

**MERRIAM CITY COUNCIL AGENDA
CITY HALL
9001 WEST 62ND STREET
June 24, 2019
7:00 P.M.**

If you require any accommodation (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-322-5500 no later than 24 hours prior to the beginning of the meeting.

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. PUBLIC ITEMS

Members of the public are encouraged to use this time to make comments about matters that do not appear on the agenda. Comments about items on the regular agenda will be taken as each item is considered. ***Please note: individuals making Public Comments will be limited to 5 minutes.***

IV. CONSENT AGENDA

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case that item will be removed from the Consent Agenda and considered separately.

1. Consider approval of the minutes of the City Council Meeting held June 10, 2019.
2. Consider approval of a resolution approving the 2020-2024 County Assisted Road System application to Johnson County.

V. MAYOR'S REPORT

1. Discussion regarding sidewalks.

VI. COUNCIL ITEMS

A. Finance and Administration

1. Consider approval of an ordinance amending Chapter 5, Alcoholic Liquor of the Merriam Code of Ordinances.

2. Consider approval of a contract with Blessing Hancock for the Community Center art pieces.
3. Revenue review for 2020 budget.

B. Community Development/Public Works/CIP

1. Consider approval of a bid award to Gunter Construction for the 2019 CARS Project (67th St. West city limits to Antioch Rd.)
2. Community Development Update.

VII. STAFF ITEMS

VIII. NEW BUSINESS

IX. EXECUTIVE SESSION

X. ADJOURNMENT

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk

**MERRIAM CITY COUNCIL MINUTES
CITY HALL
9001 WEST 62ND STREET
June 10, 2019
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Ken Sissom called the meeting to order at 7:00 PM.

II. ROLL CALL

Scott Diebold
Chris Evans Hands
Nancy Hupp
Brian Knaff
David Neal
Bob Pape
Jason Silvers
Al Frisby was absent.

Staff present: Chris Engel, City Administrator; Meredith Hauck, Assistant City Administrator; Nicole Proulx Aiken, City Attorney; Todd Allen, Acting Police Chief; Anna Slocum, Parks and Recreation Director; Cindy Ehart, Finance Director; Mike Casey, Deputy Fire Chief; Bryan Dyer, Community Development Director; and Juli Pinnick, City Clerk.

III. PUBLIC ITEMS

Members of the public are encouraged to use this time to make comments about matters that do not appear on the agenda. Comments about items on the regular agenda will be taken as each item is considered. ***Please note: individuals making Public Comments will be limited to 5 minutes.***

Judy Snyder, 9013 W. 48th Ter., requested the city sign a resolution in support of Medicare for All. Ms. Snyder shared a story about a healthcare issue her family has recently experienced and issues with their health insurance and Medicare.

Dr. David Terry, 3601 Bellview Ave., commented that he belongs to a physicians group pushing for a single payer system for our country. The current system is broken and flawed and a single payer healthcare system could solve these problems. He requested the City sign a resolution supporting a single payer system.

Mayor Sissom commented that Councilmember Frisby, who is absent tonight, had discussed bringing forth a resolution to this effect for council consideration.

IV. CONSENT AGENDA

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case that item will be removed from the Consent Agenda and considered separately.

1. Consider approval of the minutes of the City Council meeting held May 13, 2019.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 1. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

V. MAYOR'S REPORT

1. Swearing in of Ward 1 Councilmember Jason Silvers (ceremonial)

The City Clerk administered the Oath of Office to Councilmember Jason Silvers.

2. Appointment of Comprehensive Plan Update Advisory Committee.

Mayor Sissom announced his appointments to the Comprehensive Plan Update Advisory Committee.

There was some discussion regarding the length of time folks would serve on the committee, which is estimated to be about 18 months. There was some discussion regarding the members representing businesses and if they were Merriam residents. It appears that of the seventeen members, only four are not residents of Merriam.

VI. COUNCIL ITEMS

A. Finance and Administration

1. Consider approval of an ordinance amending Chapter 5, Alcoholic Liquor of the Merriam Code of Ordinances. (first reading)

City Attorney Nicole Proulx Aiken presented the background for this item.

