
8. View to the east showing a main support beam and damage to the roof structure including major deflection of the bridging iron and corrugated roof deck. Note: The main support beam also exhibits warping and deflection due to the intense heat from the fire. In addition, the steel support column appears to have been relocated toward the east from its original location as indicated on the beam (see red arrow).
9. Addition view looking east of the major deflection in the bridging angle and corrugated roof decking and joists. Also note the ductwork running north to south at the bottom of the photograph which is significantly damaged by the fire.
10. Significant damage of the roof components adjacent to the main structural beam running east to west.
11. See comment #10. Also note charring of wooden support blocking.
12. See comment #10.
13. See comment #10.
14. View of extensive heat damage to the main supply duct for the building running north to south.
15. Main entrance door, which was unlocked and unsecured at the time of this inspection.
16. Rear supply room doors remain secure.
17. Rear storage room area main electrical panel. No utilities are active since the fire event.
18. Rear storage room area.
19. South rear door of building. Evidence of pry marks and attempts to gain entry. Door remains secure.
20. Restroom, southeast corner of building. Note screwdriver at window latch to help prevent unauthorized entry.
21. Photo of rear storage building located east of the south rear door. There is evidence of unauthorized individuals/vagrants sleeping/residing in the storage building.
22. Photo of putt putt golf area adjacent to the building. Evidence of unauthorized individuals/vagrants along the south end of the area.



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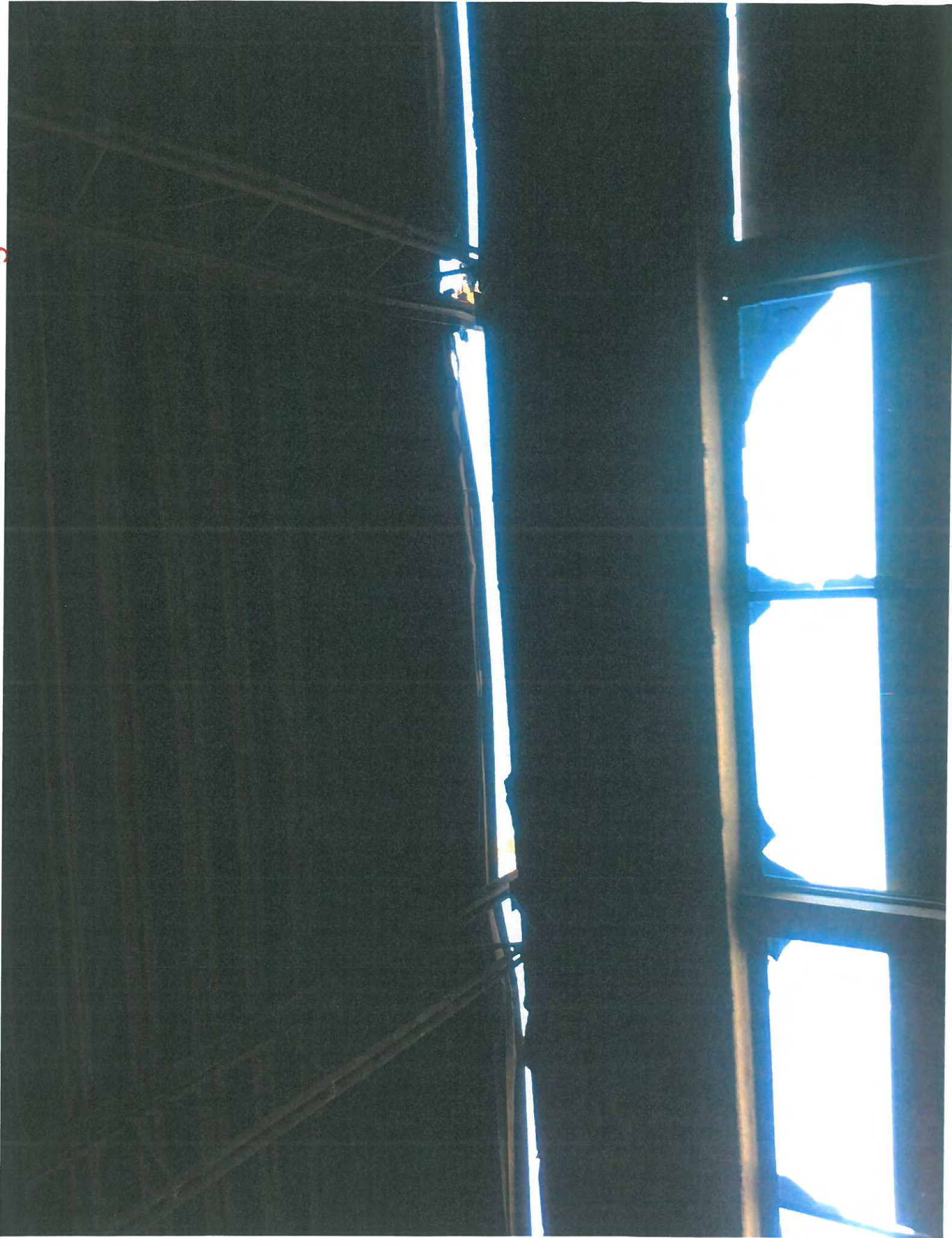
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7/8/2019 9:03 AM





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7/8/2019 9:03 AM









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7/8/2019 9:02 AM









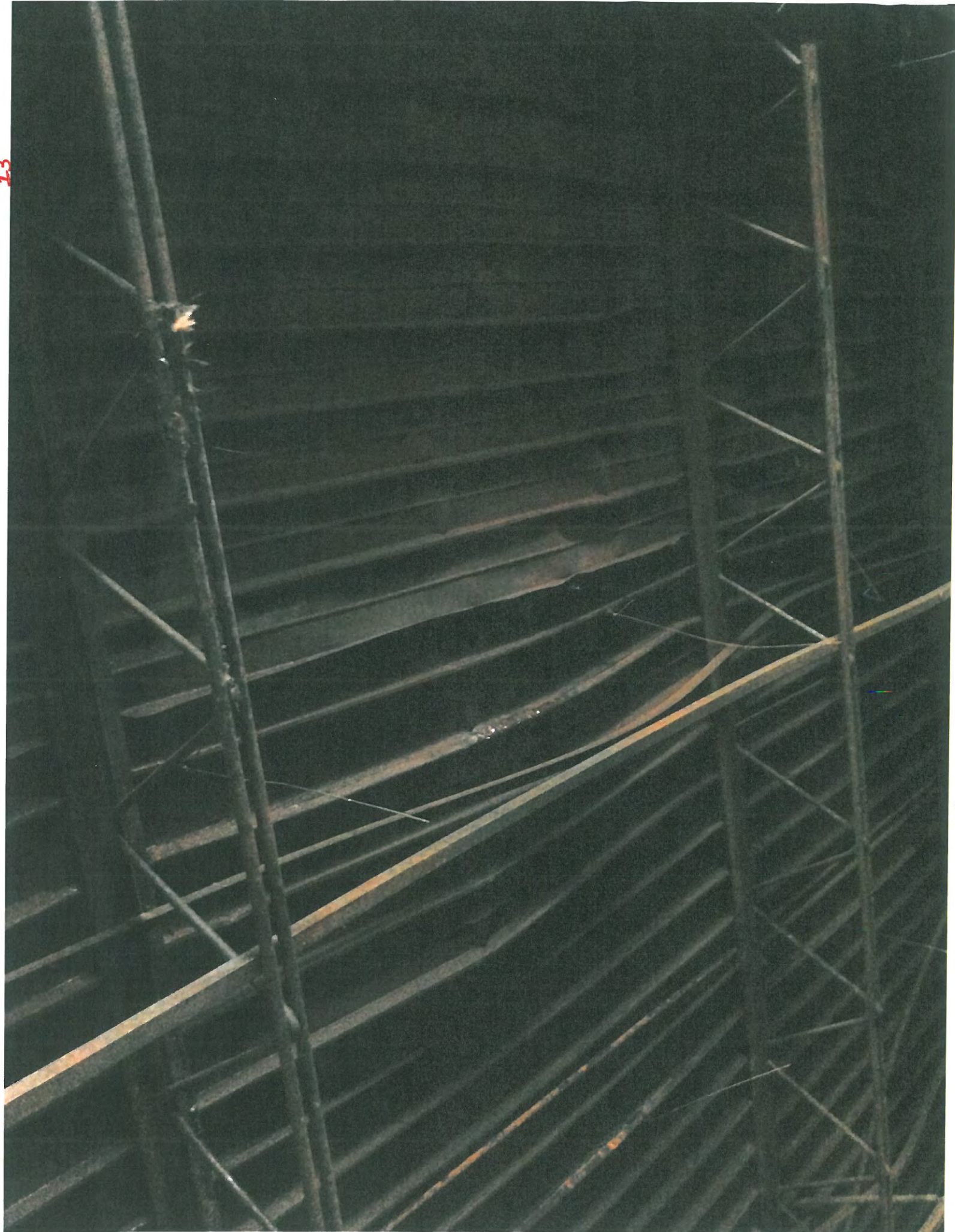
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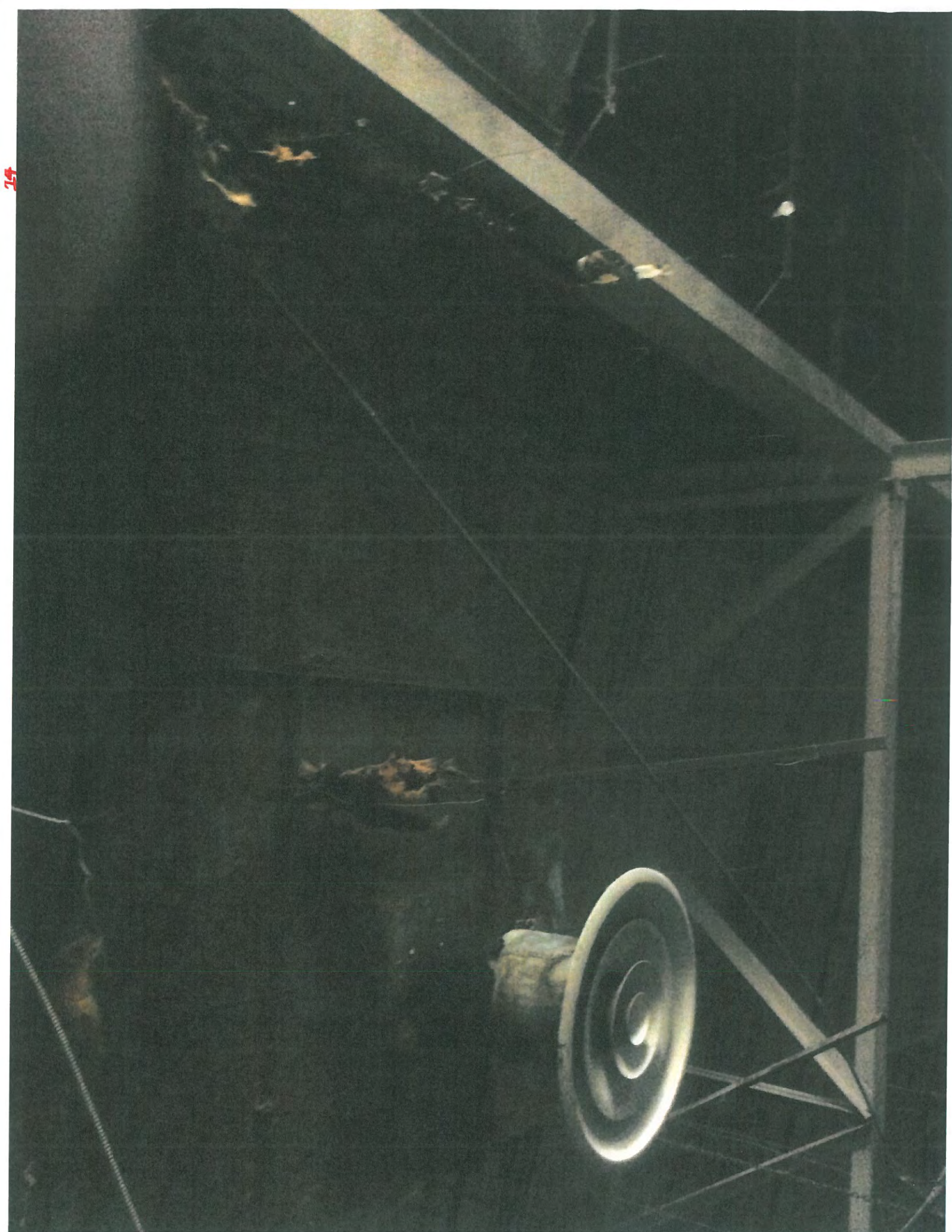














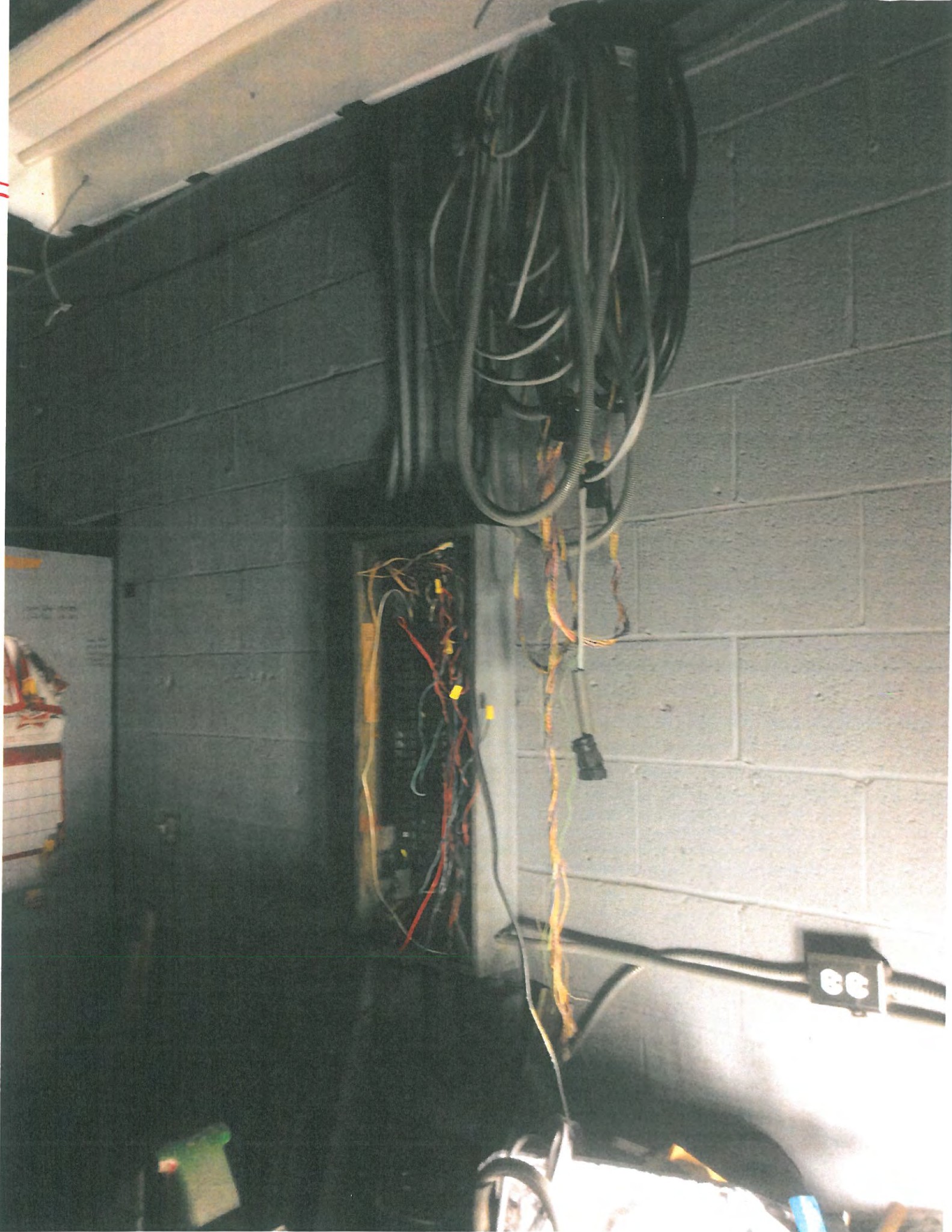








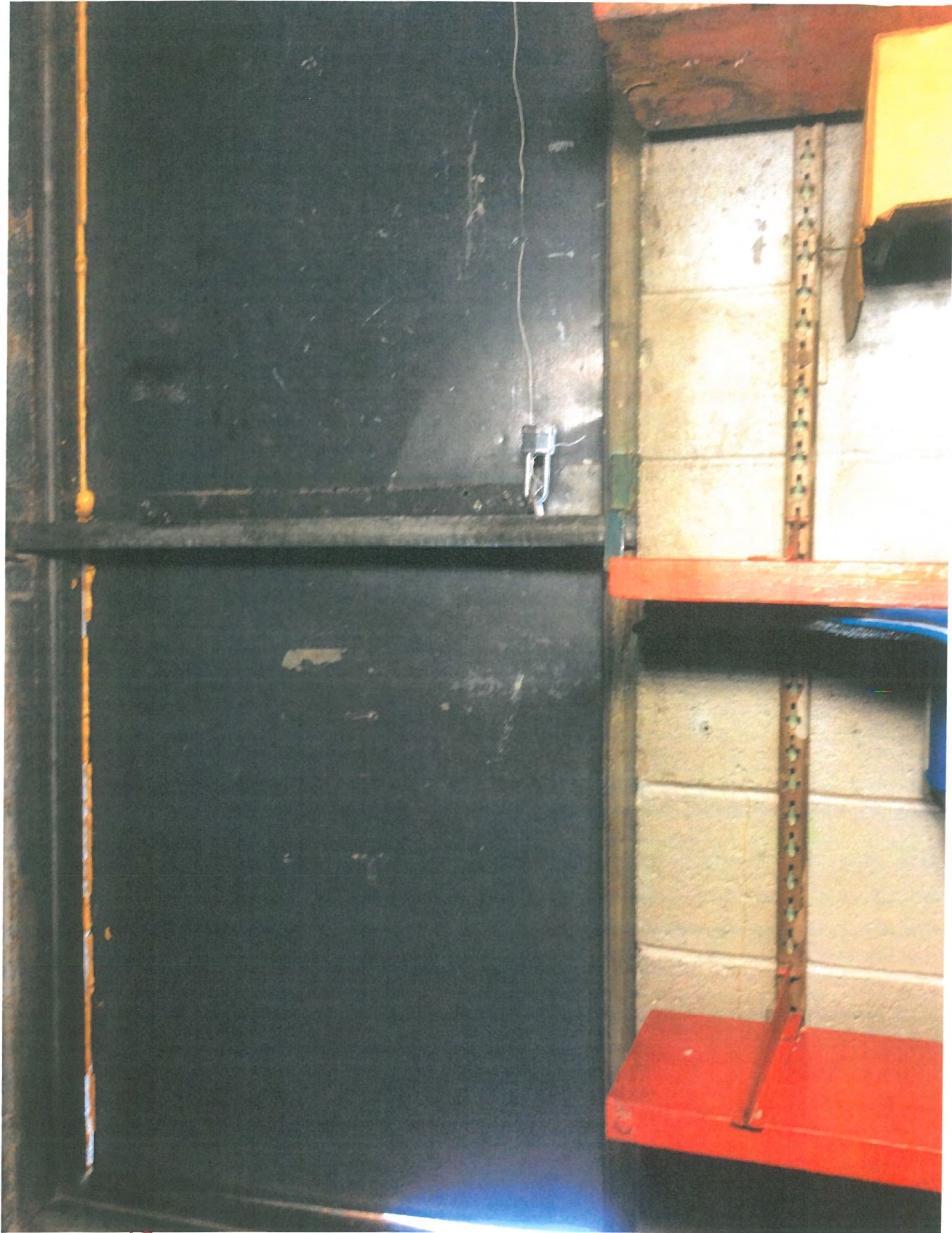
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28

WALK BEAR HAPS  
TRAILS TO  
CAMPWOOD

28







# CITY OF MISSION

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KANSAS

Community Development Department  
6090 Woodson Street  
Mission, KS 66202

## **Violation Notice with Order to Abate**

**Date:** July 10, 2019

VIA FIRST CLASS AND CERTIFIED MAIL

**Owner:** Mission Mart Shopping Center, LLC  
Commercial Ventures, Inc  
Attn: Steve Choikhit  
5426 Martway Street  
Mission, Kansas 66205

**Lessee/Tenant:** Mission Recreation Inc.  
Attn: Beverly O'Donnell  
1020 S Weaver St  
Olathe, KS 66061

**Location of Violation (address):** 5399 Martway Street, Mission KS 66202

**Legal Description:** MISSION MART LT 3 AND 4

**KS Uniform Parcel Number:** 0460620902028002000

**Tax Property ID:** KP32400000 0003

**Occupancy Status:** Vacant

**Building Description:** Commercial Building

**Zoning:** MS2

**Violations:** Dangerous Structure- [Mission Code- Chapter 510- Article I];


**History:** On July 8, 2019, an on-site investigation was performed on this property in response to complaints received regarding a dilapidated, abandoned, unsafe building thereby serving as an attractive nuisance to unauthorized individuals. The results of this investigation are as follows:

1. The structure suffered significant fire damage on April 3, 2015 and is currently vacant and uninhabitable.
2. The building is hereby declared a dangerous structure in accordance with Chapter 510, Article I of the Mission Municipal Code and the dangerous structure inspection report dated July 8, 2019.(attached)

**The following correction action(s) must be completed in order to abate this nuisance:**

1. Within fourteen (14) days from receipt of this notice, provide a detailed course of action with timeframe to apply for and obtain the necessary permits to either demolish the structure(s) or rebuild the structure(s).
2. Failure to respond will result in the City taking action by requesting an evidentiary hearing in accordance with Chapter 510 Article I of the Municipal Code.

**Date of Compliance: The required corrective action(s) must be completed on or before July 25, 2019.**



---

Jim Brown  
Building Official

Attachments:  
Photographs;  
Dangerous Structure Inspection Report

Cc: Laura Smith, City Administrator  
Brian Scott, Assistant City Administrator  
Pete Heaven, City Attorney

**DANGEROUS STRUCTURES INSPECTION**

2012 International Property Maintenance Code as adopted by:  
Mission Municipal Code Chapter 500 Article IX

**DATE OF INSPECTION:** July 8, 2019

**ADDRESS:** 5399 Martway Street (Lots 3 & 4)

**KS UNIFORM PARCEL NUMBER:** 0460620902028002000

**TAX PROPERTY ID:** KP32400000 0003

**ZONING:** MS2

**PROPERTY OWNER:** Mission Mart Shopping Center LLC  
Commercial Ventures, Inc.  
5426 Martway Street  
Mission, KS 66205

**LESSEE/TENANT:** Mission Recreation Inc.  
Attn: Beverly O'Donnell  
1020 S Weaver St  
Olathe, KS 66061

**BUILDING OFFICIAL:** Jim Brown

**International Property Maintenance Code (IPMC) Sec. 108.1.5 Dangerous structure or premises.**

Any structure or premises which have any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdictions related to the requirements for existing buildings.  
**Extensive damage at the origin of the fire located adjacent to the front entrance to the building eliminates all points of safe entry/exiting.**
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.  
**The intensity of the fire and firefighting operations heavily damaged the means of egress.**



3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse or to become detached or dislodged. **The fire damaged several areas of the structure. An area of roof structure adjacent to the front entry which is composed of four (4) Warren/SJ type joists at approximately 5 feet on center with corrugated roof decking is reliant upon temporary shoring due to the fact the front exterior wall is heavily damaged and cannot carry the imposed roof loads.**  
**In the area of the fire origin all protective galvanized coating on the roof decking has burned away thereby exposing the roof decking to substantial rust and evidence of structural deflection is noted throughout this area. Evidence of several roof leaks exist which continue to allow rainwater into the building. Mold and mildew is present in several areas of the building with heaviest concentration toward the front of the building. The building continues to deteriorate from the fire event dating back to April 2015.**
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value. **The front wall of the building adjacent to the entrance is incapable of supporting the imposed loads of the roof structure, thereby necessitating the temporary shoring which is in place.**
5. The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy. **Due to the extensive fire event and associated firefighting efforts, the temporary shoring, the evidence of damage, instability of the front wall to support the roof structure, all utilities being disconnected, clearly demonstrates the building is unsafe for its intended use and occupancy.**
7. The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act. **The building is abandoned and the front door was discovered as being unlocked and unsecured, thereby leading to its enticement as an attractive nuisance which contributes to harboring of vagrants and other unauthorized persons.**
8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

10. The above listed conditions are hereby deemed detrimental to the health, safety, and/or welfare of the city's residents, the existence of which constitutes a public nuisance. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health. **All utilities have been shut off since the fire event dating back to April 2015. There is no operating fire, mechanical or plumbing system.**

11. Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public. **The building is vacant and the front door was discovered as being open and unsecured thereby contributing to the determination the building in its present condition is an attractive nuisance and ongoing hazard. Evidence of unauthorized individuals occupying the rear storage building was also discovered.**

All dangerous buildings and structures are hereby declared to be a public nuisance and shall be vacated, repaired and/or demolished in accordance with the procedures specified in the Mission Municipal Code Chapter 510, Article I and under authority of Kansas Statutes Annotated KSA 12-1750 through 12- 1756a.

## Mission Bowl Demolition

### Notice Dates and City Council Committee and Council Dates

Action	Date
<p>Notice sent to property owner of potential dangerous structure and request to inspect.</p> <p><b>Note:</b> Received response from property owner 6.19.19. Requested that we contact the former tenant to gain access.</p> <p>Advised by city attorney to mail the letter to the former tenant to request entry for inspection.</p>	<p><b>June 14, 2019</b>  Mailed (certified)  *6.14.19 (to owner)  *6.20.19 (to former tenant per city attorney request)  <b>(complete)</b></p>
<p>Inspection of structure to determine the condition. (14 days from date notice is sent) <b>Received contact from former tenant (Beverly O'Donnell) 7/1/19. Inspection/investigation is scheduled for 7/8/19 @ 9:00 a.m.</b></p>	<p><b>June 28, 2019</b>  <b>(completed 7/8/19)</b></p>
<p>Letter sent to owner with report of inspection and requesting plan of action for correcting condition. (14 days from date report is sent)  <b>Inspection occurred 7/8/19. Letter mailed 7/10/19</b></p>	<p><b>July 12, 2019</b>  <b>(completed 7/10/18)</b></p>
<p>Response due providing plan of action for addressing concern</p>	<p><b>July 26, 2019</b>  <b>(No response received by 7/26/19)</b></p>
<p>Statement of Dangerous Structure filed with the City Council.(Request for Public Hearing)</p>	<p><b>August 7, 2019</b>  Community Development Committee  (Packet deadline - <u>July 26th</u>) <b>(packet completed 7/26/19)</b></p>
<p>Resolution adopted by the City Council establishing a date, time, and place for a public hearing for the owner and/or other interested parties to appear and provide a reason for why structure should not be repaired or demolished.</p>	<p><b>August 21, 2019</b>  City Council Meeting</p>
<p>1st Notice of Public Hearing</p>	<p><b>August 22, 2019</b>  Publish in Legal Record (week one)</p>
<p>Resolution sent to owner, agents, lienholders or occupants at their last known address by certified mail (within 3 days after 1<sup>st</sup> publication)</p>	<p><b>August 23, 2019</b></p>



2nd Notice of Public Hearing	<b>August 29, 2019</b> Publish in Legal Record (week two)
Public hearing before the city council. (Minimum of <u>30 Days after second publication</u> )	<b>October 16, 2019</b> City Council Meeting
Resolution adopted by City Council determining the structure is unsafe and should be repaired or demolished. Resolution shall state timeframe for completion of such.	<b>November 6, 2019</b> Community Development Committee (Packet deadline - <u>October 25th</u> )  <b>November 20, 2019</b> City Council Meeting
Resolution published 1 time after hearing	Publish in legal record <b>November 21, 2019</b>
Resolution sent by certified mail to owners, agents, lienholders of record and occupants in the same manner provided in the notice of hearing ( <i>within 3 days after publication</i> ).	<b>November 22, 2019</b>
Notice placed on structure if found to be a dangerous structure	<b>November 21, 2019</b>
Bids taken for demolition	<b>November 30, 2019</b>
Bids approved by Council	<b>December 4, 2019</b> Community Development Committee (Packet deadline - <u>November 15th</u> )  <b>December 16, 2019</b> City Council meeting
Demolition occurs	End of January 2020

**CITY OF MISSION**

**RESOLUTION NO. 1033**

**A RESOLUTION PROVIDING NOTICE AND FIXING A TIME AND PLACE TO APPEAR AND SHOW CAUSE WHY THE STRUCTURE AT 5399 MARTWAY STREET SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS AN UNSAFE STRUCTURE IN ACCORDANCE WITH K.S.A. 12-1750 ET. SEQ.**

**WHEREAS**, on April 3, 2015, a fire damaged the structure located at 5399 Martway Street in the city of Mission, Kansas; and

**WHEREAS**, no repairs or restoration of the structure have been made since the date of the fire and the structure remains unsecured and exposed to the elements; and

**WHEREAS**, pursuant to K.S.A. 12-1750 et. seq. and Mission City Code Section 510.000 et. seq, the Governing Body has the power to cause the repair or removal of, or to remove any structure located within the city which is determined to be unsafe or dangerous; and

**WHEREAS**, if necessary, the City may recover costs for the repair or removal of an unsafe or dangerous structure in accordance with and K.S.A 12-1755 and Mission City Code Section 510.100 ; and

**WHEREAS**, pursuant to K.S.A 12-1752, the Building Official of the City of Mission has determined the structure located upon the following described parcels of real estate:

5399 Martway Street:

Lots 3 - Tax Property ID: KP32400000 0003 / KS Uniform Parcel #:  
0460620902028002000

Lot 4 - Tax Property ID: KP32400000 0004 / KS Uniform Parcel #:  
0460620902028003000

to be unsafe and dangerous and has filed a written statement of such determination with the Governing Body on August 21, 2019; and

**WHEREAS**, pursuant to K.S.A 12-1752, the Governing Body shall provide notice and call for a public hearing so that the owner, owner's agent and any lien holders of record may appear and show cause as to why the structure should not be condemned and ordered repaired or demolished as an unsafe or dangerous structure; and

**WHEREAS**, pursuant to this notice and in accordance with K.S.A. 12-1752 et seq., the City may ultimately repair or demolish such structure and the owner may lose any interest in the salvage proceeds of such structure and that any costs borne by the City in excess of the salvage value may be assessed against the real property.



**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS**

**Section 1.** That pursuant to K.S.A. 12-1752, a public hearing shall be held by the Mission Governing Body on October 16, 2019 at 7:00 p.m. at the Mission City Hall, 6090 Woodson Road, Mission, Kansas 66202 in order that the owner, the owner's agent, any lien holders of record and any occupant of the structure described above may appear and show cause as to why such structure should not be condemned and ordered repaired or demolished.

**Section 2.** This resolution shall be in full force and effect from and after its adoption by the Governing Body, and the City Clerk shall cause it to be published once each week for two consecutive weeks on the same day of each week in the official city newspaper as required by K.S.A. 12-1752.


**Section 3.** The City Clerk is hereby directed to mail a copy of this resolution, by certified mail, to the owner, owner's agent, any lien holders and occupants of record within three days following the first publication hereof, all in accordance with K.S.A 12-1752.

**THIS RESOLUTION IS PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF MISSION, this 21st day of August, 2019.**

**APPROVED BY THE MAYOR OF THE CITY OF MISSION, this 21st day of August, 2019**

  
Ronald E. Appletoft, Mayor

ATTEST:

  
Martha Sumrall, City Clerk

APPROVED AS TO FORM:

  
David Martin, City Attorney

<b>City of Mission</b>	Item Number:	7a.
<b>ACTION ITEM SUMMARY</b>	Date:	October 2, 2019
<b>Administration</b>	From:	Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

**RE:** Agreement with WCA of Missouri, LLC for Residential Solid Waste Collection Services

**RECOMMENDATION:** Approve an Agreement with WCA of Missouri, LLC for residential solid waste collection services for a period of five (5) years with two, optional renewal terms of five (5) years each.

**DETAILS:** Chapter 235 of the Municipal Code of the City of Mission provides for solid waste collection, disposal and recycling within the city. Section 235.030, in particular states:

- A. The City shall provide for the collection and disposal of all residential solid waste as a municipal function and shall extend such service to all residential properties within the City, establish the conditions thereof and fix the charges under which service will be rendered. The City shall license one (1) or more private companies to perform such collection and disposal. All companies providing the service of collecting residential solid waste shall also provide a same-day curbside recycling service or other recycling program approved by the City and shall meet all requirements and regulations set forth by the Governing Body.
- B. Every resident of a residential property in the City shall be required to allow a collector licensed by the City on to his, her or its property for the purpose of collecting residential solid waste and recyclable materials.

The City has contracted with Waste Management (formerly Deffenbaugh) for many years to provide residential solid waste collection services for the City. The current agreement will expire December 31st of this year. Staff solicited bids this summer for a new residential solid waste collection services agreement.

Staff structured the bids for services like what is being offered currently, which includes:

- Weekly Solid Waste Collection (limited to one 65 gallon poly-cart container)
- Weekly Recyclable Collection (unlimited)
- Weekly Yard Waste Collection (limited to 8 bags January - October and 12 bags November and December)
- Monthly Bulky Item Collection (limited to 3 items)
- Collection from City Facilities

Related Statute/City Ordinance:	Chapter 235 of Municipal Code
Line Item Code/Description:	Solid Waste Collection 30-90-215-05
Available Budget:	\$667,000 FY 2020 Budeget



<b>City of Mission</b>	Item Number:	7a.
<b>ACTION ITEM SUMMARY</b>	Date:	October 2, 2019
<b>Administration</b>	From:	Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

The successful bidder will be required to provide 65 gallon poly-cart containers for both solid waste and recycling. Carts will have wheels, handle, and different color lid to distinguish between solid waste and recycling. Carts will also be stamped with the name of the company and contact information, as well as a list of acceptable recyclables.

The successful bidder will also provide overage stickers to be purchased at City facilities or local retailers for those with extra solid waste that does not fit into the poly-cart or additional yard waste bags.

The invitation for bids placed a heavy emphasis on customer services standards including requirements for a toll-free phone number, email, and other means for communicating service requests and concerns. Standards stipulate that inquiries be answered by staff that are knowledgeable about the services that are offered to the City, and that calls not answered be returned within a specific time period. Educational materials must also be provided about acceptable recycling materials and general solid waste and yard waste handling.

Three bids were received with the following monthly rates per residential unit. A detailed bid sheet is attached as part of this action item. Bid rates were for all services listed above.

	Monthly Bid Rate	Annual
<b>Current Contract</b>	<b>\$16.97</b>	<b>\$203.64</b>
WCA	\$16.04	\$192.54
Republic	\$22.16	\$265.87
Waste Management	\$17.99	\$215.88

Residents currently pay \$14.58 per month, or \$175.03 annually. The City pays for the balance (\$2.39 per month) through a transfer from the General Fund. A transition to WCA will result in slightly lower anticipated expenses.

The lowest and best bid was submitted by WCA of Missouri, LLC. WCA is located in Harrisonville, Missouri. They have their own material recycling facility (MRF) at this location and their own landfill outside of Sedalia, Missouri. WCA currently provides services for Westwood, Fairway, and Roeland Park in Johnson County; and Smithville,

Related Statute/City Ordinance:	Chapter 235 of Municipal Code
Line Item Code/Description:	Solid Waste Collection 30-90-215-05
Available Budget:	\$667,000 FY 2020 Budeget

<b>City of Mission</b>	Item Number:	7a.
<b>ACTION ITEM SUMMARY</b>	Date:	October 2, 2019
<b>Administration</b>	From:	Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

Riverside, Peculiar, and Belton in Missouri.

WCA's total bid for both residential collection and collection of City facilities for the first year is \$570,900, or \$16.04 per household per month (based on 2,970 households). The proposed agreement allows for an annual escalator equal to the 12 month average for the Urban Consumer Price Index for Trash Collection Services.

Staff reached out to the Johnson County communities to discuss their satisfaction with the services provided by WCA. All three stated that WCA has provided a good level of service. They offer an individualized website for each community with information about the services specific to that community. They also provide monthly reports to the communities outlining service requests and concerns including missed pick-ups.

If awarded the contract, WCA will place an order for the poly-cart containers as well as new trucks that will be used for service provision in Mission. Trucks have a significant lead time, so rented trucks will be used at first.

WCA will also mail an introductory letter to all households in the City outlining who they are, how new carts will be received (and the old ones removed), information about how to contact them, and information about acceptable recyclable materials and handling of solid waste. The goal is to make the transition as seamless as possible, and to provide the same type of services that residents are receiving now with a greater emphasis on customer service.

Attachments to this action item include:

- Proposed Agreement for Residential Solid Waste Collection Services
- Detailed Bid Sheet
- Bid from WCA
- Invitation for Bids for Residential Solid Waste Collection Services issued in August

Staff recommends approval of the proposed agreement.

**Update:**

At the Council's request staff did follow-up with WCA on additional points to the Agreement:

Related Statute/City Ordinance:	Chapter 235 of Municipal Code
Line Item Code/Description:	Solid Waste Collection 30-90-215-05
Available Budget:	\$667,000 FY 2020 Budeget



<b>City of Mission</b>	Item Number:	7a.
<b>ACTION ITEM SUMMARY</b>	Date:	October 2, 2019
<b>Administration</b>	From:	Brian Scott

Action items require a vote to recommend the item to full City Council for further action.

**Requirement that Contractor Compost:**

Section 2.3 - Collection of Yard Waste - the following language was added, *“Yard Waste that is collected is to be composted by the Contractor, or a subcontractor, for use as mulch or other form of soil conditioner.”*

**Commitment for Use of CNG Trucks in Mission:**

Section 3.7 - Equipment Utilized - the following language was added, *“The Contractor has expressed intentions to implement a fleet of vehicles that operate with compressed natural gas (CNG) in the next two to three years. In doing this, the Contractor has committed to the City that CNG trucks will be utilized for collection services in the city when the Contractor starts using such vehicles.”*

**Reduce The Number of Years In the Term or Allow Termination Without Cause:**

The Contractor stated that they intend to make a sizeable investment (new vehicles, staff and poly-carts) with this Agreement. Thus, they based their bid on the initial five-year term that was stipulated in the invitation for bids. They would not be able to recover their costs, if the number of years in the bid is reduced.

**CFAA CONSIDERATIONS/IMPACTS: N/A**

Related Statute/City Ordinance:	Chapter 235 of Municipal Code
Line Item Code/Description:	Solid Waste Collection 30-90-215-05
Available Budget:	\$667,000 FY 2020 Budeget

# AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES

This AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between WCA of Missouri, LLC, an entity organized and existing under the laws of the State of Delaware d/b/a/ Waste Corporation of Missouri, LLC, with its principal office located at 22820 S. State Route 291, Harrisonville, MO 64701 (“Contractor”) and the City of Mission, Kansas, a municipal corporation duly organized under the constitution and laws of the State of Kansas, with its principal office located at 6090 Woodson, Mission, KA 66202 (“City”).

## Preamble

WHEREAS, the City, in order to protect the public health and welfare of its residents, has deemed it necessary to collect, transport and dispose of Residential Solid Waste (as defined below) and;

WHEREAS, the City is authorized pursuant to the provisions of K.S.A 65-3410 and its home rule authority to provide for the methods of collection, transportation, and disposal of Residential Solid Waste located within its corporate boundaries and to provide that the method chosen may be the exclusive method to be used within its boundaries; and

WHEREAS, the City has adopted rules and regulations for the collection, transportation, and disposal of Residential Solid Waste as codified in Chapter 235 of the Municipal Code of the City of Mission; and

WHEREAS, the City desires to enter into this Agreement to provide solid waste collection, transportation and disposal services for Residential Dwelling Units (as herein defined) located along the routes and in the collection service areas as indicated on the attached Appendix B and Municipal Facilities as indicated on the attached Appendix C, and to set the rates and charges relating to such services; and

WHEREAS, the Contractor, pursuant to the terms of this Agreement and on behalf of the City, is willing to collect, transport and dispose (or sell) solid waste at a facility or facilities selected in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained:

## Article I

### Definitions

#### Section 1.1 Definitions

“**Bulky Items**” means household items that can be reasonably carried by one or two individuals including: couch, chair, mattress, table, and other such household items that do not fit in a solid waste poly-cart container. Bulky Items exclude: electronics waste such as computers, monitors and televisions; Hazardous Wastes; tires and automotive parts; appliances with CFCs and construction materials.



“**City**” means the City of Mission, Kansas, with its principal office located at 6090 Woodson, Mission, KA 62202.

“**City Facilities**” means those public areas owned or maintained by the City from which the Contractor is required to collect Solid Waste and Recyclable Materials pursuant to Appendix C of this Agreement.

“**Contractor**” means WCA of Missouri, LLC, an entity organized and existing under the laws of the State of Delaware d/b/a/ Waste Corporation of Missouri, LLC, with its principal office located at 22820 S. State Route 291, Harrisonville, MO 64701, and its successors and assignees.

“**Curbside**” means the area in front of a Residential Dwelling Unit that is located within ten (10) feet of the edge of the nearest adjacent roadway.

“**Effective Date**” means the first date that the provision of services will begin under the Agreement (January 1, 2020).

“**Hardship Situation**” means any occupant of a Residential Dwelling Unit so designated by the City who is by reason of age or disability physically unable to place the solid waste and/or recycling poly-carts, and/or any containers, bins, trash and/or yard-waste bags at the Curbside; and has no family member or other person living in the residence able to place such at the Curbside.

“**Hazardous Materials**” means, but may not be limited to, any materials such as: any automotive parts including tires car batteries, oils, and gasoline; any toxic materials including paints, solvents and poisons; and electronic waste including computers, computer monitors, and televisions.

“**Household Hazardous Waste**” means those small quantities of hazardous materials in the possession of an occupant of a Residential Dwelling Unit including, but not limited to, household cleaners, flammable liquids, antifreeze, aerosols, corrosives, pesticides, herbicides, poisons and latex paints. These wastes are consumer products that when discarded exhibit hazardous characteristics.

“**Houseline**” means the front exterior of a Residential Dwelling Unit at ground level and outside of enclosures or fences.

“**Initial Term**” means the first five (5) year term of this Agreement (January 1, 2020 through December 31, 2024).

“**Notice to Proceed**” means official, written notice from the City that the Agreement has been approved and that the City and Contractor may begin making preparations for the Effective Date of the Agreement.

“**Overage Sticker**” means stickers provided by the Contractor for the purpose of being placed on additional sealed, trash bags of Solid Waste or bags of Yard Waste to be collected for that weekly collection.

“**Recyclable Materials**” means those items identified in Appendix A of this Agreement as materials eligible for recycling, and any other materials which have been identified Recyclable Materials subsequent to the execution of this Agreement.

“**Renewal Term(s)**” means one of two (2) optional terms that extends the Initial Term of this Agreement for an additional five (5) year period (ten (10) additional years total, if both optional terms are enacted).

“**Residential Dwelling Unit**” means any single home, duplex, or triplex. A duplex shall be considered as

two dwelling units and a triplex shall be considered as three dwelling units.

“**Residential Solid Waste**” means Solid Waste, Recyclable Materials, Yard Waste, and Bulky Items collected on a weekly basis from Residential Dwelling Units in the city of Mission, provided, however, that Residential Solid Waste shall not include Hazardous Materials or Household Hazardous Waste.

“**Solid Waste**” means general garbage and refuse suitable for disposal in a 65-gallon poly-cart designated for such or a sealed trash bag and to be hauled away in a packer-type collection truck.