The Kansas Legislature recently passed SB 70, concerning alcoholic beverages. The new law, which took effect May 2, 2019, made the following changes:

Consumption of Alcoholic Liquor on Streets, Alleys, Roads, Sidewalks, or Highways

Public venues, hotels, hotel caterers, drinking establishment caterers, or drinking establishment licensees may now extend their licensed premises to a public street, alley, road, sidewalk, or highway for an event if the event is approved by ordinance by the city council.

Temporary Permit Holders

Temporary permit holders may offer samples in accordance with new state law; must mark the boundary of any premises covered by their permit with a line of demarcation; may only sell alcoholic liquor that is dispensed from original containers; and must follow new hiring regulations.

The new law also allows individuals to carry an original container of alcoholic liquor onto an event premises if the temporary permit holder allows it, the temporary permit holder does not store the container, and the individual carrying the container removes it when they leave the premises.

This ordinance amends sections of the Merriam Code concerning alcoholic beverages to align with the new state laws. The city administrator, parks and recreation director, acting police chief, and city prosecutor reviewed this ordinance.

2. Consider approval to authorize the creation and hiring of three positions for the new community center.

Parks and Recreation director Anna Slocum provided the background for this item.

In preparation for the new community there will be the need to increase staffing to meet the business plan outline in the 2017 parks and recreation master plan financial proforma. The three full-time requested positions include: Fitness Coordinator, Recreation Coordinator and Aquatics Supervisor. Although the building is not slated to open until summer 2020, these three positions will be an

integral part of developing new programming and new operational procedures prior to opening.

The Aquatics Supervisor will be an exempt position exercising supervision over all aquatics staff. The Fitness and Recreation Coordinators will be hourly positions. They will provide day-to-day supervision for a few part-time staff.

The salary range for the Aquatics Supervisor position will be \$49,431 – \$74,146 plus benefits. The salary range for the Fitness and Recreation Coordinators will be \$36,079 - \$54,118 plus benefits. Funding for these positions was included in the 2019 salaries and benefits budget, but the positions were not approved as part of the 2019 budget process. The goal is to fill the positions by late summer/early fall.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE THE CREATION AND AUTHORIZE THE HIRING OF THREE NEW POSITIONS FOR THE NEW COMMUNITY CENTER. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

3. Community Center Update.

Assistant City Administrator Meredith Hauck presented the monthly Community Center Update.

4. Monthly Finance Report.

Finance Director Cindy Ehart presented the Finance Report for the month of May.

B. Community Development/Public Works/CIP

1. CIP Update. (included in packet)

VII. STAFF ITEMS

City Administrator Chris Engel commented that the 5701 Merriam Dr. Committee will be meeting this Wednesday at the Community Center to review the three preliminary designs provided by the consultant based on the feedback collected at the public meeting, and from the committee. It is anticipated that the three would be narrowed down to one concept. That concept will be presented at the public meeting on June 26th. The committee will gather feedback from that meeting and review that feedback. After that,

the committee will make any additional tweaks and the present that recommendation to the city council.

VIII. NEW BUSINESS – there was no new business.

IX. EXECUTIVE SESSION - there was no executive session.

X. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER HANDS MOVED TO ADJOURN AT 7:38 PM. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Resolution approving the 2020-2024 County Assisted Road System application to Johnson County.

SUBMITTED BY: Jim MacDonald, Public Works Superintendent

MEETING DATE: June 24, 2019

PROJECT BACKGROUND/DESCRIPTION:

The Johnson County Board of Commissioners recognized that one of the keys to the success of Johnson County is in its major transportation corridors that connect the cities of Johnson County. In response to the need of constructing and maintaining these major corridors, the Board created the County Assistance Road System (CARS) program.

The CARS program provides funds to the cities of Johnson County to construct and maintain their major arterials. Each year the cities submit a 5-year road improvement program to Johnson County. Using a scoring system, Johnson County selects projects and allocates funds. The County pays 50% of the project's construction and construction inspection costs. Cities are responsible for design, right-of-way, and utility relocation costs. Staff plans to submit the following projects for Merriam's 2020-2024 road improvement program:

2020: Johnson Drive between Kessler Lane to Mackey Street. Work includes the replacement of curb/gutters/sidewalk/ADA ramps as required, 2" Mill/Overlay, new pavement markings to Mackey. Also, new streetlights and sidewalk repairs between Antioch Road to East City Limits.

2021: Merriam Drive between 55th Street to Antioch Road. The scope of work includes the replacement of curb/gutters/sidewalk/ADA ramps as required, 2" Mill/Overlay, new pavement markings.

2022: Merriam Drive between Johnson Drive to 55th Street. The scope of work includes the replacement of curb/gutters/sidewalk/ADA ramps as required, 2" Mill/Overlay, new pavement markings.

2023: 55th Street between West City Limits to Merriam Drive. The scope of work includes the replacement of curb/gutters/sidewalk/ADA ramps as required, 2" Mill/Overlay, new pavement markings, and streetlights improvements as needed.

2024: 49th Street between Switzer Road to Antioch Road. The scope of work includes the replacement of curb/gutters/sidewalk/ADA ramps as required, 2" Mill/Overlay, new pavement markings.

CITY COUNCIL GOALS AND OBJECTIVES

3.2 Sustain capital improvement efforts.

FINANCIAL IMPACT

Amount of Contract: N/A

Amount Budgeted: N/A

Funding Source/Account #: N/A

SUPPORTING DOCUMENTS

2020-2024 CARS Resolution

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends the Council approve the 2020-2024 CARS Resolution.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE 2020-2024 COUNTY ASSISTED ROAD SYSTEM APPLICATION OF THE CITY OF MERRIAM, KANSAS

WHEREAS, Johnson County, Kansas provides funds to cities through the County Assisted Road System (CARS) Program; and

WHEREAS, the City of Merriam, Kansas desires to obtain County funding assistance for its Five-Year Street Improvement Program; and

WHEREAS, the governing body certifies its intent and funding authority to proceed with the capital improvement projects as listed below.

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

1. The Five-Year Road Improvement Program for the City of Merriam is as follows:

Program Year	Priority	Project	CARS Eligible Costs
2020	1	Johnson Drive-Kessler Lane to East City Limits	\$1,985,200
2021	1	Merriam Drive- 55 th Street to Antioch Road	\$1,466,362
2022	1	Merriam Drive-Johnson Drive to 55 th Street	\$1,155,929
2023	1	55 th Street-Merriam Drive to West City Limits	\$1,634,329
2024	1	49 th Street-Antioch Road to Switzer Road	\$2,092,230

2. This Program has been reviewed and approved for submittal to the Johnson County Board of Commissioners.

ADOPTED, by the Governing Body of the City of Merriam, Kansas, this _____ day of June 24, 2019.

Ken Sissom, Mayor

(SEAL)

ATTEST: _____
Juliana Pinnick, City Clerk



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Discuss the 2017 – 2019 Sidewalk Infill Program

SUBMITTED BY: Chris Engel, City Administrator

MEETING DATE: June 24, 2019

PROJECT BACKGROUND/DESCRIPTION:

The current Sidewalk Infill Program is the result of the 2015 City Council Goals & Objectives process. Each year, city staff solicits Goals & Objectives from City Council that get discussed and formally adopted as part of the budget process. Required by City Code and rooted in modern design standards, sidewalk infill focuses on pedestrian safety, walkability, connectivity and acknowledging that young families with children are moving into our neighborhoods and the elderly are attempting to “age-in-place” - both of which create an urgent need to ensure our neighborhoods are accommodating.