“**Yard Waste**” means all accumulations of grass clippings, leaves, loose vegetation, and small limbs and branches, and other material accumulated as the result of the care of lawns, shrubbery, vines and trees, provided, however, “Yard Waste” shall not include wood fencing, landscape timbers, flower pots, yard decoration, mulch, rock, dirt and similar items

### **Section 1.2. Rules of Construction.**

- a) **Grammatical Usage and Construction** – In construing the Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any places in which the context so requires.
- b) **Defined Terms** – All capitalized words and phrases throughout this Agreement shall have the meanings set forth in Section 1.1 and other provisions of this Agreement.
- c) **Heading** – The headings, titles, and captions in this Agreement has been inserted only for convenience and in way define, limit, extend, or describe the scope or intent of this Agreement.
- d) **Calendar Days** – Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, of federal holiday.

## Article II

### Services To Be Provided

**Section 2.1 Weekly Solid Waste Collection.** The Contractor will provide, on behalf of the City, once a week collection of Solid Waste from each Residential Dwelling Unit in the City of Mission. The amount of solid waste collected will be limited to what can be placed in one 65-gallon poly-cart provided by the Contractor with the lid completely closed. Additional solid waste material will be collected if placed in a sealed trash bag and labeled with an Overage Sticker provided by the Contractor. Electronic items and hazardous household waste will not be accepted in the weekly solid waste collection.

**Section 2.2. Weekly Recycling Collection.** The Contractor will provide, on behalf of the City, once a week collection of Recyclable Materials from each Residential Dwelling Unit in the City of Mission. Recycled Materials will be placed in a 65-gallon poly-cart provided by the Contractor with the lid completely closed. Additional Recyclable Materials will be collected if placed in a bin clearly marked recycling or has the universal recycling symbol. Collection of recycling will be unlimited. Items acceptable



for recycling will be limited to those outlined in Appendix A of this Agreement.

**Section 2.3 Weekly Collection of Yard Waste.** The Contractor will provide, on behalf of the City, once a week collection of Yard Waste from each Residential Dwelling Unit in the City of Mission,. Collection of Yard Waste will be limited to ten (10) bags (or any combination of bags, bins, and bundles placed at the Curbside each week for collection. Additional bags will be collected if labeled with an Overage Sticker.

Yard Waste will consist of grass clippings, leaves and loose vegetation, and small limbs and branches. Yard waste is to be put into biodegradable, paper bags; or a plastic bin that is no more than 32-gallons; or bundled and neatly placed at the curb for collection. Limbs and branches cannot be any larger than 18 inches in diameter, four (4) feet in length, and must be tied together in a bundle with twine. The entire bundle must be 40 pound or less in weight. Plastic bags will not be accepted. Wood fencing, landscape timbers, flower pots, yard decorations, mulch, rock, dirt and similar items will not be accepted. The Contractor will accept Christmas trees that have been cut into sections no more than four (4) feet in length and all decorations and lights removed.

Amounts beyond what is allowed during the specific period of time will require an Overage Sticker that is provided by the Contractor and obtained at city hall, the community center, or local retailers.

Yard Waste that is collected is to be composted by the Contractor, or a subcontractor, for use as mulch or other form of soil conditioner.

**Section 2.4 Monthly Collection of Bulky Items.** The Contractor will provide, on behalf of the City, once a month collection of Bulky Items from each Residential Dwelling Unit in the City of Mission. Bulky Items are defined as items that can be reasonably carried by one or two individuals. Bulk Items include: couch, chair, mattress, table, household items that do not fit in a poly-cart, etc. Bulk Items do not include electronics waste such as computers, monitors and televisions; Hazardous Wastes; tires and automotive parts; appliances with CFCs and construction materials, and such items will not be collected by the Contractor. Bulky Items will be limited to three (3) items per month.

**Section 2.5 Curbside Collection.** All collection services outlined in Section 2.1, 2.2, and 2.3 of the Agreement will be from the Curbside in front of the Residential Dwelling Unit, with the exception of Houseline collections as outlined in Section 2.6 of this Agreement. Items to be collected will be placed in either a poly-cart provided by the Contractor, a bin or cart provided by the resident, a sealed trash bag with an Overage Sticker provided by the Contractor, or in a neat, tied bundle – all in accordance with Section 2.1, 2.2, and 2.3 of Agreement. Items will be placed at the Curbside by the resident prior to 7:00 am on the day of the collection for that week. Once collected, empty poly-carts and bins will be returned to the original point of placement at the curbside.

**Section 2.6 Houseline Collection for Hardship Situations.** Hardship Situations shall be defined as medically disabled or elderly residential customers as approved by the City. A list of Hardship Situations will be provided by the City to the Contractor and updated regularly with notice to the Contractor. Contractor will collect once a week from each Hardship Situation the Solid Waste, Recyclable Materials and Yard Waste placed readily visible in front of the Residential Dwelling Unit, anywhere between the unit and the street. Poly-carts and bins will be returned to the original point of placement in front of the unit.

**Section 2.7 Collection Schedule and Routes.** The Contractor will collect Solid Waste, Recyclable Materials and Yard Waste from each Residential Dwelling Unit in the City of Mission once a week. Collection will be in such a manner where the city is broken into four distinct collection service areas with all Solid Waste, Recyclable Materials, and Yard Waste being collected from each Residential Dwelling Unit in that service area on a designated day of the week for that area in accordance with the map shown

on Appendix B of this Agreement. Collection days will be Monday, Tuesday, Thursday and Friday of each week. Collection days will be consistent from week to week. Monthly collection of Bulky Items will be on the first collection day of each month.

- a) **Collection Times** – No collection shall be made before 7 a.m. or after 7 p.m., except by express authorization by the City. No regular collections shall be made on weekends. Saturday collection may be permitted for special pickup events, holiday week collections and missed pickups from the regular pickup day.
- b) **Holiday Schedule** – The Contractor shall observe the Thanksgiving, Christmas and New Year’s Day holidays. Materials will be collected one day later for those areas of the city with scheduled collection days on or after those holidays.
- c) **Inclement Weather** – Contractor will not unilaterally suspend or delay collections because of inclement weather (extreme cold, extreme heat, dangerous road conditions, etc.) without first notifying the City. Any decision to suspend or delay collections will be promptly communicated by Contractor to residents through all appropriate communications channels.

The Contractor may propose alternative routes or collection methodologies. These will be mutually agreed upon between the Contractor and the City in a written amendment to this Agreement. Notice must be given 30 days before actual implementation of any change in routes or collection methodologies.

**Section 2.8 Provision of Poly-Carts for Solid Waste Collection and Recycling Collection.** The Contractor will provide, at their cost, one 65-gallon poly-cart for Solid Waste and one 65-gallon poly-cart for Recyclable Materials to each Residential Dwelling Unit in the City of Mission. Each poly-cart will have two wheels, handle, and lid that fits securely around the top of the cart to prevent spillage, odor, and rainwater. Each poly-cart will be made of durable resin material that is resistant to SUV rays; free of cracks, punctures, or any other damage, and will not leak. Each poly-cart will be stamped with the name and phone number of the Contractor.

The poly-cart designated for recycling will have a different color lid than the one designated for solid waste so that they can be easily identified. The poly-cart for recycling will have the universal sign for recycling stamped on it, and should have a list of commonly accepted recycling items.

The Contractor will be required to make provisions for delivery of carts to each Residential Dwelling Unit in the City of Mission prior to the beginning of the Effective Date of this Agreement. The Contractor will be expected to replace poly-carts, at its expense, that are lost or become damaged.

**Section 2.9 Provision of Overage Stickers.** The Contractor will provide the City with Overage Stickers at a cost of \$1.25 per sticker. Overage Stickers will be provided in units of five (5) stickers per page. Overage Stickers will have the name of the Contractor clearly printed on them and the words “For Household Waste and Yard Waste Overage Collection Only.” The City will have the right to sell the overage stickers at its facilities or through local retailers in the community at a price above what they were purchased for from the Contractor. The Contractor may also sell the stickers directly to residents.

**Section 2.10 Collection of Solid Waste and Recycling from City Facilities.** The Contractor will collect Solid Waste and Recyclable Materials from City Facilities at the locations and in the frequency and at the costs as identified in Appendix C of this Agreement. In so doing, the Contractor will provide the necessary



bins and dumpsters.

**Section 2.11 Solid Waste Collection from City Festivals and Neighborhood Events.** The Contractor will provide two (2) 40-yard dumpsters up to four (4) times a year for City sponsored festivals and neighborhood events and up to six (6) portable toilets will be provided up to four (4) times a year for City sponsored festivals and events at no charge, or a grant to the City in an amount in lieu of for a solid waste, recycling or yard waste initiative.

## ARTICLE III SERVICE STANDARDS

**Section 3.1 Resident Communication.** Within ten (10) business days of the Notice to Proceed being issued by the City, the Contractor will prepare and deliver, at its expense, to all Residential Dwelling Units within the collection service areas a mail piece introducing the company. The document will contain:

- The name of the service provider
- Toll-Free telephone number for customer service concerns and requests
- Web page address and email
- Collection days and hours
- Holidays observed by the service provider and alternative collection days

The document will also provide regulations concerning the preparation of Solid Waste, Recyclable Materials, Yard Waste, and Bulky Items for collection. This communication shall be updated and distributed, at the Contractor's expense, on an annual basis during the term(s) of this agreement.

The City will provide a list of addresses in the City that the Contractor can utilize for the distribution.

**Section 3.2 City Designated Website.** The Contractor shall maintain, at its expense, a website designated specifically for the City of Mission. This website will contain the following information:

- Services offered to the City through this Agreement
- Service areas and collection days
- Hours of collections
- Holidays observed by the Contractor and corresponding schedule
- Notice of changes to collection services due to inclement weather or another unforeseen event
- Methods for contacting the Contractor directly with questions or concerns (methods should include, at a minimum, toll-free number and an email address)
- Regulations concerning the preparation of Solid Waste, Recyclable Materials, Yard Waste, and Bulky Items for collection

**Section 3.3 Customer Service Center.** The Contractor must maintain a toll-free telephone line for receiving service concerns or requests. The telephone line will be staffed by trained personnel between 8 a.m. and 5 p.m., Central Standard Time, Monday through Friday, except for holidays. Calls will be answered promptly. Those answering the telephone line will need to be familiar with the City's Agreement for Residential Solid Waste Collection and be able to answer questions and address concerns specific to the Agreement. In cases where there is an exceptionally high call load, calls may roll to a voice mail box, but must be returned within an hour after receipt.

The telephone line will have a voice mail box or answering service available during nonbusiness hours that residents may leave a message. Calls made during non-business hours will be returned within the first hour of the next business day.

Emails received should be answered within an hour after receipt. Emails received afterhours should be answered within the first hour of the next business day.

**Section 3.4 Collection Service Standards.** Service concerns or requests received by the Contractor before noon, Central Time, of the collection day must be addressed before close of business that same day. Service concerns or requests received by the Contractor after noon, Central Time, of the collection day must be addressed before close of business the following business day.

Service concerns will include a missed collection on the designated collection day, failure to return the containers to the Curbside in good order, spillage, or similar type of incident.

Concerns regarding spillage should be addressed within an hour of the concern being received.

**Section 3.5 Field Representative Provided.** The Contractor will provide the City, in writing, the name and contact information for a field representative of the Contractor that is familiar with city and the Agreement and has the authority and ability to address concerns in a timely manner.

**Section 3.6 Monthly Service Reports.** The Contractor will provide a monthly report to the City of any reported service concerns or requests. Such reports will include request for Houseline collection, missed pick-ups, spillages, and damage to private property. Such reports should also include amount of Solid Waste collected, Recyclable Materials collected, and Yard Waste collected.

**Section 3.7 Equipment Utilized.** The Contractor will be obligated to provide the number and type of trucks necessary to effectively perform the services outline in this Agreement. Trucks will be identified with the name of the Contractor. Trucks utilized in the performance of this Agreement should not be more than five (5) years in age and should be kept safe, clean, and in sanitary condition with no leakage.

All equipment will be of such a type and in such condition so as not to cause any damage to City property or the community at large. All equipment used within the jurisdictional boundaries of the city will meet the minimum requirements of OSHA (Occupational Safety Health Administration) and related federal, state, county, and city agencies and regulations, including but not limited to EPA (Environmental Protection Agency) and the NESHAPS (National Emission Standards for Hazardous Air Pollution). All equipment will be of a type and quality acceptable to the City, and which will not cause injury to property or persons.

The Contractor has expressed intentions to implement a fleet of vehicles that operate with compressed natural gas (CNG) in the next two to three years. In doing this, the Contractor has committed to the City that CNG trucks will be utilized for collection services in the city when the Contractor starts using such vehicles.



## ARTICLE IV

### TERMS OF AGREEMENT AND COMPENSATION FOR SERVICE

**Section 4.1. Effective Date.** This Agreement will be effective as of January 1, 2020 (the “Effective Date”) and coincidental with the City Administrator’s signature and attestation by the City Clerk and shall remain in effect for a period of five (5) years (“Initial Term”) in accordance with the terms of this Agreement.

**Section 4.2. Renewal Terms.** After the Initial Term, the City may approve up to two additional five (5) year extension(s) (“Renewal Terms”), with and subject to the consent of Contractor, for a potential total term of fifteen (15) years. To exercise the options to renew for the Renewal Terms, the City must give notice to the Contractor of its intent to renew the agreement no later than 120 days before the end of the current term. Contractor will be deemed to have consented to the Renewal Term unless notice is sent to the City denying the renewal no later than 90 days before the end of the term. The work as specified under this Agreement would begin the Effective Date, and continue, at a minimum, through December 31, 2024, unless cancelled by the City according to the provisions in **Article VIII** of this Agreement.

**Section 4.3. Payment for Service Performed.** The City agrees to pay the Contractor for the services outlined in the Agreement in the following manner:

- (a) The City will provide a list of addresses where residential solid waste collection services are to be performed. The Contractor will bill the City monthly based on the service list as provided by the City.
- (b) The Contractor shall invoice the City monthly for services performed as provided for in **Article II** of this Agreement, and the City shall pay the Contractor within 30 days of receipt of said invoice.
- (c) The Contractor agrees to perform all services outlined in Sections 2.1 through 2.4 of this Agreement for the first year of the Initial Term at the price of \$15.75 per active, Residential Dwelling Unit per month (\$189 annually). The Contractor may increase the price in accordance with **Section 4.1(e)**.
- (d) The Contractor agrees to perform all services outlined in Sections 2.10 and 2.11 of this Agreement in accordance with the prices provided for in Appendix C of this Agreement.
- (e) After the first year of the Initial Term and each year thereafter, the Contractor may increase the price for the services performed by Contractor for the next year by an amount equal to the “Consumer Price Index, All Urban Consumers, U.S City Averages” for Garbage and Trash Collection 12-month average as provided by the U.S. Bureau of Labor Statistics. The City shall be notified by May 1st each year of any increases that may occur for the following year pursuant to the Consumer Price Index. If not notified of any proposed change in price, along with the calculations produced by the Consumer Price Index, by said date the price will remain unchanged for the next year. In no case shall an annual increase ever be greater than 3% without the mutual agreement, in writing, of both parties.

## ARTICLE V

### RESPONIBILITIES AND DUTIES

**Section 5.1. City’s responsibility to provide information.** The City shall provide all information under its control with reasonable promptness and designate the City Administrator, or his or her designee (in

writing) to render decisions on behalf of the City and on whose actions and approvals the Contractor may rely.

**Section 5.2. Contractor’s responsibility.** The Contractor’s inability to perform its responsibilities and obligations under this Agreement is excused during the pendency of any strikes, outside labor troubles (including strikes or labor troubles affecting vendors or suppliers of Contractor), accidents, transportation delays, floods, fires, or other acts of God, and any other causes of like or different character beyond the control of Contractor. Impossibility of performance (but not simply frustration of performance) by reason of any legislative, executive, or judicial act of any governmental authority shall excuse performance of, or delay in performance of this Agreement. The City and the Contractor shall agree upon any delay or cancellation of performance and execute a memorandum in writing documenting the excuse of performance or delay in performance of this Agreement. In the event Contractor is unable to perform, the Contractor shall notify the City accordingly and shall cooperate with the City to establish alternative collection and disposal efforts, including but not limited to subcontractors or temporary assignment of this Agreement.

**Section 5.3. Contractor’s duty to provide necessary materials and equipment.** Contractor agrees to provide all materials, labor, tools, and equipment necessary to perform and complete the Agreement as specified in the Agreement Documents.

**Section 5.4. Contractor supervision.** Contractor will supervise and direct the work performed and shall be responsible for its employees. Contractor will also supervise and direct the work performed by subcontractors and their employees and be responsible for the work performed by subcontractors hired by the Contractor. Contractor shall not assign its responsibilities to any subcontractor without the prior written approval of the City, which may be granted at the sole discretion of the City.

**Section 5.5. Contractor’s duty to obtain licenses and permits.** Contractor agrees to obtain and maintain, during the term(s) of this Agreement, the necessary licenses and permits required by federal, state, county and municipal governments to perform the services as required by this Agreement. Contractor shall bear the cost of any permits which it is obligated to secure. Included in these permits will be the “Occupational License and/or Business License” required of all contractors doing business within the City limits. Contractor will also ensure any subcontractors hired will obtain the necessary licenses and permits as required by applicable law.

**Section 5.6. Contractor’s duty to comply with laws and regulations.** Contractor agrees to comply with all applicable Department of Transportation, federal, state, county, and municipal laws and regulations, including, but not limited to, affirmative action, equal employment, fair labor standards and all applicable provisions of the Occupational Safety and Health Act of 1970, as amended. Contractor agrees to ensure subcontractors and their employees comply with all applicable laws and regulations aforementioned.

**Section 5.7. Drug/Crime Free Workplace.**

Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and/or agents performing services on City property are prohibited:

- a) The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
- b) Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).
- c) Any crimes committed while on City property.



Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of Agreement and may result in default action being taken by the City in addition to any criminal penalties that may result from such conduct.

**Section 5.8. General compliance with all laws and regulations.** Contractor also agrees to be, at all times, in full compliance with any and all applicable federal, state and local laws and regulations as they may change from time to time.

**Section 5.9. Agreement assignable and transferable subject to approval of the City.** Contractor may assign or transfer its rights under the Agreement subject to (1) the Contractor providing ninety (90) day written notice of the same to the City and (2) the City's approval, in writing, of the assignment or transfer, which may be granted at the sole discretion of the City.

**Section 5.10. Maintenance of Performance Bond.** The Contractor will be required to maintain a Performance Bond for the life of the Agreement. The Performance Bond will be from a recognized surety company and will be in an amount equal to the compensation that the Contractor will receive for the first year of services under the Initial Term of the Agreement (\$571,000). In the event that the Performance Bond is accessed by the City or is otherwise diminished, the Contractor will have thirty (30) days to restore the Performance Bond to the original amount.

The Performance Bond may be accessed if the Contractor is unable to perform the work under the Agreement and reasonable resolution is not reached.

## ARTICLE VI

### DAMAGES, DELAYS, AND DEFECTS

**Section 6.1. Limitation on monetary damage to the City.** If the whole or any part of this Agreement is delayed through the failure of the Contractor and/or his sureties to perform any part or the whole of this Agreement, the City's monetary damages will be limited to the cost of the steps taken to complete whatever contracted work in a workmanlike manner. Thus, if at any time the Contractor refuses or neglects to supply sufficiently skilled workmen or proper materials, or fails in any respect to execute the Agreement, including extras, with the utmost diligence, subject to delayed or excused performance in accordance with Section 5.2 of this Agreement, the City may take steps deemed advisable to promptly secure the necessary labor, tools, materials, equipment, services, etc., by contract or otherwise, to complete whatever portion of the contracted work which is causing delay or is not being performed in a workmanlike manner. This may include acting upon the Performance Bond as provided for in Section 5.10 of this Agreement.

**Section 6.2. Contractor and sureties liable.** Contractor and/or its sureties will be liable to the City for any cost for labor, tools, materials, equipment, services, delays, or claims incurred by the City to finish the work.

**Section 6.3. Storage and removal of materials and equipment.** Contractor will store, contain, or remove all debris, materials, tools, equipment and vehicles at the end of each day so that no hazardous or dangerous situations are created by the Contractor within the City.

**Section 6.4. Contractor's repair of damage.** Contractor will promptly (and within 7 days of receiving notice thereof) repair all damage to public and private property caused by their agents or employees. Should damages not be promptly repaired (within 7 days of receiving notice thereof), the City will authorize the

hiring of another Contractor or vendor with the necessary and applicable qualifications, to do the repairs. The original Contractor agrees to promptly pay for the services of any such contractor or vendor hired to do such repairs within 10 days of completion of the repairs. Notwithstanding the foregoing provisions of this Section 6.4 or any other term or provision of this Agreement, the City represents to Contractor that the streets, roadways, alleys, parking lots, driveways, paved areas and any other surface that Contractor will use to perform the work are sufficient to withstand the fully-loaded tear weights of Contractor's service vehicles. Accordingly, Contractor shall be relieved of and is hereby released from any claims that the City may have or make for any damage to streets, roadways, alleys, parking lots, driveways, paved areas and any other surface area resulting from Contractor's due performance of the work services under this Agreement; provided, however, Contractor shall not be released and shall remain liable for damages to streets, roadways, alleys, parking lots, driveways, paved areas and any other surface caused by Contractor's negligent acts or omissions or for accidents for which Contractor is determined to be at fault.

**Section 6.5. Contractor's duty to report.** Contractor shall immediately report, to the City, or a duly authorized representative, any accident whatsoever arising out of the performance of this Agreement, especially those resulting in death, serious injury or property damage. Contractor must provide full details and statements from any witnesses.

## ARTICLE VII

### INSURANCE AND INDEMINIFICATION

**Section 7.1 Indemnity and Required Insurance.** The Contractor shall indemnify and hold harmless the City, its officers and employees from any and all liability, loss or damage, including attorney fees and costs of defenses, the City may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature, including workers' compensation claims, in any way resulting from or arising out of the operations of the respondent under this Agreement; and, at his own expense, appear, defend, and pay all fees of attorneys and all costs and other expenses arising therefrom or incurred in any such action, the respondent shall, at his own expense, satisfy and discharge same.

Furthermore, the Contractor shall maintain insurance coverage in the following amounts:

<u>Type of Insurance</u>	<u>Limit/Ea. Occurrence</u>	<u>Limit/Aggregate</u>
General Liability		
• Bodily Injury	\$1,000,000	\$2,000,000
• Property Damage	\$1,000,000	\$2,000,000
• Contractual Insurance	\$1,000,000	\$2,000,000
Professional Liability		
Automobile Liability		
• Bodily Injury	\$1,000,000	\$1,000,000
• Property Damage	\$1,000,000	\$1,000,000



Worker’s Compensation

- Employee Claims Statutory for Kansas
- Employer’s Liability \$1,000,000 per accident  
\$1,000,000 disease – policy limit  
\$1,000,000 disease – each employee

Workers’ Compensation policies should include a “Waiver of Subrogation” in favor of the City of Mission.

All insurance carriers should carry a minimum rating of A- X (rated by A.M. Best).

Vehicles, equipment and property used by the service provider shall be the property of the service provider and insured as such. The City of Mission will not be responsible for any damage that may occur to such items.

**Section 7.2 Hold Harmless Claims.** The Contractor shall, during the term of the agreement including any warranty period, indemnify, defend, and hold harmless the City, its officials, employees, agents, residents and representatives thereof from all suits, actions, or claims of any kind, including attorney’s fees, brought on account of any personal injuries, damages, or violations of rights, sustained by any person or property in consequence of any neglect in safeguarding contract work or on account of any act or omission by the Contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. Contractor agrees that this clause shall include claims involving infringement of patent or copyright.

## ARTICLE VIII

### CANCELLATION AND/OR TERMINATION OF AGREEMENT

**Section 8.1. Termination with cause.** If Contractor fails to perform his duties as specified in this Agreement, the City through its appointed representative, shall notify the Contractor to correct any default(s) under the terms of this Agreement. Such notification shall be made in writing, and delivered via certified mail, facsimile or e-mail. If the Contractor fails to correct any default(s) within thirty (30) days of notification of such default(s), the City shall have the right to immediately cancel and/or terminate this agreement by giving the Contractor ninety (90) days written notice, and delivered via certified mail, facsimile or e-mail. If the Contractor fails to correct any default(s) after notification of such default(s) and the default(s) are of such that they endanger the health, safety and/or welfare of the residents of Mission, City may terminate this Agreement immediately without notice and retain the services of an alternative contractor to perform the solid waste disposal services contemplated under this Agreement for up to ninety (90) days, for which Contractor may be held liable for such costs. In the event this Agreement is terminated with cause, the City may hold as retainer the amount needed to complete the work in accordance with bid specifications and/or apply any pending credits to the final invoice.

**Section 8.2. Termination without cause.** The City may cancel or terminate this Agreement at any time during any Renewal Term without cause by providing ninety (90) days written notice, by certified mail, facsimile or e-mail to the Contractor. In the event that this Agreement is terminated without cause, the City shall pay for all work completed through the effective date of cancellation.

**Section 8.3. Cancellation notice not relieve Contractor.** Any cancellation notice shall not relieve the Contractor of the obligation to delivery and/or perform on all outstanding requirements of this Agreement and orders issued prior to the effective date of cancellation.

**Section 8.4. Waiver.** Waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of same to be performed by the Contractor of the term, covenant or condition, the City shall be entitled to invoke any remedy available to it under the Agreement or by law despite any such forbearance or indulgence.

**Section 8.5. Payment not proof of satisfaction.** No payment made under this Agreement shall be proof of satisfactory performance of the Agreement, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

**Section 8.6. Use of performance bond.** If the Contractor fails to comply with or perform a material term of this Agreement and has not corrected said non-compliance or failure to perform within any applicable timelines, the City may call upon and draw from the Contractor's performance bond required by this Agreement.

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 9.1. Dispute resolution.** In case of a dispute arising under this Agreement, the Contractor and the City may each agree to appoint a representative, who, together, shall select a third-party attorney in good standing and licensed to practice law in Kansas, to arbitrate the issue. Resolution of the issue will be binding upon both parties. The arbitrator may allocate damages, costs, and reasonable attorneys' fees between the parties.

- (a) If Contractor shall be in material default or breach of any material provision of this agreement, City may terminate this agreement pursuant to **Article VIII**, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor ninety (90) days written notice and opportunity to cure such default or breach. Nothing in this provision shall prevent the City from terminating the agreement without cause under Section 8.2.
- (b) If City shall be in material default or breach of any material provision of this Agreement, Contractor may terminate this Agreement or suspend Contractor's performance after giving City ninety (90) days written notice and opportunity to cure such default or breach.

## ARTICLE X

### MISCELLANEOUS

**Section 10.1 Severability.** In the event that any provision of this Agreement shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.



**Section 10.2 Applicable Laws.** This Agreement and the rights of the City and the Contractor under this Agreement shall be interpreted to the internal laws, but not the conflict of laws, rules, of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

**Section 10.3 Personal Non-Liability of Officials, Employees and Agents of the City.** No recourse shall be had for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such official, officers, employees or agents as such is hereby expressly waived and released as a condition of an consideration for the execution of this Agreement.

**Section 10.4 Kansas Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. Any automatic renewal of the terms of this Agreement shall create no legal obligation on the part of the City. The City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the City’s current budget year, or (b) funds made available from any lawfully operated revenue producing source.

**Section 10.5. Notice.** Except as may be otherwise specifically required herein, all notices to be given according to this agreement shall be in writing and may be given, served or made by delivery in person to the addressee, and email, or by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by hand-delivery provided by a bonded and insured courier operating in the Kansas City Metropolitan Area. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this agreement from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to City:                   City of Mission,  
                                  Attn: City Administrator  
                                  6090 Woodson  
                                  Mission, KS 66202

If to Contractor:       WCA of Missouri, LLC  
                                  Attn: District Manager  
                                  22820 S. State Route 291  
                                  Harrisonville, MO 64701

**Section 10.6 Incorporation of Appendices.** The Appendices attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

**Section 10.7 Entire Agreement.** This Agreement sets forth the entire agreement of the City and the Contractor with respect to the provision of the services and compensation therefor, and there are no other understandings or agreements, oral or written, between the City and the Contractor with respect to services or compensation therefor, nor was the making and execution of this Agreement induced by any

representation, statement, warranty, agreement or action other than those expressed or explicitly referenced herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, all on the day and year first above written.

CITY OF MISSION, KANSAS:

\_\_\_\_\_  
Ronald E. Appeltoft, Mayor

ATTEST:

\_\_\_\_\_  
Martha Sumrall, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
David Martin, City Attorney

CONTRACTOR:

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

Name: \_\_\_\_\_

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



**APPENDIX A**  
**ACCEPTABLE RECYCABLE MATERIALS**

The following shall be deemed materials acceptable for recyclable collection under this Agreement.

**Containers:**

- Aluminum and metal food cans
- Aluminum trays and foil
- Aseptic packaging and gable top containers (milk and juice cartons)
- Steel cans and tins

**Plastics:**

- PET soda, milk, water, and flavored beverage bottles (#1 clear and green plastic resin)
- HDPE detergent and fabric softener containers (#2 colored plastic resin)
- PVC narrow neck containers only (#3 plastic resin); examples include health and beauty aid products, household cleaners
- LDPE grocery containers (#4 plastic resin); examples include margarine tubs, frozen dessert cups, six and twelve pack rings)
- PP grocery containers (#5 plastic resin); examples include yogurt cups, narrow neck syrup and ketchup bottles
- #7 plastic resin grocery – narrow neck containers only

**Paper:**

- Newspaper, including inserts (remove plastic sleeve)
- Magazines, catalogues and telephone books
- Kraft (brown paper) bags
- Office, computer, notebook and gift wrap paper
- Chipboard (cereal, cake and food mix boxes, gift boxes, etc.)
- Carrier stock (soda and beer can carrying cases)
- Junk mail and envelopes
- Paperback books (does not include hard cover books)
- Cardboard (no waxed cardboard)
- Telephone Books

Other materials which are not identified in this Appendix, but deemed to be eligible for recycling subsequent to the execution of this Agreement, will also be included in this Appendix as if expressed in such initially.

The Contractor will be required to report to the City on a quarterly basis the amount, either by weight or volume, of recyclables collected.

## APPENDIX B

### MAP OF SERVICE AREAS

#### Mission Residential Trash and Recycling Schedule

Beginning Week of January 1

Trash and recycling pickup will occur on the same day.





**APPENDIX C**  
**COLLECTION OF SOLID WASTE AND RECYCLABLE MATERIALS FROM**  
**CITY FACILITIES**

The Contractor will provide solid waste and recycling collection from the City's four municipal facilities at the following rates:

City Hall/Police Department – 6090 Woodson Road

2-Yard Dumpster – Qty. of Two (2) – collected three (3) times a week at **\$190 per month**

Mission Family Aquatic Center (pool) – 6090 Woodson Road

8-Yard Dumpster – Qty. of One (1) – collected one (1) time a week at **\$80 per month (April-September)**

This facility is operational from April through September. No collection services are needed during non-operational months.

Sylvester Powell, Jr. Community Center – 6200 Martway Street

2 Yard Dumpster – Qty. of Four (4) – collected three (3) times a week at **\$300 per month**

8-Yard Dumpster (Recycling) – Qty. of Two (2) – collected one (1) a week at **\$150 per month**

Public Works Maintenance Facility – 4775 Lamar Avenue

8-Yard Dumpster (Recycling) – Qty. Of One (1) – collected one (1) time a week at **\$80 per month**

40-Yard Dumpster – Qty. of Two (2) – collected upon request at **\$295 per haul**

Item	Description	Quantity Requested	Current Contract - Waste Management			WCA			Allied Services (d/b/a Republic)			Waste Management			
			Unit Price	Total Monthly	Total Annual	Unit Price	Total Monthly	Total Annual	Unit Price	Total Monthly	Total Annual	Unit Price	Total Monthly	Total Annual	
<b>Weekly Residential Solid Waste Collection</b>															
1	Cost per month, per resident for weekly collection of solid waste limited to one poly-cart	2,970	\$13.82	\$41,045.40	\$492,544.80	\$8.75	\$25,987.50	\$311,850.00	\$10.65	\$31,630.50	\$379,566.00	\$17.99	\$53,430.30	\$641,163.60	
<b>Base Bid - Weekly Residential Recycling</b>															
2	Cost per month, per resident for weekly collection of recyclable waste - <b>UNLIMITED AMOUNT</b>	2,970	\$2.06	\$6,118.20	\$73,418.40	\$4.00	\$11,880.00	\$142,560.00	\$7.95	\$23,611.50	\$283,338.00	\$0.00	\$0.00	\$0.00	
<b>Alternate Bid - Weekly Residential Recycling</b>															
3	Cost per month, per resident for weekly collection of recyclable waste - LIMITED:	2,970	N/A	N/A	N/A	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	
<b>Weekly Yard Waste Collection</b>															
4	Eight (8) Yard Waste Bags - January through October	2,970	\$1.08	\$3,207.60	\$38,491.20	\$3.00	\$8,910.00	\$106,920.00	\$3.00	\$8,910.00	\$106,920.00	\$0.00	\$0.00	\$0.00	
5	Twelve (12) Yard Waste Bags - November through December	2,970	\$1.08			\$3.00			They will collect 12 bags all year.			\$0.00	\$0.00	\$0.00	
<b>Bulky Item - Once a Month Pick-up</b>															
6	Cost per month, per resident, for monthly collection of bulky items (limit of three - 3)	2,970	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10 per item collected			\$0.00	\$0.00	\$0.00	
<b>Overage Stickers</b>															
7	Cost per overage sticker	2,970	\$1.50			\$1.50			\$1.25			\$1.25			
<b>Community Festivals</b>															
8	2-Yard Dumpster - Two (2) dumpsters provided up to four times a year for community festivals	4	\$7.00			\$0.00		\$0.00	\$190.00		\$760.00	\$0.00		\$0.00	
9	Portable Toilets - Six (6) portable toilets provided up to four time year for community festivals	4				\$0.00		\$0.00	No Bid		No Bid	\$0.00		\$0.00	
<b>CURRENT TOTAL</b>				\$50,371.20	\$604,454.40	<b>TOTAL</b>	\$46,777.50	\$561,330.00	<b>TOTAL</b>	\$64,152.00	\$770,584.00	<b>TOTAL</b>	\$53,430.30	\$641,163.60	

Notes:

\$0.00 signifies that the item is included in the overall bid price



Item	Description	Quantity Requested	Current Contract - Waste Management			WCA			Allied Services (d/b/a Republic)			Waste Management			
			Unit Price	Total Monthly	Total Annual	Unit Price	Total Monthly	Total Annual	Unit Price	Total Monthly	Total Annual	Unit Price	Total Monthly	Total Annual	
<b>Collection for City Facilities</b>															
<b>City Hall</b>															
10	2-Yard Dumpster collected 3 times a week	2	\$0.00	\$0.00	\$0.00		\$190.00	\$2,280.00		\$540.00	\$6,480.00	\$0.00	\$0.00	\$0.00	
<b>Mission Family Aquatic Center (pool) Six Months</b>															
11	2-Yard Dumpster - collected 1 time a week	2	\$0.00	\$0.00	\$0.00		\$75.00	\$450.00		\$180.00	\$1,080.00	\$0.00	\$0.00	\$0.00	
12	8-Yard Dumpster - collected 1 time a week	1	\$0.00	\$0.00	\$0.00		\$80.00	\$480.00		\$165.00	\$990.00	\$0.00	\$0.00	\$0.00	
<b>Sylvester Powell Jr. Community Center</b>															
13	2-Yard Dumpster - collected 3 time a week	4	\$0.00	\$0.00	\$0.00		\$300.00	\$3,600.00		\$270.00	\$3,240.00	\$0.00	\$0.00	\$0.00	
14	8-Yard Dumpster - collected 1 time a week	2	\$0.00	\$0.00	\$0.00		\$150.00	\$1,800.00		\$330.00	\$3,960.00	\$0.00	\$0.00	\$0.00	
<b>Public Works Maintenance Facility</b>															
15	8-Yard Dumpster - collected 1 time a week	1	\$41.70	\$41.70	\$500.40		\$80.00	\$960.00		\$165.00	\$1,980.00	\$0.00	\$0.00	\$0.00	
16	80-Yard Dumpster - collected upon request	2				\$295.00									
<b>TOTAL</b>			\$41.70	\$500.40		<b>TOTAL</b>	\$875.00	\$9,570.00	<b>TOTAL</b>	\$1,650.00	\$17,730.00	<b>TOTAL</b>	\$0.00	\$0.00	

Current Contract -Waste Management			WCA			Republic			Waste Management		
<b>OVERALL TOTAL</b>	\$50,412.90	\$604,954.80	<b>OVERALL TOTAL</b>	\$47,652.50	\$570,900.00	<b>OVERALL TOTAL</b>	\$65,802.00	\$788,314.00	<b>OVERALL TOTAL</b>	\$53,430.30	\$641,163.60

Residential Rates Based on 2,970 Households	Monthly	Annual		Monthly	Annual		Monthly	Annual		Monthly	Annual
	\$16.97	\$203.69			\$16.04		\$192.54			\$22.16	\$265.87

Item	Description	WCA	Allied Services (d/b/a Republic)	Waste Management
1	<b><u>Cart for Solid Waste Collection</u></b> Poly-Cart for solid waste collection. Maximum of 65 gallons with wheels, lid, and handle. Company name and contact.	65 gallon poly cart containers will be manufactured by Sierra Container Group for this contract. Poly-cart containers will have wheels, lid, and handle and labeled with company name.	65 gallon poly cart containers will be provided. Poly-cart containers will have wheels, lid, and handle and labeled with company name. Carts are blue with black lid	Same as is currently provided.
2	<b><u>Cart for Recycling</u></b> Poly-Cart for recycling waste collection. Minimum of 65 gallons with wheels, lid, and handle. Different color and recycling instruc.	65 gallon poly cart containers will be manufactured by Sierra Container Group for this contract. Poly-cart containers will have wheels, lid, and handle and labeled with company name.	65 gallon poly cart containers will be provided. Poly-cart containers will have wheels, lid, and handle and labeled with company name. Carts are blue with light blue lid.	Same as is currently provided.
3	<b><u>Yard Waste</u></b> Collection of 8 bags of yard waste weekly between January and October. Collection of 12 bags weekly November and December.	Same price for both types of pick-ups.	Subcontracts with Compost Connections for yard waste collection. Will provide year-around 12 bag service. Bundles are no longer than 48" and no heavier than 50lbs.	Same as is currently provided.
4	<b><u>Bulky Item Pick-up</u></b> Once a month pick-up at curb of bulky items (limited to 3 items). Bulky items are things that can be reasonably handled by 2 people.	Residentially generated items including furniture, mattresses and small appliances are accepted. No appliances with CFCs, no electronics, and no auto parts.	Can provide as currently done or all bulky pick-up on day each week. Will work with City to decide best option.	Same as is currently provided.
5	<b><u>Overage Stickers</u></b> Overage stickers that can be purchased at city hall, community center or local retail. Should have name of company on them.	Overage stickers will be made available for sale at local retailers as well as mailed to customers directly that request them from WCA.	No response provided.	Same as is currently provided.
6	<b><u>Solid Waste Collection Method</u></b> Bidder will indicate if they are purposing to utilize the current collection method or alternative method.	Continue with the City's current collection method.	Continue with the City's current collection method.	Same as is currently provided.
7	<b><u>Holiday Schedule</u></b> The Bidder will provide a holiday schedule for the entire year.	Observe Thanksgiving, Christmas, and New Year's Day.	No response provided.	No response provided.
8	<b><u>Inclement Weather Policy</u></b> The Bidder will provide an inclement weather policy, if one exists.	WCA will inform the City of inclement weather delays or suspensions, and will announce through all available methods.	No response provided.	No response provided.



Item	Description	WCA	Allied Services (d/b/a Republic)	Waste Management
	<b>Reason for No Pick-Up</b>	No response provided.	No response provided.	No response provided.
9	The Bidder will need to have a method in place for identifying to residents why certain items are not collected.			
	<b>Handling of Service Concerns</b>	Call center located in Harrisonville, MO. Minimum of 12 customer service representatives are available by phone and email. After hour calls are directed to a voicemail box and are reviewed the following morning. City dedicated website with information specific to Mission. Service requests can also be taken through this.	No response provided.	Website - wm.com - offers 24/7 account management and online chat. They also offer a WM Mobile App. And, there is email and phone. Onboard computing system allows for real-time route management for the service care team.
10	The Bidder will need to maintain a toll-free telephone line for receiving service concerns or requests. The line is staffed 8-5 M-F. VM for afterhours. Social media is strongly encouraged.			
	<b>Equipment To Be Used</b>	Front loading trucks will be used for trash and recycling. Rear loading packing trucks will be used for yard waste and bulky items. Trucks will be ordered if the contract is awarded.	Front loading trucks will be used for trash and recycling. Both trucks are Mack. One is 2016 and the other is 2008 (scheduled to be replaced in 2021). 150 trucks in entire fleet in KC market.	Just general information about their national fleet, safety programs, and maintenance programs is provided. Nothing specific to Mission.
11	The Bidder will provide a list of equipment to be used. List should include year, make, and model of each truck.			
	<b>Customer Communications &amp; Education</b>	Will uses of Sturges Work Communications to develop a multi-channel public education program for Mission residents that will be launched prior to cart delivery and sustained throughout the contract.	Carts will be delivered in 3 to 4 days. Service information will be provided when the carts are delivered.	Not applicable if awarded contract.
12	Within 10 days of the Notice to Proceed being issued, bidder will prepare and deliver to all households a brochure containing information about company. Also ongoing recycling and solid waste education.			



**INVITATION FOR BIDS**

**FOR**

**RESIDENTIAL SOLID WASTE COLLECTION SERVICES**

The City of Mission is seeking bids from qualified companies for the systematic, weekly collection of solid waste, recyclables and yard waste from residential properties within the City of Mission. Interested companies should submit one (1) hard copy and one (1) electronic copy of a complete Bid as stipulated in this Invitation for Bids (IFB). The Bid must be submitted in a sealed envelope marked "Solid Waste Collection" and addressed to the City Clerk's office at Mission City Hall, 6090 Woodson, Mission, KS 66202.

**BIDS MUST BE RECEIVED NO LATER THAN**  
**4:30 P.M. CDT, FRIDAY, AUGUST 23, 2019**

**Questions regarding this IFB may be submitted in writing to:**  
Brian Scott, Assistant City Administrator/Finance Director  
6090 Woodson Street  
Mission, KS 66202  
[bscott@missionks.org](mailto:bscott@missionks.org)

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# City of Mission

## Invitation for Bids for Residential Solid Waste Collection Services

### Table of Contents

Section 1 – Introduction	4
Section 2 – Background	
2.1. City of Mission	4
2.2. Boundaries of the Residential Solid Waste Collection Service Area	5
2.3. Make-up of Residential Solid Waste Collection Service Area	5
2.4. Current Residential Collection Services	6
2.5. Collection Process	7
2.6. Billing for Residential Solid Waste Collection Services	7
Section 3 – Scope of Services	
3.1. Purpose	7
3.2. Services to Be Provided	8
3.3. Provision of Carts and Overage Stickers	10
3.4. Residential Unit	11
3.5. Solid Waste Collection Method	11
3.6. Holiday Schedule	11
3.7. Inclement Weather	11
3.8. Customer Communications	12
3.9. Reason for No Pick-up	12
3.10. Handling of Service Concerns and Requests	12
3.11. Solid Waste Collection from City Facilities	13
3.12. Solid Waste Collection from City Festivals and Neighborhood Events	14
Section 4 – Terms and Conditions	
4.1. Compliance with All Applicable Local, State, and Federal Laws	14
4.2. Familiarity with City Codes Pertaining to Solid Waste Collection	14
4.3. Occupational Licenses	14
4.4. Minimum Experience and Licenses	14
4.5. Designated Disposal Site	14
4.6. Financial Ability and Performance Bond	14
4.7. Sub-Contracting	15
4.8. Equipment and Personnel Utilized	15
4.9. Driver Safety Training	15
4.10. Indemnity and Required Insurance	15
4.11. Term of Contract	16

Section 5 – Submittal Requirements and Timeline	
5.1. Submission of Bid	17
5.2. Submission Timeline	17
5.3. Bids Sheet and Other Items Required with Submittal	17
5.4. Bid Bond	19
5.5. Bid Withdrawal	19
5.6. Questions and Addenda	20
5.7. General Requirements and Stipulations with Submission	20
Appendix A – Map of City of Mission and Residential Solid Service Area	22
Appendix B – Chapter 235 – Solid Waste Collection, Disposal and Recycling	23
Appendix C – City of Mission Bid Sheet for Residential Solid Waste Collection Services	24
Appendix D – Acknowledgment of Addenda	27



## 1. INTRODUCTION

The City of Mission is seeking Bids for **Residential Solid Waste Collection Services**, which entails the systematic, weekly collection of solid waste, recyclables, and yard waste; and the once a month collection of bulky items, from all residential properties within the city of Mission.

A full Invitation for Bids (IFB) can be obtained from the City's website – [www.missionks.org](http://www.missionks.org). The IFB contains the Scope of Work, terms and conditions, and requirements for submittal. Any revision to the IFB, or additional information to be provided, will be through addenda published on the City's website. All respondents must acknowledge with their Bid that they have received and considered all addenda.

**To be considered, one (1) hard copy and one (1) electronic copy of the complete Bid should be submitted in a sealed enveloped labeled "Solid Waste Collection Services" to the City Clerk's Office, Mission City Hall, 6090 Woodson, Mission, KS 66202 by 4:30 p.m. CDT, Friday, August 23, 2019.** Any Bids received after this date and time will be returned unopened.

Questions regarding this IFB should be submitted in writing to:

Brian Scott  
Assistant City Administrator/Finance Director  
City of Mission  
6090 Woodson  
Mission, KS 66202  
[bscott@missionks.org](mailto:bscott@missionks.org)

The City will not pay for any information herein requested, nor is it liable for any costs incurred by those responding to this IFB. The City reserves the right to select the Bid that best meets the overall needs of the City and to waive any informalities, technicalities, or irregularities in the Bids. Bids that do not meet the stated requirements will be considered in non-compliance and will be disqualified unless the City waives such non-compliance.

## 2. BACKGROUND

### 2.1. The City of Mission

The City of Mission is a municipal corporation organized under the constitution and laws of the State of Kansas. The City serves a population of approximately 9,400 residents within a 2.87 square mile area located in Northeast Johnson County, Kansas; two miles west of the Missouri/Kansas boarder.

The City is comprised of five operating departments: administration, community development, police, public works, and parks and recreation. The City has 72 full-time

employees and an annual operating budget of \$12 million. Respondents unfamiliar with the City can find more information online at the City's website, <http://missionks.org/>.

## 2.2. Geographical Boundaries of the Residential Solid Waste Collection Service Area

The residential solid waste collection service area will be entirely within the city of Mission. The city's corporate boundaries are approximately:

- North: I-35 and the Johnson County/Wyandotte County boundaries from Metcalf Avenue to Nall Avenue
- East: Nall Avenue south to Johnson Drive, Johnson Drive east to Roe Avenue, Roe Avenue south to 63<sup>rd</sup> Street, 63<sup>rd</sup> Street west to Nall Avenue, Nall Avenue south to 67<sup>th</sup> Street
- South: 63<sup>rd</sup> Street west to Nall Avenue, Nall Avenue south to 67<sup>th</sup> Street, 67<sup>th</sup> Street west to Lamar Avenue, Lamar Avenue north to Shawnee Mission Parkway, Shawnee Mission Parkway west to Metcalf Avenue
- West: Metcalf Avenue from Shawnee Mission Parkway north to I-35

Please see Appendix A for a map of the city showing the residential solid waste collection area.

## 2.3. Make-up of Residential Solid Waste Collection Service Area

The residential solid waste collection service area within the City of Mission is comprised of single-family homes, townhomes, duplexes, and triplexes in both the north side of the city (north of Johnson Drive) and the south side of the city (south of Johnson Drive).

There are approximately 2,970 residential units within the city of Mission's residential solid waste collection service area.

There are several multi-family apartment complexes on the north side of the City and in the downtown area that are not included in the service area as they contract individually for solid waste collection.

It should be noted that the city of Mission is a mature, first-tier, suburban community. As such, most of the residential structures range in age from 40 to 80 years. Neighborhoods have mature trees, overhead power lines, and narrow streets. This is especially true on the north side of the city. In addition, the topography on the north side of the city can be very hilly. Bidders should be aware of these conditions when considering their bid.



## 2.4. Current Residential Collection Services

Residential solid waste collection services are currently provided by Waste Management (formerly Deffenbaugh) under a seven (7) year contract that will be expiring December 31, 2019.

Service includes once a week pick-up of all solid waste, recyclables, and yard waste, and once a month pick-up of bulky items from every residential unit in the city of Mission as described in Section 2.3.

Service specifically entails:

### 2.4.1 Provision of Carts

Every residential unit is currently provided two (2) poly-carts by the service provider. Each poly-cart is 65 gallons and has a lid, handle, and wheels for easy maneuverability. One poly-cart has a black lid and is designated for solid waste. The other poly-cart has a yellow lid and is designated for recyclables.

Poly-carts are to be stored in a garage or behind the front building line and brought out by the resident to the curb for collection on the designated collection day of the week. Collection is between 7:00 a.m. and 7:00 p.m.

### 2.4.2 Limits on Amount Collected

The amount of solid waste collected in one week is limited to what can be placed in the one poly-cart designated for such. Additional solid waste can be collected if placed in a sealed bag and identified with an “overage sticker” that is purchased from the City or local retailer.

Currently, **recycling is unlimited**. Once the poly-cart designated for recycling is filled, additional recycling items can be placed in a container marked “recycling” or with the universal recycling symbol.

### 2.4.3 Yard Waste

Yard waste consists of grass clippings, leaves, loose vegetation, and small limbs and branches. Yard waste is to be put into biodegradable, paper bags, or a 32-gallon bin (labeled yard waste), or bundled and neatly placed at the curb. Limbs and branches cannot be any larger than 18 inches in diameter, four (4) feet in length, and 65 pounds in weight.

From **January through October**, residents may place **eight (8)** yard waste bags (or any combination of bags, bins, and bundles) at the curb each week for collection.

From **November through December**, residents may place **twelve (12)** yard waste bags (or any combination of bags, bins, and bundles) at the curb each week for collection.

Amounts beyond what is allowed during the specific period of time will require an “overage sticker” that is purchased from the City or a local retailer.

#### 2.4.4 Bulky Items

Bulky item collection is on the first collection day of the month. No more than three (3) large items, such as appliances (no Freon) or furniture, can be placed at the curb for collection on bulky item day.

#### 2.4.5 House-Line Pick-up

Residents may request House-Line pick-up meaning that the driver will walk-up to the house to retrieve the solid waste and recycling bins on the day of collection.

This request is made in advance, and is often due to a disability that prevents the resident from moving the trash to the curb on their own.

### 2.5 Collection Process

Currently, the residential solid waste collection service area is broken out into four (4), separate areas. Each area is collected on a separate day of the week – Monday, Tuesday, Thursday, and Friday.

There are three trucks – one each for solid waste, recycling, and yard waste – that go through the collection area on the collection day.

Please see Appendix A for a map showing the residential solid waste collection areas.

### 2.6 Billing for Residential Solid Waste Collection Services

The City bills residents for solid waste collection services through a special assessment on their annual property taxes. Currently residents pay \$175 per year for this service. The City supplements the balance of \$25 per year per residential unit with a transfer from the general fund.

The service provider bills the City monthly for this service. The bill is based on the number of households collected multiplied by the monthly rate per household.



### 3 SCOPE OF SERVICES

#### 3.1 Purpose

The City is seeking Bids from qualified companies that are capable of providing systematic, weekly solid waste collection services for residential units within the city of Mission. Solid waste collection services will include solid waste, recycling, and yard waste. Monthly pick-up of bulky items will also be included in the service.

This Scope of Service will be made a part of and included in the final Contract for Services that the selected Bidder and City enter into.

#### 3.2 Services to be Provided

The selected Bidder will be required to collect solid waste, recycling, and yard waste from every residential unit in the city of Mission once a week in the manner prescribed for in this section. In addition, the selected Bidder will be required to collect bulky items from every residential unit in the city of Mission once a month.

All collection will be provided from the curb of the residential unit with the exception noted in subsection 3.2.5.

Collection will be provided in the following manner:

##### 3.2.1 Solid Waste Collection

The amount of solid waste collected each week from a single residential unit will be limited to one poly-cart that is no larger than 65 gallons. The poly-cart shall have a lid that is completely closed when placed at the curb for collection.

Additional solid waste may be collected from a residential unit if it is placed in a sealed trash bag and labeled with an overage sticker provided by the bidder and purchased by the resident at city hall, the community center, or at local retailers.

Collection shall be done in a neat and orderly manner so as not to have any spills or loose trash left behind on the property or in the street.

##### 3.2.2 Recycling Collection

The amount of recycled waste collected each week from a single residential unit will be **unlimited**.

Recycled waste will be placed in a poly-cart with a minimum capacity of 65 gallons. The poly-cart shall have a lid that is completely closed when placed at the curb for collection. If the poly-cart is full, additional recycling material may be placed in another bin that is clearly marked "recycling" or has the universal recycling symbol.

The Bidder will be required to report to the City on a quarterly basis the amount, either by weight or volume, of recyclables collected and the compensation received, if any, for that amount.

The City understands the circumstances with the current market for recyclable waste. The City is open to alternative solutions that the Bidder may offer to achieve the goal of reducing the overall amount of solid waste collected while still keeping cost reasonable.

### 3.2.3 Yard Waste Collection

Yard waste will consist of grass clippings, leaves and loose vegetation, and small limbs and branches. Yard waste is to be put into biodegradable, paper bags; or a plastic bin that is no more than 32-gallons; or bundled and neatly placed at the curb for collection. Limbs and branches cannot be any larger than 18 inches in diameter, four (4) feet in length, less than 65 pounds, and be tied together in a bundle with twine.

Collection of yard waste will be limited to **eight (8) yard waste bags** (or any combination of bags, bins, and bundles) placed at the curb each week for collection between the months of **January through October**.

Collection of yard waste will be limited to **twelve (12) yard waste bags** (or any combination of bags, bins, and bundles) placed at the curb each for collection between the months of **November through December**.

Amounts beyond what is allowed during the specific period of time will require an “overage sticker” that is provided by the Bidder and obtained at city hall, the community center, or local retailers.

### 3.2.4 Bulky Items

Bulky items are defined as items that can be reasonably carried by one or two individuals. Examples are small appliances with no Freon, pieces of furniture, and household waste that cannot fit in a poly-cart. Automotive parts, tires, or anything with hazardous materials is prohibited. Bidder should provide a list of acceptable items in their Bid.

No more than three (3) bulky items can be placed at the curb for collection on bulky item pick-up day.

### 3.2.5 Special Conditions for Collections

**House-Line Pick-Ups** – Residents may request that the driver retrieve the solid waste and recycling bins from the front of the house on the day of collection. This

request is made in advance, and is often due to a disability that prevents the resident from moving the trash to the curb on their own.

**Townhome Complexes** – There are two townhome complexes where the placing of containers at the curb is not feasible. In these locations 2-yard dumpsters are provided in general locations and dumped once a week by the Bidder. There may be a combination of poly-cart containers and/or 2-yard dumpsters.

### 3.3 Provision of Carts and Overage Stickers

The selected Bidder will provide to every residential unit in the city that is included in the residential solid waste collection program the following:

**Solid Waste** - One (1) poly-cart container with a maximum capacity of 65 gallons for general solid waste items. Such poly-cart container should have a black lid, a handle, and two wheels that allows for maneuverability. The poly-cart container should be labeled with the service provider's name and customer service phone number.

**Recycled Waste** - One (1) poly-cart container with a minimum capacity of 65 gallons for recycled waste. Such poly-cart container should have a yellow lid (or color other than that of the solid waste poly-cart), a handle, and two wheels that allows for maneuverability. The poly-cart container should be labeled with the service provider's name and customer service phone number, and the universal recycling symbol. A list of approved recycling items on the lid or side of the cart would be preferred.

The selected Bidder will need to make arrangements to have the poly-carts distributed throughout the solid waste collection service area prior to the commencement of the contract. Likewise, arrangements will need to be made for the collection of the poly-carts once the contract concludes, if the selected Bidder is not selected to continue with the service.

All poly-cart containers will be made of a durable resin material that is resistant to UV rays; free of cracks, punctures, or any other damage; and will not leak. Poly-cart containers shall have lids that fit snugly and prevent rain water from collecting or trash blowing out. Poly-cart containers for recycling should be made with 25% recycled plastic.

The selected Bidder will have a system in place for the timely replacement of poly-cart containers that are damaged or lost.

The selected Bidder shall provide "overage" stickers that can be purchased by residents at city hall, community center, or various retailers in the city. The "overage" stickers will include the name of the service provider, contact information, and be designed in such way that they can be easily identifiable by the driver.



The selected Bidder shall provide material to every residential unit at least twice a year on the benefits of recycling and materials that can be recycled (both through the service provider and by other means such as Ripple Glass).

#### 3.4 Residential Unit

A residential unit is defined as a single-family home, townhome, condominium, duplex, or triplex.

Multi-family structures of four (4) or more units are not included in this definition and are not part of the residential solid waste collection service.

#### 3.5 Solid Waste Collection Method

The selected Bidder will develop a systematic method for collection of solid waste that is consistent, efficient in time and resources, and reduces the amount of truck traffic in the city.

The selected Bidder may select to continue with the current method that is utilized for solid waste collection in the city, or propose an alternative method that is acceptable to the City.

If an alternative collection method is proposed and accepted by the City, it will be “locked down” for the first year. Request for changes to routes, including days of collection, will be submitted to the City ninety (90) days prior to the end of the year of the contract to allow time for consideration by the City and communication to the residents. Approval of such requests are at the sole discretion of the City.

#### 3.6 Holiday Schedule

The selected Bidder must provide a holiday collection schedule for the entire year by the first of December of the preceding year.

The schedule will be posted on the City’s website and in the City’s newsletter, and should be on the service provider’s website as well.

#### 3.7 Inclement Weather

The Bidder will provide a policy for adjustments to the collection schedule in cases of inclement weather (i.e. collection is delayed by one day when...), if one exists. Enactment of such policy will be communicated to the City within 24-hours, or as soon as possible, and posted to the Bidder’s automated answering phone line and webpage.

Periods of extreme heat will be considered an inclement weather event, and as such the Bidder will notify the City 24-hours prior to any adjustment in the collection schedule.

### 3.8 Customer Communications

Within ten (10) business days of the Notice to Proceed being issued to the selected Bidder, the Bidder will prepare and deliver to all customers within the solid waste collection service area a brochure introducing the company. The brochure will contain:

- The name of the service provider
- Toll-Free telephone number for customer service concerns and requests
- Web page address and email
- Collection days and hours
- Holidays observed by the service provider and alternative collection days
- Inclement weather policy and alternative collection days.

The brochure will also include a calendar of holidays when collections does not occur, and the policy for collecting afterwards, and a policy for collecting during inclement weather (if applicable). The brochure will need to provide regulations concerning the preparation of solid waste, recyclable waste, yard waste, and bulky items for collection.

It is expected that the Bidder will promote recycling in this brochure and throughout the year with additional brochures and information on its webpage.

### 3.9 Reason for No Pick-Up

The Bidder will need to have a method in place for identifying to the resident why certain items are not collected on the day of collection. This method could be, as an example, a door hanger or sticker placed on the item with a list of common reasons, and the applicable reason for that particular non-pick-up checked.

### 3.10 Handling of Service Concerns and Requests

The selected Bidder must maintain a toll-free telephone line for receiving service concerns or requests. The telephone line will be staffed by trained personnel between 8:00 am and 6:00 pm, Central Standard Time, Monday through Friday, except for holidays. Calls will be answered promptly. Those answering the telephone line will need to be familiar with the City's solid waste collection contract and be able to answer questions and address concerns specific to the contract.

The telephone line will have a voice mail box or answering service available during non-business hours that residents may leave a message. Calls made during non-business hours will be returned within the first hour of the next business day.

Alternative methods for receiving service concerns or requests such as a webpage, email, or social media are strongly encouraged.

Service concerns or requests received before noon, Central Time, of the collection day must be addressed before close of business that same day.

Service concerns or requests received after noon, Central Time, of the collection day must be addressed before close of business the following business day.

Service concerns will include a missed collection on the designated collection day, failure to return the containers to the curb in good order, spillage, or similar type of incident.

Concerns regarding spillage should be addressed within an hour of the concern being received.

The selected Bidder will also provide the City with the name and contact information for a field supervisor that is able to address concerns in a timely manner.

The selected Bidder will provide a monthly report to the City of service concerns, missed pick-ups, and requested house-line pick-ups.

### 3.11 Solid Waste Collection from City Facilities

In addition to residential solid waste collection services, the City is also seeking solid waste and recycling collection from its four municipal facilities:

- City Hall/Police Department – 6090 Woodson Road  
2-Yard Dumpster – Qty. of Two (2) – collected three (3) times a week
- Mission Family Aquatic Center (pool) – 6090 Woodson Road  
2-Yard Dumpster – Qty. of Two (2) – collected one (1) time a week  
8-Yard Dumpster – Qty. of One (1) – collected one (1) time a week  
(This facility is operational from April through September. No collection services are needed during non-operational months.)
- Sylvester Powell, Jr. Community Center – 6200 Martway Street  
2 Yard Dumpster – Qty. of Four (4) – collected three (3) times a week  
8-Yard Dumpster – Qty. of Two (2) – collected one (1) a week
- Public Works Maintenance Facility – 4775 Lamar Avenue  
8-Yard Dumpster – Qty. Of One (1) – collected one (1) time a week  
80-Yard Dumpster – Qty. of Two (2) – collected upon request

### 3.12 Solid Waste Collection from City Festivals and Neighborhood Events

The selected Bidder will need to provide two (2) 80-yard dumpsters up to four (4) times a year for City sponsored festivals and neighborhood events. If the selected Bidder provides



portable toilets as well, then six (6) portable toilets will be provided up to four (4) times a year for City sponsored festivals and events as well.

#### 4 TERMS AND CONDITIONS

##### 4.1 Compliance with All Applicable Local, State, and Federal Laws

The selected Bidder shall comply at all times with all applicable municipal, county, state and federal regulations and laws pertaining to the services offered under this Contract. In so doing, there shall be no increase in compensation to the Bidder as set forth in the Contract for compliance with such regulations and laws.

##### 4.2 Familiarity with City Codes Pertaining to Solid Waste Collection

The selected Bidder shall be familiar with all City of Mission Municipal Codes pertaining to solid waste collection within the City of Mission. In particular, the Bidder should be familiar with Chapter 235 of the City of Mission Municipal Code – Solid Waste Collection, Disposal, and Recycling. Please see Appendix B for a copy of this code.

##### 4.3 Occupational Licenses

The selected Bidder shall maintain an Occupational License with the City of Mission for the life of the contract.

##### 4.4 Minimum Experience and License

The selected Bidder will have at least five (5) years of experience in curbside solid waste and recycling collection similar to the services that are being solicited for in this IFB.

The selected Bidder shall also have a license with Johnson County and the State of Kansas Department of Health and Environment for solid waste collection and maintain such for the duration of the contract.

##### 4.5 Designated Disposal Site

The selected Bidder shall have a contract in place, or designated location, that will accept the solid waste, recyclables, and yard waste collected in the city.

##### 4.6 Financial Ability and Performance Bond

The selected Bidder shall be prepared to demonstrate that it has the financial capability to take on the provision of solid waste collection services for the City of Mission.

The selected Bidder will be required to maintain a Performance Bond for the life of the contract. The Performance Bond will be from a recognized surety company and will be in an amount equal to the compensation that the Bidder will receive for the first year of services under the Contract.

The Performance Bond will be pulled if the Bidder is unable to perform the work under the contract for whatever reason.

#### 4.7 Sub-Contracting

The selected Bidder will not sub-contract the provision of services to another company, individual, or entity without first receiving the expressed, written consent of the City.

#### 4.8 Equipment Utilized

The selected Bidder must provide the appropriate number of trucks and personnel to perform the service in the manner provided for in this IFB.

No truck utilized in performing the services should be older than five years. Trucks will be maintained in a safe, clean, and sanitary condition and not allowed to leak. Trucks shall be inspected at least annually and reports of such made available to the City upon request.

Trucks shall also be clearly marked with the name of the Bidder.

#### 4.9 Driver and Personnel Safety Training

The selected Bidder will have a driver safety training program in place and be prepared to demonstrate that drivers performing collection services in the city of Mission have completed such program and any routine or updated training.

Driver's background check shall be performed on all drivers that are utilized for collection services in the city of Mission. Drivers will be required to maintain their commercial driver's license throughout the life of this contract while working in the city of Mission.

Drivers and handlers will be required to wear ANSI Class 2, or better, safety shirt, vest, and/or jackets. Shirts or jackets should have the name of the Bidder clearly labeled on them.

#### 4.10 Indemnity and Required Insurance

The selected Bidder shall indemnify and hold harmless the City, its officers and employees from any and all liability, loss or damage, including attorney fees and costs of defenses, the City may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature, including workers' compensation claims, in any way resulting from or arising out of

the operations of the respondent under this contract; and, at his own expense, appear, defend, and pay all fees of attorneys and all costs and other expenses arising therefrom or incurred in any such action, the respondent shall, at his own expense, satisfy and discharge same.

Furthermore, the service provider shall maintain insurance coverage in the following amounts:

<u>Type of Insurance</u>	<u>Limit/Ea. Occurrence</u>	<u>Limit/Aggregate</u>
General Liability		
• Bodily Injury	\$1,000,000	\$2,000,000
• Property Damage	\$1,000,000	\$2,000,000
• Contractual Insurance	\$1,000,000	\$2,000,000
Professional Liability	\$3,000,000	\$3,000,000
Automobile Liability		
• Bodily Injury	\$1,000,000	\$1,000,000
• Property Damage	\$1,000,000	\$1,000,000
Worker’s Compensation		
• Employee Claims	Statutory for Kansas	
• Employer’s Liability	\$1,000,000 per accident	
	\$1,000,000 disease – policy limit	
	\$1,000,000 disease – each employee	

Workers’ Compensation policies should include a “Waiver of Subrogation” in favor of the City of Mission.

All insurance carriers should carry a minimum rating of A- X (rated by A.M. Best).

Vehicles, equipment and property used by the service provider shall be the property of the service provider and insured as such. The City of Mission will not be responsible for any damage that may occur to such items.

4.11 Term of Contract

The Contract shall commence on January 1, 2020 and be for a term of five (5) years with an option for two (2) additional five-year extensions.

Extensions will be granted if the service being provided is acceptable to the City and meets all terms and conditions imposed in the Contract, and the Bidder is in good standing with all agencies and regulatory bodies, and has adequate insurance, and a new performance bond can be produced.



## 5 SUBMITTAL REQUIREMENTS AND TIMELINE

### 5.1 Submission of Response

Those desiring to submit a Bid shall **submit one (1) hard copy and one (1) electronic copy of their bid to the City Clerk's Office by no later than 4:30 p.m. CDT, Friday, August 23, 2019.**

Submission should be clearly marked "Solid Waste Collection Services" and addressed to:

City Clerk  
City of Mission  
6090 Woodson St.  
Mission, KS 66202

Submissions received after the date and time stated in this IFB shall not be considered. Any submissions received after the deadline shall be returned unopened providing the entity submitting the response is identified on the response envelope.

### 5.2 Submission Timeline

The following is a list of key dates for consideration of proposals:

Event	Date
Issuance of IFB	Friday, July 26th
Last Day for Issuance of Addenda	Friday, August 16th
<b>DUE DATE for Bids</b>	<b>Friday, August 23th</b>
Initial Review Bids	Monday, August 26th
Selection of Vendor and Finalize Contract	Friday, August 30th
City Council Consideration	Wednesdays, September 4 <sup>th</sup> and 18th
Notice to Proceed Issued	Monday, September 23 <sup>rd</sup>

### 5.3 Contents of Submittals

Submissions shall include a complete set of Bid Documents as outlined in this section. To be considered for selection Bid Documents shall be (1) clear and concise, (2) responsive to all IFB requirements, and (3) presented in the form of a written report with the following subheadings clearly marked

1. Cover Letter
2. Experience of the Bidder / Statement of Qualifications
3. References of Bidder
4. Methodology for Service Delivery
5. Equipment to be Used
6. Poly-Carts to be Provided
7. Completed Bid Sheet
8. Acknowledgment of Addenda

9. Bid Bond

5.3.1 Cover Letter (Limit One (1) Page)

Submit a cover letter signed by an individual authorized to obligate the Bidder to fulfill the commitments contained in the Bid. The letter must include the following: (1) a contact for all communication pertaining to the Bid (including name, position, address, direct phone number and email); (2) a statement of the Bidder's understanding of the Scope of Services to be provided and overall ability and qualifications to successfully fulfill the Scope of Services; and (3) acknowledgment by the Bidder that it meets all requirements for award of a contract.

5.3.2 Experience of the Bidder / Statement of Qualifications (Limit Two (2) Pages)

Provide a brief description of the Bidder including length of time in business, services provided, and any certifications and/or affiliations that may be relevant. Provide sufficient information for the City to evaluate the ability and experience of the Bidder to successfully fulfill the Scope of Services.

5.3.3 References (Limit two (2) pages)

Provide references (name, entity, phone number and email) for three other cities (or entities) that the Bidder has provided similar services for in the past three years.

5.3.4 Methodology for Service Delivery (Limit one (1) page)

Bidder may choose to utilize the current methodology or process for providing solid waste collection services in the city of Mission. If the Bidder proposes an alternative methodology, please provide an explanation of such and how this will be beneficial to the City.

5.3.5 Equipment to be Used

Bidder shall provide a list of equipment that will be used in the provision of solid waste collection services for the city of Mission. Such list should include year, make, and model of each truck.

5.3.6 Poly-Carts to Be Provided

Bidder shall provide a description of the Poly-Carts to be used in the service provision. A picture of the Poly-Cart would be preferable.

A description of how the carts are to be distributed will be required and the process by which carts can be replaced if lost or broken.

5.3.7 Appendix C – Complete Bid Sheet

Bidder will provide a completed Bid Sheet with as shown in Appendix C of this IFB.

### 5.3.8 Appendix D – Acknowledgement of Addenda

Bidder should complete and sign the Acknowledgement of Addenda as found in Appendix D of this IFB.

Bid Documents will be incorporated and become a part of the Contract that the City enters into with the selected Bidder.

## 5.4 Bid Bond

The Bidder will provide a Bid Bond in the amount of five percent (5%) of the compensation that the Bidder is bidding for the first year of services under the contract. The Bid Bond will be in the form of a Surety Bond from a recognized surety company, cashier's check, or certified check drawn on a responsible bank.

The Bid Bond is subject to forfeiture to the City in the event the successful Bidder fails to enter into the Contract. Bid Bonds of unsuccessful bids will be returned within 120 days of the bid date.

The selected Bidder will provide the Performance Bond upon which the Bid Bond will be returned.

## 5.5 Bid Withdrawal

Bids submitted may be withdrawn up to the submittal deadline. Bidders will be required to provide a written request to withdraw a bid.

A new bid may be submitted if done so prior to the bid submittal deadline.

## 5.6 Questions and Addenda

Questions regarding this IFB may be addressed to:

Brian Scott  
Assistant City Administrator/Finance Director  
6090 Woodson  
Mission, KS 66202  
bscott@missionks.org

Questions must be submitted in writing.

Any addenda will be posted on the City's website.

The last date for addenda to be issued will be **Friday, August 16, 2019** except for an addendum extending the date of submission or withdrawing the IFB.



## 5.7 General Requirements and Stipulations with Submission

The City reserves the right to reject any or all Bids and to waive any minor informality, technicality or irregularity in any Bid.

All Bids, and related reference information, submitted in response to this IFB will become the property of the City and will not be returned. Bidders waive any right of confidentiality as to the Bid Documents. If a Bidder considers certain material in the Bid proprietary information, it shall clearly designate those portions of the Bid it wishes to remain confidential. As a public entity, the City is subject to making records available for public disclosure. The City will attempt to maintain confidentiality of material marked proprietary; however, it cannot guarantee that information will not be made public.

The City reserves the right to (1) accept or reject any and all Bids and to waive any technicalities or irregularities involving any Bids and to cancel the IFB process at any time prior to entering into a contract, (2) not award a Contract for any or all of the services that are the subject of this IFB process, (3) negotiate Contract terms acceptable to the City with the Bidder and (4) disregard all nonconforming, non-responsive or conditional Bids.

During the evaluation process, the City reserves the right to request additional information or clarifications from those Bidders submitting Bids and to allow corrections of errors and/or omissions.

Submission of a Bid indicates acceptance by the Bidder of the terms, conditions and specifications contained in this IFB to include any contract requirements set forth herein.

The City will not pay for any information herein requested, nor is it liable for any costs incurred by those Bidders submitting Bids. The City reserves the right to select the Bid that will best meet the needs of the City. Bids that do not meet the stated requirements will be considered in non-compliance and will be disqualified unless the City waives such non-compliance.

No Bid may be withdrawn for a period of ninety (90) days from the date set for the opening thereof.

By submission of a Bid, each Bidder submitting a proposal certifies and acknowledges that:

- a. It has not paid nor agreed to pay any person, other than a bona fide employee, a fee or brokerage fee resulting from the award of the IFB.
- b. The City may, by written notice to the respondent submitting the response, reject the IFB or cancel any award under this IFB if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise were offered or given to any representative of the City with a view toward securing an agreement or other favorable treatment with respect to this IFB or the entity submitting the response participated on collusion with another entity to restrain or eliminate competition.

- c. The contents of this IFB and any clarifications distributed or issued by the City shall become part of the contractual obligation and incorporated by reference into the ensuing Contract as the City deems appropriate.

**Appendix A**

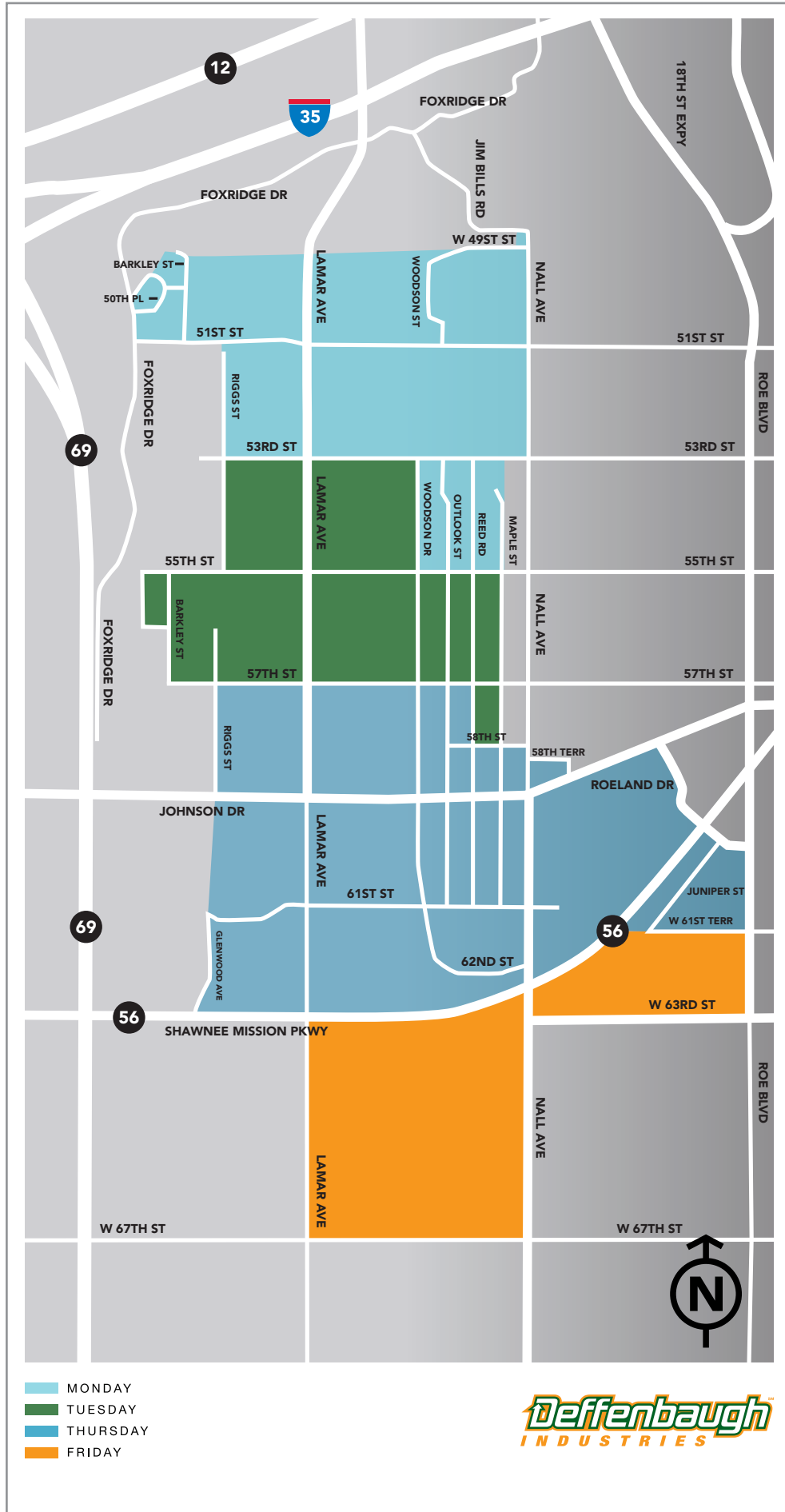
**Map of the City of Mission and Residential Solid Waste Service Area**



# Mission Residential Trash and Recycling Schedule

Beginning Week of December 1

Trash and recycling pickup will occur on the same day.



**Appendix B**

**Chapter 235 - Solid Waste Collection, Disposal and Recycling**

**City of Mission Municipal Code**

City of Mission, KS  
Friday, January 4, 2019

## Chapter 235. Solid Waste Collection, Disposal and Recycling

Editor's Note — Ord. no. 1270 §1, adopted August 20, 2008, amended this ch. 235 by enacting the new provisions set out herein. Former ch. 235 derived from CC 2000 §§8-101 — 8-132; ord. no. 796 §1, 12-12-90; ord. no. 989 §8, 1-12-00; ord. no. 1161 §1, 5-11-05.

### Section 235.010. Purpose.

[Ord. No. 1270 §1, 8-20-2008]

The City Council hereby finds that improper disposal of articles that can be recycled is contrary to the public interest and it is hereby declared to be the policy of the City to recycle materials and properly dispose of solid waste that cannot be recycled in a safe and sanitary manner. The City Council further finds that solid waste management and disposal are functions that it can efficiently and economically provide or regulate in the furtherance of the well-being of its citizens.

### Section 235.020. Definitions.

[Ord. No. 1270 §1, 8-20-2008]

For the purpose of this Chapter, the following words shall have the following meanings:

#### **CONSTRUCTION AND DEMOLITION WASTE**

Solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; untreated wood and untreated sawdust from any source; solid waste consisting of motor vehicle window glass; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials, non-asbestos insulation and construction-related packaging. *"Construction and demolition waste"* shall not include waste material containing friable asbestos, garbage, furniture, appliances, electrical equipment containing hazardous materials, tires, drums and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other construction and demolition waste during demolition or transportation shall be considered to be construction and demolition waste.

#### **CONTRACTOR**

A contractor licensed under this Chapter to collect and transport solid waste, recyclable materials and/or yard waste.

#### **DIRECTOR**

The City Administrator or his designee.

#### **HAZARDOUS WASTE**

1. Any waste or combination of wastes which, because of its quantity, concentration or physical, chemical, biological or infectious characteristics or as otherwise determined by the secretary:



- a. Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
  - b. Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.
2. Hazardous waste shall not include:
- a. Household waste;
  - b. Agricultural waste returned to the soil as fertilizer;
  - c. Mining waste and overburden from the extraction, beneficiation and processing of ores and minerals, if returned to the mine site;
  - d. Drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal energy;
  - e. Fly ash, bottom ash, slag and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels;
  - f. Cement kiln dust; or
  - g. Materials listed in 40 CFR 261.4, as in effect on July 1, 1983, or any later version as established in rules and regulations adopted by the secretary.

### **NUISANCE**

Anything which:

1. Is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and
2. Affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and
3. Occurs during or as a result of the handling or disposal of solid waste.

### **RECYCLABLE MATERIALS**

Any materials that will be used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product or as an effective substitute for a commercial product. "Recyclables" includes, but is not limited to, paper, glass, plastic, municipal water treatment residues, as defined by K.S.A. 65-163 and amendments thereto, and metal, but excludes materials rejected by licensed recycling contractors and yard waste.

### **RESIDENCE AND RESIDENTIAL**

All single-family dwellings, duplexes, triplexes, town homes and condominiums and all other types of dwelling units in the City except apartment buildings, which shall be considered for purposes of this Chapter commercial buildings.

### **SOLID WASTE**

Unwanted or discarded waste materials in a solid or liquid state including, but not limited to, refuse, garbage, trash, rubbish and discarded appliances, furniture, tires, equipment and appliances.

### **YARD WASTE**

Consists of grass clippings, leaves, shrubs and tree trimmings.

## **Section 235.030. Solid Waste Management Utility — Residential Solid Waste and Recyclable Collection.**

[Ord. No. 1270 §1, 8-20-2008]

- A. The City shall provide for the collection and disposal of all residential solid waste as a municipal function and shall extend such service to all residential properties within the City, establish the conditions thereof and fix the charges under which service will be rendered. The City shall license one (1) or more private companies to perform such collection and disposal. All companies providing the service of collecting residential solid waste shall also provide a same-day curbside recycling service or other recycling program approved by the City and shall meet all requirements and regulations set forth by the Governing Body.
- B. Every resident of a residential property in the City shall be required to allow a collector licensed by the City on to his, her or its property for the purpose of collecting residential solid waste and recyclable materials.

## Section 235.040. Commercial and Other Collections.

[Ord. No. 1270 §1, 8-20-2008]

The City shall, by licensing, designate collectors to provide for solid waste collection service to institutional, commercial, industrial establishments and apartment buildings. The costs of such services shall be borne by the establishment or apartment building. If the owner of any such establishment or apartment building shall desire to provide for the collection and transportation of its own solid waste generated and/or produced on its own property, such establishment shall make application to the City Administrator for such authority.

## Section 235.045. Construction and Demolition Waste Containers.

[Ord. No. 1270 §1, 8-20-2008]

- A. Construction and demolition waste containers may be stored on any residential, institutional, commercial or industrial establishment where a valid building permit has been issued and construction is in progress. Construction and demolition waste containers shall be removed upon the completion of construction.
- B. Construction and demolition waste containers are permissible on any residential, institutional, commercial or industrial property at any time for a fifteen (15) day period, not to exceed one (1) time per year. A permit must be obtained for such fifteen (15) day period from the Director.
- C. The owner, occupant or contractor for every construction site where a construction and demolition waste container is on hand shall place all construction and demolition waste at least once per day into a construction and demolition waste container and maintain such containers and the area surrounding them in a clean, neat and sanitary condition.

## Section 235.050. Solid Waste Containers.

[Ord. No. 1270 §1, 8-20-2008; Ord. No. 1291 §1, 3-18-2009]

- A. The owner or occupant of every residence and of every institutional, commercial or industrial establishment or apartment building where solid waste is accumulated must provide sufficient and adequate containers for the deposit and collection of solid waste.
- B. Residential solid waste containers shall have a tight fitting lid or otherwise be tightly secured and/or enclosed to prevent solid waste from escaping or from allowing water to collect inside the container. The container shall be maintained so as to retain odors and prohibit insects or animals from entering the solid waste containers. Containers shall be polycarts furnished by the contractor, not to exceed sixty-five (65) gallons of capacity and shall not weigh over fifty (50) pounds when full.



- C. Commercial solid waste containers shall be approved by the Director. The containers shall be waterproof with a substantial lid or cover tightly fitting to retain all odors and keep out animals and insects and of a sufficient size to receive and hold all solid waste that may accumulate without leakage, overflow or flowing.

## Section 235.060. Maintenance of Solid Waste Containers.

[Ord. No. 1270 §1, 8-20-2008]

The owner or occupant of every structure from which solid waste collection is made shall place all solid waste in solid waste containers, except as otherwise provided, and shall maintain such solid waste containers and the area surrounding them in a clean, neat and sanitary condition at all times. The contents thereof shall be kept in such condition that they can be readily and fully removed by licensed collectors. No person shall place or store any containers at any place in front of existing buildings, setback lines or existing building lines upon any real property or public rights-of-way in residential areas, except on the day of collection. For institutional, commercial and industrial establishments and apartment buildings, the storage area must be screened from view by enclosure, fence, screen or other suitable means so as to present an aesthetically pleasing appearance.

## Section 235.070. Residential Recyclable Containers.

[Ord. No. 1270 §1, 8-20-2008; Ord. No. 1291 §1, 3-18-2009]

Containers for recyclable materials in residential areas shall be polycarts furnished by the contractor(s) with a minimum of sixty-five (65) gallons in capacity and constructed of not less than twenty-five percent (25%) recycled plastic. Containers for recyclable materials in apartment buildings and multi-family dwellings designed for more than four (4) dwelling units may be bags, bins or other containers furnished by the contractor(s) and approved by the Director. The Director may provide other specific requirements for the containers.

## Section 235.080. Yard Waste and Composting.

[Ord. No. 1270 §1, 8-20-2008]

It shall be the responsibility of the occupant to place all yard cleanup waste, including, but not limited to, grass clippings, leaves and tree trimmings, in biodegradable kraft paper bags or other rigid containers not exceeding thirty-two (32) gallons in capacity or appropriately bundled tree trimmings at the regular collection point for collection. Containers shall be maintained as to prevent the dispersal of waste placed therein upon the premises served, upon adjacent premises or upon adjacent public rights-of-way. Any composting of yard waste within the City shall be conducted behind the rear building setback line and in a manner so as not to create a nuisance, an offensive sight or offensive odors.

## Section 235.090. Tree Trimmings.

[Ord. No. 1270 §1, 8-20-2008]

Tree trimmings less than two (2) inches in diameter shall be securely tied in bundles not larger than forty-eight (48) inches long and eighteen (18) inches in diameter when not placed in storage containers.

## Section 235.100. Bulky Waste.

[Ord. No. 1270 §1, 8-20-2008]

It shall be the responsibility of the occupant not to permit bulky solid waste to accumulate and to ensure that such waste is disposed of in a proper manner. For purposes of this Section, the term "bulky waste" shall mean non-putrescible solid wastes consisting of combustible or non-combustible waste materials



which are either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors with the equipment readily available therefor. Persons engaged in the collection and transportation of residential solid waste, recyclable materials and yard waste shall make available a bulky waste disposal service. The City shall have the authority to periodically provide for public dumpsters within the City for the benefit of City residents and owners only for the disposal of bulky waste. Locations, duration and any cost of such public dumpsters shall be upon such terms and conditions as approved by the Governing Body.

## Section 235.110. Recyclable Collection.

[Ord. No. 1270 §1, 8-20-2008]

The owner or occupant of any residence where recyclable materials shall be generated may separate recyclable materials from all other solid waste and place such recyclable materials at the location designated by the contractor in a recyclable materials container for collection on collection day and shall maintain such recyclable containers and the area surrounding them in a neat, clean and sanitary condition at all times.

## Section 235.120. Licensing.

[Ord. No. 1270 §1, 8-20-2008]

All persons desiring to collect and transport residential solid waste within the City shall be licensed and shall collect recyclable materials and yard waste. Application for license shall be made to the City Clerk on forms provided.

## Section 235.130. Approval By Governing Body.

[Ord. No. 1270 §1, 8-20-2008]

Each application for license to collect and transport residential solid waste and recyclable materials in the City shall be approved by the Governing Body prior to issuance of any license or the renewal of any license.

## Section 235.140. License Fee.

[Ord. No. 1270 §1, 8-20-2008]

All persons engaged in the collection and transportation of solid waste, recyclable materials or yard waste in the City shall pay the occupational license fees required by Chapter **103**, Section **103.070** of the Code of the City of Mission, Kansas.

## Section 235.150. Collection Frequency.

[Ord. No. 1270 §1, 8-20-2008]

- A. Residential and apartment building collection of solid waste, recyclable materials and yard waste shall be not less than one (1) collection each calendar week.
- B. Institutional, commercial and industrial solid waste collection shall be as required to protect the health, welfare and safety of the City and maintain the premises in a sanitary and uncluttered condition so as to avoid the creation of a nuisance.

## Section 235.160. Routes Established.

[Ord. No. 1270 §1, 8-20-2008]

Each person licensed to engage in collection, storage and transportation of residential solid waste and recyclable material shall file a route schedule with the Director to ensure that each area of the City is provided service on the same day of the week.

## Section 235.170. Rate Schedule.

[Ord. No. 1270 §1, 8-20-2008]

Each firm applying for a license to engage in collection and transportation of residential solid waste and recyclable material in the City shall file a complete rate schedule with its application. The rate schedule shall list all charges and classification of charges, including special charges for groups or associations charged in any area of Johnson County. The Governing Body shall approve such rates for the period ending on the first (1st) day of December of each year. Any change in the rates prior to being placed into effect shall be approved by the Governing Body. The method and time of billing shall also be indicated and must be approved by the Governing Body.

## Section 235.180. Collection Hours.

[Ord. No. 1270 §1, 8-20-2008]

All licensed contractors shall engage in the collection and transportation of solid waste, recyclable materials and yard waste between the hours of 7:00 A.M. and 7:00 P.M.

## Section 235.190. Telephone Required.

[Ord. No. 1270 §1, 8-20-2008]

All licensed contractors shall maintain an office with adequate telephone service to provide for service requests and complaints. The Director shall be furnished immediately any change in telephone or address if such office changes after receiving a license.

## Section 235.200. Revocation of License.

[Ord. No. 1270 §1, 8-20-2008]

Any person licensed under this agreement and found, after public hearing before the Governing Body, to be in violation of the provisions of this Chapter may have such license revoked.

## Section 235.210. Disposal of Solid Waste.

[Ord. No. 1270 §1, 8-20-2008]

All solid waste shall be disposed of at a processing facility or disposal area approved by and complying with all requirements of the Johnson County Solid Waste Management Plan and as permitted by the Kansas Department of Health and Environment and the Johnson County Board of County Commissioners.

## Section 235.220. Disposal of Recyclable Materials.

[Ord. No. 1270 §1, 8-20-2008]

All recyclable material shall be disposed of at a recycling processing or disposal facility approved by and in compliance with all local, State and Federal regulations.

## Section 235.230. Hazardous Wastes.

[Ord. No. 1270 §1, 8-20-2008]

No person shall place any flammable, explosive or hazardous waste in any container for collection and disposal. Hazardous wastes shall be disposed of only in a manner prescribed by applicable local, State and Federal laws and regulations.

## Section 235.240. Insurance.

[Ord. No. 1270 §1, 8-20-2008]

Each collector and contractor in the City shall maintain insurance coverage in an amount not less than one hundred thousand dollars (\$100,000.00) for each person injured or killed and an amount not less than two hundred thousand dollars (\$200,000.00) in the event of injury or death of two (2) or more persons in any single accident and an amount not less than fifty thousand dollars (\$50,000.00) for damage to property, such policy to be written to allow the first (1st) twenty thousand dollars (\$20,000.00) of liability for property damage to be deductible. A certificate of insurance evidencing the required insurance shall be continuously maintained with the Director. The insurance carrier shall be required to notify the City in writing no less than ten (10) days prior to the effective date of such a cancellation. The policy shall contain a provision which shall place the responsibility for the ten (10) day written notice upon the company issuing the policy.

## Section 235.250. Inspection.

[Ord. No. 1270 §1, 8-20-2008]

In order to insure compliance with the laws of this City, County, State and any applicable Federal laws and regulations, the Director is authorized to inspect all phases of solid waste management within the City. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspection reveals violation of this Chapter, the Director or other law enforcement personnel may issue a complaint for prosecution in the Municipal Court of the City or other appropriate court of proper jurisdiction.

## Section 235.260. Documentation.

[Ord. No. 1270 §1, 8-20-2008]

All residential collectors of solid waste and recyclable materials must submit recycling documentation on a quarterly basis to the Governing Body. Documentation must be submitted no later than April thirtieth (30th), July thirtieth (30th), October thirtieth (30th) and January thirtieth (30th) immediately following the prior quarter. Documentation shall include an affidavit certifying that the Collector has complied with all requirements of this Chapter and substantiate the recyclable disposal method, weight and/or volume amount and compensation received for the materials recycled. Any person licensed to collect solid waste and recyclable materials failing to provide the required documentation will be found in violation of this Chapter and may have his/her license revoked by the Governing Body.

## Section 235.270. Rules and Regulations.

[Ord. No. 1270 §1, 8-20-2008]

The Director may promulgate such reasonable and necessary rules and regulations governing the administration of this Chapter. Such regulations shall be approved by the Governing Body. Once approved by the Governing Body, such regulations shall be subject to enforcement on the same manner as set forth in this Chapter. A copy of the regulations shall be on file in the office of the City Clerk.

## Section 235.280. Education, Promotion and Marketing.



[Ord. No. 1270 §1, 8-20-2008]

Each solid waste and recyclable materials contractor shall implement public education and awareness programs in coordination with the City to educate the general public and waste generators of the importance of recycling and waste minimization. Each contractor shall submit a public education and awareness program to the Director for approval which program shall commence prior to the commencement of recycling in the City and shall continue so long as such contractor collects recyclable materials in the City. A recycling emblem may be established by the City as part of the recycling program and utilized in the establishment of an awareness program.

## Section 235.290. Solid Waste Collection Vehicles.

[Ord. No. 1270 §1, 8-20-2008]

All solid waste collection vehicles shall be maintained in a safe, clean and sanitary condition and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with watertight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste or, as an alternative, the entire bodies hereof shall be enclosed with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

## Section 235.300. Recyclable Material Collection Vehicles.

[Ord. No. 1270 §1, 8-20-2008]

All recyclable material collection vehicles shall be maintained in a safe, clean and sanitary condition and shall be so constructed, maintained and operated as to prevent spillage of recyclable material therefrom.

## Section 235.310. Excavation Material.

[Ord. No. 1270 §1, 8-20-2008]

Permits shall not be required for the removal, hauling or disposal of earth and rock material from grading or excavation activities; however, all such material shall be conveyed in tight vehicles, trucks or receptacles so constructed and maintained that none of the materials being transported spill upon the public rights-of-way.

## Section 235.320. Unlawful Activity.

[Ord. No. 1270 §1, 8-20-2008]

A. It shall be unlawful for any person:

1. As owner, occupant or person in charge of any residence, building, lot or premises to violate any of the provisions of this Chapter.
2. As owner, occupant or person in charge of any residence building, lot or premises to deposit or cause to be deposited upon any street of the City or upon any other property, public or private, within the City limits any solid waste, yard waste or recyclable material except as prescribed in this Chapter.
3. As non-residents of the City to deposit anything in public dumpsters.
4. To engage in the business of collecting, transporting, processing or depositing of solid waste, recyclable material or yard waste within the City without first obtaining a license to do so from

the Governing Body.

5. Be granted a license from the City under this Chapter for collection and transportation of solid waste, recyclable materials and yard waste to violate any of the provisions of this Chapter.
6. To deposit solid waste, recyclable materials or yard waste in any solid waste container or recyclable container other than his/her own without the written consent of the possessor of such container and/or with the intent of avoiding payment of the service charge thereafter provided for solid waste collection, recyclable material collection, yard waste collection and disposal.
7. To interfere in any manner with solid waste and/or recyclable collection equipment or with solid waste and recyclable collectors in the lawful performance of their duties.
8. To burn solid waste or recyclable materials within the City.
9. To dispose of any solid waste recyclable material or yard waste at a facility which is not approved by the City or Johnson County.
10. To upset, turn over, remove or carry away any solid waste container, recyclable material container or any other approved container or part hereof.
11. To engage in the business, operation of or in any manner perform the act of collection of solid waste, recyclable material or yard waste within the City between the hours of 7:00 P.M. and 7:00 A.M.
12. To stop, stand or park a vehicle used in the collection of solid waste, recyclable material or yard waste at any place in the City between the hours of 7:00 P.M. and 7:00 A.M.
13. To remove any recyclable material from a recyclable materials container without the written consent of the possessor of such container.
14. As non-residents of the City to deposit any solid waste, yard waste or recyclable material upon any street of the City or upon any other property, public or private, within the City limits.
15. No waste or recyclable material shall be placed in front of the building line earlier than 6:00 P.M. the night before collection.

## Section 235.330. Collection and Payment of Charges.

[Ord. No. 1270 §1, 8-20-2008]

- A. Annual charges for solid waste collection for residential property shall be collected with ad valorem real estate taxes annually.
- B. The City will make available residential bulky waste pickup at least yearly at specified times at no charge to the owner or occupant; in all other situations, the costs of bulky waste collection shall be the responsibility of the owner or occupant.
- C. The City will make recycling collection available for residential property at no charge to the owner or occupant.
- D. Charges by licensed contractors for solid waste collection for institutional, commercial and industrial establishments and apartment buildings shall be the responsibility of the owner or occupant of the establishment or apartment building.

## Section 235.340. Schedule of Fees and Charges.

[Ord. No. 1270 §1, 8-20-2008]

The charges to be assessed and paid by the occupant for collection, transportation and disposal of solid waste shall be as fixed from time to time in the City's schedule of fees available in the office of the City Clerk.



**Appendix C**

**City of Mission Bid Sheet for Residential Solid Waste Collection Services**

Name of Bidder: \_\_\_\_\_

**Weekly Residential Solid Waste Collection**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
1	Cost per month, per resident for weekly collection of solid waste limited to one Poly-Cart		2,970		
				<b>Total</b>	

**Base Bid - Weekly Residential Recycling Collection**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
2	Cost per month, per resident for weekly collection of recyclable waste – <u>UNLIMITED AMOUNT</u>		2,970		
				<b>Total</b>	

**ALTERNATE Bid – Weekly Residential Recycling Collection**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
3	Cost per month, per resident for weekly collection of recyclable waste – LIMITED to:		2,970		
	Limited to what amount?				
				<b>Total</b>	

Bidder's Initial: \_\_\_\_\_

Page 1 of 3

Name of Bidder: \_\_\_\_\_

**Weekly Yard Waste Collection**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
4	Eight (8) Yard Waste Bags - January thru October		2,970		
5	Twelve (12) Yard Waste Bags – November thru December		2,970		
				<b>Total</b>	

**Bulky Items – Once a Month Pick-Up**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
6	Cost per month, pre resident for monthly collection of bulky items (limit of three - 3)		2,970		
				<b>Total</b>	

**Overage Stickers**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
7	Cost per overage sticker				

**Community Festivals**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
8	2-Yard Dumpster – Two (2) dumpsters provided up to four times a year for community festivals		4 times a year		
9	Portable Toilets – Six (6) portable toilets provided up to four times a year for community festivals.		4 times a year		
				<b>Total</b>	

Bidder's Initial: \_\_\_\_\_

Page 2 of 3

Name of Bidder: \_\_\_\_\_

**Collection for City Facilities**

Item	Description	Unit Price	Quantity	Total Monthly Price	Total Annual Price
	City Hall/Police Depart. – 6090 Woodson Road				
10	2-Yard Dumpster – collected 3 times a week		2		
	Mission Family Aquatic Center (pool) – 6090 Woodson Road				
11	2-Yard Dumpster – collected 1 time a week		2		
12	8-Yard Dumpster – collected 1 time a week		1		
	Sylvester Powell Jr. Community Center – 6200 Martway Street				
13	2-Yard Dumpster – collected 3 times a week		4		
14	8-Yard Dumpster – collected 1 time a week		2		
	Public Works Maintenance Facility – 4775 Lamar Avenue				
15	8-Yard Dumpster – collected 1 time a week		1		
16	80-Yard Dumpster – collected upon request (one is for recycling only)		2		
				<b>Total</b>	

Name of Bidder: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Signature of Individua Authorized to Bind Bidder: \_\_\_\_\_

Name of Signer: \_\_\_\_\_

Title/Position: \_\_\_\_\_

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



**Appendix D**

**City of Mission**

**Acknowledgment of Addenda**

Bidder will need to complete and sign this acknowledgment that he/she has received and considered all Addenda that were issued in relation to this IFB.

\_\_\_\_\_ (Bidder) does hereby certify that he/she has received any and all addendum issued by the City of Mission in relation to the Invitation for Bids for:

“Residential Solid Waste Collection Services”

And, that Bidder has reviewed and understands each addenda issued and has developed its Bid to this Invitation for Bids in accordance with said addendum.

Name of Bidder: \_\_\_\_\_

Address of Bidder: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Individual of Vendor with Authority to Sign on Behalf of Bidder:

\_\_\_\_\_

Title of Individual:

\_\_\_\_\_

Signature:

\_\_\_\_\_

<b>City of Mission</b>	Item Number:	7b.
<b>ACTION ITEM SUMMARY</b>	Date:	October 9, 2019
<b>Administration</b>	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

**RE:** A Resolution calling a public hearing regarding the division of the Rock Creek Redevelopment (TIF) District into five Redevelopment Districts.

**RECOMMENDATION:** Approve the Resolution calling a public hearing for 7 p.m. on Monday, November 18, 2019 regarding the division of the Rock Creek Redevelopment (TIF) District into five Redevelopment Districts.

**DETAILS:** In 2006, the City established the Rock Creek TIF District (via Ordinances 1190 and as amended by Ordinance 1195). The District contained approximately 71 acres of property, which generally follows the Rock Creek Floodplain from Roe to Lamar. The larger district was created to aid redevelopment in areas that had been put into the 100-year floodplain just a few years earlier. The Rock Creek District included four (4) redevelopment areas within the larger district.

In 2009, the District was amended (Ordinance 1299) to included five redevelopment project areas. Areas 1, 3 and 4 as remained as previously established, and within area 2, a separate redevelopment project area (2A) which included the Capitol Federal property was created.

The TIF Act provides that increment is computed on a district-wide basis. This law works where there is (1) a single project area within a district, or (2) multiple project areas, all of which have positive incremental assessed valuation (AV). However, when some project areas have negative incremental AV but others have positive incremental AV, those areas with positive increment are unable to be compensated until the entire district is generating positive increment.

As we've taken steps to re-evaluate the Gateway Redevelopment Agreement, and started exploring issuance of the Special Obligation (SO) bonds it contemplates, we have identified some issues which need to be addressed, including:

1. What is a fair way to allocate the future incremental property tax revenues generated by the Rock Creek District as between Gateway, CapFed and Project Areas 2-4?
2. Where bonds are issued to finance Gateway project costs, how can we effectively mitigate risk to bondholders of future AV decreases in other project areas that could decrease incremental revenues within the District, such that there is insufficient increment to give Gateway its "fair share" distribution?

In order to address the issues identified above, and to preserve the greatest amount of flexibility for the City, staff recommends the Council proceed to split the existing Rock Creek District into separate Districts. In order to accomplish this (in accordance with K.S.A. 12-1771(h)), the City must provide the same notice and hearing as was required when the original district was established.

Related Statute/City Ordinance:	<i>K.S.A. 12-1770 et seq.</i>
Line Item Code/Description:	NA
Available Budget:	NA

<b>City of Mission</b>	Item Number:	7b.
<b>ACTION ITEM SUMMARY</b>	Date:	October 9, 2019
<b>Administration</b>	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

The steps to accomplish the separation of the districts include:

- City Council adopts Resolution calling public hearing (October 16). The Public Hearing date must be not less than 30 days or more than 70 days following adoption of the Resolution
- Notice of public hearing must be given to the County, USD 512, and all property owners and occupants within District – sent via certified mail, return receipt requested
- Hold public hearing (November 18)
- City Council adopts Ordinance splitting area into separate districts (November 18)

A memo outlining the issues and considerations more thoroughly is included in the packet for your review and information.

**CFAA CONSIDERATIONS/IMPACTS:** NA

Related Statute/City Ordinance:	<i>K.S.A. 12-1770 et seq.</i>
Line Item Code/Description:	NA
Available Budget:	NA





## MEMORANDUM

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**Date:** October 4, 2019  
**To:** Mayor and City Council  
**From:** Laura Smith, City Administrator  
**RE:** Division of Rock Creek TIF District

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In 2006, the City established the Rock Creek TIF District (via Ordinance 1190 and as amended by Ordinance 1195). The District contained approximately 71 acres of property, which generally follows the Rock Creek Floodplain from Roe Boulevard to Lamar. The large district was created to aid redevelopment in areas that had been put into the 100-year floodplain just a few years earlier. The Rock Creek District included four (4) redevelopment project areas within the larger district, as illustrated by the map included as Exhibit A.

In 2009, the District was amended (Ordinance 1299) to include five redevelopment project areas. Areas 1, 3 and 4 remained as previously established, and within area 2, a separate redevelopment project area (2A), which encompassed the Capitol Federal property, was created.

The TIF Act provides that increment is computed on a district-wide basis. This law works where there is (1) a single project area within a district, or (2) multiple project areas, all of which have positive incremental assessed valuation (AV). However, when some project areas have negative incremental AV but others have positive incremental AV, those areas with positive increment are unable to be compensated until the entire district is generating positive increment.

Since its creation, the Rock Creek District has not experienced positive incremental AV as a whole in any budget year. However, there are certain redevelopment areas that have/are experiencing positive incremental AV. So, "why does this matter?"

The application of the TIF Act is inconsistent with the approach that is often taken when establishing individual project plans within a larger district. At least in Mission's case, the two approved projects plans within the Rock Creek District - Gateway and Capitol Federal - were approved with an assumption that they would be able to receive TIF incentives from positive increment generated specifically within their individual project areas. Currently, neither project could receive TIF revenues until the entire (71 acre) district started generating positive increment.

The table below illustrates the five (5) separate existing project areas, their base assessed value from 2006, the current assessed value and the increment generated (positive or negative). The areas are detailed in the map attached as Exhibit B.



**MEMORANDUM**

<b>Project Area</b>	<b>Base Total Assessed Value</b>	<b>2019 Assessed Value</b>	<b>Incremental Assessed Value</b>	<b>Notes</b>
1*	\$ 2,532,825	\$ 488,175	(\$2,044,650)	Gateway Project
2A*	\$ 49,045	\$ 257,501	\$208,456	CapFed Project
2	\$ 4,581,069	\$4,120,353	(\$460,716)	Roeland Drive to Nall
3	\$ 3,231,790	\$3,927,668	\$695,878	Nall to just west of Woodson, north of Martway (includes Mission Bowl and Mission Mart)
4	\$ 449,598	\$ 791,174	\$341,576	Area north and west of City Hall
<b>District Totals</b>	\$ 10,844,327	\$9,584,871	(\$1,259,456)	Total incremental assessed value within District has not yet been positive, so no incremental tax revenues distributed to date.

\* Approved project plans for Project Area 1 (Gateway) and Project Area 2A (CapFed) only allocate increment generated within the respective project areas to payment of eligible project costs.

As we've taken steps to re-evaluate the Gateway Redevelopment Agreement, and started seriously exploring issuance of the Special Obligation (SO) bonds it contemplates, we have identified some issues which need to be addressed, including:

1. What is a fair way to allocate the future incremental property tax revenues generated by the Rock Creek District as between Gateway, CapFed and the remaining project areas?
2. Where bonds are issued to finance Gateway project costs, how can we effectively mitigate risk to bondholders of future AV decreases in other project areas that could decrease



## MEMORANDUM

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incremental revenues within the District, such that there is insufficient increment to give Gateway its "fair share" distribution?

In order to address the issues identified above, and to preserve the greatest amount of flexibility for the City, staff recommends the City Council proceed to split the existing Rock Creek District into separate Districts. In order to accomplish this (in accordance with K.S.A. 12-1771(h)), the City must provide the same notice and hearing as was required when the original district was established. The steps include:

- City Council adopts Resolution calling public hearing (October 16). The Public Hearing date must be not less than 30 days or more than 70 days following adoption of the Resolution
- Notice of public hearing must be given to the County, USD 512, and all property owners and occupants within District – sent via certified mail, return receipt requested
- Hold public hearing (November 18)
- City Council adopts Ordinance splitting area into separate districts (November 18)

In this amendment process, the County and School District are not given veto rights, and the base AV of each new district is equal to the base AV as of the date the original district was established (2006).

The advantages of this approach are as follows:

- Allows each Project Area/District to receive increment attributable only to activities within that geographic area.
- Consistent with business deal in approved project plans for Gateway and CapFed.
- Likely helps with marketing Gateway Bonds – less risk to investors related to increment from other project areas.
- Provides City Council with the opportunity to evaluate the necessity/value of such a large TIF District and remove certain portions entirely either at the November 18 meeting or at a later date.

These actions don't specifically benefit one property or project over another. Staff believes this is an appropriate step given the length of time that has transpired since the district was established in 2006. The Resolution to call a public hearing on Monday, November 18, 2019 has been drafted by the City's Bond Counsel, Gilmore & Bell and is included in the packet.

The legal descriptions which will be included as Exhibit B to the Resolution are being updated to reflect changes that have occurred since 2006 and will be finalized prior to distribution of the Council agenda packet on October 11, 2019.



**EXHIBIT A  
MAP OF ROCK CREEK REDEVELOPMENT DISTRICT**

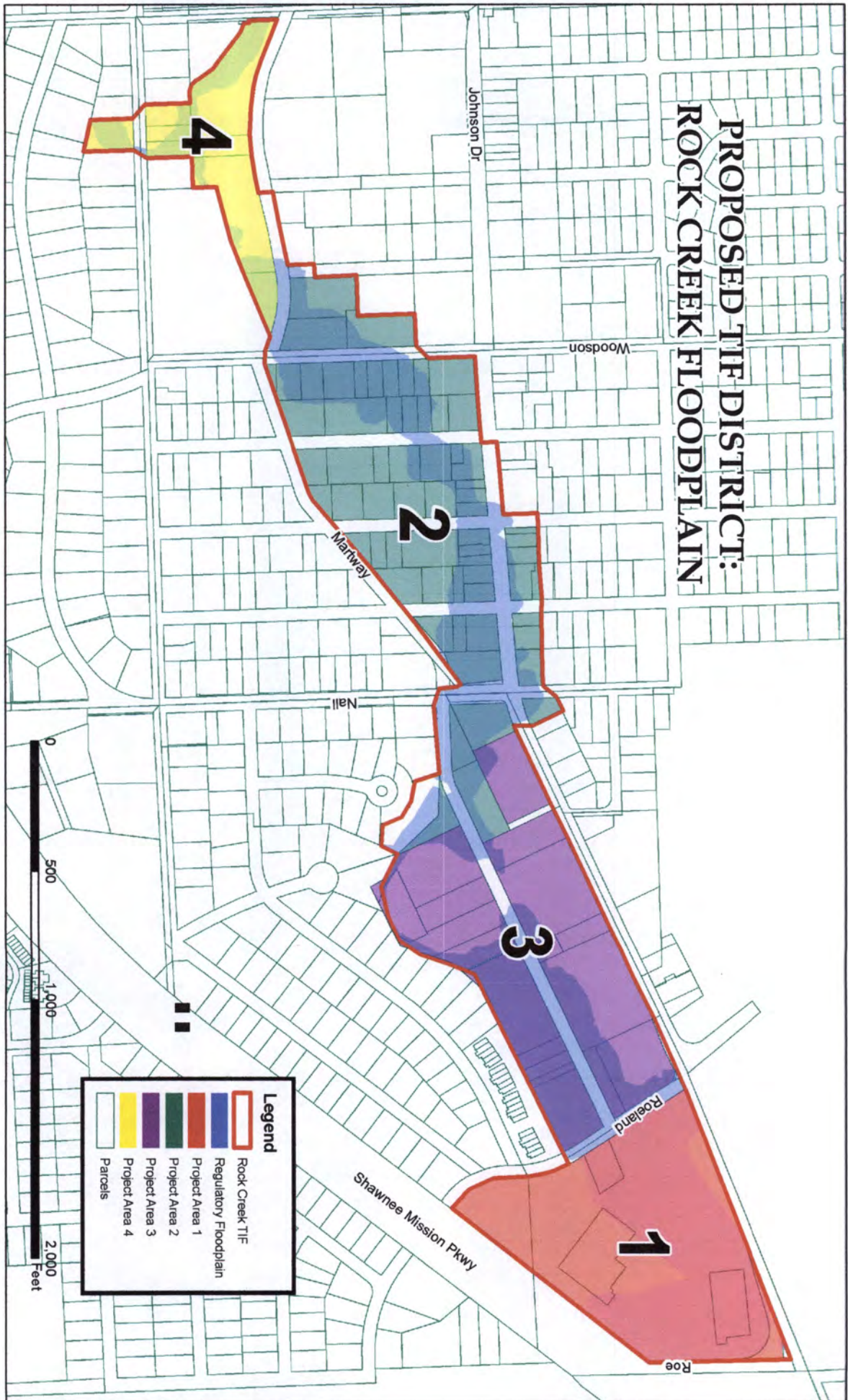
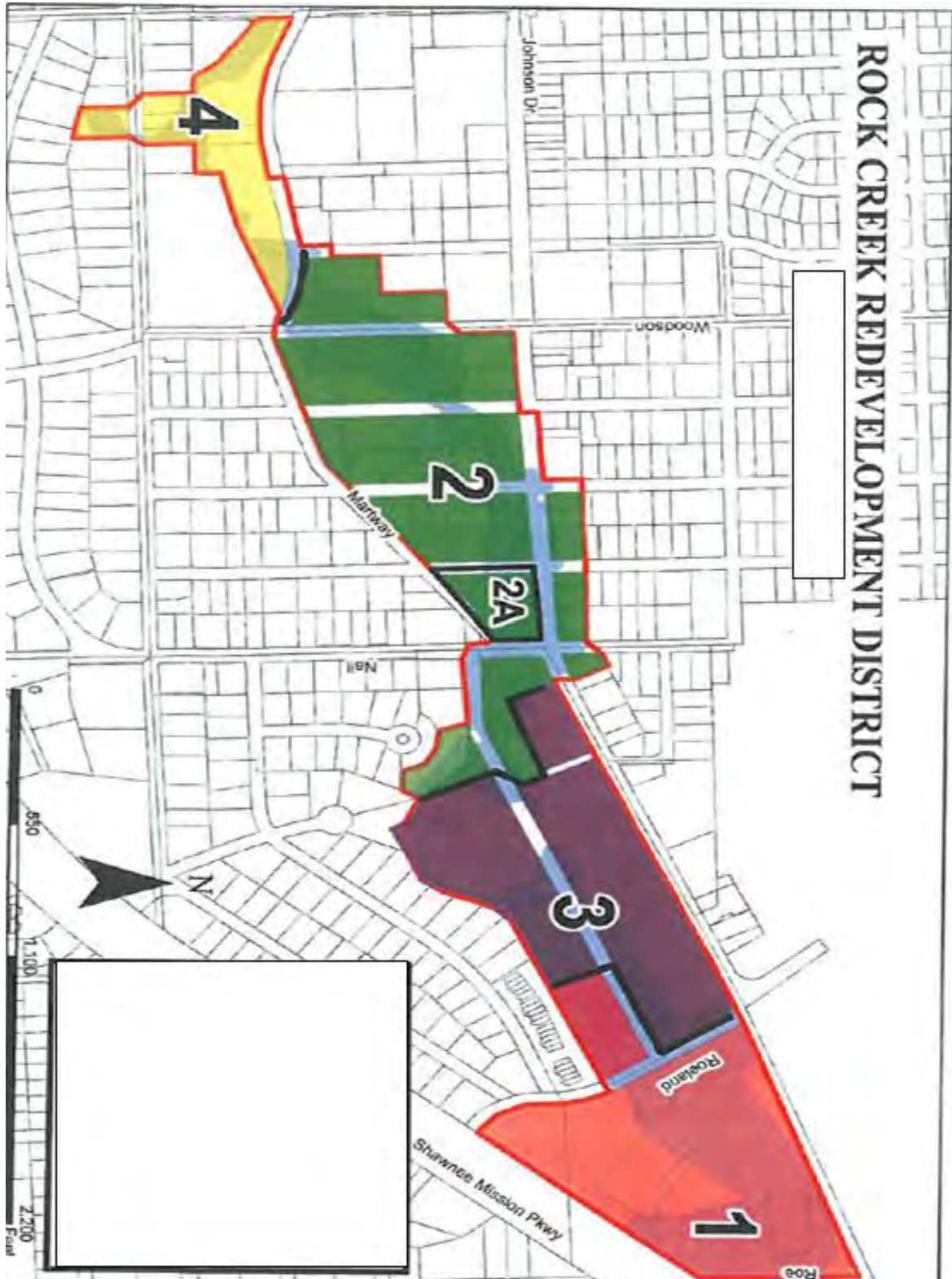




EXHIBIT B

MAP OF REDEVELOPMENT DISTRICTS



(Published in *The Legal Record* on November 5, 2019)

**RESOLUTION NO. 1035**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MISSION, KANSAS ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING REGARDING THE DIVISION OF THE ROCK CREEK REDEVELOPMENT DISTRICT INTO FIVE (5) REDEVELOPMENT DISTRICTS.**

**WHEREAS**, the City of Mission, Kansas (the “City”) created a redevelopment district (the “Redevelopment District”) pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”) and Ordinance No. 1190 passed by the City Council of the City (the “Governing Body”) on January 11, 2006, as amended by Ordinance No. 1195 passed by the Governing Body on February 8, 2006; and

**WHEREAS**, the City is considering the division of the Redevelopment District into five separate redevelopment districts pursuant to K.S.A. 12-1771(h); and

**WHEREAS**, the Governing Body desires to establish November 18, 2019 as the date for the public hearing to consider the division of the Redevelopment District into five (5) redevelopment districts and authorize dissemination of notice as required by the Act.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS:**

**Section 1.** Notice is hereby given that a public hearing will be held by the Governing Body to consider the division of the Redevelopment District into five (5) redevelopment districts in the City Council Chamber located in City Hall, 6090 Woodson, Mission, Kansas 66202, commencing at 7:00 p.m., or as soon thereafter as may be heard, on **November 18, 2019**.

**Section 2.** A map of the five (5) proposed redevelopment districts is attached hereto as *Exhibit A*. The legal descriptions of the five (5) proposed redevelopment districts are attached hereto as *Exhibit B*. Descriptions and maps of the proposed redevelopment districts are available for inspection at the office of the City Clerk, City Hall, 6090 Woodson, Mission, Kansas 66202, Monday through Friday (other than holidays) between 8:00 a.m. and 5:00 p.m.

**Section 3.** The district plans for the proposed redevelopment districts are described in a general manner as follows:

**Rock Creek Redevelopment District No. 1 (Gateway).** A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial or residential facilities, parking facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary sewers, water lines and all related expenses to redevelop and finance the project.

**Rock Creek Redevelopment District No. 2.** A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial and residential facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm



sewers, water lines and all related expenses to redevelop and refinance the redevelopment project and all other associated public and private infrastructure.

**Rock Creek Redevelopment District No. 2A (Capitol Federal).** A redevelopment district containing one project area consisting of some or all of the following uses: an approximately 3,800 square foot commercial banking building and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and finance the project and all other associated public and private infrastructure.

**Rock Creek Redevelopment District No. 3 (Mission Mart and Bowl).** A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial or residential facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and finance the project and all other associated public and private infrastructure.

**Rock Creek Redevelopment District No. 4.** A redevelopment district containing one project area consisting of some or all of the following uses: one or more commercial and residential facilities and all related infrastructure improvements, including storm water improvements within and around the Rock Creek channel, streets, sanitary and storm sewers, water lines and all related expenses to redevelop and refinance the redevelopment project and all other associated public and private infrastructure.

**Section 4.** The Governing Body will consider the findings necessary for the division of the Redevelopment District into the five (5) redevelopment districts after the conclusion of the public hearing.

**Section 5.** The City Clerk is hereby authorized and directed to publish this resolution once in the official city newspaper not less than one week or more than two weeks preceding the date set for the public hearing. The City Clerk is also authorized and directed to mail a copy of this resolution via certified mail, return receipt requested to the board of county commissioners, the board of education of any school district levying taxes on property within the proposed redevelopment district, and to each owner and occupant of land within the Redevelopment District, not more than 10 days following the date of the adoption of this Resolution.

**Section 6.** The Mayor, City Administrator, City Clerk and other officials and employees of the City, including the City Attorney and Gilmore & Bell, P.C., Bond Counsel to the City, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this resolution.

**Section 7.** This Resolution shall become effective upon its adoption by the Governing Body.

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**ADOPTED** by the Governing Body on October 16, 2019.

**SIGNED** by the Mayor on October 16, 2019.

(SEAL)

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Ronald E. Appletoft, Mayor

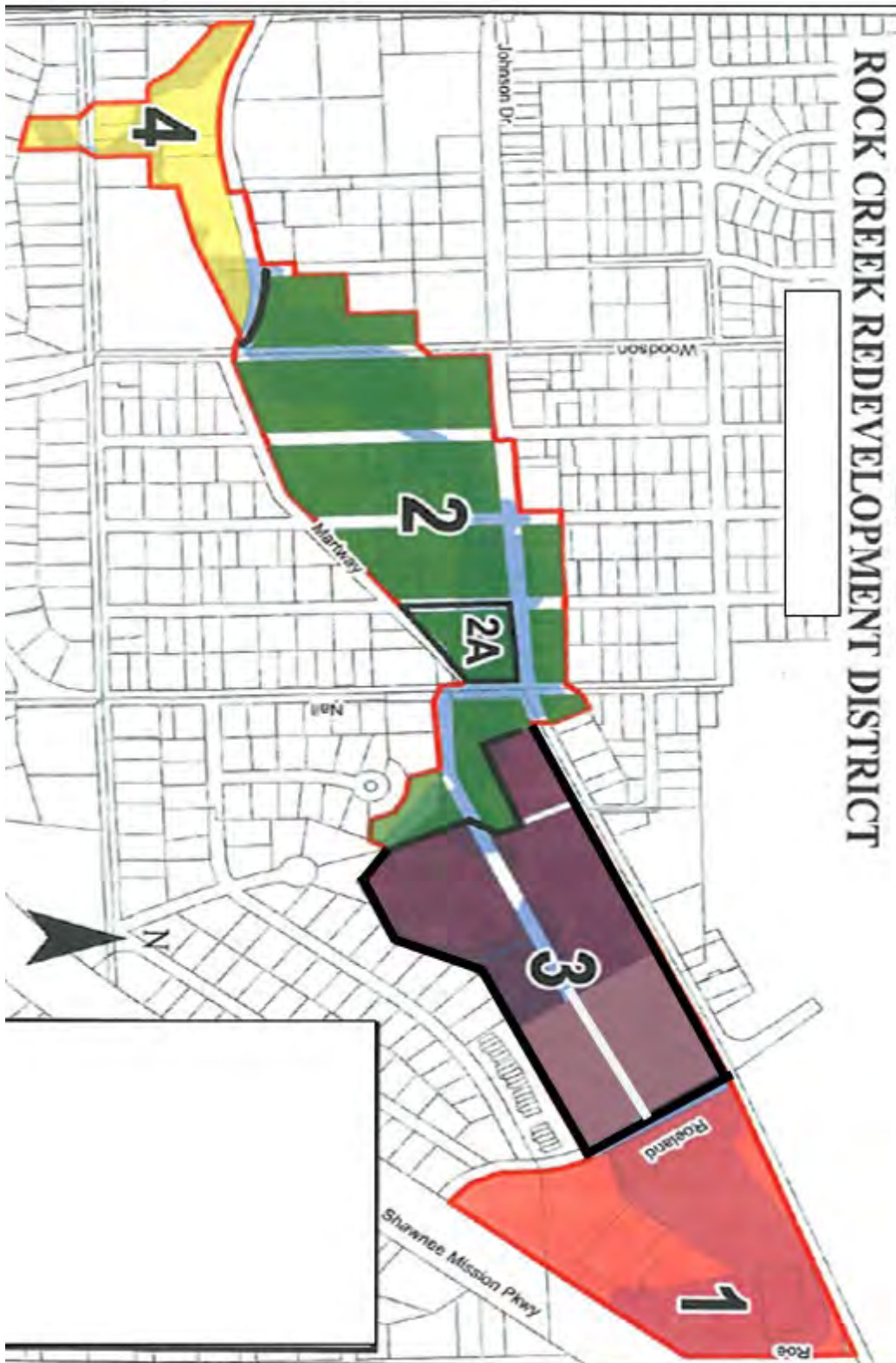
ATTEST:

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Martha Sumrall, City Clerk

EXHIBIT A

MAP OF REDEVELOPMENT DISTRICTS





**EXHIBIT B**

**LEGAL DESCRIPTIONS OF REDEVELOPMENT DISTRICTS**

**PROJECT AREA 1 – Gateway Site**

Parcel Id.: KP58100000 0001

Legal:

Lot 1, THE GATEWAY FIRST PLAT, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KR251209-1005

Legal:

9-12-25 PT SE 1/4 NW 1/4 BG INTRC W RTWY/L ROE & SLY RTWY/L JOHNSON DR S 30' WLY 95.4' TO PT IN S/L JO DR ELY 100' ON S/L JO DR TO PT OF BG ( JOHNSON DR ) .03 ACS M/L MIC-0096B0001 BTAO #864

Parcel Id.: KR251209-1006

Legal:

9-12-25 PT NW 1/4 BEG 76.42' S & 40' W INTRC CTR/L JOHNSON DR & ROE AVE S 517.93' SWLY 7.18' N 202.73' NLY 111.19' NLY 69.33' NWLY ON CURVE 157.63' WLY 48.36' SWLY 342.82' NLY 1.53' NELY ON SLY/L JOHNSON DR 441.24' ELY 94.08' TO BG EX .04 AC PLATTED ( JOHNSON DR & ROE AVE ) .40 ACS M/L MIC 96B 3 BTAO 1458 1

**PROJECT AREA 2a – Capitol Federal Bank Site**

Parcel Id.: KR27500000 0021C

Legal:

MISSIONHILL ACRES BG 15' W NE CR LT 21 E 15' S 152.79' SW TOPT 40' W C/L NALLAVE N TO PT 10' S N/L LT 21 NW TO POB ( NALLAVE )

Parcel Id.: KP06500000 0001

Legal:

Lot 1, CAPITOL FEDERAL FIRST PLAT, a subdivision in the City of Mission, Johnson County, Kansas.

**PROJECT AREA 2 – Nall Ave. to Dearborn St., Between Johnson Drive and Martway Street**

Parcel Id.: KF251208-4040; KF251208-4049; KF251208-4050

Legal:

**TRACT I:**

**Beginning at a point on the East line and 300 feet South of the North line of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, thence North 89 Degrees 56 Minutes West 149 feet to the true point of beginning; thence South and parallel to the East line of the Northwest Quarter of the Southeast Quarter 220 feet; thence West and parallel to the North line of the Northwest Quarter of the Southeast Quarter, 156 feet; thence North and parallel to the East line of the Northwest Quarter of the Southeast Quarter, 220 feet; thence South 89 Degrees 56 Minutes East along a line 300 feet South and parallel to the North line of the Northwest Quarter of the Southeast Quarter, 156 feet to the true point of beginning, all in the City of Mission, Johnson County, Kansas.**

**Tract II:**

**Beginning at a point on the East line and 527.40 feet North of the Southeast corner of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, City of Mission, Johnson County, Kansas; thence South 66 Degrees 19 Minutes West, along the Northerly property line of the Mission City Park property, 66.24 feet to the centerline of 60th Street, as now dedicated; thence Northwesterly, Westerly and Southwesterly, along the centerline of said 60th Street Right-of-Way, 273.76 feet, to a point 330 feet West of the East line of the Northwest Quarter of the Southeast Quarter of said Section 8; for the TRUE POINT OF BEGINNING; thence North, along a line 330 feet West of and parallel to the East line of the Northwest Quarter of the Southeast Quarter of Section 8, 276.81 feet, to a point 520 feet South of the North line of the Southeast Quarter of Section 8; thence South 89 Degrees 56 Minutes East, along a line 520 feet South of and parallel to the North line of the Southeast Quarter of Section 8, 156 feet; thence South, along a line parallel to the East line of the Northwest Quarter of the Southeast Quarter of Section 8, to a point in the centerline of 60th Street as now established; thence Northwesterly, Westerly and Southwesterly along the centerline of 60th Street to the TRUE POINT OF BEGINNING, except that part in 60th Street and Dearborn Street.**

**TRACT III:**

**Beginning at a point on the East line and 300 feet South of the North line of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, City of Mission, Johnson County, Kansas; thence North 89 Degrees 56 Minutes West 149 feet; thence South and parallel to the East line of the Northwest Quarter of the Southeast Quarter 220 feet; thence West and parallel to the North line of the Northwest Quarter of the Southeast Quarter, 25 feet; thence South and parallel to the East line of the Northwest Quarter of the Southeast Quarter, 46 feet; thence South 89 Degrees 56 Minutes East along a line parallel to the North line of the Northwest Quarter of the Southeast Quarter, 174 feet to the East line of the Northwest Quarter of the Southeast Quarter of said Section 8; thence North along said East line 266 feet more or less to the point of beginning, except that part in Woodson Street.**



**TRACT IV:**

Beginning at a point on the East line and 527.40 feet North of the Southeast corner of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, City of Mission, Johnson County, Kansas; thence South 66 Degrees 19 Minutes West, along the Northerly property line of the Mission City Park property, 66.24 feet to the centerline of 60th Street, as now dedicated; thence Northwesterly, Westerly and Southwesterly, along the centerline of said 60th Street Right-of-Way, 273.76 feet, to a point 330 feet West of the East line of the Northwest Quarter of the Southeast Quarter of said Section 8; thence North, along a line 330 feet West of and parallel to the East line of the Northwest Quarter of the Southeast Quarter of Section 8, 495.81 feet, to a point 300 feet South of the North line of the Southeast Quarter of Section 8; thence South 89 Degrees 56 Minutes East, along a line 300 feet South of and parallel to the North line of the Southeast Quarter of Section 8, 330 feet; thence South, along the East line of the Northwest Quarter of the Southeast Quarter of Section 8, 497.90 feet to the point of beginning, EXCEPT Beginning at a point on the East line and 527.40 feet North of the Southeast corner of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, City of Mission, Johnson County, Kansas; thence South 66 Degrees 19 Minutes West, along the Northerly property line of the Mission City Park property, 66.24 feet to the centerline of 60th Street, as now dedicated; thence Northwesterly, Westerly and Southwesterly, along the centerline of said 60th Street Right-of Way, 273.76 feet, to a point 330 feet West of the East line of the Northwest Quarter of the Southeast Quarter of said Section 8; for the TRUE POINT OF BEGINNING; thence North, along a line 330 feet West of and parallel to the East line of the Northwest Quarter of the Southeast Quarter of Section 8, 275.81 feet, to a point 520 feet South of the North line of the Southeast Quarter of Section 8; thence South 89 Degrees 56 Minutes East, along a line 520 feet South of and parallel to the North line of the Southeast Quarter of Section 8, 156 feet; thence South, along a line parallel to the East line of the Northwest Quarter of the Southeast Quarter of Section 8, to a point in the centerline of 60th Street as now established; thence Northwesterly, Westerly and Southwesterly along the centerline of 60th Street to the TRUE POINT OF BEGINNING, EXCEPT Beginning at a point on the East line and 300 feet South of the North line of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, City of Mission, Johnson County, Kansas; thence North 89 degrees 56 Minutes West 149 feet; thence South and parallel to the East line of the Northwest Quarter of the Southeast Quarter 220 feet; thence West and parallel to the North line of the Northwest Quarter of the Southeast Quarter, 25 feet; thence South and parallel to the East line of the Northwest Quarter of the Southeast Quarter, 46 feet; thence South 89 Degrees 56 Minutes East along a line parallel to the North line of the Northwest Quarter of the Southeast Quarter, 174 feet to the East line of the Northwest Quarter of the Southeast Quarter of said Section 8; thence North along said East line 266 feet more or less to the point of beginning, EXCEPT Beginning at a point on the East line and 300 feet South of the North line of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, thence North 89 Degrees 56 Minutes West 149 feet to the true point of beginning; thence South and parallel to the East line of the Northwest Quarter of the Southeast Quarter 220 feet; thence West and parallel to the North line of the Northwest Quarter of the Southeast Quarter, 156 feet; thence North and parallel to the East line of the Northwest Quarter of the Southeast Quarter, 220 feet; thence South 89 Degrees 56 Minutes East along a line 300 feet South and parallel to the North line of the Northwest Quarter of the Southeast Quarter, 156 feet to the true point of beginning, all in the City of Mission, Johnson County, Kansas, and except those parts in streets and roads.

Parcel Id.: KP27500000 0020; KP27500000 0042A; and KP27500000 0042B

Legal:

Lots 20 and 42, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0081

Legal:

*LEGAL DESCRIPTION-TRACT 1*

*ALL THAT PART OF THE SOUTH 55 FEET OF LOT 80 AND ALL THAT PART OF LOT 81, MISSION HILL ACRES, A SUBDIVISION OF LAND NOW IN THE CITY OF MISSION, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 81; THENCE N 0° 08' 04" E, ALONG THE WEST LINE OF SAID LOT 81, A DISTANCE OF 102.32 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE S 89° 58' 25" E, ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 81, A DISTANCE OF 29.54 FEET; THENCE S 0° 08' 04" W, ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID LOT 81, A DISTANCE OF 12.92 FEET; THENCE S 89° 58' 25" E, ALONG A LINE PARALLEL TO THE NORTH LINE OF SAID LOT 81, A DISTANCE OF 110.39 FEET, TO A POINT ON THE EAST LINE THEREOF; THENCE N 0° 08' 04" E, ALONG THE EAST LINE OF SAID LOT 81 AND ALONG THE EAST LINE OF SAID LOT 80, A DISTANCE OF 82.32 FEET; THENCE N 88° 59' 15" W, A DISTANCE OF 139.95 FEET TO A POINT ON THE WEST LINE OF SAID LOT 80; THENCE S 0° 08' 04" W, ALONG THE WEST LINE OF SAID LOT 80 AND ALONG THE WEST LINE OF SAID LOT 81, A DISTANCE OF 71.81 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT. THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 11,306 SQUARE FEET, MORE OR LESS.*

Parcel Id.: KP27500000 0082A; KP27500000 0082B; and KP27500000 0083A

Legal:

All of Lot 82 and the North 40 feet of Lot 83, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0083B

Legal:

The South 80 feet of Lot 83 and the North 40 feet of Lot 84, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0084A

Legal:

The South 80 feet of Lot 84 and all of Lot 85, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0099

Legal:

Lot 99, and the South 20 feet Lot 100, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0100A

Legal:

The South 60 feet of the North 100 feet of Lot 100, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0100B

Legal:

All of the North 40 feet of Lot 100 and the South 20 feet of Lot 101, in MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0101

Legal:

The North 100 feet of Lot 101 and all of Lot 102, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0104A and KP27500000 0104B

Legal:

**Tract 1:**

**All of the East 50 feet of the West 75 feet of Lot 104, Missionhill Acres, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof. (Commonly known as 5622 Johnson Drive, Mission, Kansas)**

**Tract 2:**

**The West 25 feet of Lot 104, Missionhill Acres, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof. (Commonly known as 5636 Johnson Drive, Mission, Kansas)**

Parcel Id.: KP27500000 0104C

Legal:

Lot 104, MISSIONHILL ACRES, except the West 75 feet thereof, a subdivision in the City of Mission, Johnson County, Kansas.



Parcel Id.: KP27500000 0144A

Legal:

**Beginning at a point on the South line of Lot 144, in Missionhill Acres, a subdivision in Johnson County, Kansas, which is 30 feet East of the Southwest corner of said Lot 144; thence North and parallel to the West line of Lot 144 a distance of 114.6 feet to a point on the North line of said Lot 144; thence East along the North line of Lot 144 a distance of .78 feet to a point; thence South and parallel to the West line of said Lot 144 a distance of 19.8 feet to the Northeast corner of a store building; thence in a Southerly direction along the East line of said Store building a distance of 46.83 feet, more or less, to the Southeast corner of said store building to a point which is 32.75 feet East of the West line and 48 feet North of the South line of said lot; thence South and parallel to the West line of said Lot 144, a distance of 48 feet to a point on the South line of said Lot 144; thence West 2.75 feet to the point of beginning, and all of the West 30 feet of Lot 144, Missionhill Acres, Except that part in roads.**

Parcel Id.: KP27500000 0144B

Legal:

**Beginning at the Northeast corner of Lot 144, in Missionhill Acres, a subdivision in Johnson County, Kansas; thence in a Westerly direction along the North line of said Lot, a distance of 53.50 feet to a point; thence Southerly 117.38 feet to a point which is 52.50 feet West of the Southeast corner of said Lot 144; thence East along the South line of said Lot 52.50 feet to the Southeast corner thereof; thence North along the Easterly line of said Lot, a distance of 120 feet to the point of beginning, all a part of Section 8, Township 12, Range 25, Except that part in roads.**

Parcel Id.: KP27500000 0144C

Legal:

**Beginning at a point in the North line of Lot 144 in Missionhill Acres, a subdivision in Johnson County, Kansas, which is 30.82 feet East of the Northwest corner of said Lot 144; thence South and parallel to the West line of said Lot 144, a distance of 19.8 feet to the Northeast corner of a store building; thence in a Southerly direction along the East line of said store building a distance of 46.83 feet more or less to the Southeast corner of said store building; thence South and parallel to the West line of said Lot 144 a distance of 48 feet to a point on the South line of said Lot 144, which point is 32.75 feet East of the Southwest corner of Lot 144; thence East along the South line of said Lot 144 a distance of 54.75 feet to a point which is 52.50 feet West of the Southeast corner of Lot 144; thence in a Northerly direction a distance of 117.38 feet to a point in the North line of Lot 144 which is 53.50 feet West of the Northeast corner of Lot 144; thence West along the North line of said Lot 144, a distance of 55.85 feet to the point of beginning, Except that part in roads.**

Parcel Id.: KP27500000 0145 and KP27500000 0146

Legal:

Lots 145 and 146, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0147

Legal:

Lot 147, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0148

Legal:

Lot 148, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0149

Legal:

All of Lot 149, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0159

Legal:

Lot 159, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0160

Legal:

Lot 160 and the South half of Lot 161, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0161A

Legal:

The North half of Lot 161, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0162; KP27500000 0163; and KP27500000 0206A; and KP27500000 0206B

Legal:

Lots 162, 163 and Lot 206, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0164

Legal:

All of Lot 164 in MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas as recorded in Book 7, Plats, at Page 20, except the following described tract: beginning at the Southwest corner, Lot 164 in Mission Hill Acres; thence North along the West line of said Lot 164 a distance of 47.63 feet to a point; thence in an easterly direction on a line parallel to and 47.63 feet North of the South line of the said Lot 164 a distance of 74.50 feet to a point; thence South along a line that is parallel to and 74.50 feet East of the West line of said Lot 164 a distance of 47.63 feet to a point in the South line of the said Lot 164; thence West along the South line of said Lot 164 a distance of 74.50 feet to the point of beginning.

Parcel Id.: KP27500000 0164A

Legal:

**Beginning at the Southwest corner of Lot 164 in Missionhill Acres, a subdivision in the City of Mission, Johnson County, Kansas; thence North along the West line of said Lot 164, a distance of 47.63 feet to a point; thence in an Easterly direction on a line parallel to and 47.63 feet North of the South line of said Lot 164, a distance of 74.60 feet to a point, thence South along a line that is parallel to and 74.60 feet East of the West line of said Lot 164, a distance of 47.63 feet to a point in the South line of the said Lot 164; thence West along the South line of said Lot 164, a distance of 74.50 feet to the point of beginning.**

Parcel Id.: KP27500000 0205

Legal:

Lot 205, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat filed in Book 7, Page 20.

Parcel Id.: KP27500000 0207 and KP27500000 0207A

Legal:

The North 60 feet of Lot 207 and the South 60 feet of Lot 207, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0208 and Parcel Id.: KP27500000 0210

Legal:

Lots 208, 209, 210 and 211, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0220A

Legal:

The South 43 feet of Lot 221, and all of Lot 220, EXCEPT that portion deeded to the City of Mission for street and highway purposes as recorded in Deed Book 451 at Page 201, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KR27500000 0220B

Legal:

Beginning at a point on the east right-of-way line of Woodson Road, said point being the southwest corner of Lot 220, MISSIONHILL ACRES, a subdivision in Section 8, Township 12, Range 25, Johnson County, Kansas, thence north a distance of 40.84 feet to a point 54.0 feet south of the north line of said Lot 220, thence east and parallel to the north line of said Lot 220 a distance of 132.20 feet more or less to a point on the south line of said Lot 220, thence in a



southwesterly direction and along the south line of said Lot 220 a distance of 138.37 feet to the point of beginning.

Parcel Id.: KP27500000 0221A

Legal:

The North 77 feet of Lot 221 and the South 9 feet of Lot 222, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0222

Legal:

Lot 222, EXCEPT the South 9 feet thereof, and the South 10 feet of Lot 223, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0223A and KP27500000 0224B

Legal:

MISSIONHILL ACRES, South one-half (S. ½) of Lot 224, and the North one-half (N. ½) of Lot 223, subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0223B

Legal:

The North 50 feet of the South 60 feet of Lot 223, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0224A

Legal:

The North one-half of Lot 224, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27500000 0225A

Legal:

The South half of Lot 225, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KP27500000 0226

Legal:

**Lot 226, Except the South 19.74 feet in the MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, being more particularly described as follows:**

**Commencing at the Southwest corner of Lot 226 of said MISSIONHILL ACRES; thence North 00 degrees 10 minutes 38 seconds West on the West line of said Lot 226 a distance of 19.74 feet to the Point of Beginning; thence continuing North 00 degrees 10 minutes 38 seconds West on said West line a distance of 100.26 feet; thence North 88 degrees 44 minutes 05 seconds East on the North line of said Lot 226 a distance of 140.68 feet; thence South 00 degrees 04 minutes 44 seconds East on the East line of said Lot 226 a distance of 103.36 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 140.48 feet to the point of beginning.**

**ACCESS EASEMENT FOR TRACT B:**

**A tract of land for ingress-egress over the South 10.00 feet of the North 1/2 of Lot 225, also the West 20.00 feet of the East 25.00 feet of Lot 225 and the West 20.00 feet of the East 25.00 feet of the South 19.74 feet of Lot 226, all in MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, being more particularly described as follows:**

**Commencing at the Northwest corner of Lot 225 of said MISSIONHILL ACRES; thence South 00 degrees 10 minutes 38 seconds East on the West line of said Lot 225 a distance of 50.00 feet to the Point of Beginning; thence South 90 degrees 00 minutes 00 seconds East a distance of 115.34 feet; thence North 00 degrees 04 minutes 44 seconds West a distance of 69.74 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 20.00 feet; thence South 00 degrees 04 minutes 44 seconds East a distance of 79.74 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 135.34 feet to the West line of said Lot 225; thence North 00 degrees 10 minutes 38 seconds West on said West line 10.00 feet to the Point of Beginning.**

Parcel Id.: KP27600000 0001 and KP27600000 0002

Legal:

Lots 1 and 2, Resurvey of Lot 103, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP27600000 0003

Legal:

Lots 3, Resurvey of Lot 103, MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP35000000 0001

Legal:

Lot 1, MISSION VALE, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP37500004 0001

Legal:

**All of Lot 1, EXCEPT the West 10 feet of Lot 1, Block 4, taken under Condemnation Suit No. 45522, and Lot 2, Block 4, Mission Village, lying Westerly of the following described line: Beginning at a point on the Northerly line of said Lot 2, which point is 9.92 feet Southwesterly from the Northeasterly corner of said Lot 2; thence Southeasterly to a point in the Southerly line of said Lot 2, which is 10.83 feet Southwesterly from the Southeasterly corner of said Lot 2, all in Block 4, Mission Village, a subdivision in the City of Mission, Johnson County, Kansas.**

Parcel Id.: KP38000000 0001

Legal:

All of Lot 1, MISSION VILLAGE, BLOCK 5, a subdivision in the City of Mission, Johnson County, Kansas

Parcel Id.: KP27500000 0080C

Legal:

*ALL THAT PART OF THE SOUTH 55 FEET OF LOT 80 AND ALL THAT PART OF LOT 81, MISSION HILL ACRES, A SUBDIVISION OF LAND NOW IN THE CITY OF MISSION, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 81; THENCE N 0° 08' 04" E, ALONG THE WEST LINE OF SAID LOT 81, A DISTANCE OF 102.32 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE S 89° 58' 25" E, ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 81, A DISTANCE OF 29.54 FEET; THENCE S 0° 08' 04" W, ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID LOT 81, A DISTANCE OF 12.92 FEET; THENCE S 89° 58' 25" E, ALONG A LINE PARALLEL TO THE NORTH LINE OF SAID LOT 81, A DISTANCE OF 110.39 FEET, TO A POINT ON THE EAST LINE THEREOF; THENCE N 0° 08' 04" E, ALONG THE EAST LINE OF SAID LOT 81 AND ALONG THE EAST LINE OF SAID LOT 80, A DISTANCE OF 82.32 FEET; THENCE N 88° 59' 15" W, A DISTANCE OF 139.85 FEET TO A POINT ON THE WEST LINE OF SAID LOT 80; THENCE S 0° 08' 04" W, ALONG THE WEST LINE OF SAID LOT 80 AND ALONG THE WEST LINE OF SAID LOT 81, A DISTANCE OF 71.81 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT. THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 11,308 SQUARE FEET, MORE OR LESS.*

Parcel Id.: KR37500004 0001A

Legal:

The West Ten (10) feet of Lot 1, Block 4 Mission Village, a subdivision in the City of Mission, Johnson County, Kansas (Being Tract #40 in Condemnation Action #45522 in District Court of Johnson County, Kansas).

Parcel Id.: KP27500000 0225B

Legal:

**The North 1/2 of Lot 225 and the South 19.74 feet of Lot 226, in MISSIONHILL ACRES, a subdivision in the City of Mission, Johnson County, Kansas, being more particularly described as follows:**

**Beginning at the Southwest corner of Lot 226 of said MISSIONHILL ACRES; thence North 00 degrees 10 minutes 38 seconds West on the West line of said Lot 226 a distance of 19.74 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 140.48 feet to a point on the East line of said Lot 226; thence South 00 degrees 04 minutes 44 seconds West on the East line of said Lot 226 and Lot 225, a distance of 79.74 feet to the Southeast corner of the North 1/2 of said Lot 225; thence South 90 degrees 00 minutes 00 seconds West a distance of 140.34 feet to the Southwest corner of the North 1/2 of said Lot 225; thence North 00 degrees 10 minutes 38 seconds West on the West line of said Lot 225 a distance of 60.00 feet to the Point of Beginning.**



Parcel Id.: KR27500000 0164B

Legal:

**Permanent Right of Way**

All that part of Lot 164, Missionhill Acres, a subdivision lying in the Southeast Quarter of Section 8, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, described as follows:

COMMENCING at the Northwest corner of the Southeast Quarter of Section 8, Township 12 South, Range 25 East; thence North 88 degrees 01 minutes 42 seconds East along the North line of the Southeast Quarter of said Section 8 a distance of 1676.68 feet to a point on the Northerly prolongation of the East right of way line of Outlook Avenue; thence South 2 degrees 00 minutes 42 seconds East along the East right of way line of Outlook Avenue and said prolongation a distance of 48.93 feet to the POINT OF BEGINNING; thence North 84 degrees 56 minutes 17 seconds East a distance of 140.20 feet to a point; thence South 2 degrees 00 minutes 42 seconds East a distance of 5.34 feet to a point; thence South 85 degrees 55 minutes 04 seconds West a distance of 140.09 feet to a point on the East right of way line of Outlook Avenue; thence North 2 degrees 00 minutes 42 seconds West along the East right of way line of Outlook Avenue a distance of 2.94 feet to the POINT OF BEGINNING and containing 580 Square Feet or 0.013 Acres, more or less.

Parcel Id.: KR27500000 0020A

Legal:

**Permanent Right of Way**

All that part of Lots 20 and 42, Missionhill Acres, a subdivision lying in the Northeast Quarter of Section 8, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, described as follows:

COMMENCING at the Southwest corner of the Northeast Quarter of Section 8, Township 12 South, Range 25 East; thence North 88 degrees 01 minutes 42 seconds East along the South line of the Northeast Quarter of said Section 8 a distance of 2336.67 feet to a point on the Southerly prolongation of the West line of Lot 42, Missionhill Acres; thence North 1 degree 49 minutes 20 seconds West along the West line of said Lot 42 and said prolongation a distance of 46.80 feet to the POINT OF BEGINNING; thence continuing North 1 degree 49 minutes 20 seconds West along the West line of said Lot 42 a distance of 36.25 feet to a point; thence North 88 degrees 10 minutes 40 seconds East a distance of 6.92 feet to a point; thence South 0 degrees 09 minutes 51 seconds West a distance of 25.13 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears North 85 degrees 53 minutes 35 seconds East, having a radius of 51.00 feet, through a central angle of 17 degrees 10 minutes 57 seconds, an arc distance of 15.29 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 49.00 feet, through a central angle of 17 degrees 50 minutes 14 seconds, an arc distance of 15.25 feet to a point; thence North 85 degrees 14 minutes 19 seconds East a distance of 48.29 feet to a point; thence North 82 degrees 03 minutes 36 seconds East a distance of 36.07 feet to a point; thence North 85 degrees 14 minutes 19 seconds East a distance of 73.48 feet to a point; thence South 4 degrees 59 minutes 52 seconds East a distance of 6.98 feet to a point; thence South 84 degrees 56 minutes 11 seconds West a distance of 194.48 feet to the POINT OF BEGINNING and containing 1515 Square Feet or 0.035 Acres, more or less.

Parcel Id.: KR27500000 0226A

Legal:

All that part of Lot 226, MISSIONHILL ACRES, a subdivision of land now in the City of Mission, Johnson County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Lot 226; thence East, along the North line of said Lot 226 to the Northeast corner thereof; thence South, along the East line of said Lot 226, to a point 28 feet South of the Northline thereof; thence Westerly, to a point 79 feet West of the East line and 47 feet South of the North line of said Lot 226; thence Westerly, to a point on the west line of said Lot 226 and 44 feet South of the Northeast corner thereof; thence Northerly, along the West line of said Lot 226, a distance of 44 feet, to the point of beginning.

Parcel Id.: KP32400000 0002

Legal:

Lot 2, MISSION MART, a subdivision in the City of Mission, Johnson County, Kansas.

**PROJECT AREA 3 – Roeland Drive to Nall Ave., Between Johnson Drive and Martway**

Parcel Id.: KF251209-1011 and KF251209-1014

Legal:

**Commencing at the northwest corner of the northwest 1/4 of the Southwest 1/4 of Section 9, Township 12, Range 25, in Johnson County, Kansas; thence North 3.70 feet to a point on the west line of the southwest 1/4 of the northwest 1/4 of said section; thence deflecting to the right from the last described course 66 degrees 41 minutes 50 seconds, a distance of 1332.57 feet, said line being 9.0 feet south and parallel to the center tangent line of an 18 foot wide brick slab (formerly U.S. Highway No. 50) and now known as Johnson Drive; thence southeasterly 90 degrees to the last described course a distance of 21 feet to the point of beginning; thence continuing on the last described course a distance of 250 feet; thence in a northeasterly direction along a course which makes an angle of 90 degrees to the last described course, a distance of 335.74 feet to the westerly line of Roeland Drive; thence deflecting to the left 98 degrees 09 minutes 58 seconds a distance of 251.72 feet to the southerly right of way line of said Johnson Drive; thence southwesterly along a line which is 30 feet from the center line of said Johnson Drive 300 feet to the point of beginning AND**

**All that part of the South 1/2 of the Northwest 1/4 of Section 9, Township 12, Range 25, in the City of Mission, in said county and state, described as follows: From the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of said Section 9; run thence North (this and all subsequent bearings being in relation to the West line of the Southwest 1/4 of said Section 9, as having an assumed bearing of due North-South), 3.70 feet to a point in a line that is 9.0 feet Southerly distance at right angles to the center tangent line of an 18 foot brick slab known as Johnson Drive formerly U.S. Highway No. 50; run thence North 66 degrees 41 minutes 50 seconds East along said line, 1386.57 feet; run thence South 23 degrees 18 minutes 10 seconds East, 271.0 feet to the true point of beginning of the tract of land herein described; thence North 66 degrees 41 minutes 50 seconds East 281.75 feet to the Westerly right of way line of Roeland Drive as now established; thence South 31 degrees 28 minutes 08 seconds East along said Westerly right of way line, 53.21 feet to the Northerly right of way line of Martway Street, as now established; thence South 66 degrees 51 minutes 57 seconds West along said Northerly right of way line, 289.31 feet; thence North 23 degrees 18 minutes 10 seconds West, 51.82 feet to the point of beginning, EXCEPT**

**All that part of the South 1/2 of the Northwest 1/4 of Section 9, Township 12, Range 25, in the City of Mission, Johnson County, Kansas, described as follows: From the Northwest corner of the Northwest 1/4 of the Southwest 1/4**



of said Section 9; thence run North (this and all subsequent bearings being in relation to the West line of the Southwest 1/4 of said Section 9 as having an assumed bearing of due North-South) 3.70 feet to a point in a line that is 9.0 feet Southerly distance, at right angles to the center tangent line of an 18 foot wide brick slab known as Johnson Drive, formerly U.S. Highway No. 50; run thence North 66 degrees 41 minutes 50 seconds East along said line, 1332.57 feet; run thence South 23 degrees 18 minutes 10 seconds East, 21.0 feet to the Southerly right of way line of said Johnson Drive, as now established, also being the true point of beginning of the tract of land herein described; thence continuing South 23 degrees 18 minutes 10 seconds East, 250.00 feet; thence North 66 degrees 41 minutes 50 seconds East, 54.0 feet; thence North 23 degrees 18 minutes 10 seconds West 250.00 feet to the Southerly right of way line of said Johnson Drive; thence South 66 degrees 41 minutes 50 seconds West along said Southerly right of way line 54.0 feet to the point of beginning.

Parcel Id.: KR251209-1018

Legal:

All that part of the South 1/2 of the Northwest 1/4 of Section 9, Township 12, Range 25, in the City of Mission, Johnson County, Kansas, as described as follows:

Commencing at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of said Section 9; thence North (assumed bearing of due North-South), a distance of 3.70 feet to a point on the West line of the Southwest 1/4 of the Northwest 1/4 of said Section 9; thence North 66° 42' 30" East, a distance of 1386.57 feet, said line being 8 feet South and parallel to the center tangent line of Johnson Drive; thence South 23° 18' 10" East, distance of 21 feet to the Southerly right-of-way line of Johnson Drive, as now established, also being the true point of beginning; thence South 23° 18' 10" East, a distance of 5.68 feet; thence North 69° 33' 35" East, a distance of 122.25 feet; thence North 66° 41' 50" East, a distance of 102.14 feet; thence South 73° 53' 09" East, a distance of 34.42 feet to a point on the Westerly right-of-way line of Roeland Drive as now established; thence North 31° 28' 08" West along said Westerly line, a distance of 9.00 feet; thence North 72° 23' 09" West along the right-of-way line as now established, a distance of 37.78 feet to the Southerly right-of-way line of Johnson Drive as now established; thence South 66° 41' 50" West along said Southerly line, a distance of 221.00 feet to the point of beginning; containing 2,487 square feet more or less.

Parcel Id.: KP38000000 0005 and KP38000000 0006

Legal:

Lots 5 and 6, MISSION VILLAGE, Block 5, a subdivision in the City of Mission, Johnson County, Kansas

Parcel Id.: KP38000000 0007

Legal:

**Lots 7, 8, 9, 10, 21 and 22, Lot 23, except the East 10 feet thereof, and the East 95 feet of Lot 20, Block 5, MISSION VILLAGE, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof;**

**Together with the non-exclusive right appurtenant to and for the benefit of the above described property to use existing and future parking facilities, drive aisles and access drives to the adjacent street created and granted by the Reciprocal License and Building Setback Line Agreement dated May 19, 1971, by and among Mission Mart, Inc., a Kansas corporation, Metropolitan Life Insurance Company, a New York corporation, and Safeway Stores, Incorporated, a Maryland corporation, filed for record September 1, 1971, in the Office of the Register of Deeds in and for Johnson County, Kansas, Register of Deeds No. 889503, and recorded in Book 223 Misc. at Page 208, over, upon and across the following described property in the City of Mission, Johnson County, Kansas, described as follows, to wit;**

**All that part of the South 1/2 of the Northwest 1/4 of Section 9, Township 12, Range 25, in the City of Mission, Johnson County, Kansas, described as follows:**

**Commencing at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of said Section 9; thence North (this and all subsequent bearings being in relation to the West line of the Southwest 1/4 of said Section 9 as having an assumed bearing of due North-South) 3.70 feet to a point in a line that is 9.0 feet Southerly distance at right angles to the center tangent line of an 18-foot wide brick slab known as Johnson Drive, formerly U.S. Highway No. 50; thence North 66 degrees 41 minutes 50 seconds East along said line, 1386.47 feet (Deed-1386.57); thence South 23 degrees 18 minutes 10 seconds East, 21.0 feet to the Southerly right of way line of said Johnson Drive, as now established, also being the true point of beginning of the tract of land herein described; thence continuing South 23 degrees 18 minutes 10 seconds East, 301.82 feet to the Northerly right of way line of Martway Street as now established; thence North 66 degrees 51 minutes 57 seconds East, along said Northerly right of way line, 289.31 feet to the Westerly right of way line of Roeland Drive, as now established; thence North 31 degree 32 minutes 08 seconds West, along said Westerly right of way line, 304.90 feet to the Southerly right of way line of said Johnson Drive; thence Southwesterly along said Southerly right of way line, being a curve to the left and having a radius of 4470.0 feet, an initial tangent bearing of South 67 degrees 49 minutes 28 seconds West, an arc distance of 87.88 feet; thence South 66 degrees 41 minutes 50 seconds West, along said Southerly right of way line, 158.12 feet to the point of beginning.**

Parcel Id.: KP38000000 0016

Legal:

**Lot 16, MISSION VILLAGE BLOCK 5, a subdivision in the City of Mission, Johnson County, Kansas**

Parcel Id.: KP38000000 0023B

Legal:

East 10 feet of Lot 23 and the West 50 feet of Lot 24, MISSION VILLAGE BLOCK 5, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP38000000 0024

Legal:

East 50 feet of Lot 24, MISSION VILLAGE BLOCK 5, a subdivision in the City of Mission, Johnson County, Kansas

Parcel Id.: KP38000000 0025

Legal:

Lot 25 except the East 49.1 feet, MISSION VILLAGE BLOCK 5, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP38000000 0025A

Legal:

East 49.1 feet of Lot 25 and all of Lot 26, MISSION VILLAGE BLOCK 5, a subdivision in the City of Mission, Johnson County, Kansas, except the following tract:

**All that part of Lot 26, Block 5, MISSION VILLAGE, a subdivision of land in the City of Mission, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Lot 26; thence S 33° 28' 53" E, along the East line of said Lot 26, a distance of 137.74 feet, to a point of curvature; thence Southerly along the Easterly line of said Lot 26, said line being on a curve to the right having a radius of 440 feet and a central angle of 6° 20' 05", a distance of 48.65 feet, to the Southeast corner thereof; thence S 64° 41' 05" W, along the South line of said Lot 26, a distance of 10.63 feet; thence N 29° 28' 17" W, a distance of 167.93 feet; thence N 72° 55' 50" W, a distance of 12.63 feet; thence S 64° 19' 42" W, a distance of 191.69 feet, to a point on the West line of said Lot 26; thence N 25° 09' 19" W, along the West line of said Lot 26, a distance of 10.50 feet, to the Northwest corner thereof; thence N 64° 50' 41" E, along the North line of said Lot 26, a distance of 200 feet, to the point of beginning. All subject to that part thereof, now dedicated for permanent street right-of-way.**

Parcel Id.: KR38000000 0026A

Legal:

**All that part of Lot 26, Block 5, MISSION VILLAGE, a subdivision of land in the City of Mission, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Lot 26; thence S 33° 28' 53" E, along the East line of said Lot 26, a distance of 137.74 feet, to a point of curvature; thence Southerly along the Easterly line of said Lot 26, said line being on a curve to the right having a radius of 440 feet and a central angle of 6° 20' 05", a distance of 48.65 feet, to the Southeast corner thereof; thence S 64° 41' 05" W, along the South line of said Lot 26, a distance of 10.63 feet; thence N 29° 28' 17" W, a distance of 167.93 feet; thence N 72° 55' 50" W, a distance of 12.63 feet; thence S 64° 19' 42" W, a distance of 191.69 feet, to a point on the West line of said Lot 26; thence N 25° 09' 19" W, along the West line of said Lot 26, a distance of 10.50 feet, to the Northwest corner thereof; thence N 64° 50' 41" E, along the North line of said Lot 26, a distance of 200 feet, to the point of beginning. All subject to that part thereof, now dedicated for permanent street right-of-way.**



Parcel Id.: KP24950000 0001

Legal:

Lot 1, MISSION CELL TOWER, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP32400000 0001

Legal:

Lot 1, MISSION MART, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP32400000 0003

Legal:

Lot 3, MISSION MART, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP32400000 0004

Legal:

Lot 4, MISSION MART, a subdivision in the City of Mission, Johnson County, Kansas.

**PROJECT AREA 4 – between Woodson Road and Lamar Ave., South of Martway Street,  
Generally Following the Rock Creek**

Parcel Id.: KF251208-4033

Legal:

**All that part of the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12 South, Range 25 East, sixth principal meridian, City of Mission, Johnson County, Kansas described as follows; Commencing at the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 8; thence North 01 degrees 51 minutes 53 seconds East, along the West line of the Northwest Quarter of the Southeast Quarter of said Section 8, a distance of 200.00 feet; thence South 88 degrees 06 minutes 06 seconds East, a distance of 465.00 feet; thence North 01 degrees 53 minutes 54 seconds East, a distance of 182.63 feet to the point of beginning; thence North 65 degrees 50 minutes 09 seconds West, a distance of 86.59 feet to a point on the Southerly right of way line Martway Street; thence Southeasterly along said right of way on a curve to the left having a radius of 548.98 feet, an initial tangent bearing of South 82 degrees 56 minutes 06 seconds East, a central angle of 08 degrees 22 minutes 18 seconds, a distance of 80.21 feet; thence South 01 degrees 53 minutes 54 seconds West, a distance of 31.44 feet to the point of beginning containing 1,181 square feet or 0.03 acres more or less.**

Parcel Id.: KP20600000 0001

Legal:

Lot 1, MARTWAY OFFICE BUILDINGS, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KF251208-4029

Legal:

All of the West 60 feet of the East 245.82 feet of the South 200 feet of the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range, 25, in Mission, Johnson County, Kansas, except that part in streets and roads.

Parcel Id.: KF251208-4030

Legal:

All of the West 65 feet of the East 185.82 feet of the South 200 feet of the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, in the City of Mission, Johnson County, Kansas, except that part in roads.

Parcel Id.: KF251208-4031

Legal:

The West 80 feet of the East 325.82 feet of the South 200 feet of the Southwest Quarter of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, except that part now in 61<sup>st</sup> Street now in the City of Mission, Johnson County, Kansas.

Parcel Id.: KF251208-4039

Legal:

The East 75 feet of the West 540 feet of the Northwest Quarter of the Southeast Quarter of Section 8, Township 12, Range 25, in the City of Mission, Johnson County, Kansas, lying South of 60<sup>th</sup> Street, except the South 200 feet thereof.

Parcel Id.: KF251208-4043

Legal:

**THAT PART OF THE EAST 300 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12, RANGE 25, IN THE CITY OF MISSION, JOHNSON COUNTY, KANSAS, WHICH LIES NORTH OF THE MISSION CITY PARK PROPERTY CONVEYED TO THE CITY OF MISSION BY DEED RECORDED IN BOOK 354 DEEDS, AT PAGE 533 AND SOUTH OF 60TH STREET, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 8, WHICH IS 527.40 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 66 DEGREES 19 MINUTES WEST, ALONG THE NORTHERLY BOUNDARY LINE OF SAID MISSION CITY PARK PROPERTY, A DISTANCE OF 66.24 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED, SAID POINT OF BEGINNING BEING ON THE CENTER LINE OF 60TH STREET, AS NOW DEDICATED; THENCE CONTINUING SOUTH 66 DEGREES 19 MINUTES WEST, ALONG THE NORTHERLY BOUNDARY OF SAID PARK PROPERTY, A DISTANCE OF 294.11 FEET, MORE OR LESS, TO A POINT 330 FEET WEST OF THE EAST LINE OF SAID QUARTER QUARTER SECTION; THENCE NORTH, ALONG A LINE 330 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID QUARTER QUARTER SECTION, A DISTANCE OF 147.22 FEET, MORE OR LESS, TO THE CENTER LINE OF THE DEDICATED RIGHT OF WAY OF SAID 60TH STREET; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CENTER LINE, A DISTANCE OF 273.76 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, EXCEPT THAT PART IN STREET AND ROADS AS CONVEYED TO THE CITY OF MISSION IN BOOK 436 DEEDS, PAGE 621 AND IN BOOK 440 DEEDS, PAGE 367.**

Parcel Id.: KP07000006 0009

Legal:

Lot 9, Block 6, COUNTRYSIDE, a subdivision in the City of Mission, Johnson County, Kansas, according to the recorded plat thereof.

Parcel Id.: KR251208-4054

Legal:

A TRACT OF LAND FOR PERMANENT RIGHT-OF-WAY PURPOSES LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 25 EAST, IN MISSION, JOHNSON COUNTY, KANSAS, BEARINGS ARE REFERENCED TO GRID NORTH OF THE KANSAS STATE PLANE COORDINATE SYSTEM, 1983, NORTH ZONE, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 8, T12S, R25E, BEING A FOUND DISK IN MONUMENT BOX; THENCE S02°05'18"E ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 831.95 FEET; THENCE N87°54'42"E ALONG A LINE THAT IS PERPENDICULAR TO SAID WEST LINE, A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING; THENCE S56°13'55"W, A DISTANCE OF 17.63 FEET TO A POINT THAT IS 30.00 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST QUARTER, AS MEASURED PERPENDICULAR TO SAID WEST LINE; THENCE N02°05'18"W ALONG A LINE THAT IS PARALLEL WITH AND 30.00 FEET EAST OF SAID WEST LINE OF THE SOUTHEAST QUARTER, A DISTANCE OF 54.98 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF MARTWAY DRIVE, AS NOW ESTABLISHED; THENCE S69°19'24"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 16.27 FEET TO A POINT THAT IS 45.00 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST QUARTER, AS MEASURED PERPENDICULAR TO SAID WEST LINE; THENCE S02°05'18"E ALONG A LINE THAT IS PARALLEL WITH AND 45.00 FEET EAST OF SAID WEST LINE OF THE SOUTHEAST QUARTER, A DISTANCE OF 39.43 FEET TO THE POINT OF BEGINNING.

THE TRACT DESCRIBED ABOVE CONTAINS 708 SQUARE FEET, OR 0.0163 ACRES, MORE OR LESS.

Parcel Id.: KP20600000 0002

Legal:

Lot 2, MARTWAY OFFICE BUILDINGS, a subdivision in the City of Mission, Johnson County, Kansas.

Parcel Id.: KP20600000 0003

Legal:

Lot 3, MARTWAY OFFICE BUILDINGS, a subdivision in the City of Mission, Johnson County, Kansas.



Parcel Id.: KP20600000 0T0A

Legal:

Tract A, MARTWAY OFFICE BUILDINGS, a subdivision in the City of Mission, Johnson County, Kansas.

<b>City of Mission</b>	Item Number:	7c.
<b>ACTION ITEM SUMMARY</b>	Date:	October 9, 2019
<b>Administration</b>	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

**RE:** First Amendment to Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project.

**RECOMMENDATION:** Approve the Resolution Approving the First Amendment to Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project.

**DETAILS:** In October 2017, the City approved the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. Now, as a result of the project's evolution over the past two years, the City and its consultant team have negotiated a proposed "First Amendment" to the 2017 Redevelopment Agreement for the City Council's consideration.

The City Team believes that this Amendment serves a crucial role in reconciling the current project to the 2017 Agreement, and that Council consideration of it should therefore precede any other Council actions concerning the issuance of Special Obligation Bonds to benefit the project.

Rather than building the project in separate, distinct phases as contemplated in the 2017 Redevelopment Agreement, the schedule is now being driven primarily by Cinergy and their desire to open for the summer/fall movie season in 2020. The construction of this 90,000 sq. ft. entertainment facility, also drives the need for construction of the parking structure sooner in the process in order to accommodate the Cinergy patrons.

Over the last several months the City's consultant team, which includes our independent financial advisor, land use attorney, and bond counsel, have been working with the Developer's team to address the steps necessary to recommend an amendment that aligns the underlying goals and assumptions included in the 2017 Redevelopment Agreement with the realities of the 2019 project. A memo is included in the packet which provides background information on both the 2017 Agreement and 2019 Amendment, and on the presentation to occur at the October 9, 2019 Finance & Administration Committee meeting.

In addition to detailed discussion regarding the amendment, the City's team will also provide the following:

- A project status update
- Review and recap of the financial benefits anticipated for the City under the amended agreement
- Potential next steps related to issuance of special obligation bonds

**CFAA CONSIDERATIONS/IMPACTS:** NA

Related Statute/City Ordinance:	NA
Line Item Code/Description:	NA
Available Budget:	NA

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF MISSION, KANSAS, APPROVING THE FIRST AMENDMENT TO THE THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR THE MISSION GATEWAY PROJECT**

**WHEREAS**, the City of Mission, Kansas and Aryeh Realty, LLC (“Developer”) entered into that certain Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project, dated as of October 18, 2017 (“Agreement”); and

**WHEREAS**, the Developer has requested certain amendments to the Agreement, and pursuant thereto, the City Staff and Developer have prepared an amendment to the Agreement (“First Amendment”) for consideration by the Governing Body; and

**WHEREAS**, on October 16, 2019 at a scheduled meeting, by at least a majority vote of the City Council, the aforesaid First Amendment was approved.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS, AS FOLLOWS:**

1. That “First Amendment to the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project”, on file with the City Clerk, is hereby approved; and the Mayor and City Clerk are hereby authorized to execute same on behalf of the City of Mission, Kansas.

**THIS RESOLUTION IS ADOPTED** by the Governing Body of the City of Mission, Kansas, this 16th day of October, 2019.

**CITY OF MISSION, KANSAS**

By: \_\_\_\_\_  
Ronald E. Appletoft, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Martha Sumrall, City Clerk

**APPROVED AS TO FORM ONLY:**

By: \_\_\_\_\_  
David K. Martin, City Attorney



## MEMORANDUM

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**Date:** October 7, 2019  
**To:** Mayor and City Councilmembers  
**From:** Laura Smith, City Administrator  
**RE:** Mission Gateway Redevelopment Project

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In October 2017, the City approved the Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. Now, as a result of the project's evolution over the past two years, the City and its consultant team have negotiated a proposed "First Amendment" to the 2017 Redevelopment Agreement for the City Council's consideration. The City Team believes that this Amendment serves a crucial role in reconciling the current project to the 2017 Agreement, and that Council consideration of it should therefore precede any other Council actions concerning the issuance of Special Obligation Bonds to benefit the project. This memo provides background information on both the 2017 Agreement and 2019 Amendment, and on the presentation to occur at this Wednesday's Committee meeting.

The 2017 Agreement negotiations were based on the plan and development schedule anticipated and approved at that time. A copy of the current agreement is included in the packet for your review and information. Copies of memos provided in association with the agreement's approval in 2017 are also included for historical reference.

The key aspects and assumptions of the 2017 deal can be characterized as follows:

- Developer demonstrated a legitimate need for City participation in the project in order for it to be financially viable.
- The project would receive 100% of the project area property TIF over the maximum 20-year term.
- The project would receive 55% of the City general sales tax collections within the Gateway project area over the 20-year TIF term (City retains 45%).
- The project would receive 8% of the City's transient guest tax collections within the project area over the 20-year TIF term (City retains the remaining 1%)
- The project would receive 100% of a 1% CID fee over the maximum 22-year term.
- The project would receive an Industrial Revenue Bond (IRB)-driven sales tax exemption on Gateway construction materials.

The 2017 Agreement also included the following components:

- A phased project construction approach, beginning with the residential over small shop retail at the corner of Johnson Drive and Roeland Drive
- Anticipated issuance of Special Obligation Bonds (both TIF and CID)
- Developer access to TIF and CID "tails" - the surplus revenues after bonds are paid in full.





## MEMORANDUM

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Gateway Redevelopment Agreement Amendment  
October 7, 2019

Construction on Phase I, as identified in the 2017 agreement, began in the fall of 2018. In December 2018, the Developer secured a lease with Cinergy sooner than originally anticipated, and the construction schedule for the entire project had to be re-evaluated.

Rather than building the project in separate, distinct phases as contemplated in the 2017 Redevelopment Agreement, the schedule is now being driven primarily by Cinergy and their desire to open for the summer/fall movie season in 2020. The construction of this 90,000 sq. ft. entertainment facility, also drives the need for construction of the parking structure sooner in the process in order to accommodate the Cinergy patrons.

With the current project parameters, we have known for some time that an amendment to the Redevelopment Agreement would be necessary. Over the last several months the City's consultant team, which includes our independent financial advisor, land use attorney, and bond counsel, have been working with the Developer's team to address the steps necessary to recommend an amendment that aligns the underlying goals and assumptions included in the 2017 Redevelopment Agreement with the realities of the 2019 project.

The "deal points" themselves have not been the subject of our negotiations as the developer has not changed any of the key components of the project. We are simply dealing with new construction timelines schedules that do not align with those included in the 2017 Redevelopment Agreement. As such, the City's team has focused exclusively on how to maintain the benefits and protections provided by the 2017 agreement.

In addition to changes to the project's construction schedule, the Developer has been working for several months to secure permanent financing for the project. The amendments to the Redevelopment Agreement address conditions for the issuance and distribution of the Special Obligation bond proceeds contemplated since 2017, and incorporates references to the private lenders. Past agreements have aligned only the responsibilities of the City and the Developer, the 2019 amendment brings the private lenders into this partnership.

The changes to the Third Amended and Restated Redevelopment Agreement will be discussed in detail during our Committee meeting on October 9. The primary revisions include:

- Elimination of the phasing schedule contemplated in the 2017 agreement (Section 2.02 - Development Schedule) such that the project will be constructed in a single construction phase and completed no later than December 31, 2021. This change accelerates the completion timeline for the entire project by 12 months.



## MEMORANDUM

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Gateway Redevelopment Agreement Amendment  
October 7, 2019

- Removal of all references to a CID Special Obligation Bond Issue. The Developer's Team now proposes to issue one series of Special Obligation Bonds that will be repaid with both TIF and CID revenues.
- The project budget has been updated to reflect current costs, and to include a "Priority Approved TIF Eligible Project Costs" category. This specifically outlines what TIF bond proceeds may be spent on and ensures that the bond proceeds are used for "hard" costs.
- Changes to the conditions precedent for issuance of bonds, and a new section outlining conditions precedent for distribution of net bond proceeds. These changes are the most important among the revisions recommended as they serve to align the Council's expectations for completion of significant portions of the project with availability of the City incentives.

All members of the City's consultant team will be present to review and answer questions regarding the recommended First Amendment to Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project. In addition to a detailed explanation of the amendment, the City's team will provide the following:

- A project status update (Brian Scott)
- Review and recap of the financial benefits anticipated for the City under the amended agreement (Bruce Kimmel)
- Potential next steps related to issuance of special obligation bonds (Gary Anderson)

Please do not hesitate to contact me with questions in advance of Wednesday's Committee meeting or should there be additional background information you might require.

**FIRST AMENDMENT TO  
THIRD AMENDED AND RESTATED REDEVELOPMENT  
AGREEMENT FOR THE MISSION GATEWAY PROJECT**

THIS FIRST AMENDMENT TO THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR THE MISSION GATEWAY PROJECT (this “Amendment”), is made and entered into as of \_\_\_\_\_, 2019 (the “Effective Date”), by and between the CITY OF MISSION, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (“City”), and ARYEH REALTY, LLC, a Delaware limited liability company (and its lawful successors and assigns, the “Developer”).

**RECITALS**

A. The City and the Developer entered into that certain Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project, dated as of October 18, 2017 (the “Agreement”). Capitalized terms used and not otherwise defined in this Amendment will have the meanings provided in the Agreement.

B. Pursuant to the terms of the Agreement, the Project was intended to be completed in three separate phases, with a start date of no later than October 31, 2018, and a final completion date of no later than December 31, 2022. The Developer commenced construction prior to October 31, 2018, but now wants to streamline construction of the Project by eliminating the separate phases. Instead of three phases to conclude on December 31, 2022, the Developer proposes to construct the same Project in a single phase, with a completion date of December 31, 2021.

C. The Developer has asked the City to amend certain provisions of the Agreement to assist the Developer in commencing and completing the Project in a single phase.

D. The City and the Developer now desire to enter into this Amendment to memorialize their agreement with respect to the foregoing matters and amend the Agreement in accordance with Section 10.05 thereof.

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. Section 1.01 – Definitions of Words and Terms.**

**a)** The definitions for “Master Funding Agreement” and “TIF Eligible Project Costs”, set forth in Section 1.01 of the Agreement or elsewhere in the Agreement are hereby deleted in their entirety and replaced with the following:

“**Master Funding Agreement**” means an agreement by and among the Developer, the City, Developer’s lender(s), and the trustee acting in connection with the bonds to be issued under this Agreement, whereby said escrow agent receives funds for payment of Project costs and disburses same in accordance with this Agreement.”

“**TIF Eligible Project Costs**” means “redevelopment project costs” as defined in the TIF Act in the categories set forth in the approved Project Plan limited to the amounts set forth on **Exhibit B** of this Agreement, which have been or will be (i) incurred by the Developer pursuant to this Agreement, and (ii) subject to approval by the City for reimbursement pursuant to this Agreement with the revenues of Captured Real Estate Taxes, Captured Sales Taxes, and CID Sales Tax revenues; plus interest and private financing costs at the actual cost of borrowing. For the purposes of this Agreement, any interest or private financing costs incurred by the Developer to finance TIF Eligible Project Costs shall be reimbursable in the same manner as other TIF Eligible Project Costs.

**b)** **Section 1.01** of the Agreement is hereby amended to add the following defined terms:

“**Priority Approved TIF Eligible Project Costs**” shall mean the TIF Eligible Project Costs identified as “Priority Approved TIF Eligible Project Costs” on Exhibit B, totaling approximately \$34,000,000.00.

**2. CID Bonds.** The parties have agreed that no CID Bonds will be issued in connection with the Project, and all references thereto or use of the proceeds therefrom is hereby stricken from this Agreement. The definition of “CID Bonds” is hereby stricken.

**3. Section 2.02 – Development Schedule; Replacement of Exhibit B-1.**

Section 2.02 of the Agreement is hereby deleted in its entirety and replaced with the following:

“**Section 2.02 Development Schedule** The Developer has already commenced development activities and will continuously prosecute and substantially complete same in a single construction phase no later than December 31, 2021, as more fully described in Exhibit B-1 attached hereto (the “**Development Schedule**”). The parties recognize and agree that the Development Schedule is an estimated schedule, subject to change based on market and other conditions beyond the control of the Developer; provided, however, that the availability of the Developer Financing shall not excuse performance of the Development Schedule. The Development Schedule is subject to further change and/or modification, provided that any substantial change will require the written approval of the City and the Developer, which approval will not be unreasonably withheld or delayed. Anything to the contrary in this Agreement notwithstanding, the Developer shall complete the Project no later than December 31, 2021, unless such date is extended in writing by the City. The approval of the City as required in this Section shall be given by the Mayor or his/her designee (for thirty (30) days or less) or the Governing Body of the City (for thirty-one (31) days or more). The Developer will report in writing at least quarterly to the Mayor or the City’s designated consultant on the progress of construction.”

**4.** Exhibit B-1 to the Agreement is hereby deleted in its entirety and replaced with Exhibit B-1 attached hereto and incorporated herein by this reference as though fully set



forth in this Section 2. Exhibit B-1 attached to this Amendment, and the Development Schedule set forth therein, shall constitute Exhibit B-1 and the Development Schedule for all purposes under the Agreement.

**5. Section 2.03 – Project Budget; Replacement of Exhibit B.**

Section 2.03 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“Section 2.03 Project Budget** Attached as **Exhibit B** is the Project Budget setting forth in detail the total cost of the Project, including TIF Eligible Project Costs, CID Eligible Project Costs, and Priority Approved TIF Eligible Project Costs. The Project Budget is subject to further change and/or modification based on extraordinary market or other conditions (beyond the reasonable control of Developer) with the written approval of Developer and the City, which approval will not be unreasonably withheld or delayed.

Without the prior written consent of City, total reimbursements of potential Approved Eligible Project Costs will not exceed 115% of the total amount specified in the Project Budget for budget category (excluding line items for contingencies).

Anything in this Agreement to the contrary notwithstanding, the maximum amount of Project Costs to be paid or reimbursed to Developer under this Agreement shall be the sum of the TIF Cap plus any CID Sales Tax generated by the Project, subject to the terms of this Agreement (the **“Incentive Funding”**). It is acknowledged by Developer that the City’s willingness to provide the full Incentive Funding is predicated on completion of the Project.”

**6.** Exhibit B to the Agreement is hereby deleted in its entirety and replaced with Exhibit B attached hereto and incorporated herein by this reference as though fully set forth in this Section 2. Exhibit B attached to this Amendment, and the Budget set forth therein, shall constitute Exhibit B and the Budget for all purposes under the Agreement.

**7.** Section 2.05 is hereby deleted in its entirety and replaced with the following:

**“2.05 Plan Approval; Additional Redevelopment District Development Approval**

Developer agrees to diligently pursue approval of the Project Site Plans and Zoning Approvals. Once approved, to the extent the Developer elects to modify the same, Developer shall submit to the City and the City shall review the Site Plans relating to the Project and the related site work, which plans shall be submitted in accordance with the City’s generally accepted requirements for the consideration of such plans and must satisfy the requirements set forth in the Zoning Approvals. The City shall diligently review said Site Plans and construction plans to determine if such plans satisfy the Zoning Approvals and building codes and approve same, or provide a written description detailing any portion of the plans which the City has determined to be unacceptable.

8. Section 3.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“Section 3.01 Initial Capital.** The Developer intends to finance a portion of the costs of the Project from Developer Financing. Prior to the issuance of any bonds for the Project, the Developer will deliver to the City signed commitment letters to finance, or other evidence of commitment to finance acceptable to the City, the Developer Project Work up to the amount of the Project’s private improvements’ costs, less the Incentive Funding, and less any equity contributions made or represented to be made by the Developer (“**Developer Equity**”). Developer shall demonstrate the existence of the Developer Equity to the reasonable satisfaction of the City. The commitment letters or other evidence of commitment to finance shall be in form and content satisfactory to City by a lender or group of lenders subject to normal and customary disbursement requirements. Prior to or simultaneously with the closing of the bonds, the Developer Financing loan shall be closed and funded to the satisfaction of the City.

The Developer represents and warrants to the City that, to the best of its knowledge, the Developer Financing, along with the Incentive Funding, will enable the Developer to timely implement and complete the Developer Project Work as required in this Agreement. The Developer shall immediately notify the City of any material changes in the Developer Financing and/or Developer Equity that occur after the execution of this Agreement.”

9. Section 3.03 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“Section 3.03 CID Funding of Approved Eligible Project Costs**

A. **CID Term.** Developer has requested that the City create a CID that provides for the levying of a CID Sales Tax on all taxable sales occurring within the Property not to exceed one percent (1%) for a term of 22 years (the “**CID Term**”). Except as provided in **Section 9.02**, the City shall not, without the consent of Developer, terminate the CID or reduce the CID Term prior to such time as the Developer has been reimbursed for all CID Eligible Project Costs incurred or to be incurred by Developer as part of the Project; provided, however, that if all aspects of the Project are completed, the City may then terminate the CID or CID Term so long as Developer has been fully reimbursed for all CID Eligible Project Costs incurred, and so long as all TIF Bonds issued for the Project are retired.

B. **CID Sales Tax Captured.** All CID Sales Tax generated within the Property as a result of the Project shall be deposited by the City as provided in this Agreement and utilized solely to pay or repay, in the following order: (i) City CID District Expenses; (ii) then principal and interest on the TIF Bonds; and (iii) then unreimbursed CID Eligible Project Costs.

10. Section 3.04 of the Agreement is hereby deleted in its entirety and replaced with the following:

**“Section 3.04 Bond Issuance; Conditions and Priority of Disbursement of Net Bond Proceeds**

A. Bond Issuance. The parties contemplate a single issuance of TIF Bonds which is estimated by Developer to generate the Net Bond Proceeds to fund a portion of the Priority Approved TIF Eligible Project Costs. The parties agree that the bond schedule attached hereto as **Exhibit C** currently reflects commercially reasonable underwriting practices, including interest rates, and debt-service coverage ratios for TIF Bonds. This bond structure, which shall be subject to reasonable modifications to account for underwriting standards and market conditions as mutually agreed by the City and Developer, is described on **Exhibit C**.

B. Cooperation. The parties shall reasonably cooperate to achieve bond issuances that will generate a portion of the Incentive Funding in a manner and time reasonably sufficient to facilitate completion of the Project. All issuances shall be issued in the City’s sole discretion after consultation with its financial consultants and advisors.

C. Conditions Precedent for Issuance of Bonds.

1. The issuance of the TIF Bonds shall be conditioned upon:

- (a) The Developer shall not be in default of this Agreement beyond any applicable cure period.
- (b) Evidence of Developer Financing and Developer Equity as required by **Section 3.01**.
- (c) Construction contracts, construction permits and notices to proceed for the entertainment facility currently known as “Cinergy” and parking structure portions of the Developer’s Project Work.
- (d) Evidence of compliance with the requirements of **Section 2.04(B)(2)**.
- (e) A current Project Budget that demonstrates that all of the Developer’s Project Work can be constructed within the Project Budget (as may be subject to change as provided herein) and in accordance with the Project Plan and Zoning Approvals.
- (f) A proposed schedule for the completion of the Project (as may be subject to change as provided herein), to the extent it is inconsistent or noncompliant with Exhibit B-1.

D. Satisfaction of Conditions. Upon receipt of the information set forth in **Section 3.04(C)**, the City shall within a reasonable time thereafter either:

1. Provide written notice to Developer that **Section 3.04(C)** has not been satisfied; or

2. Provide affirmative notice to Developer that the conditions precedent to its obligations to issue the TIF Bonds have been met at which time City's commitment to issue the applicable issuance of TIF Bonds will become irrevocable, subject to satisfactory underwriting and the terms of this Agreement.

E. Conditions Precedent for Distribution of Bond Proceeds. The distribution of Bond Proceeds shall be conditioned upon (the "Disbursement Conditions"):

- (a) Receipt by the Developer of all Zoning Approvals, except that additional approvals may be necessary for the Food Hall component of the Project.
- (b) Payment by Developer of at least 50% of the costs and completion of at least 50% of the construction of the "Cinergy" portion of the Project, as certified by tenant's architect.
- (c) Payment by Developer of at least 25% of the costs and completion of at least 25% of the construction of the Project parking garage, as certified by Developer's architect.
- (d) Proof that funding from The Carlyle Group in the minimum amount of \$50 Million and from Bank OZK in the minimum amount of \$13 Million has been released to Developer and utilized in the Project.
- (e) A Certification of Expenditure for each item to be paid, in accordance with **Section 3.06**.
- (f) The Master Funding Agreement is executed by the parties thereto.

F. Distribution of Net Bond Proceeds. Net Bond Proceeds will be held by the bond trustee in a project fund pursuant to the requirements set forth in this Agreement and the Master Funding Agreement and shall be disbursed in the following order of priority (i) to pay any outstanding Eligible Public Costs; and (ii) then to pay the Priority Approved TIF Eligible Project Costs, all in accordance with the Bond Documents. Provided, however, none of the Net Bond Proceeds will be disbursed until the Disbursement Conditions are satisfied. Following satisfaction of the Disbursement Conditions, Net Bond Proceeds in an amount equal to \$7 Million will be disbursed (the "Initial Disbursement"). Following the Initial Disbursement, Net Bond Proceeds shall be disbursed pari-passu with the loan portions of the Developer Financing on a 25% (Net Bond Proceeds) and 75% (Developer Financing) basis.

G. City Credit Support. Under no circumstances will the City extend credit support to the financing of the Project, including but not limited to the TIF Bonds or IRBs"

**11.** Subsection (B) of Section 3.10, Limitation on Reimbursement from Net Bond Proceeds, is hereby deleted in its entirety and replaced with the following:



“B. No costs other than Priority Approved TIF Eligible Project Costs shall be paid or reimbursed from the Net Bond Proceeds; provided, however, that total reimbursements of potential Project Budget categories of Priority Approved TIF Eligible Project Costs may be moved to other Project Budget categories of Priority Approved TIF Eligible Project Costs so long as the amount of each category will not exceed 115% of the total amount specified in the Project Budget for each budget category.”

12. Section 5.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

“**Section 5.01 Intent to Pay Taxes** The Developer agrees that to the extent it is obligated to pay any portion of the real estate tax bills for the Property it intends to pay such taxes and assessments promptly on or before the due date of such tax bills. City reserves the right to withhold Pay As You Go reimbursements and the proceeds of TIF Bonds from Developer for such time as real estate taxes and assessments levied against the Property are delinquent. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer and any other owners, tenants or occupants of real property in the Redevelopment District shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer’s or such other owner’s property within the Redevelopment District.”

13. **Section 10.13, Notice**, is hereby amended to replace Evan E. Fitts at the Polsinelli address with Korb K. Maxwell.

14. **Replacement of Exhibit C – Bond Schedule**. Exhibit C to the Agreement is hereby deleted in its entirety and replaced with Exhibit C attached hereto and incorporated herein by this reference as though fully set forth in this Section 6. Exhibit C attached to this Amendment, and the Bond Schedule set forth therein, shall constitute Exhibit C and the Bond Schedule for all purposes under the Agreement.15.

15. **Counterparts**. This Amendment may be executed in several counterparts. All counterparts so executed shall constitute one agreement and shall be binding on all parties, even though all the parties did not sign the original or the same counterpart signature page. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Amendment.

16. **Amendment**. Except as specifically amended hereby, the Agreement remains in full force and effect and is hereby ratified by the parties hereto. In the event that any of the terms or conditions of the Agreement conflict with this Amendment, the terms and conditions of this Amendment shall control.

17. **Governing Law**. This Amendment shall be governed by and construed in accordance with the laws of the State of Kansas.

*[Remainder of Page Intentionally Left Blank. Signature Pages follow.]*





**EXHIBIT B**

Project Budget

See attached



Project Budget (2019 Update)					
	Development Budget	Approved Eligible Project Costs	TF Eligible Project Costs	Priority Approved TF Eligible Costs	CID Eligible Project Costs
<b>Land, Demolition &amp; Predevelopment Costs</b>					
Property Acquisition	\$7,550,000	\$7,550,000	\$7,550,000	\$5,319,591	\$7,550,000
Tenant Buyouts and Relocation	\$512,568	\$512,568	\$512,568	\$512,568	\$512,568
Demolition / Earthwork	\$2,534,838	\$2,534,838	\$2,534,838	\$2,534,838	\$2,534,838
Architectural / Survey / Site Design	\$7,420,005	\$0	\$0	\$0	\$0
Engineering	\$2,944,401	\$0	\$0	\$0	\$0
Legal	\$1,841,105	\$0	\$0	\$0	\$0
Rail Easement Taxes	\$1,861,592	\$0	\$0	\$0	\$0
Interest on Past Loans	\$5,244,200	\$0	\$0	\$0	\$0
Closing Costs / Mortgage Transaction Fees	\$1,962,642	\$0	\$0	\$0	\$0
Per Contractor General Conditions / Fees / Other	\$1,283,253	\$0	\$0	\$0	\$0
Marketing / Promotions	\$580,009	\$0	\$0	\$0	\$0
Miscellaneous 3rd Party Expenses	\$820,238	\$0	\$0	\$0	\$0
Developer- General Conditions	\$77,923	\$0	\$0	\$0	\$0
Developer- Miscellaneous	\$485,862	\$0	\$0	\$0	\$0
Developer- Project Management / Coordination	\$776,641	\$0	\$0	\$0	\$0
Developer- Travel / Lodging / Meals	\$461,140	\$0	\$0	\$0	\$0
Developer- Meals & Entertainment	\$20,904	\$0	\$0	\$0	\$0
Developer- Allocated Overhead	\$651,550	\$0	\$0	\$0	\$0
Developer- Other Legacy less Minimum Rents	\$612,329	\$0	\$0	\$0	\$0
<b>Total Land Cost</b>	<b>\$37,863,352</b>	<b>\$10,597,406</b>	<b>\$10,597,406</b>	<b>\$8,366,997</b>	<b>\$10,597,406</b>
<b>Site Work, Infrastructure &amp; Parking</b>					
Hard Costs- Parking, Garage Spaces	\$16,000,000	\$16,000,000	\$16,000,000	\$16,000,000	\$16,000,000
Sitework	\$4,902,267	\$4,902,267	\$4,902,267	\$4,902,267	\$4,902,267
Offsite	\$1,106,000	\$1,106,000	\$1,106,000	\$1,106,000	\$1,106,000
<b>Total Site Work</b>	<b>\$22,008,267</b>	<b>\$22,008,267</b>	<b>\$22,008,267</b>	<b>\$22,008,267</b>	<b>\$22,008,267</b>
<b>Hard Costs</b>					
Hard Costs Retail (Roeland)	\$5,207,612	\$5,207,612	\$560,516		\$5,207,612
Hard Costs Retail (Johnson)	\$2,792,388	\$2,792,388	\$300,555		\$2,792,388
Hard Costs Entertainment/Retail	\$25,000,000	\$25,000,000	\$2,490,848		\$25,000,000
Hard Costs Hotel (includes Restaurant & Spa)	\$22,500,000	\$22,500,000	\$2,421,764		\$22,500,000
Hard Costs Residential	\$5,807,500	\$5,807,500	\$2,777,743		\$5,807,500
Hard Costs Office	\$11,600,000	\$11,600,000	\$1,248,254		\$11,600,000
Payment & Performance Bonds	\$901,114	\$901,114	\$180,379		\$901,114
Insurance/Risk/Risk	\$1,710,756	\$1,710,756	\$451,349		\$1,710,756
General Contractor Fee	\$2,750,000	\$2,750,000	\$725,566		\$2,750,000
Tenant Improvements	\$19,680,833	\$19,680,833	\$0		\$19,680,833
Contingency	\$5,903,582	\$5,903,582	\$1,557,613		\$5,903,582
<b>Total Hard Costs</b>	<b>\$123,655,784</b>	<b>\$123,655,784</b>	<b>\$12,914,927</b>	<b>\$0</b>	<b>\$123,655,784</b>
<b>Soft Costs</b>					
Architecture/Engineering Services	\$6,498,120	\$3,248,652	\$1,300,751		\$3,248,652
Legal	\$1,427,500	\$1,427,500	\$285,748		\$1,427,500
Plating	\$0	\$0	\$0		\$0
Civil Engineer (includes geo-tech and survey)	\$382,000	\$382,000	\$91,479		\$382,000
Testing & Special Inspections	\$600,000	\$600,000	\$120,104		\$600,000
Rail Easement Taxes	\$5,445,545	\$950,000	\$0	\$0	\$950,000
Stormwater Assessment	\$4,645,108	\$4,645,108	\$4,645,108	\$3,624,736	\$0
Residential Marketing and FF&E	\$240,000	\$40,000	\$0		\$40,000
Project Branding & Marketing	\$300,000	\$300,000	\$0		\$300,000
Farmers Interest	\$0	\$0	\$0		\$0
Hotel Pre-Opening	\$200,000	\$200,000	\$0		\$200,000
Hotel Supplies	\$0	\$0	\$0		\$0
Hotel FF&E	\$5,075,000	\$5,075,000	\$0		\$5,075,000
Hotel Operator Technical Services Fee	\$100,000	\$100,000	\$0		\$100,000
Development Fee	\$5,332,006	\$2,000,000	\$0		\$2,000,000
Project Staffing	\$1,550,000	\$0	\$0		\$0
Residential Staffing	\$55,000	\$55,000	\$0		\$55,000
Permit & Fees	\$395,000	\$395,000	\$79,089		\$395,000
Accounting (Audit, etc.)	\$150,000	\$150,000	\$30,026		\$150,000
Developer Rent Payments	\$41,505	\$0	\$0		\$0
Leasing Commissions	\$2,250,000	\$2,250,000	\$0		\$2,250,000
Soft Cost Contingency	\$2,559,920	\$750,000	\$150,130		\$750,000
<b>Total Soft Costs</b>	<b>\$37,858,252</b>	<b>\$22,988,260</b>	<b>\$6,702,414</b>	<b>\$4,624,736</b>	<b>\$16,343,152</b>
<b>Construction Loan Closing Cost</b>					
Mortgage Broker Fee	\$1,000,000	\$1,000,000	\$200,201		\$1,000,000
Bank Fee	\$1,920,000	\$1,920,000	\$384,385		\$1,920,000
Title Insurance	\$253,605	\$253,605	\$50,772		\$253,605
Mortgage Recording Tax	\$0	\$0	\$0		\$0
Legal (Owner and Lender)	\$1,518,710	\$1,518,710	\$304,047		\$1,518,710
Construction Monitoring	\$125,000	\$125,000	\$25,025		\$125,000
3rd Parties	\$253,700	\$253,700	\$50,791		\$253,700
Construction Interest Reserve	\$21,725,000	\$4,200,000	\$4,200,000		\$4,200,000
Bond Payment Reserve	\$0	\$0	\$0		\$0
<b>Total Financing Cost</b>	<b>\$26,796,015</b>	<b>\$9,271,015</b>	<b>\$5,215,221</b>	<b>\$0</b>	<b>\$9,271,015</b>
<b>Totals:</b>	<b>\$248,381,670</b>	<b>\$188,720,731</b>	<b>\$57,438,235</b>	<b>\$34,000,000</b>	<b>\$184,075,624</b>

## **EXHIBIT B-1**

### Development Schedule

- Cinergy – Complete construction no later than December 31, 2020
- Parking Garage – Complete construction no later than December 31, 2020
- Residential/Small Shop Retail – Complete construction no later than June 30, 2021
- Hotel – Complete construction no later than September 30, 2021
- Office – Complete construction no later than December 31, 2021
- Food Hall – Complete construction no later than December 31, 2021

**EXHIBIT C**

Bond Schedule

**THIRD AMENDED AND RESTATED  
REDEVELOPMENT AGREEMENT  
FOR THE  
MISSION GATEWAY PROJECT**



**TABLE OF CONTENTS**

	Page
<b>ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION .....</b>	<b>3</b>
Section 1.01 Definitions of Words and Terms.....	3
Section 1.02 Rules of Construction .....	6
<b>ARTICLE II CONSTRUCTION OF PROJECT .....</b>	<b>7</b>
Section 2.01 Authorization to Construct.....	7
Section 2.02 Development Schedule .....	7
Section 2.03 Project Budget.....	8
Section 2.04 Construction Obligations of the Parties .....	8
Section 2.05 Plan Approval; Additional Redevelopment District Development Approval .....	9
Section 2.06 Insurance.....	9
Section 2.07 Building, Subdivision Codes; Architect’s Report; Accreditation.....	9
Section 2.08 Zoning Approvals and Project Plan .....	9
Section 2.09 Delay .....	10
Section 2.10 Modifications .....	10
Section 2.11 Utilities and Fees.....	10
Section 2.12 Assistance to Developer.....	10
Section 2.13 Modification of City Municipal Code Provisions Pertaining to Drinking Establishments .....	10
<b>ARTICLE III PROJECT FINANCING.....</b>	<b>10</b>
Section 3.01 Initial Capital .....	11
Section 3.02 TIF Funding of Eligible Project Costs .....	11
Section 3.03 CID Funding of Eligible Project Costs .....	12
Section 3.04 Bond Issuance; Priority of Disbursement of Net Bond Proceeds .....	12
Section 3.05 Certification of Expenditure .....	14
Section 3.06 Procedures for Certification of Expenditures .....	14
Section 3.07 Right to Inspect.....	15
Section 3.08 Certificates of Completion.....	15
Section 3.09 Pay As You Go .....	15
Section 3.10 Limitation on Reimbursement from Net Bond Proceeds.....	16
Section 3.11 Interim Construction Financing – Issuance of Industrial Revenue Bonds (IRB) – Sales Tax Exemption for Construction Materials.....	16
Section 3.12 City Consideration of Future Financing or Zoning Applications .....	16
Section 3.13 Failure to Approve Project Plan and/or CID, IRB Financing.....	16
Section 3.14 Drainage and Benefit District .....	16
<b>ARTICLE IV DEVELOPER OF RECORD .....</b>	<b>17</b>
Section 4.01 Developer Designation.....	17
<b>ARTICLE V REAL ESTATE TAXES .....</b>	<b>17</b>
Section 5.01 Agreement to Pay Taxes .....	17
Section 5.02 Notice of Protest .....	17
<b>ARTICLE VI OTHER DEVELOPER COVENANTS .....</b>	<b>17</b>
Section 6.01 Maintenance and Repair .....	18
Section 6.02 Local, State and Federal Laws .....	18
<b>ARTICLE VII ASSIGNMENT, SALES, LEASING, &amp; MANAGEMENT .....</b>	<b>18</b>

Section 7.01	Sale or Disposition of Property within Redevelopment District .....	18
Section 7.02	Partial Assignment of Reimbursement Rights .....	19
Section 7.03	Related Entity.....	20
<b>ARTICLE VIII AUTHORITY .....</b>		<b>20</b>
Section 8.01	Actions .....	20
Section 8.02	Powers.....	20
Section 8.03	Authorized Parties.....	20
Section 8.04	Representations of the Developer .....	21
<b>ARTICLE IX EVENTS OF DEFAULT .....</b>		<b>22</b>
Section 9.01	Events of Default .....	22
Section 9.02	Remedies on Developer’s Default .....	24
Section 9.03	Remedies on City Default.....	24
Section 9.04	Agreement to Pay Attorneys’ Fees and Expenses .....	24
<b>ARTICLE X GENERAL PROVISIONS.....</b>		<b>25</b>
Section 10.01	City Responsibility.....	25
Section 10.02	City Expenses.....	25
Section 10.03	Limited Obligations .....	25
Section 10.04	Time of Essence.....	25
Section 10.05	Amendment.....	25
Section 10.06	Liens.....	26
Section 10.07	Indemnity and Release.....	26
Section 10.08	Immunity of Officers, Employees and Members of the City.....	26
Section 10.09	No Other Agreement.....	27
Section 10.10	Assigns and Transfers .....	27
Section 10.11	Severability .....	27
Section 10.12	Kansas Law .....	27
Section 10.13	Notice.....	27
Section 10.14	Counterparts .....	28
Section 10.15	Recordation of Agreement.....	28
Section 10.16	Consent or Approval .....	28
Section 10.17	Notice of Developer Default to Lender; Lender Right to Cure; Modifications .....	28
Section 10.18	Term of Agreement.....	30

**THIS THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (this "**Agreement**"), is made and entered into as of the 18 day of Oct, 2017 by and between the **CITY OF MISSION, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas ("**City**"), and **ARYEH REALTY, LLC**, limited liability company ("**Developer**"), amends and supersedes in its entirety that certain "Second Amended and Restated Redevelopment Agreement for the Gateway Retail District", effective February 11, 2013.

### RECITALS

A. The City has the authority to adopt tax increment financing ("**TIF**") pursuant to sections K.S.A. 12-1770 *et seq.*, as amended (the "**TIF Act**").

B. Pursuant to the TIF Act, the City held a public hearing on January 11, 2006 to consider establishing a Redevelopment District on approximately 17 acres generally bounded by Johnson Drive on the North, Roe Avenue on the East, Shawnee Mission Parkway on the South and Roeland Drive on the West in Mission, Johnson County, Kansas, (the "**Redevelopment District**").

C. On January 11, 2006, the City adopted Ordinance 1190, establishing a redevelopment district and designating redevelopment project areas for the Redevelopment District on the bases described therein.

D. On February 8, 2006, the City adopted Ordinance 1195, amending and restating Ordinance 1190 on the bases described therein.

E. The City and The Gateway Developers, LLC, the original developer ("**Original Developer**") executed a certain Redevelopment Agreement dated June 8, 2006 setting forth certain terms and conditions of development within the Redevelopment District (the "**Original Development Agreement**").

F. On September 13, 2006, the City adopted Ordinance 1210, approving a TIF redevelopment project plan within the Redevelopment District (the "**Original Project Plan**").

G. On December 13, 2006, the City adopted Ordinance 1217, approving a transportation development district ("**TDD**") for a portion of the Redevelopment District pursuant to K.S.A. 12-17,141 *et seq.*, as amended (the "**TDD Act**")

H. On January 23, 2008, the City adopted Ordinance 1255 approving an amended TIF redevelopment project plan which amended and replaced the Original Project Plan (the "**First Amended Project Plan**"), and the City and the Original Developer executed a certain Amended and Restated Redevelopment Agreement dated January 23, 2008 which amended and replaced the Original Development Agreement (the "**Amended Development Agreement**")

I. On January 16, 2013, the City adopted Ordinance No. 1374 approving an amended TIF redevelopment project plan which amended and replaced the Original Project Plan and the First Amended Project Plan, and the City and the Original Developer executed a certain Second Amended and Restated Redevelopment Agreement dated February 11, 2013, which amended and

replaced the Amended Development Agreement (the “**Second Amended Development Agreement**”).

J. On or about June 3, 2016, the Original Developer conveyed fee simple title to the Redevelopment District to Developer.

K. On or about November 20, 2015, the Original Developer assigned its right, title and interest in and to the Second Amended Development Agreement to Developer.

L. On or about March 7, 2017, the Developer filed for approval by the City, a certain Third Amended Redevelopment Project Plan, which Plan was subsequently withdrawn by the Developer. Developer has filed for approval by the City, after public notice and hearing, a certain Fourth Amended Redevelopment Project Plan to amend and replace the Second Amended Project Plan (“**Project Plan**”) for the redevelopment of the area within the Redevelopment District designated in Ordinance 1195 as Project Area 1, as legally described on **Exhibit A** attached hereto (the “**Property**”) and redevelopment of the Property as a mixed-use project consisting of retail, office, hotel and residential uses.

N. The Project Plan includes a detailed description of the buildings and areas to be constructed, studies the feasibility of the Project, describes the financing mechanisms to be utilized for private and public costs of the Project, and addresses all other components required by the TIF Act and the City’s TIF policy.

O. It is the Developer’s intent to finance construction of the Project’s private improvements through a combination of TIF, Community Improvement District (“**CID**”) financing, and the issuance of Industrial Revenue Bonds (“**IRBs**”), as well as private debt and equity contributions, subject to City approvals and in accordance with applicable law and this Agreement.

P. The City has the authority to approve utilization of CID financing pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the “**CID Act**”).

Q. The City has the authority to approve utilization of IRB financing pursuant to K.S.A. 12-1470 *et seq.*, as amended (the “**IRB Act**”).

R. The City and Developer now desire to enter into this Agreement to address issues regarding implementation of the Project Plan, if approved.

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:



## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.01 Definitions of Words and Terms.** In addition to words and terms defined elsewhere in this Agreement, the following capitalized words and terms as used in this Agreement shall have the following meanings:

**“Affected Area”** shall have the meaning set forth in **Section 2.04**.

**“Approved Eligible Project Costs”** means TIF Eligible Project Costs and CID Eligible Project Costs.

**“Assessment District”** shall have the meaning set forth in **Section 3.14**.

**“Bond Documents”** means the documents and proceeds governing the issuance of the TIF Bonds, CID Bonds and/or IRBs as approved by bond counsel for the City.

**“Captured Real Estate Taxes”** means the incremental ad valorem property tax revenue captured under K.S.A. 12-1774(a)(1)(A) within the Property. The term Captured Taxes shall not include any taxes imposed by any drainage district

**“Captured Sales Taxes”** means 55% of the City’s 1% general sales tax captured under K.S.A. 12-1774(a)(1)(D) within the Property, however excluding any special or additional City sales taxes.

**“Captured Taxes”** means Captured Real Estate Taxes and Captured Sales Taxes collectively.

**“CID”** means one or more community improvement districts created by the City for the Property pursuant to the CID Act.

**“CID Bonds”** means bonds issued by the City pursuant to the CID Act and in accordance with this Agreement, payable from the CID Sales Tax.

**“CID Eligible Project Costs”** means any “cost” as defined in the CID Act to be paid with revenues of the CID Sales Tax as identified in the Project Budget which have been or will be (i) incurred by the Developer pursuant to this Agreement, and (ii) subject to approval by the City for reimbursement pursuant to this Agreement. For the purposes of this Agreement, any interest or private financing costs incurred by the Developer to finance CID Eligible Project Costs, to the extent allowable under the CID Act, shall be reimbursable in the same manner as other CID Eligible Project Costs.

**“CID Fund”** shall have the meaning set forth in **Section 3.03**.

“**CID Sales Tax**” means any additional sales tax levied within any CID created for the Property pursuant to the CID Act.

“**CID Term**” shall have the meaning set forth in **Section 3.03 (A)**.

“**City**” means the City of Mission, Kansas.

“**City CID District Expenses**” shall have the meaning set forth in **Section 10.02**.

“**City Expenses**” means all reasonable documented, out-of-pocket expenses incurred in connection with the Property, the Project Plan, this Agreement, and the issuance of the TIF Bonds, CID Bonds and IRBs, including attorney’s fees, postage, mileage, copying costs, recording costs and similar expenses.

“**City Project Work**” means the Stormwater Improvements.

“**City Representative**” means the Mayor of the City, or such other person or persons at the time designated to act on behalf of the Mayor in matters relating to this Agreement.

“**City TIF District Expenses**” shall have the meaning set forth in **Section 10.02**.

“**Consent**” means a written document evidencing agreement or concurrence with the performance of an act.

“**Developer**” means Aryeh Realty, LLC and its successors and permitted assigns.

“**Developer Equity**” shall have the meaning set forth in **Section 3.01(A)**.

“**Developer Financing**” means the nonpublic financing of a portion of the costs of the Project by the Developer from Developer Equity and/or conventional loans.

“**Developer Project Work**” has the meaning set forth in **Section 2.04(B)**.

“**Developer Representative**” means Thomas J. Valenti, Evan Fitts, and such other person or persons at the time designated to act on behalf of the Developer in matters relating to this Agreement as evidenced by a written certificate furnished to the City containing the specimen signature of such person or persons and signed on behalf of the Developer.

“**Development Schedule**” means the development schedule referred to in **Section 2.02**.

“**Drainage District**” shall have the meaning set forth in **Section 3.14**.

“**Eligible Public Costs**” means the City TIF District Expenses, the City CID District Expenses, and such other costs to be incurred by the City upon agreement of the City and Developer.

“**Event of Default**” means any event or occurrence as defined in **Article IX** of this Agreement.

**“Fee Mortgagee”** shall have the meaning set forth in **Section 10.17**.

**“Incentive Funding”** shall have the meaning set forth in **Section 2.03**.

**“Master Funding Agreement”** means an agreement by and between the Developer, the City, Developer’s primary lender, the trustee acting in connection with the bonds to be issued under this Agreement and an escrow agent, whereby said escrow agent receives funds for payment of Project costs and disburses same in accordance with this Agreement.

**“Net Bond Proceeds”** means the proceeds from the sale of the TIF Bonds or CID Bonds available to be deposited with the bond trustee in accordance with the Bond Documents, the value of which shall be calculated excluding issuance costs, capitalized interest, and debt service reserve funds.

**“Pay-As-You-Go Reimbursement”** means the reimbursement of Approved Eligible Project Costs with Captured Taxes or CID Sales Tax from time to time as such expenses are incurred and documented as provided in **Section 3.09** herein and in accordance with the TIF and/or CID Act.

**“Project”** or **“Project Work”** means the improvements described in the Project Plan and Zoning Approvals.

**“Project Budget”** means the project budget attached hereto as **Exhibit B**, as amended from time to time in accordance with this Agreement.

**“Project Plan”** has the meaning set forth in the Recitals to this Agreement.

**“Related Entity”** means any entity in which the ownership or membership of such entity is controlled by Developer or the majority owners or members of the Developer.

**“Site Plan”** means such Preliminary Development Plans and such Final Development Plans as may be approved from time to time by the City for the Property on file with the City of Mission Planning Department.

**“Special Obligation”** means any bonds that are backed solely by the revenue streams for which they are issued and are not otherwise secured by the full-faith and credit of the City.

**“Stormwater Improvements”** means improvements previously undertaken by the City at a cost of approximately Twelve Million Dollars (\$12,000,000) for the remediation of stormwater drainage issues affecting the Property.

**“TGT”** means the City’s Transient Guest Tax. For purposes of this Agreement, TGT shall mean Transient Guest Tax of not more than the lesser of the Transient Guest Tax of the City or 8%.

**“TIF Bonds”** means TIF Sales Tax Bonds and TIF Property Tax Bonds collectively.

**“TIF Cap”** means the sum of Captured Real Estate Taxes, Captured Sales Taxes and TGT, in the amount not to exceed the amount of TIF Eligible Project Costs as set forth on **Exhibit B** (plus any interest or private financing costs contemplated in the definition of TIF Eligible Project Costs), whether paid from Net Bond Proceeds or Pay-As-You-Go Reimbursement.

**“TIF Eligible Project Costs”** means “redevelopment project costs” as defined in the TIF Act in the categories set forth in the approved Project Plan limited to the amounts set forth on **Exhibit B** of this Agreement, which have been or will be (i) incurred by the Developer pursuant to this Agreement, and (ii) subject to approval by the City for reimbursement pursuant to this Agreement with the revenues of Captured Real Estate Taxes and Captured Sales Taxes. For the purposes of this Agreement, any interest or private financing costs incurred by the Developer to finance TIF Eligible Project Costs shall be reimbursable in the same manner as other TIF Eligible Project Costs.

**“TIF Fund”** shall have the meaning set forth in **Section 3.02**.

**“TIF Sales Tax Bonds”** means bonds issued by the City pursuant to the TIF Act and in accordance with this Agreement, payable from Captured Sales Tax.

**“TIF Term”** shall have the meaning set forth in **Section 3.02**.

**“TIF Property Tax Bonds”** means bonds issued by the City pursuant to the TIF Act and in accordance with this Agreement, payable from the Captured Real Estate Taxes.

**“Zoning Approvals”** means the approvals previously granted and associated preliminary development plan approvals, as may be revised and approved, and such final plan approvals as may be approved by the City from time to time.

**Section 1.02 Rules of Construction** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
- C. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- D. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.



F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

## ARTICLE II

### CONSTRUCTION OF PROJECT

**Section 2.01 Authorization to Construct** Subject to the approval of the Project Plan, in order to further the development of the Project, the City hereby authorizes the Developer to develop the Project pursuant to this Agreement. Nothing contained herein shall be construed as creating a partnership or other entity between the Developer and the City, or ensuring zoning, planning, permit or other approvals by the City.

**Section 2.02 Development Schedule** Developer intends to develop the Project in three (3) phases as follows:

A. **Phase 1.** The first phase of the Project is proposed to include: (i) construction of approximately 55,594 square feet of “small shop” commercial or restaurant uses; and (ii) construction of approximately 168 apartment units; (iii) construction of related site work; and (iv) construction of surface parking sufficient for such uses pursuant to the City’s applicable ordinances (collectively referred to herein as “**Phase 1**”).

B. **Phase 2.** The second phase of the Project is proposed to include: (i) construction of a parking garage serving the entirety of the Project; and (ii) construction of an approximately 200-room hotel including a restaurant consisting of approximately 15,624 square feet (collectively referred to herein as “**Phase 2**”)

C. **Phase 3.** The third phase of the Project is proposed to include construction of approximately 123,685 square feet of junior-anchor/“big box” commercial retail space, which may also include “small-shop” commercial or restaurants as tenants are identified, as well as approximately 75,000 square feet of office uses (referred to herein as “**Phase 3**”).

Subject to **Section 2.09**, the Developer shall commence Phase 1 development activities no later than October 31, 2018, continuously prosecute and substantially complete same no later than April 30, 2020, pursuant to the Development Schedule attached hereto as Exhibit B-1 (the “**Development Schedule**”). Construction of Phase 2 and Phase 3 may occur at the discretion of the Developer, provided that the Developer hereby acknowledges that the availability of TIF Bonds and CID Bonds will be subject to the conditions precedent set forth in Section 3.04(C) hereof. And provided, further, that in the event construction of Phase 2 or 3 is not commenced on or before December 31, 2020, it will be deemed for the purposes of this Agreement that Phase 2 and Phase 3 will not be constructed, and the provisions for failure to construct Phase 2 and Phase 3 herein will apply. Notwithstanding the foregoing, the Developer shall use commercially reasonable efforts to promptly complete construction of the Project. For purposes hereof, the Developer shall be deemed to have commenced development activities or construction upon (i) as to Phase 1, the pouring of footings for the proposed retail/multiple family residential portions of Phase 1 and (ii) as to Phase 2 or Phase 3, the pouring of footings for the parking garage of Phase 2 of the Project. The parties recognize and agree that the Development Schedule is an estimated

schedule, subject to change based on market and other conditions beyond the control of Developer; provided, however, that the availability of Developer Financing shall not excuse performance of the Development Schedule. The Development Schedule is subject to further change and/or modification, provided that any change will require the written approval of the City and the Developer, which approval will not be unreasonably withheld or delayed. Anything to the contrary in this Agreement notwithstanding, the Developer shall complete the Phase 1 no later than April 30, 2020, unless such date is extended in writing by the City. The approval of the City as required in this Section shall be given by the Mayor or his/her designee (for thirty (30) days or less) or the Governing Body of the City (for thirty-one (31) days or more). The Developer will report in writing at least quarterly to the Mayor or the City's designated consultant on the progress of construction.

**Section 2.03 Project Budget** Attached as **Exhibit B** is the Project Budget setting forth in detail the total cost of the Project, including TIF Eligible Project Costs and CID Eligible Project Costs. The Project Budget is subject to further change and/or modification based on extraordinary market or other conditions (beyond the reasonable control of Developer) with the written approval of Developer and the City, which approval will not be unreasonably withheld or delayed.

Without the prior written consent of City, total reimbursements of potential Approved Eligible Project Costs will not exceed 115% of the total amount specified in the Project Budget for budget category (excluding line items for contingencies).

Anything in this Agreement to the contrary notwithstanding, the maximum amount of Project Costs to be paid or reimbursed to Developer under this Agreement shall be the sum of the TIF Cap plus any CID Sales Tax generated by the Project, subject to the terms of this Agreement (the "**Incentive Funding**"). Provided, however, that in the event construction of Phase 2 or Phase 3 is not timely commenced, the total Incentive Funding shall be reduced to no more than \$13,300,000 (from CID and TIF), anything to the contrary in this Agreement notwithstanding, it being acknowledged by Developer that the City's willingness to provide the full Incentive Funding was predicated on completion of the Project.

**Section 2.04 Construction Obligations** The Developer shall cause its construction obligations relating to the Project (as set forth below) to be completed at Developer's expense (such expenses, to the extent they constitute Approved Eligible Project Costs, to be reimbursed, as applicable and to the extent provided in this Agreement, from the Net Bond Proceeds and/or from Pay-As-You-Go Reimbursement) in accordance with the provisions of this Agreement. Developer's responsibilities under this Agreement are to cause its obligations to be performed; it is not required that the Developer be the person performing such obligations, but only that the Developer causes the obligations to be performed.

A. **Completed City Project Work.** The parties agree that the Stormwater Improvements have been completed by the City. The parties acknowledge that a small portion of the Property ("**Affected Area**") is within the area designated by the Federal Emergency Management Agency (FEMA) maps as the 100-year flood plain, and the Site Plan provides for improvements to remove the Affected Area from such flood plain. The City, as flood plan administrator, agrees to allow the issuance of building permits for the Project and take such steps as may be reasonably necessary to cause the FEMA maps to be revised to remove the Affected

Area from the flood plain after the Site Plan improvements are made and the Affected Area is removed from the flood plain.

B. Developer's Project Work. It is acknowledged by Developer that it owns or controls the Property. The Developer shall be responsible for causing the following construction work or other development related activity ("**Developer Project Work**") to be completed:

1. Construct all improvements in accordance with the Project Plan and Zoning Approvals.

2. Developer represents that Developer shall retain a qualified contractor after a competitive selection process to serve as general contractor for the Project and that such contractor will competitively bid the construction work for the Project, to the extent practicable. Developer shall provide to City reasonable documentation of such competitive bid procedure.

Developer acknowledges and agrees that receipt by the Developer of the Incentive Funding and benefits under the TIF Act, the CID Act and IRB Act is conditioned upon the completion by the Developer of the Developer Project Work in accordance with this Agreement.

**Section 2.05 Plan Approval; Additional Redevelopment District Development Approval** Prior to the execution of this Agreement, the City approved the Site Plans and Zoning Approvals. To the extent the Developer elects to modify the same, Developer shall submit to the City and the City shall review the Site Plans relating to the Project and the related site work, which plans shall be submitted in accordance with the City's generally accepted requirements for the consideration of such plans and must satisfy the requirements set forth in the Zoning Approvals. The City shall diligently review said Site Plans and construction plans to determine if such plans satisfy the Zoning Approvals and building codes and approve same, or provide a written description detailing any portion of the plans which the City has determined to be unacceptable.

**Section 2.06 Insurance** The Developer shall provide and maintain the insurance coverage described in **Exhibit D** relating to the Developer's Project Work and the Property. Developer shall provide to the City verification of coverage as provided in **Exhibit D**.

**Section 2.07 Building, Subdivision Codes; Architect's Report; LEED Qualification** The Developer acknowledges that the contemplated uses and occupancies of the Project shall comply with all federal, state and City building codes (2012 ICC Code), subdivision, zoning, environmental and other developmental regulations and that the Project shall be constructed in compliance with all such codes and regulations. The Property is zoned as a Mixed-Use District (MXD). The adopted Development Policy and Design Guidelines for commercial and residential buildings shall be followed on the Property, and requirements as a result of any SUP/Plat/Rezoning/Plan Review shall be adhered to. Developer shall submit in a form reasonably acceptable to the City a report by a licensed architect describing improvements and features of the Project that qualify for LEED certification, but the Developer shall not be required to obtain any form of LEED certification for the Project.

**Section 2.08 Zoning Approvals and Project Plan** The Developer shall complete the development in accordance with the Zoning Approvals, subject to the requirements of the City's



zoning ordinances, federal law and the laws of the State of Kansas, from time to time amended, this Agreement and the Project Plan, as it may be modified or revised from time to time with approval of the parties.

The Developer shall use good faith efforts to develop the Project expeditiously and in accordance with the projections set forth in the Project Budget and Development Schedule (as each of same may be modified as provided herein).

**Section 2.09 Delay** For the purposes of any of the provisions of this Agreement, neither the City nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage, lack of access to capital due to a national or global recession or financial crisis, destruction by fire or other casualty, strike, shortage of material, unusually adverse weather condition such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration or tornadoes and other events or conditions beyond the reasonable control of the party affected which, in fact, interferes with the ability of such party to discharge its respective obligations hereunder or during any delay thereafter.

**Section 2.10 Modifications** The construction of the development may be modified or revised by the Developer, with the City's and Developer's approval, to provide for other improvements consistent with the Project Plan and the requirements set forth in the Zoning Approvals.

**Section 2.11 Utilities and Fees.** The City hereby agrees that the Developer shall have the right to connect to any and all water lines, sanitary and storm sewer lines over which the City has control and City-owned utility lines constructed in the vicinity of Property subject to compliance with the City's codes and procedures for such connections.

**Section 2.12 Assistance to Developer** The City agrees to use reasonable efforts, without cost to the City, in assisting the Developer, its agents, contractors and subcontractors, with respect to obtaining building permits from the City, and any permits or approvals required from any governmental agency, whenever reasonably requested to do so.

**Section 2.13 Modification of City Municipal Code Provisions Pertaining to Drinking Establishments** To the extent permitted under State law, the City agrees to consider in good faith modifying Municipal Code Section 600.020 (A), or other applicable Municipal Code Sections, such that the Project Area shall be exempt from the prohibition against the sale or serving of alcoholic liquor or cereal malt beverage by a person holding a license or permit from the City whose place of business or other premises are located within two hundred (200) feet of any public or parochial school, college, church, nursing home, library or hospital.

### ARTICLE III

### PROJECT FINANCING



### **Section 3.01 Initial Capital**

A. **Developer Financing.** The Developer intends to finance a portion of the costs of the Project from Developer Financing. Prior to the issuance of any bonds for the Project, the Developer will deliver to the City a signed commitment letter to finance Phase 2 of the Developer Project Work up to the amount of the Private Improvement Costs, less the Incentive Funding, and less any equity contributions made or represented to be made by the Developer (“**Developer Equity**”). The proceeds of the bonds shall not be available to Developer until work is commenced on Phase 2 or Phase 3 of the Project, and shall be available as set forth in **Section 3.04(E)**. Developer shall demonstrate the existence of the Developer Equity to the reasonable satisfaction of the City. The commitment letter shall be in form and content consistent with market lending conditions subject to normal and customary disbursement requirements. Upon receipt of the executed loan commitment, the City will direct its advisors to commence work on the documents related to the issuance of the bonds. Once the loan documents are complete and the lender(s) have certified to the City they are complete and ready for execution, then the City will authorize marketing of the bonds. Prior to or simultaneously with the closing of the bonds, the Developer Financing loan shall be closed and funded to the satisfaction of the City.

Developer shall use commercially reasonable efforts to secure Developer Financing that will enable the Developer to timely implement and complete the Developer Project Work as required in this Agreement. Developer shall keep the City reasonably informed of all matters related to the Developer Financing and/or Developer Equity that occur after the execution of this Agreement.

**Section 3.02 TIF Funding of Approved Eligible Project Costs** The Developer and the City agree to the reimbursement of Approved Eligible Project Costs incurred by or for the Developer (subject to the limitations otherwise set forth in this Agreement) to the extent possible from the Net Bond Proceeds, and, to the extent any such costs are unpaid by the Net Bond Proceeds or Net Bond Proceeds are not available at the time reimbursement of Approved Eligible Project Costs is requested, from Pay-As-You-Go Reimbursement in accordance with this Agreement. Reimbursement shall be made in accordance with the priority set forth in this Agreement. Nothing herein contained shall obligate the City to issue additional bonds or incur debt or expense in the event the Net Bond Proceeds are insufficient to pay or reimburse all Approved Eligible Project Costs.

A. **TIF Term.** The term of the Project Plan shall be for a term ending on the earlier of (i) the payment of all TIF Eligible Project Costs or (ii) the twentieth anniversary of the publication of the ordinance approving the Project Plan (“**TIF Term**”), unless the City takes the appropriate actions required by law to terminate or amend the term. Except as provided in **Section 9.02**, the City shall not, without the consent of Developer, terminate that portion of the Redevelopment District designated for the Property or reduce the TIF Term prior to such time as the Developer has been reimbursed for all TIF Eligible Project Costs incurred or to be incurred by Developer as part of the Project; provided, however, that if all aspects of the Project are completed, the City may then terminate that portion of the Redevelopment District or TIF Term so long as Developer has been fully reimbursed for all TIF Eligible Project Costs incurred, and so long as all TIF Bonds issued as part of the Project Plan are retired.

B. Real Estate Taxes Captured. All Captured Real Estate Taxes generated within the Property as a result of the Project shall be deposited by the City upon receipt in a special fund (the “**TIF Fund**”) for the duration of the TIF Term and utilized to repay in the following order: City TIF District Expenses; TIF Bonds; and any unreimbursed Approved Eligible Project Costs. The specifics of the issuance and repayment of the TIF Bonds, including the disposition of surplus annual proceeds, shall be in accordance with the Bond Documents, to be approved by City ordinance.

C. Sales Taxes Captured. All Captured Sales Taxes generated within the Property as a result of the Project shall be deposited by the City in the TIF Fund for the duration of the TIF Term and utilized to repay, in the following order: City TIF District Expenses; TIF Bonds, and any unreimbursed TIF Eligible Project Costs. The specifics of the issuance and repayment of the TIF Bonds, including the disposition of surplus annual proceeds, shall be in accordance with the Bond Documents, to be approved by City ordinance.

D. TGT Captured. TGT (at a rate not to exceed the lesser of the Transient Guest Tax of the City or 8%) generated within the Property as a result of the Project shall be deposited by the City in the TIF Fund for the duration of the TIF Term and utilized to repay, in the following order: City TIF District Expenses; TIF Bonds, and any unreimbursed TIF Eligible Project Costs up to the TIF Cap.

### **Section 3.03 CID Funding of Approved Eligible Project Costs**

A. CID Term. Developer has requested that the City create a CID that provides for the levying of a CID Sales Tax on all taxable sales occurring within the Property not to exceed one percent (1%) for a term of 22 years (the “**CID Term**”). Except as provided in **Section 9.02**, the City shall not, without the consent of Developer, terminate the CID or reduce the CID Term prior to such time as the Developer has been reimbursed for all CID Eligible Project Costs incurred or to be incurred by Developer as part of the Project; provided, however, that if all aspects of the Project are completed, the City may then terminate the CID or CID Term so long as Developer has been fully reimbursed for all CID Eligible Project Costs incurred, and so long as all CID Bonds issued for such CID are retired.

B. CID Sales Tax Captured. All CID Sales Tax generated within the Property as a result of the Project shall be deposited by the City in a special fund for the duration of the CID Term (the “**CID Fund**”) and utilized solely to repay, in the following order: City CID District Expenses; CID Bonds; and unreimbursed CID Eligible Project Costs. The specifics of the issuance and repayment of the CID Bonds, including the disposition of surplus annual proceeds, shall be in accordance with the Bond Documents, to be approved by City ordinance.

### **Section 3.04 Bond Issuance; Priority of Disbursement of Net Bond Proceeds**

A. Bond Issuance. The parties contemplate one or more issuances of TIF Bonds and/or CID Bonds which are estimated by Developer to generate the Net Bond Proceeds to fund all or a portion of the Approved Eligible Project Costs. The parties agree that the bond schedule attached hereto as **Exhibit C** currently reflects commercially reasonable underwriting practices, including interest rates, debt-service coverage ratios for TIF Bonds and CID Bonds. This bond structure,

which shall be subject to reasonable modifications to account for underwriting standards and market conditions as mutually agreed by the City and Developer, is described on **Exhibit C**.

B. Cooperation. The parties shall reasonably cooperate to achieve bond issuances that will generate the Incentive Funding in a manner and time reasonably sufficient to facilitate completion of the Project. All issuances shall be issued in the City's sole discretion after consultation with its financial consultants and advisors.

C. Conditions Precedent for Bonds.

1. The issuance of the TIF Bonds and CID Bonds shall be conditioned upon:
  - (a) The Developer shall not be in default of this Agreement beyond any applicable cure period.
  - (b) Evidence of Developer Financing and Developer Equity as required by **Section 3.01**.
  - (c) Construction contracts for Developer's Project Work.
  - (d) Evidence of compliance with the requirements of **Section 2.04(B)(2)**.
  - (e) A current Project Budget that demonstrates that all of the Developer's Project Work relating to the applicable phase of the Project can be constructed within the Project Budget (as may be subject to change as provided herein) and in accordance with the Project Plan and Zoning Approvals.
  - (f) Proposed schedule for the completion of the Project (as may be subject to change as provided herein).
  - (g) Timely commencement of construction of Phase 2 or 3.

In addition to the foregoing the Master Funding Agreement must be executed by the parties thereto as conditions to the issuance of the TIF Bonds and CID Bonds.

D. Satisfaction of Conditions. Upon receipt of the information set forth in **Section 3.04(C)**, the City shall within a reasonable time thereafter either:

1. Provide written notice to Developer that **Section 3.04(C)** has not been satisfied; or
2. Provide affirmative notice to Developer that the conditions precedent to its obligations to issue the TIF Bonds and CID Bonds have been met at which time City's commitment to issue the applicable issuance of TIF Bonds or CID Bonds will become irrevocable, subject to satisfactory underwriting and the terms of this Agreement.



E. Distribution of Net Bond Proceeds. Net Bond Proceeds will be held by the bond trustee in a project fund pursuant to the Master Funding Agreement and shall be disbursed in the following order of priority (i) to pay any outstanding Eligible Public Costs; and (ii) then to pay Approved Eligible Project Costs, all in accordance with the Bond Documents; provided, however, that Net Bond Proceeds shall be disbursed pari-passu with the loan portions of Developer Financing, meaning Net Bond Proceeds and the loan portions of Developer Financing will be disbursed in proportion to the percentage of the total sources of funds for the Project that each source represents.

F. City Credit Support. Under no circumstances will the City extend credit support to the financing of the Project, including TIF Bonds, CID Bonds, or IRBs.

**Section 3.05 Certification of Expenditure** In order to receive reimbursement, the Developer shall submit to the City a Certification of Expenditure attesting to the expenditure of qualified Eligible Project Costs in accordance with the procedures outlined in **Section 3.06** below.

**Section 3.06 Procedures for Certification of Expenditures**

A. For Certifications of Expenditures to be made in connection with the Eligible Project Costs:

1. The Developer shall submit to the City a written request in the form attached hereto as **Exhibit E** setting forth the amount for which certification is sought and identification of the Eligible Project Costs with respect thereto and shall certify that it complies with the requirements of **Section 3.04**.

2. The request for Certification of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as reasonably necessary to document appropriate payment pursuant to the Project Plan and this Agreement.

3. City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a request is submitted, to examine the records relating to all Eligible Project Costs to be paid, and to obtain such other information as is reasonably necessary to evaluate compliance with the terms hereof.

4. Subject to the provisions of **Section 3.04(E)**, City shall have 20 calendar days after receipt of any request hereunder to review and respond to any such request by written notice to the Developer. If the submitted documentation demonstrates that: (1) the request relates to Eligible Project Costs that are in compliance with the priority of disbursement set forth in **Section 3.04(E)**, (2) the expense was incurred, and (3) the Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then City shall approve the request and authorize the escrow holder under the Master Funding Agreement to make, or cause to be made, reimbursement within ten (10) days of the certification from the Net Bond Proceeds under the Bond Documents. If City disapproves the request, City shall notify the Developer in writing of the reason for such disapproval within such 20 calendar-day period, and the reason for disapproval must be supported by evidence. Approval of the Developer's requests for reimbursement will not be unreasonably withheld, conditioned or delayed. If City disapproves a portion of a



request, the approved portion of such request shall be paid without delay as provided herein.

B. In the event the request is granted, City shall take such further action as is reasonably necessary to have the Developer reimbursed through the Master Funding Agreement.

**Section 3.07 Right to Inspect** The Developer agrees that, for up to two years after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to the Approved Eligible Project Costs incurred by Developer paid from the Net Bond Proceeds and Pay-As-You-Go Reimbursement (including all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices). The City shall have the right at its own cost and expense to audit (either through employees of the City or a firm engaged by the City) the books and records of the Developer relating to the Approved Eligible Project Costs.

A. The City shall have the right to inspect construction of the Project, however it is understood and agreed by Developer that such inspections and the results thereof shall in no manner be deemed to create a warranty or assurance of any kind, and no third-party (including Developer) may rely on same in any manner. The Developer shall pay any costs or fees of the City related to such inspections as required by City ordinances. The Developer will provide any construction progress reports or inspections required by its lender to the City.

**Section 3.08 Certificates of Completion** Upon completion of the Developer Project Work, the Developer shall submit a report to the City certifying that the Developer Project Work has been completed in accordance with the Project Plan and that it is in compliance with all other provisions of the Agreement.

B. The City may conduct an investigation, and if the City determines that the Project Improvements have been constructed in accordance with the Zoning Approvals, it shall issue to the Developer one or more certificates of occupancy for the Project ("**Certificate of Completion**"). If the City determines that the Developer Project Work has not been completed in accordance with the Project Plan or the Developer is not in compliance with this Agreement, then it shall not issue a Certificate of Completion and shall, within ten (10) business days of such finding, specify in writing to Developer the reasons for withholding its certification. At Developer's request, the City shall, within forty-five (45) days of Developer's request, hold a special hearing at which Developer may present additional evidence of compliance or seek further clarification of the City's finding of non-compliance. The City shall conduct any further investigation in order to issue its Certificate of Completion within ten (10) business days of Developer's request. The Certificate of Completion shall be issued by the City in such form as to allow the Certificate to be recorded in the office of the Register of Deed of Johnson County, Kansas.

**Section 3.09 Pay As You Go Reimbursement** Until such time as the TIF Bonds and CID Bonds are issued, or in the event that market conditions restrict the ability of the City to issue the TIF Bonds or CID Bonds pursuant to the specifications set forth herein, the parties shall institute Pay-As-You-Go Reimbursement for Approved Eligible Project Costs in accordance with

applicable law and subject to the terms of this Agreement. To the extent a bond issuance is required by law to institute such Pay-As-You-Go Reimbursement, the City shall issue private placement bonds which will be purchased by the Developer.

**Section 3.10 Limitation on Reimbursement from Net Bond Proceeds** The City and the Developer covenant and agree:

A. No costs other than Approved Eligible Project Costs shall be reimbursed from the Net Bond Proceeds.

B. No otherwise Eligible Project Costs related to travel, entertainment or meals shall be reimbursed from the Net Bond Proceeds unless otherwise approved in advance in writing by the City.

C. Except for (i) real estate commissions and administrative costs directly related to the Project that might be paid to Cameron Group, LLC and (ii) insurance payments to an affiliate of the Developer, no otherwise Eligible Project Costs paid to third-parties in which the Developer and its principals have an ownership interest will be eligible for reimbursement.

**Section 3.11 Interim Construction Financing – Issuance of Industrial Revenue Bonds (IRB) – Sales Tax Exemption for Construction Materials** Developer may make application to the City, at Developer's sole cost and expense, for the issuance by the City of private placement taxable IRBs for the sole purpose of qualifying for a sales tax Project Exemption Certificate pursuant to K.S.A. 79-3606(b). If approved by the City the IRBs will be purchased by the Developer or its lender. The term of the IRBs will not exceed five years. If approved, City shall cooperate with Developer in securing the sales tax Project Exemption Certificate.

**Section 3.12 City Consideration of Future Financing or Zoning Applications** Developer acknowledges and agrees that any future applications for effectuation of the terms and requirements of this Agreement or planning and zoning for the Project are subject to the approval by the City's Governing Body, after notice and public hearing, in accordance with applicable state or local law. Upon proper submittal to the City, the City agrees to schedule any such applications for consideration within the minimum time frame allowed by applicable Kansas law (subject to the City's published meeting schedule).

**Section 3.13 Failure to Approve Project Plan and/or IRB Financing** In the event the City fails to approve the Project Plan or IRB application, after the Project Plan or IRB application has been submitted by Developer and meets all requirements of the applicable statutes, City code and City policies, and provided Developer is not in default hereunder, the City and Developer agree that this Agreement will terminate and both parties shall be released from all their respective rights and obligations under this Agreement.

**Section 3.14 Drainage and Benefit District** Developer acknowledges that the Stormwater Improvements have been completed and the costs thereof have been certified for reimbursement through (i) segregated property tax revenues in the Rock Creek Storm Drainage District #1 which includes only the Property (the "**Drainage District**"), and (ii) by special assessments against the Property imposed pursuant to the Special Assessment Storm Water District that includes the Property (the "**Assessment District**"). Developer agrees to execute all documents

reasonably necessary to facilitate the Drainage District and Assessment District, and shall not challenge or oppose same or the mill levies or special assessments within the Drainage District, directly or indirectly.

B. As additional consideration for Developer to enter into this Agreement, City hereby acknowledges that Developer would not execute this Agreement absent the following covenant: City covenants and agrees that no additional special benefit districts for the repayment of the City Project Work will be formed that include the Project Area. The City hereby acknowledges that upon the repayment of all costs levied via the Assessment District (in the approximate amount of Twelve Million Dollars (\$12,000,000)), the City shall take all necessary actions to terminate the Assessment District. This Section shall survive the termination of this Agreement.

#### ARTICLE IV

#### DEVELOPER OF RECORD

**Section 4.01 Developer Designation** Developer currently owns all land within the Property and intends to develop the Project in a manner consistent with the Zoning Approvals and Project Plan for the purposes of carrying out that intent. Developer is hereby designated the exclusive Developer of Record of the Property for a period of 5 years from the date of publication of the Ordinance adopting the Project Plan; provided, however, any amounts spent by Developer during such 5-year period shall be reimbursable beyond such 5-year period.

#### ARTICLE V

#### REAL ESTATE TAXES

**Section 5.01 Agreement to Pay Taxes** The Developer agrees that to the extent it is obligated to pay any portion of the real estate tax bills for the Property it shall pay such taxes and assessments promptly on or before the due date of such tax bills. Failure to timely pay such real estate tax bills shall be an event of default under Section 9.01 below. Provided, however, that Developer or its successors shall have the right to pay said taxes under protest in accordance with applicable law. In addition to other remedies for default, City reserves the right to withhold Pay As You Go reimbursements and the proceeds of CID Bonds and/or TIF Bonds from Developer for such time as real estate taxes and assessments levied against the Property are delinquent. Developer acknowledges that the real estate tax and assessments on the Property are currently delinquent. Developer agrees to pay such delinquency within ten (10) days after obtaining Developer Financing for Phase 1 of the Project and further agrees that, in all events, permits to commence construction of Phase 1 of the Project will be withheld by the City until such delinquency is satisfied.

**Section 5.02 Notice of Protest** The Developer shall promptly notify the City in writing within ten (10) days of the filing of any protest of real estate taxes or valuation of any portion of the Property owned or controlled by the Developer by the County Assessor.

#### ARTICLE VI

#### OTHER DEVELOPER COVENANTS



**Section 6.01 Maintenance and Repair** At all times during the term of this Agreement, the Developer shall maintain in good repair and condition the Property and the buildings and improvements therein owned or controlled by it from time to time.

**Section 6.02 Local, State and Federal Laws.** The Developer and City shall carry out the provisions of this Agreement in conformity with all applicable local, state and federal laws and regulations.

## ARTICLE VII

### ASSIGNMENT, SALES, LEASING, & MANAGEMENT

#### **Section 7.01 Sale or Disposition of Property within Redevelopment District**

A. **Control of Uses.** Within the categories of land uses approved with the zoning and preliminary and final development plans, as those approvals may be amended from time-to-time, Developer shall have complete and exclusive control over sales and/or leasing of the property which it owns within the Property, including, without limitation, the fixing of rentals and the selection or rejection of tenants.

B. **Sale or Lease.** Subject to **Section 7.01(C)**, the Developer may sell, transfer, convey, lease or otherwise dispose of real property owned by Developer within the Property, so long as said sale, transfer, conveyance, lease or disposition does not materially affect the repayment of the TIF Bonds and/or CID Bonds. From and after the date of this Agreement, the Developer shall notify the City in writing of any sale, lease or other disposition of any or all of the real property in the Property. Provided, however, that Developer may not subdivide the Property without the approval of City, which approval is in addition to the provisions of the ordinances of the City setting forth requirements for the subdividing of land. Said approval shall not be unreasonably withheld, delayed or conditioned, however may be withheld if such subdivision materially affects the repayment of the TIF Bonds and/or CID bonds.

C. **Transfer of Obligations.** This Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by the Developer except upon terms and conditions acceptable to the City. Any proposed assignee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations of the Developer, and, if the proposed transfer relates to a portion of any Redevelopment District on which Project Improvements are underway, such obligations to the extent that they relate to such ongoing work. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of any Redevelopment District, such obligations, conditions and restrictions to the extent that they relate to such portion). In the event this Agreement is assigned in whole or part, the Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. Notwithstanding the foregoing, Developer may, without the prior written consent of City, assign its rights under this Agreement to any Related Entity, provided that (i) prior to such assignment Developer furnishes the City with the name of any such Related Entity, together with



a certification of Developer, and such other proof as the City may reasonably request, that such assignee is a Related Entity of Developer and continues to remain such during the term of this Agreement and (ii) demonstrates to the City that it has the ability to perform all obligations of Developer under this Agreement. The City will have the right, at any reasonable time, to examine such books and records of Developer and Related Entity as may be necessary to establish that such assignee remains a Related Entity of Developer. For the purposes hereof, "control" will mean the power to direct or cause the direction of the management or policies of such corporation or entity..

D. Assumptions of Obligations. The Developer's undertaking pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties, as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of the Property, nor any purchaser of individual residential units, shall be bound by any obligation of Developer solely by virtue of being a tenant, provided, however, that no transferee or owner of property within the Property except the City and Developer shall be entitled to any rights whatsoever under this Agreement, except as specifically authorized in writing by the Developer and City.

E. Time of Performance for City's Approval Rights. Any approval rights of the City under this Article VII must be exercised in the form of a written authorization or rejection within thirty (30) days of receipt of written notice from the Developer.

**Section 7.02 Partial Assignment of Reimbursement Rights** At the Developer's sole discretion, Developer may assign a limited right of reimbursement for Approved Eligible Project Costs ("**Reimbursement Assignment**") to tenants, successors in interest, a Related Entity, creditors or subsequent landowners within the Property ("**Reimbursement Assignees**").

B. All Reimbursement Assignments shall be made in the following manner:

1. An Assignment Agreement (the "**Assignment Agreement**") shall be in form and content reasonably acceptable to the City.

2. The Assignment Agreement shall contain instructions to the Trustee or the City regarding the type of Approved Eligible Project Costs that the Reimbursement Assignee is entitled to, the timing and sequencing of the reimbursement as it relates to the timing and sequencing of reimbursements due to the Developer, and the amount of the reimbursement being granted to the Reimbursement Assignee.

3. To be valid, the Assignment Agreement shall be signed by:

(a) The City who shall execute the Assignment Agreement at the direction of the Developer;

(b) The Developer; and

(c) The Reimbursement Assignee who shall agree to be bound by the terms of this Agreement as it relates to reimbursements of Approved

Eligible Project Costs and specifically the provisions of Article III herein.

Once a valid Assignment Agreement is executed, the City and the Developer shall take such further steps as may be reasonably necessary to comply with the intent of this Section. Nothing herein shall relieve Developer from its obligations under this Agreement.

**Section 7.03 Related Entity** Notwithstanding anything else contained in this Agreement, Developer shall have the right, without the consent of the City, to (a) transfer the property in the Property to a Related Entity or cause the property in the Property to be acquired by a Related Entity, and (b) to contribute to or transfer to such Related Entity any proceeds for reimbursement received by Developer as a result of expenditures made by either Developer or the Related Entity, provided that (i) prior to such assignment Developer furnishes the City with the name of any such Related Entity, together with a certification of Developer, and such other proof as the City may reasonably request, that such assignee is a Related Entity of Developer and continues to remain such during the term of this Agreement, and (ii) such Related Entity assumes or otherwise guarantees the obligations of the Developer hereunder, and (iii) such transfer is subject and subordinate to all obligations of Developer under this Agreement. The City will have the right, at any reasonable time, to examine such books and records of Developer and Related Entity as may be necessary to establish that such transferee remains a Related Entity of Developer.

## ARTICLE VIII

### AUTHORITY

**Section 8.01 Actions** The City represents and warrants that upon proper application of the Developer it has taken, or will take, such action(s) as may be required and necessary to process the amendments, variations, and special use approvals relating to its zoning ordinances and its other ordinances, codes and regulations, as may be necessary or proper in order to insure the development of the Property in accordance with the Zoning Approvals and to enable the City to execute this Agreement and to carry out fully and perform the terms, covenants, agreements, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

**Section 8.02 Powers** The City hereby represents and warrants that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

**Section 8.03 Authorized Parties** Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreement, request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by the Developer Representative; and any person shall be

authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither party hereto shall have any complaint against the other as a result of any such action taken.

**Section 8.04 Representations of the Developer** Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

A. Due Authority. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. To Developer's actual knowledge following reasonable inquiry, the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any material agreement or instrument to which it is now a party, and do not constitute a default under any of the foregoing.

C. No Litigation. Except for pending and threatened litigation regarding, or arising out of, the alleged termination of leases by the Developer for space in the former Mission Mall and fee disputes with third party consultants, real estate brokers, real estate agents, or contractors, no litigation, proceedings or investigations are pending or, to the actual knowledge of the Developer, threatened against the Developer (or any member of the Developer) or the Project or the Fourth Amended TIF Redevelopment Project Plan. In addition, no litigation, proceedings or investigations are pending or, to the actual knowledge of the Developer (including the actual knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer (or any member of the Developer) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer (or any member of the Developer) of, the terms and provisions of this Agreement.

D. No Material Change. (i) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for or arising out of or relating to the transactions contemplated by this Agreement, and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

E. Governmental or Corporate Consents. To Developer's actual knowledge after reasonable inquiry, no consent or approval is required to be obtained from, and no action need be



taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement except as contemplated herein and except for City approvals pursuant to this Agreement and except for local, state and federal approvals in connection with the Project and public improvements to be performed by the City.

F. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

G. Approvals. The Developer has or intends to obtain with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to complete the Developer Project Work. The Developer has no reason to believe that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will not be obtained in due course.

H. Compliance with Laws. To Developer's actual knowledge after reasonable inquiry, the Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

I. Developer Financing. The Developer warrants and represents to the City that, to the best of its present knowledge and belief, the Developer Financing will enable the Developer to timely implement the Developer Project Work as required in this Agreement. The financial statements of the Developer and members of the Developer furnished to the City or its consultants present fairly and accurately the financial position of such entities or persons as of the dates indicated. There has been no material adverse change in the financial position of such entities or persons since the date of such financial information. The Developer understands and agrees that the City has relied upon the financial capacity of the Developer and its members in its decision to enter into this Agreement.

J. Other Disclosures. The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

## ARTICLE IX

### EVENTS OF DEFAULT

**Section 9.01 Events of Default** The following events shall constitute an Event of Default under this Agreement:

A. The Developer shall fail to meet the Development Schedule.



B. The Developer shall fail to obtain and maintain the Developer Financing.

C. The failure of the Developer to maintain or cause to be maintained the insurance required by **Section 2.06** hereof; and continuance of such failure for a period of thirty (30) business days after there has been given to the Developer by the City a written notice of such failure.

D. Failure by the Developer to observe and perform any other covenant, condition or agreement on the part of the Developer under this Agreement, including failure to perform the Developer Project Work in substantial accordance with the Development Schedule, for a period of 60 days after written notice of such default has been given to the Developer by the City during which time such default is neither cured by the Developer nor waived in writing by the City. If the failure stated in the notice cannot be corrected within the applicable period, so long as corrective action is instituted within the applicable period and diligently pursued to completion, there shall be no default.

E. Failure by City to observe and perform any covenant, condition or agreement under this Agreement, for a period of 30 days, to the extent such nonperformance relates to: (i) the payment of any sums to the Developer or the trustee of the Project fund under the Master Funding Agreement or (2) any administrative approvals related to the Site Plans, the Zoning Approvals, any related permits, or any amendment thereto, after written notice of such default has been given to the City by the Developer during which time such default is neither cured by the City nor waived in writing by the Developer. If the failure stated in the notice cannot be corrected within the applicable period, so long as corrective action is instituted within the applicable period and diligently pursued to completion, there shall be no default. Notwithstanding the foregoing, the Development Schedule shall be extended by a time equal to any nonperformance by the City occurring under this Section.

F. Failure by City to observe and perform any covenant, condition or agreement under this Agreement, including failure to perform the City Project Work in a time and manner necessary to facilitate the Development Schedule, for a period of 60 days after written notice of such default has been given to the City by the Developer during which time such default is neither cured by the City nor waived in writing by the Developer. If the failure stated in the notice cannot be corrected within the applicable period, so long as corrective action is instituted within the applicable period and diligently pursued to completion, there shall be no default. Notwithstanding the foregoing, the Development Schedule shall be extended by a time equal to any nonperformance by the City occurring under this Section.

G. The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Developer, or adjudging the Developer a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, adjustment or composition of or in respect of the Developer under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of or for the Developer or any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days, or evidence of means of alternative financing is not otherwise provided by the Developer to the City.

H. The commencement by the Developer, or any member of the Developer of a voluntary case, of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the Developer, any member of the Developer of bankruptcy or insolvency proceedings against it, or the filing by any of them of a petition or answer or consent seeking reorganization, arrangement or relief under the United States Bankruptcy Code or any other applicable federal or state law, or the consent or acquiescence by it to the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Developer or any member of the Developer or any substantial part of their property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability or its failure to pay its debts generally as they become due, or the taking of corporate action by the Developer or any member of the Developer of any such action.

**Section 9.02 Remedies on Developer's Default** Whenever any Event of Default by Developer shall have occurred and be continuing, subject to applicable cure periods, the City may take any one or more of the following remedial steps:

- A. Refuse to approve any further disbursements or reimbursements until such event of default is cured.
- B. Terminate this Agreement.
- C. Pursue any remedy at law or in equity.

Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement or the Project. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred for any action arising from this Agreement or the Project. Further, specific performance shall not be available to the City to require the Developer to perform the Developer Project Work except to the extent Developer has received Incentive Funding to be utilized for a specific component of the Developer Project Work and has not expended such Incentive Funding for that component of the Developer Project Work, in which case specific performance may be utilized to compel Developer to expend the portion of the Incentive Funding for such specific component of the Developer Project Work.

**Section 9.03 Remedies on City Default.** Whenever any Event of Default by City shall have occurred, Developer shall have available to it all remedies at equity and at law. Notwithstanding any other provision of this Agreement to the contrary, in no event shall the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement or the Project. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred for any action arising from this Agreement or the Project. In connection with any Event of Default by the Developer or the City to perform its obligations hereunder, if either party files a lawsuit for the enforcement of the performance or observance of any covenants or agreements on the part of the other party herein contained, the non-prevailing party agrees that it will, on demand thereof, pay to the prevailing party the reasonable fees of such attorneys and such other reasonable expenses so incurred.

## ARTICLE X

### GENERAL PROVISIONS

**Section 10.01 City Responsibility** The City shall be responsible for the publication, mailing or delivery of such notices of public hearings or amendments thereto, and shall conduct public hearings as required by state statutes, and shall, if the requisite votes are received, pass such ordinances, to include a TIF and/or CID administrative fee, necessary to legally create and carry out the Project Plan and any future amendments.

**Section 10.02 City Expenses** **City TIF District Expenses:** The City shall be reimbursed by Developer for its actual reasonable out-of-pocket expenses incurred in approving the Project Plan and this Agreement, including but not limited to the fees and costs of its financial consultants, construction oversight fees, engineers, bond counsel and attorneys (the “**City TIF District Expenses**”). Said reimbursements to the City shall be deemed Eligible Public Costs. City TIF District Expenses shall, to the maximum extent permitted by law, be reimbursed as costs of issuance of any TIF Bonds.

B. **City CID District Expenses:** The City shall be reimbursed by Developer for its actual reasonable out-of-pocket expenses incurred in approving any CID and this Agreement including but not limited to the fees and costs of its financial consultants, construction oversight fees, engineers, bond counsel and attorneys (the “**City CID District Expenses**”). Said reimbursements to the City shall be deemed Eligible Public Costs. City CID District Expenses shall, to the maximum extent permitted by law, be reimbursed as costs of issuance of any CID Bonds.

C. **Bond Administrative Fees.** The City shall not charge the Developer any bond application or administrative fees related to the Project after the date of this Agreement; provided, however, the Developer shall reimburse the City for all actual expenses incurred in the issuance of IRBs for the Project.

D. **Limitation on Construction Fees.** Developer’s obligation to pay or reimburse the City for any of the following shall not exceed Five Hundred Thousand Dollars (\$500,000) for the entire Project: construction oversight fees, engineering fees, building permit fees, plan review fees, or any out-of-pocket fees or costs related to the design or construction of the Project.

**Section 10.03 Limited Obligations** The IRBs shall not constitute a debt or general obligation of the City, the State or any political subdivision thereof, shall be payable solely from the revenues described in the Bond Documents, and shall not constitute or give rise to or impose upon the City, the State or any political subdivision thereof a pecuniary liability or a charge upon its general credit or taxing powers. Under no circumstances shall the City be obligated to extend credit support to any issuance of TIF Bonds, CID Bonds and/or IRBs.

**Section 10.04 Time of Essence** Time is of the essence of this Agreement.

**Section 10.05 Amendment** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution



of the City approving said amendment, as provided by law, and by the execution of said amendment by the Developer and the City or their successors in interest.

**Section 10.06**      **Liens** The Developer agrees that no mechanics' or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer, contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal there from. The City reserves the right to require Developer to deposit a bond or other form of surety to ensure any mechanic's liens adjudicated valid are timely discharged.

**Indemnity and Release.**

A.      **Developer Indemnity.** The Developer covenants and agrees, at its expense, to pay and to indemnify and save the City and its officials, members, officers, employees and agents harmless from and against all loss, liability, damage or expense arising out of any and all claims, demands, expenses, penalties, fines, taxes of any character or nature whatsoever regardless of by whom imposed, and losses of every conceivable kind, character and nature whatsoever arising from the Developer's Project Work, including, but not limited to, claims for loss or damage to any property or injury to or death of any person, asserted by or on behalf of any person, firm, corporation or governmental authority arising out of or in any way connected with the Developer's Project Work or the Property, or the conditions, occupancy, use, possession, conduct or management of, or any work done in or about the Project by the Developer or its agents. The Developer also covenants and agrees at its expense to pay, and to indemnify and save the City and its officials, members, officers, employees and agents harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them or by the Developer in any action or proceeding brought by reason of any such claim, demand, expense, penalty, fine or tax related to or arising out of the Developer's Project Work. If any action or proceeding subject to the provisions of this **Section 10.07(A)** is brought against the City or its officials, members, directors, officers, employees or agents by reason of any such claim or demand, the Developer, upon notice from the City, covenants to resist and defend such action or proceeding on demand of the City or its officials, members, directors, officers, employees or agents. Notwithstanding the foregoing, neither the City nor its officials, members, directors, officers, employees and agents shall be indemnified against liability for damage arising out of bodily injury to persons or damage to property caused by their own negligent, willful and malicious acts or omissions or negligent, willful and malicious acts or omissions of their own members, directors, officers, employees or agents.

**Section 10.08 Immunity of Officers, Employees and Members of the City** No recourse shall be had for the payment of the principal of or interest on the Project or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future official, officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, members, directors, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.



**Section 10.09 No Other Agreement** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter of Project approval, construction and financing and is a full integration of the agreement of the parties.

**Section 10.10 Assigns and Transfers** This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

**Section 10.11 Severability** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

**Section 10.12 Kansas Law** This Agreement shall be construed in accordance with the laws of the State of Kansas.

**Section 10.13 Notice** All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

Aryeh Realty, LLC  
50 Broadway  
New York, New York 10004  
Attn: Allen Gross

With copy to:

Evan F. Fitts  
Polsinelli  
700 West 47<sup>th</sup> Street, Suite 1000  
Kansas City, MO 64112

To the City:

Mayor  
City of Mission, Kansas  
6090 Woodson  
Mission, KS 66202

With copies to:

Lewis A. Heaven, Jr.  
Spencer Fane LLP  
9401 Indian Creek Parkway, Suite 700  
Overland Park, KS 66210

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 10.14 Counterparts** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 10.15 Recordation of Agreement** The parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Johnson County, Kansas.

**Section 10.16 Consent or Approval** Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

**Section 10.17 Notice of Developer Default to Lender; Lender Right to Cure; Modifications** In the event of any act or omission by Developer which would give City the right to terminate the Agreement, or make any claim against Developer for the payment of money in an amount over \$50,000.00 or for specific performance, City will not make such claim or exercise such right until (i) it has given written notice of such act or omission to (a) Developer; and (b) a Fee Mortgagee (as defined below) as to whom Developer has instructed City in writing to give copies of all of City's notices to Developer; and (ii) Developer or Fee Mortgagee fails to cure such act or omission within thirty (30) days after written notice thereof from City (or if such act or omission cannot be cured within such thirty (30) day period fails to undertake to cure such act or omission within such thirty (30) day period and to diligently pursue to completion such cure or remedy within sixty (60) days as relates to the Developer and seventy (70) days as relates to Fee Mortgagee, or such longer period as may be required if such cure or remedy is not reasonably susceptible to cure within said period. Provided, however, notwithstanding the foregoing, if the default is of such a nature that it cannot be remedied by Fee Mortgagee without possession of the property subject to the Fee Mortgage (defined below), then the default shall be deemed to be remedied if: (a) within thirty (30) days after receiving written notice from the City setting forth the nature of such event of default, or prior thereto, the Fee Mortgagee shall have acquired such property or shall have commenced foreclosure proceedings, (b) the Fee Mortgagee diligently prosecutes any such proceedings to completion, (c) within such thirty (30) day period the Fee Mortgagee shall have fully cured any default in the payment of any monetary obligations owed to the City hereunder, and all non-monetary obligations of Developer under this Agreement which do not require possession of property subject to the Fee Mortgage and shall thereafter continue to perform faithfully all such monetary and non-monetary obligations of Developer under this Agreement which do not require possession of property subject to the Fee Mortgage, and (d) after gaining possession of such property following foreclosure or deed in lieu thereof, the Fee Mortgagee performs all other obligations of Developer hereunder as and when the same become due.

A. Developer (or its Related Entity) shall have the right at any time to subject all or any portion of its fee or leasehold interest in property owned by Developer in the Property, including any residual interest in the building improvements, to one or more mortgages, deeds of

trust or like instruments or to otherwise encumber such fee interest (“**Fee Mortgage**”), provided that Developer forwards to City a written notice setting forth the name and address of the mortgagee, beneficiary or holder (“**Fee Mortgagee**”) of such Fee Mortgage. In addition to the rights of Fee Mortgagee set forth above, the Fee Mortgagee shall be entitled to the benefits set forth in this Section. Subject to **Section 7.02** of this Agreement, Developer (or its Related Entity) shall also have the right to collaterally assign to any Fee Mortgagee as additional collateral for the obligations secured by the Fee Mortgage all of Developer’s rights under this Agreement relating to the property encumbered by the Fee Mortgage.

1. *Modification of Agreement.* Except in the exercise of any remedies under Article 9 which may run in favor of City (but subject to Fee Mortgagee notice and cure rights in this Section), this Agreement shall not be canceled, surrendered, modified or amended in a material manner without the written consent of the Fee Mortgagee under any Fee Mortgage and any such change requiring the consent of the Fee Mortgagee shall not be binding on the Fee Mortgagee without the Fee Mortgagee’s consent, which will not be unreasonably withheld, delayed or conditioned; provided, however, subject to the foregoing, nothing contained herein shall modify or diminish the rights and remedies of the City provided under the terms of this Agreement. An amendment or modification of the Agreement shall only be deemed to be material if such amendment or modification alters the Agreement term or the amount, payment or priority of Net Bond Proceeds or any other amounts payable by Developer or City under this Agreement or materially diminishes any non-monetary obligation of City or materially increases any non-monetary obligation of Developer.

2. *Substitute Performance.* Each Fee Mortgagee under a Fee Mortgage shall, within the 30 day cure period provided herein (subject to such additional cure periods as provided in this Agreement for Fee Mortgagee), have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and City shall accept such performance by any such Fee Mortgagee with the same force and effect as if furnished by Developer.

3. *Special Rights of Fee Mortgagee.* No Fee Mortgagee under a Fee Mortgage shall be required, pursuant to this Section, to continue to proceed to obtain possession of the property, to continue in possession of the property as mortgagee or to continue to prosecute foreclosure proceedings following the cure of such default. Nothing herein shall preclude City from exercising any of its rights or remedies with respect to any other default by Developer during any period of City’s forbearance under this Section, but in such event the Fee Mortgagee shall have all of the rights and protections provided in this Section with respect to such other default. If the Fee Mortgagee, or its nominee, or a receiver or a purchaser at a foreclosure sale shall cure all defaults of Developer hereunder then the defaults of any prior Developer hereunder which are not continuing shall no longer be deemed to be defaults hereunder.

4. *Limitations on Fee Mortgagee’s Liability.* No Fee Mortgagee under a Fee Mortgage shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Fee Mortgagee takes possession of the property

as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the owner of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise. Thereafter, such Fee Mortgagee and its successors and assigns shall each remain personally liable for the obligations of Developer only so long as they are in possession of the fee estate as Fee Mortgagee or the owner of the fee estate under this Agreement. In addition, no Fee Mortgagee or purchaser upon acquiring any portion of Property through foreclosure of a Fee Mortgage, deed in lieu, or in aid thereof, shall be liable or responsible for any liabilities or obligations under this Agreement except to the extent arising or accruing during the Fee Mortgagee's or purchaser's period of ownership and any liabilities of Fee Mortgagee shall be in all events limited to its interest in the property acquired pursuant to foreclosure or deed in lieu of the property acquired.

5. Any Fee Mortgagee or purchaser upon acquiring any portion of the Property through foreclosure of a Fee Mortgage, deed in lieu, or in aid thereof, shall automatically be (i) deemed to have assumed the obligations of the Developer under this Agreement arising or accruing during the Fee Mortgagee's or purchaser's period of ownership, and (ii) deemed to be Developer's assignee and entitled to exercise all rights of the Developer under this Agreement relating to the property acquired by the Fee Mortgagee or such purchaser. Notwithstanding the foregoing, the provisions of Article VII hereof shall govern any proposed further assignment of the Agreement by Fee Mortgagee or such purchaser.

6. Following receipt of written notice from a Fee Mortgagee that Fee Mortgagee is exercising its rights to exercise Developer's rights and assume Developer's obligations under this Agreement pursuant to the Fee Mortgage and/or any other loan document, the City as requested by the Fee Mortgagee shall perform all of its respective obligations under this Agreement to and for the benefit of Fee Mortgagee or such other party as Fee Mortgagee shall direct, and shall recognize Fee Mortgagee's right to exercise all rights of Developer under this Agreement until, and subject to Article VII hereof, the receipt by City of a subsequent notice from Fee Mortgagee directing that performance be directed to another party. Each party who receives a notice from Fee Mortgagee or any other Mortgagee shall be entitled to rely upon such notice and shall not be required to investigate or determine the validity or accuracy of such notice of the validity or enforceability of the assignment. Developer hereby indemnifies and agrees to defend and hold City harmless from and against any and all expenses, loss, claims, damage or liability arising out of such party's compliance with such notice or performance of the obligations under this Agreement made in good faith in reliance on and pursuant to such notice.

**Section 10.18 Term of Agreement.** Except as otherwise provided in **Section 3.13**, this Agreement will become effective upon approval of the Project Plan in accordance with the TIF Act.



IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF MISSION, a Kansas municipal corporation

By: Steve Schowengerdt  
Steve Schowengerdt, Mayor

ATTEST:

By: Martha Sumrall  
Martha Sumrall, City Clerk


ARYEH REALTY, LLC

By: [Signature]  
Title: Authorized Signatory

STATE OF KANSAS        )  
  ) ss.  
COUNTY OF JOHNSON    )

On this 7<sup>th</sup> day of November, 2017, to me personally known, appeared Steve Schowengerdt and Martha Sumrall, who, being by me duly sworn did say that they are the Mayor and City Clerk, respectively, of the City of Mission, a Kansas municipal corporation, and that the seal affixed to the foregoing instrument is the City's seal and that said instrument was signed, sealed and delivered in behalf of said City by authority of its City Council.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
12-29-2020

NILO FANSKA  
Notary Public  
State of Kansas  
My Appt. Expires: 12-29-2020

STATE OF New York )  
 ) ss.  
COUNTY OF Kings )

On this 6th day of November, 2017, to me personally known, appeared Allen Gross, who, being by me duly sworn did say that he is the authorized signatory of ARYEH REALTY, LLC a limited liability company, and that said instrument was signed and delivered in behalf of said limited liability company, and said officer acknowledged said instrument to be the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Aneta Ursu

NOTARY PUBLIC

My Commission Expires:

3-18-21

[SEAL]

ANETA URSU  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01UR6278216  
Qualified In Kings County  
My Commission Expires 03-18-2021

## **EXHIBITS**

- Exhibit A     Legal Description of the Property
- Exhibit B     Project Budget
- Exhibit B-1   Construction Schedule
- Exhibit C     Bond Schedule
- Exhibit D     Insurance Requirements
- Exhibit E     Certification of Expenditures Form



## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

All that part of the West half of Section 9, Township 12 South, Range 25 East, in the City of Mission, Johnson County, Kansas, described as follows:

COMMENCING at the Southwest corner of the Northwest Quarter of Section 9, Township 12 South, Range 25 East; thence North 1 degree 49 minutes 20 seconds West along the West line of the Northwest Quarter of said Section 9 a distance of 349.28 feet (339.15 feet Deed) to a point; thence North 88 degrees 10 minutes 40 seconds East a distance of 1740.63 feet (1742.10 feet Deed) to a point on the East right of way line of Roeland Drive, the POINT OF BEGINNING; thence North 33 degrees 29 minutes 13 seconds West along the East right of way line of Roeland Drive a distance of 358.19 feet to a point on the South right of way line of Johnson Drive; thence North 67 degrees 34 minutes 47 seconds East along the South right of way line of Johnson Drive a distance of 143.70 feet to a point; thence North 68 degrees 09 minutes 28 seconds East along the South right of way line of Johnson Drive a distance of 434.76 feet to a point; thence South 21 degrees 50 minutes 32 seconds East along the South right of way line of Johnson Drive a distance of 1.53 feet to a point; thence North 72 degrees 37 minutes 31 seconds East along the South right of way line of Johnson Drive a distance of 342.82 feet to a point; thence in a Northeasterly direction along the South right of way line of Johnson Drive and along a curve to the right, having a radius of 297.25 feet, through a central angle of 9 degrees 19 minutes 18 seconds, an arc distance of 48.36 feet to a point of compound curvature; thence in a Southeasterly direction along the South right of way line of Johnson Drive and along a curve to the right, having a radius of 106.25 feet, through a central angle of 85 degrees 00 minutes 09 seconds, an arc distance of 157.63 feet to a point of compound curvature, said point also lying on the West right of way line of Roe Avenue; thence in a Southeasterly direction along the West right of way line of Roe Avenue and along a curve to the right, having a radius of 397.25 feet, through a central angle of 9 degrees 59 minutes 48 seconds, an arc distance of 69.31 feet to a point; thence South 3 degrees 03 minutes 14 seconds East along the West right of way line of Roe Avenue a distance of 111.19 feet to a point; thence South 2 degrees 07 minutes 38 seconds East along the West right of way line of Roe Avenue a distance of 200.66 feet to a point on the Northwesterly right of way line of Shawnee Mission Parkway; thence South 1 degree 54 minutes 32 seconds East a distance of 42.62 feet to a point; thence South 37 degrees 23 minutes 58 seconds West a distance of 936.45 feet to a point; thence North 52 degrees 36 minutes 02 seconds West a distance of 44.00 feet to a point on the East right of way line of Roeland Drive; thence in a Northwesterly direction along the East right of way line of Roeland Drive and along a curve to the right, having a radius of 260.50 feet, through a central angle of 53 degrees 32 minutes 02 seconds, an arc distance of 243.40 feet to a point of reverse curvature; thence in a Northwesterly direction along the East right of way line of Roeland Drive and along a curve to the left, having a radius of 490.00 feet, through a central angle of 34 degrees 25 minutes 13 seconds, an arc distance of 294.37 feet to a point; thence North 33 degrees 29 minutes 13 seconds West along the East right of way line of Roeland Drive a distance of 125.55 feet to the POINT OF BEGINNING and containing 721,889 Square Feet or 16.572 Acres, more or less.

**EXHIBIT B**  
**PROJECT BUDGET**

<b><u>Land, Demolition &amp; Predevelopment Costs</u></b>	<b><u>Development Budget</u></b>	<b><u>Approved Eligible Project Costs</u></b>	<b><u>TIF Eligible Project Costs</u></b>	<b><u>CID Eligible Project Costs</u></b>
Property Acquisition	\$7,550,000	\$7,550,000	\$7,550,000	\$7,550,000
Tenant Buyouts and Relocation	\$512,568	\$512,568	\$512,568	\$512,568
Demolition / Earthwork	\$2,534,838	\$2,534,838	\$2,534,838	\$2,534,838
Architectural /Survey / Site Design	\$7,420,005	\$0	\$0	\$0
Engineering	\$2,944,401	\$0	\$0	\$0
Legal	\$1,861,125	\$0	\$0	\$0
Real Estate Taxes	\$1,861,592	\$0	\$0	\$0
Interest on Past Loans	\$5,244,330	\$0	\$0	\$0
Closing Costs /Mortgage Tax on Past Loans	\$1,962,642	\$0	\$0	\$0
Prior Contractor General Conditions / Fees / Other	\$1,285,255	\$0	\$0	\$0
Marketing / Promotions	\$580,009	\$0	\$0	\$0
Miscellaneous 3rd Party Expenses	\$820,238	\$0	\$0	\$0
Developer - General Conditions	\$548,654	\$0	\$0	\$0
Developer - Miscellaneous	\$485,862	\$0	\$0	\$0
Developer - Project Management / Coordination	\$976,641	\$0	\$0	\$0
Developer - Travel / Lodging / Meals	\$461,140	\$0	\$0	\$0
Developer - Meals & Entertainment	\$20,904	\$0	\$0	\$0
Developer - Allocated Overhead	\$651,550	\$0	\$0	\$0
Developer - Other Legacy less Minimum Rents	\$412,329	\$0	\$0	\$0
<b>Total Land Costs</b>	<b>\$38,134,083</b>	<b>\$10,597,406</b>	<b>\$10,597,406</b>	<b>\$10,597,406</b>
<b><u>Site Work, Infrastructure &amp; Parking</u></b>				
Hard Costs - Parking Garage (1,041 Spaces)	\$15,010,155	\$15,010,155	\$15,010,155	\$15,010,155
Sitework	\$7,999,429	\$7,999,429	\$7,999,429	\$7,999,429
Offsite	\$500,000	\$500,000	\$500,000	\$500,000
<b>Total Site Work</b>	<b>\$23,509,584</b>	<b>\$23,509,584</b>	<b>\$23,509,584</b>	<b>\$23,509,584</b>
<b><u>Hard Costs</u></b>				
Hard Costs Retail (Roeland)	\$3,854,490	\$3,854,490	\$0	\$3,854,490
Hard Costs Retail (Johnson)	\$2,066,827	\$2,066,827	\$0	\$2,066,827
Hard Costs Entertainment/Retail	\$32,224,500	\$32,224,500	\$0	\$32,224,500
Hard Costs Hotel (includes Restaurant & Spa)	\$23,745,480	\$23,745,480	\$0	\$23,745,480
Hard Costs Residential	\$22,295,094	\$22,295,094	\$0	\$22,295,094
Hard Costs Office	\$9,750,000	\$9,750,000	\$0	\$9,750,000

Payment & Performance Bonds	\$523,457	\$523,457	\$104,782	\$523,457
Insurance/Builders Risk	\$1,235,477	\$1,235,477	\$247,310	\$1,235,477
General Contractor Fee	\$2,830,020	\$2,830,020	\$566,495	\$2,830,020
Tenant Improvements	\$5,043,180	\$5,043,180	\$0	\$5,043,180
Contingency	\$6,101,746	\$6,101,746	\$1,221,408	\$6,101,746
<b>Total Hard Costs</b>	<b>\$109,670,271</b>	<b>\$109,670,271</b>	<b>\$2,139,995</b>	<b>\$109,670,271</b>

**Soft Costs**

Architecture/Engineering Services	\$3,248,652	\$3,248,652	\$650,294	\$3,248,652
Legal	\$375,000	\$375,000	\$75,065	\$375,000
Platting	\$75,000	\$75,000	\$15,013	\$75,000
Civil Engineer (includes geo-tech and survey)	\$29,000	\$29,000	\$5,805	\$29,000
Testing & Special Inspections	\$200,000	\$200,000	\$40,035	\$200,000
Real Estate Taxes	\$228,000	\$228,000	\$228,000	\$0
Stormwater Assessments	\$3,952,000	\$3,952,000	\$3,952,000	\$0
Residential Marketing and FF&E	\$358,000	\$358,000	\$71,662	\$358,000
Project Branding & Marketing	\$50,000	\$50,000	\$10,009	\$50,000
Farmers Interest	\$504,000	\$504,000	\$100,887	\$504,000
Hotel Pre Opening	\$1,000,000	\$1,000,000	\$0	\$1,000,000
Hotel Supplies	\$400,000	\$400,000	\$0	\$400,000
Hotel FFE	\$3,400,000	\$3,400,000	\$0	\$3,400,000
Hotel Operator Technical Services Fee	\$200,000	\$200,000	\$0	\$200,000
Development Fee	\$4,564,451	\$2,000,000	\$0	\$2,000,000
Project Staffing	\$2,250,000	\$0	\$0	\$0
Residential Staffing	\$150,000	\$150,000	\$0	\$150,000
Permit & Fees	\$796,053	\$796,053	\$159,349	\$796,053
Accounting (Audit, etc.)	\$50,000	\$50,000	\$10,009	\$50,000
Developer Reimbursements	\$300,000	\$0	\$60,052	\$0
Leasing Commissions	\$1,792,817	\$1,792,817	\$0	\$1,792,817
Soft Cost Contingency	\$750,000	\$750,000	\$150,130	\$750,000
<b>Total Soft Costs</b>	<b>\$24,672,973</b>	<b>\$19,558,522</b>	<b>\$5,528,310</b>	<b>\$15,378,522</b>

**Construction Loan Closing Cost**

Mortgage Broker Fee	\$616,821	\$616,821	\$123,488	\$616,821
Bank Fee	\$1,233,642	\$1,233,642	\$246,975	\$1,233,642
Title Insurance	\$925,231	\$925,231	\$185,231	\$925,231
Mortgage Recording Tax	\$185,046	\$185,046	\$37,046	\$185,046
Legal (Owner and Lender)	\$500,000	\$500,000	\$100,100	\$500,000
Construction Monitoring	\$150,000	\$150,000	\$30,030	\$150,000
3rd Parties	\$250,000	\$250,000	\$50,050	\$250,000
<b>Total Construction Loan Closing Cost</b>	<b>\$3,860,740</b>	<b>\$3,860,740</b>	<b>\$772,920</b>	<b>\$3,860,740</b>

**Interest Reserve**

Construction Loan Interest Reserve	\$4,200,000	\$4,200,000	\$840,840	\$4,200,000
Bond Payment Reserve	\$2,399,022	\$2,399,022	\$480,284	\$2,399,022
<b>Total Financing Costs</b>	<b>\$6,599,022</b>	<b>\$6,599,022</b>	<b>\$1,321,124</b>	<b>\$6,599,022</b>

<b>TOTALS:</b>	<b>\$206,446,673</b>	<b>\$173,795,545</b>	<b>\$43,869,339</b>	<b>\$169,615,545</b>
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\*Transient Guest Tax revenues are considered as a part of the TIF Eligible Project costs and may be subject to additional certification criteria.



**EXHIBIT B-1**

**CONSTRUCTION SCHEDULE**

- No later than October 31, 2018 – Commence construction of Phase 1
- No later than April 30, 2020 – Complete construction of Phase 1
- No later than December 31, 2020 – Commence construction of Phase 2 or 3
- No later than December 31, 2022 – Complete construction of Phase 2 or 3

**EXHIBIT C**  
**BOND SCHEDULE**

## EXHIBIT D

### INSURANCE REQUIREMENTS

A. Developer shall procure and maintain, or cause to be procured and maintained, for the duration of the agreement, occurrence form insurance coverages against claims for injuries to persons or damages to property which may arise from or in connection with the project. Any "claims-made" coverage will require coverage for two years after completion of project. The cost of such insurance shall be included in the Developer's costs.

B. Coverages and minimum limits.

1. Commercial General Liability: [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit and products - completed operations aggregate limit. Any general aggregate limit should be at least \$2 million with a per site/project endorsement.

2. Business Auto Coverage: (*Owned and non-owned autos*) \$1,000,000 per occurrence limit.

3. Workers Compensation and Employers Liability: Workers compensation statutory limits as required by the state of Kansas and employer's liability limits of \$100,000/\$500,000. *When workers compensation insurance policy is applicable, waiver of subrogation and "other states" coverage is required.*

4. Builder's Risk. Coverage equal to project values.

5. Professional Liability. Architect/engineer liability of at least \$5,000,000.

6. Excess/umbrella. Minimum limit of \$10,000,000 per occurrence/aggregate, reduced to minimum limit of \$5,000,000 for subcontractors

7. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.

8. Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Developer.

C. Additional Insured. The City, its officials, officers, employees and agents shall be listed as additional insureds as respect to the project. Any other insurance maintained by the city shall be secondary and not contribute with the coverage provided by the Developer.

D. This agreement shall not modify or waive the provisions available to the City contained in the Kansas Tort Claims Act, Chapter 75, Article 61 of the Kansas Statute Annotated.

E. Verification of Coverage.

1. Developer shall furnish the City certificates of insurance accompanied by ISO Form Additional insured endorsements or equivalent evidencing the coverage

required by the City. The endorsements and certificate for each insurance policy are to be executed by a person authorized by the insurer to bind coverage on its behalf.

2. The certificate of insurance must contain a statement that the insurance coverages are provided by Kansas admitted insurance companies. Those not admitted must be approved by City.

3. Any self-insurance or self-insured retentions must be specified on the certificate of insurance with the name, address, and telephone number of the claims office indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above described coverages shall be assumed by and at the sole risk of the Developer.

4. If any of the foregoing insurance coverages are "Claims-Made" form, coverage will be required to remain in force for a minimum of two years after completion of the project. Also, proof of annual renewal of coverages shall be filed with the city during the life of the project or the agreement which ever is longer and then "Claims-Made" forms for two years thereafter.

F. Cancellation. Each insurance policy required shall not be suspended, voided, or canceled; except after thirty (30) days' written notice has been given to the City.

G. Subcontractors. The Developer shall include all subcontractors as additional insureds under its policies or shall furnish to the City Clerk and project manager separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.



**EXHIBIT E**

**CERTIFICATION OF EXPENDITURES FORM**

Request No. \_\_\_\_\_

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

Pursuant to **Section 3.06** of the Third Amended and Restated Redevelopment Agreement for the Gateway Retail District (the "Agreement") between the City of Mission, Kansas and the undersigned (the "Developer"), the Developer requests payment or reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Agreement.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment I** hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the Agreement.
5. Each item listed above has not previously been paid or reimbursed and no part thereof has been included in any other Disbursement Request previously filed with the City.
6. There has not been filed with or served upon the Developer any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request.
7. All work for which payment is now or has heretofore been requested (insofar as such payments relate to the construction, remodeling and renovation portions of the Project) has been performed in accordance with the plans and specifications therefore.
8. Lien waivers for costs for which payment is hereby requested have been received and are attached hereto as **Attachment II** hereto.

ARYEH REALTY, LLC

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

Approved this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

**CITY OF MISSION**

By: \_\_\_\_\_  
City Representative

**ATTACHMENT I  
TO CERTIFICATION OF EXPENDITURE  
REDEVELOPMENT AGREEMENT FOR THE GATEWAY RETAIL DISTRICT**

REQUEST NO. \_\_\_\_\_

DATED \_\_\_\_\_

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**SCHEDULE OF PAYMENTS REQUESTED**

Person, firm or corporation to whom payment is due	Amount to be paid	General classification and description of the costs of issuance for which the Obligation to be paid was incurred <sup>1</sup>
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## MEMORANDUM

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**Date:** October 17, 2017  
**To:** Mayor and City Councilmembers  
**From:** Laura Smith, City Administrator  
**RE:** Mission Gateway Redevelopment Project

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In 2005, The Cameron Group, LLC, a development company from East Syracuse, New York, purchased the Mission Mall property with plans to build a mixed-use development on the site. In 2006, the Planning Commission reviewed and approved the rezoning and preliminary site plan for the redevelopment of the subject property for urban development composed of retail, office, hotel, restaurant, and residential uses (Ordinance #1203). Since the initial "MXD" zoning and preliminary site plan was first approved, more than ten years ago, the project has evolved through several iterations, reflected in revised plans presented to the Planning Commission and the City Council in 2007, 2008, 2012, and 2015.

The subject property is the site of the former Mission Mall and is zoned Planned Mixed Use District "MXD". This district is intended to encourage a variety of land uses in closer proximity to one another than would be possible with more conventional zoning districts, and to encourage building configurations that create a distinctive and memorable sense of place. Developments in this district are allowed and expected to have a mixture of residential, office and retail uses, along with public spaces, entertainment uses and other specialty facilities that are compatible in both character and function. Developments are also expected to utilize shared parking facilities linked to multiple buildings and uses by an attractive and logical pedestrian network that places more emphasis on the quality of the pedestrian experience than is generally found in typical suburban development. Buildings are intended to be primarily multi-story structures with differing uses organized vertically rather than the horizontal separation of uses that commonly results from conventional zoning districts.

The Comprehensive Plan indicates this area is appropriate for Mixed Use High-Density to be composed of a pedestrian friendly mix of neighborhood and community office uses, retail-commercial and service-commercial uses, institutional, civic, and medium to high density Residential.

The preliminary site plan for the current project was approved by the City Council on January 20, 2016 after a public hearing before the Planning Commission in September 2015. Final site plan approval was granted by the Planning Commission in March 2017.





## MEMORANDUM

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Since 2005, the Developer had identified several unique development challenges and added costs which created a project financing gap. As a result, they requested the City consider using a variety of economic development tools to establish a public-private partnership which would be mutually beneficial for both the City and the Developer.

### **Review and Evaluation of Financing Request**

When considering redevelopment projects of this nature, the City employees a team of consultants which includes an independent financial advisor, a land use attorney, and bond counsel to assist the staff in crafting a recommendation which provides for a public-private partnership that balances the needs of both the City and the Developer. Over a series of committee meetings and worksessions in the last several months, we have discussed the developer's request for the use of Tax Increment Financing (TIF), a Community Improvement District (CID), Industrial Revenue Bonds (IRBs) and other public participation tools project as well as clarified the Council's goals and concerns regarding the project.

Bruce Kimmel, of Ehlers, Inc. has provided a detailed memo which is included in the packet and describes not only the decision-making framework, but outlines the key points of the deal which has been negotiated with the Developer and is being recommended for Council Consideration.

As you will see outlined in the memo, the recommendation is for the City and the Developer to share in revenues throughout the entire TIF term - allowing for the entire community to benefit immediately from the project. The revenues coming to the City are new revenues - revenues which would not be available if the project is not built. The City's participation in the project does not take away services or benefits for any current residents or businesses, and provides an opportunity for significant financial benefits (\$40.74 million) over the next 20 years.

During the worksession on Wednesday evening, we will review the financial components of the project in detail, along with the additional terms included in the Redevelopment Agreement which push the Developer to achieve full build out as quickly as possible, and address other concerns voiced by the City Council. Following the worksession, the following items have been placed on the City Council agenda for consideration and action.

### **Ordinance Approving TIF Redevelopment Project Plan**

The City has taken the steps necessary to establish a Redevelopment (TIF) District for the project area. Following creation of the Redevelopment District the developer submitted a Redevelopment Project Plan which outlined:



## MEMORANDUM

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1. A summary of the comprehensive feasibility study prepared in conjunction with the redevelopment project;
2. A reference to the redevelopment district plan that identifies the redevelopment project area that is set forth in the comprehensive plan that is being considered;
3. A description and map of the redevelopment project area to be redeveloped;
4. The relocation assistance plan; and
5. A detailed description of the buildings and facilities proposed to be constructed or improved in such area.

The Planning Commission has reviewed the Redevelopment (TIF) Project Plan and found it to be in conformance with the City's Comprehensive Plan. The City Council held a public hearing on the Redevelopment (TIF) Project Plan at the August 16 City Council meeting, at which time there was a question posed regarding how the revenue projections were determined, with no one speaking specifically in favor or against the use of tax increment financing for the project. The final step in authorizing TIF for the Mission Gateway project is consideration of an ordinance approving the Fourth Amended Redevelopment Project Plan. It requires a two-thirds majority vote (6 of 9, with Mayor voting) of the Governing Body to approve the ordinance. The ordinance was prepared by Gary Anderson of Gilmore & Bell, P.C. the City's Bond Counsel.

### **Ordinance Establishing Gateway Community Improvement District (CID) #3**

Earlier this year, the developer submitted a new CID Petition associated with the current project, which would replace the two existing districts with one. The petition called for the establishment of a single district, encompassing the entire site which would levy an additional 1.00% CID sales tax effective January 1, 2019. The City Council held a public hearing on the CID Petition for Gateway CID #3 on August 16.

The final step in creating the Gateway CID #3 is consideration of an ordinance establishing the District. A simple majority vote of the City Council is required to pass the ordinance. The ordinance was prepared by Gary Anderson, the City's Bond Counsel

### **Resolution of Intent to Issue Industrial Revenue Bonds (IRBs) for Sales Tax Exemption**

The Developer has asked the City to consider issuing IRBs to finance the costs of acquiring, constructing, and equipping multiple facilities for the benefit of the project. This tool provides the developer with a sales tax exemption on the purchase of these items. The City has used IRBs in connection with a number of other projects including Mission Square, Welstone, and most recently with the Mission Trails apartment project approved for 6201 Johnson Drive.



## MEMORANDUM

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The IRBs are special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement. Pursuant to terms included in the Redevelopment Agreement, the developer agrees to purchase the bonds. The bonds are not a general obligation of the City, and are not backed by the full faith and credit of the City. The bonds are not payable in any manner by taxation, but shall be payable solely from the funds provided for in the Indenture. The Resolution was prepared by Gary Anderson of Gilmore & Bell, P.C. the City's Bond Counsel.

In order to approve this transaction, the City Council will consider a Resolution establishing the intent and authority of the City to issue Industrial Revenue Bonds (IRBs) in one or more series in an aggregate principal amount not to exceed \$214 million. The final amount will be lower, and will be established at the time the bonds are issued. A simple majority vote is required to approve this Resolution.

### **Ordinance Approving the Redevelopment Agreement and Terminating Gateway CID District's #1 and #2**

The Redevelopment Agreement is the document used to capture and control the terms of the "deal" as agreed to by the City and the developer. It addresses, among other things, the project budget, the project schedule, the obligations of the developer and the City, the process for certifying and reimbursing TIF and CID eligible expenses, requirements for transfer or sale of the property, and events of default and remedies.

The Redevelopment Agreement was prepared by Pete Heaven, the City's land use attorney. The enclosed Third Amended and Restated Redevelopment Agreement has undergone significant review and the terms presented represent those recommended by the City and agreed to by the Developer.

The ordinance presented would not only approve the Third Amended and Restated Redevelopment Agreement, but would terminate the existing Community Improvement District's (Gateway CID's #1 and #2) which currently exist on the project site. The ordinance may be adopted by a simple majority vote of the City Council.

### **Summary**

Although agreements had been negotiated and approved for previous Gateway projects, we approached this project with a fresh set of eyes - challenging assumptions, evaluating costs,



## MEMORANDUM

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and vetting all information provided by the Developer. After months of review and analysis, the staff and the City's consultant team are pleased to present this recommended partnership with the Gateway developer to bring a unique and exciting project to the City of Mission.

All members of the City's consultant team will be present to review and answer questions regarding any of the documents and/or actions anticipated to finalize the Mission Gateway Project. Please feel free to contact any member of the City team with questions or comments regarding the project or the process.





# Memo

**To:** City of Mission, Kansas  
**From:** Bruce Kimmel, Senior Municipal Advisor  
**Date:** October 16, 2017  
**Subject:** **Recommended Mission Gateway Agreement**

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Representatives of the City of Mission and the Gateway Developer (Aryeh Realty, LLC) have negotiated the primary terms of the “Third Amended and Restated Redevelopment Agreement for the Mission Gateway Project.” This memo summarizes the key deal points of the proposed Redevelopment Agreement, and addresses various points of discussion which have occurred over the last several months.

## Developer Request

The Developer originally requested that the City allow the project to capture 100% of all revenues associated with the project including:

- Property tax increment
- City general sales taxes (1% rate)
- City transient guest taxes (9% rate)
- Supplemental CID sales tax (1%)

The revenues would first be used to support a pay-as-you-go agreement on the “Phase 1” apartment and small retail portion of the project, and then to repay Special Obligation TIF and CID Bonds covering Phase 1 plus the Phase 2 and 3 parking structure, hotels, large retail, and office components. And finally, the Developer requested to receive all TIF and CID “tails” – the surplus revenues after the bonds were paid in full – on a pay-go basis during the estimated remaining 6-8 years of the 20-year TIF and 22-year CID terms.

## Financial Analysis and Evaluation

The City took a different approach to its prospective participation in the project. First, we delved into the Gateway development budget and operating proforma, TIF and CID projections, and underlying assumptions, to evaluate the project’s financial need for City assistance and the causes thereof.

Next we considered, from the City’s perspective, the relative value of each requested financial tool, and our need for upfront and ongoing financial benefits that it could use to

[www.ehlers-inc.com](http://www.ehlers-inc.com)

fund City services and perhaps also infrastructure improvements, versus waiting for the project's tail surpluses and/or full City revenues following the 20-year TIF term.

With these considerations in mind, the City determined the following:

- The Developer demonstrated a legitimate need for City participation for the project to be financially viable, and even with its full TIF and CID request, the Developer's prospective return on investment was not excessive.
- That said, the Gateway would also be viable and achieve a reasonable return without the benefit of the Developer's full TIF and CID request.
- Sales and transient guest taxes hold more future value for the City than does its relatively small share of property tax increment, and the CID holds little value due to restrictions on how these revenues may be spent.
- The City will benefit more from retaining a portion of the incremental new sales and transient guest taxes during the entire 20-year TIF term than it would from collecting a larger portion of TIF tails in years 14 through 20.
- Allocating fixed percentages of the sales and transient guest taxes to the project TIF over 20 years will give the Developer an incentive to complete and open the Gateway promptly, and to work with the City to make the SO Bond issuances as efficient as possible – so that the Developer may then receive a larger amount of tail reimbursements for remaining eligible costs.

Accordingly, the City negotiated the following key deal points which are included in the proposed Redevelopment Agreement:

- The project will receive 100% of a 1% CID fee over the maximum 22-year term starting 2019 and ending 2040, pledged to a Phase 1 pay-go note, then to SO Bonds, and finally to tails, all to fund / reimburse CID-eligible expenses.
- The project will receive 100% of the Gateway project area's property TIF over the maximum 20-year term starting 2019 and ending 2038, pledged in the same manner as above and to fund / reimburse TIF-eligible expenses.
- The project will receive 55% of the City general sales tax collections within the Gateway project area over the 20-year TIF term starting 2019 and ending 2038. This allocation reflects the "TIF capture" of 0.55% of the City's 1% general sales tax rate, with the City retaining revenues generated from the remaining 0.45% portion over the entire TIF term.
- The project will receive 89% of the City transient guest tax collections within the Gateway project area over the 20-year TIF term starting 2019 and ending 2038. This allocation reflects the "TIF capture" of 8% of the City's 9% transient guest tax rate, with the City retaining revenues generated from the remaining 1% portion over the entire TIF term.

- The Industrial Revenue Bond (IRB)-driven sales tax exemption on Gateway construction materials, as discussed previously.

The City’s retention of 45% and 11%, respectively, of Gateway-derived general sales and transient guest taxes during the TIF term – is estimated to generate \$545,000 of City revenue in 2021, the first full year of Gateway sales activity. These new taxes are in addition to the following City revenue elements, as estimated in the table below:

- Property taxes generated from the TIF project area’s “base value”;
- Business license and franchise fees (likely higher than shown here);
- City allotment of Johnson County sales tax;
- Stormwater assessments (approximately \$600,000 annually) through 2034;
- Stormwater utility fees;
- 0.25% street sales tax, expiring 2022 unless extended by voters; and
- 0.375% parks sales tax, expiring 2023 unless extended by voters;

In all, City revenues generated from the Gateway are estimated to total \$1.93 million in 2021. In addition to the repayment of the stormwater debt, a focus on providing significant revenue streams annually throughout the life of the project was a top priority for the Council, staff and consultant team.

YEAR	Base Property Taxes	Business License and Franchise Fees	City Portion of County Sales Tax (Variable)	Stormwater Special Assessment	Stormwater Utility Fees	.25% Street Sales Tax (Sunsets 2022)	.375% Park Sales Tax (Sunsets 2023)	45% Sales Tax	1% Transient Guest Tax	Total City Revenues
2018	\$0	\$0	\$0	\$1,498,988	\$78,288	\$0	\$0	\$0	\$0	\$1,577,276
2019	\$46,487	\$0	\$1,887	\$599,595	\$78,288	\$43,842	\$65,763	\$78,916	\$0	\$914,780
2020	\$46,487	\$10,200	\$7,967	\$599,595	\$78,288	\$185,071	\$277,607	\$333,128	\$28,919	\$1,567,264
2021 - Full STIF	\$46,487	\$10,200	\$10,933	\$599,595	\$78,288	\$253,954	\$380,931	\$457,117	\$87,633	\$1,925,139
2022 - Full PTIF	\$46,487	\$10,200	\$11,161	\$599,595	\$78,288	\$259,252	\$388,878	\$466,654	\$90,262	\$1,950,778
2023	\$46,487	\$10,200	\$11,394	\$599,595	\$78,288	\$264,663	\$396,994	\$476,393	\$92,970	\$1,976,985
2024	\$46,487	\$10,200	\$11,632	\$599,595	\$78,288	\$270,189	\$405,283	\$486,340	\$95,759	\$2,003,772
2025	\$46,487	\$10,200	\$11,874	\$599,595	\$78,288	\$275,832	\$413,748	\$496,497	\$98,632	\$2,031,154
2026	\$46,487	\$10,200	\$12,123	\$599,595	\$78,288	\$281,595	\$422,393	\$506,871	\$101,591	\$2,059,143
2027	\$46,487	\$10,200	\$12,376	\$599,595	\$78,288	\$287,481	\$431,221	\$517,466	\$104,639	\$2,087,753
2028	\$46,487	\$10,200	\$12,635	\$599,595	\$78,288	\$293,492	\$440,238	\$528,286	\$107,778	\$2,116,999
2029	\$46,487	\$10,200	\$12,899	\$599,595	\$78,288	\$299,631	\$449,447	\$539,336	\$111,011	\$2,146,896
2030	\$46,487	\$10,200	\$13,169	\$599,595	\$78,288	\$305,902	\$458,852	\$550,623	\$114,342	\$2,177,458
2031	\$46,487	\$10,200	\$13,445	\$599,595	\$78,288	\$312,305	\$468,458	\$562,150	\$117,772	\$2,208,700
2032	\$46,487	\$10,200	\$13,726	\$599,595	\$78,288	\$318,846	\$478,269	\$573,923	\$121,305	\$2,240,639
2033	\$46,487	\$10,200	\$14,014	\$599,595	\$78,288	\$325,526	\$488,289	\$585,947	\$124,944	\$2,273,291
2034	\$46,487	\$10,200	\$14,307	\$599,595	\$78,288	\$332,349	\$498,524	\$598,228	\$128,692	\$2,306,671
2035	\$46,487	\$10,200	\$14,607		\$78,288	\$339,318	\$508,977	\$610,772	\$132,553	\$1,741,203
2036	\$46,487	\$10,200	\$14,914		\$78,288	\$346,435	\$519,653	\$623,584	\$136,530	\$1,776,092
2037	\$46,487	\$10,200	\$15,227		\$78,288	\$353,706	\$530,558	\$636,670	\$140,626	\$1,811,762
2038	\$46,487	\$10,200	\$15,547		\$78,288	\$361,131	\$541,697	\$650,036	\$144,845	\$1,848,231
	\$929,749	\$193,800	\$245,836	\$11,092,508	\$1,644,048	\$5,710,521	\$8,565,781	\$10,278,937	\$2,080,804	\$40,741,984

Of the estimated annual revenues, it should be noted that the special (dedicated) sales tax revenues comprise 1/3 (\$635,000) of this total, foreshadowing the importance of future reauthorization decisions. Assuming continued voter approval of existing

dedicated sales taxes, total City revenues total during the 20-year TIF term are estimated at \$40.74 million. Without renewal of the special (dedicated) sales taxes, the total City revenues during this same period could be expected to generate approximately \$28.72 million.

To achieve an apples-to-apples comparison of the City’s prospective tax and fee benefits, as detailed above, to the Developer’s proposed TIF and CID benefits, it makes sense to convert each party’s revenue streams into present values. For example, the present value of the City’s \$40.74 million revenue total is \$29.5 million. On the Developer’s side, the present value can be estimated as follows:

TIF and CID Bond Proceeds	\$28.15 million
Surplus tails	<u>\$ 8.40 million</u>
Total present value to Developer	\$36.60 million

This present value equals 21% of the project’s estimated \$173 million approved eligible development costs, and 18% of the total project budget. Exhibit B to the Third Amended and Restated Redevelopment Agreement illustrates the project budget and the costs which the City has determined to be eligible for consideration as a part of the public-private partnership.

City staff and consultants believe the TIF and CID deal terms described above balances the Developer’s need for a financially viable project with the City’s need for ongoing and diversified fiscal benefits from the development – both to fund future City operations and priorities, but also in recognition of stormwater and other costs that the City has incurred and carried from the inception of this redevelopment in 2006.

#### Other Considerations

In addition to the financial participation outlined above, the proposed Redevelopment Agreement contains several provisions to mitigate the City’s risks and concerns related to this project. These include:

- All current and delinquent real estate taxes and special assessments must be brought current when Phase I of the project is financed.
- In the future, any failure to pay property taxes or assessments on time will be an event of default that the Developer must remedy promptly or else lose the pledged revenues.
- The Developer must obtain the City’s permission before selling any portion of the site for another firm to development, and/or selling any portion of the completed Gateway project. These terms help to protect the integrity of the process by which the City determined the need for assistance, and to ensure that any future owner has the experience and resources to continue successful operations.
- The Agreement specifies that the Developer may use the project TIF and CID only to fund future eligible costs and to recoup a limited set of “legacy costs” – namely, site acquisition, tenant buyouts and relocation, demolition, and earthwork.



- All bonds to be issued in connection with the project will be Special Obligation Bonds, meaning that at no time will the City pledge its full faith and credit toward their repayment.

There has been a concern that the Developer will build Phase 1 only, collecting pay-as-you-go TIF and CID from the residential and small retail uses, and not complete subsequent phases. Given the Developer's need to complete Phases 2 and 3 in order to achieve a positive return on investment, and the Developer's progress to-date in moving the elements of these Phases toward development readiness we believe that risk is remote.

However, in recognition of this concern, the Agreement caps the total TIF and CID available to the Developer from Phase 1. In addition, the issuance and use of SO Bonds is conditioned on the Developer having undertaken elements of Phase 2 and/or 3. These and other provisions still permit the Developer to "count" the Phase 1 TIF and CID in negotiating its Phase 1 financing, but would impose serious limitations if the project stopped there.

And finally, the Agreement specifies that the Developer will fund third-party construction oversight, helping to ensure City and Developer compliance with statutory limits on the eligible uses of TIF and CID revenues and bond proceeds, and reimburse the City for expenses incurred in negotiating the Agreement, the associated TIF and CID actions, and the future issuance of both IRBs and SO Bonds.

## **Summary**

City Staff and Consultants believe the proposed Agreement moves both the City and the Developer toward our common goal, of "completing the entire Gateway project according to the approved plan as quickly as possible in order to realize mutual benefit for the Developer and the City."

We look forward to receiving and discussing your questions about the Agreement terms, as well as regarding the four action items that appear on the October 18 Council agenda as New Business Items:

- Ordinance adopting amended Redevelopment Project Plan (authorizing TIF);
- Ordinance authorizing Mission Gateway Community Improvement District #3;
- Resolution of City intent to issue Industrial Revenue Bonds; and
- Ordinance approving Redevelopment Agreement and terminating the previous Gateway CIDs #1 and #2.

Please contact me at [bkimmel@ehlers-inc.com](mailto:bkimmel@ehlers-inc.com) or (651) 697-8572 with any questions, and thank you for the opportunity to be of assistance to the City of Mission.

<b>City of Mission</b>	Item Number:	9b.
<b>ACTION ITEM SUMMARY</b>	Date:	October 16, 2019
<b>Administration</b>	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

**RE:** Approval of the terms associated with de-annexation of land at the northeast corner of Johnson Drive and Roe Boulevard.

**RECOMMENDATION:** Authorize the Mayor and City Administrator to complete the remaining steps necessary to finalize an agreement with the City of Roeland Park for compensation associated with the de-annexation of a parcel of land at the northeast corner of Johnson Drive and Roe Boulevard and cost sharing for the traffic signal owned by KCPL at this intersection as long as the City of Roeland Park approves compensation in an amount within the following range: \$62,856 - \$69,840.

**DETAILS:** Since December 2018, the cities of Mission and Roeland Park have been discussing the benefits of annexation/de-annexation of approximately .7 of an acre at the northeast corner of Johnson Drive and Roe Boulevard. The cities agreed to move forward with the de-annexation process in order to facilitate the developer's schedule, while continuing to negotiate the terms of compensation.

The public hearing was scheduled at the beginning of the City Council agenda for October 16, followed immediately with consideration of an ordinance to exclude the property in question from the City of Mission's corporate boundaries.

Councilmember Flora and Councilmember Inman have been working with two designated representatives from the Roeland Park City Council in an effort to negotiate acceptable financial terms for the de-annexation and resolve the remaining outstanding issues. Following a meeting on October 16, they agreed to present a range for the compensation to their respective Governing Bodies in the amount of \$62,856 - \$69,840. This represents the estimated taxes and fees that Mission would receive from the parcel over a 18 (\$62,856) or 20 (\$69,840) year period, respectively.

Councilmembers Flora and Inman will provide more detail on the status of their conversations, but are seeking Council approval to accept an offer as final if it comes back within this range. In addition to the compensation, the City of Roeland Park has agreed to take on 50% of the costs of the traffic signal (estimated at \$18,000 annually) located at this intersection.

**CFAA CONSIDERATIONS/IMPACTS:** NA

Related Statute/City Ordinance:	NA
Line Item Code/Description:	NA
Available Budget:	NA