In 2017, Phase 1 installed sidewalks in the Milburn West neighborhood, just northeast of Quail Creek Park. Phase 2 was finished in 2018 and included the Owen Heights neighborhood, Farley Lane, 51st Place to 53rd St., and 52nd St./Farley Court. Phase 3 includes the West Vernon Place neighborhood, Burnham St., and portions of W. 66th Terrace, W. 56th Terrace, W. 56th St., and Switzer Road. Phase 4 will include Perry Avenue between W. 55th St. and W. 56th Terrace as well as W. 56th Terrace east of Knox.

To communicate the details, a letter is mailed approximately six months in advance to all affected property owners. Staff also notifies the residents of a city-hosted neighborhood meeting to further discuss the details of the program and gain a better understanding of what is occurring along the route. Staff and designers further conduct onsite visits with any interested adjacent homeowners. Another contact is made after the project is bid and a firm schedule has been determined, and a final door hanger notification is used to notify residents that construction is imminent.

Phase 3 residents living on a street scheduled to receive a sidewalk were mailed a notification letter and FAQ in November 2018. Residents were subsequently contacted and invited to the neighborhood meeting on May 9, 2019 where many showed up to share their objections to the program. Numerous residents from that meeting also showed up at the May 13, 2019 City Council meeting to share their objections to the program. At that meeting city staff was directed to pause placing the Phase 3 sidewalks out to bid until the City Council could further discuss the sidewalk infill program during the June 24, 2019 City Council meeting.

CITY COUNCIL GOALS AND OBJECTIVES

3.3 Improve the City’s Sidewalk System

FINANCIAL IMPACT

Amount of Request/Contract: \$0

Amount Budgeted: \$639,860

Funding Source/Account #: CIP – General Projects

SUPPORTING DOCUMENTS

Packet with sidewalk relevant information

Merriam City Code

Chapter 62 - SUBDIVISIONS

Sec. 62-1. - Purpose.

The purpose of the subdivision and development regulations codified in this chapter is to ensure that the subdivision of land, which is the initial step in urbanization, will be in the public interest and for general welfare. Since the allocation and arrangement of parcels of land for both private uses and public uses helps to influence the health, safety, economy, livability and amenities of an area, this chapter is intended to:

- (1) Provide for the harmonious and orderly development of the city by making provisions for adequate open space, traffic, recreation, drainage, utilities, light and air, and other public needs;
- (2) Contribute to conditions conducive to health, safety, aesthetics, convenience, prosperity and efficiency; and
- (3) Provide for the conservation and protection of human and natural resources. This chapter is designed, intended, and shall be administered in a manner:
 - a. To ensure that the development of the city shall confirm substantially with the comprehensive plan of the city, the zoning ordinance enacted in accordance with such plan and adopted major street plan.
 - b. To provide for the conservation of existing neighborhoods, to encourage the concept of neighborhood planning in new developments and to prevent the development of slums and blight areas.
 - c. To coordinate the development of each parcel of land with the existing community, and to facilitate the proper development of adjoining land.
 - d. To encourage the best possible use of each parcel of land through the application of urban design principles.

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Sec. 62-58. - Sidewalks and pedestrian ways.

- (a) Public sidewalks shall be installed on one side of all local residential and collector streets and on both sides of all other streets unless such installation is specifically waived by the planning commission, except that no sidewalk shall be required on the outer side (that side nearest arterial or collector street) of any frontage road. If frontage roads are contemplated, sidewalks will not be required on the adjacent paralleling arterial or collector street. Sidewalks will be installed on the side of the frontage road away from the adjacent paralleling arterial or collector street when the frontage road is constructed.
- (b) Sidewalks shall be installed according to specifications adopted by the city council. Such sidewalks shall extend from curb to curb of intersection streets and shall be constructed as near as possible to property lines.
- (c) The planning commission may require the installation of an improved pedestrian way not less than four feet wide in easement space dedicated for that purpose.
- (d) No petitions for street improvements shall be considered by the city council unless such petitions are accompanied by valid petitions for construction of sidewalks or pedestrian ways, except where the planning commission has specifically waived the installation as provided in subsection (a) of this section. The total cost of all sidewalks or pedestrian way improvements shall be borne by the property benefited in the improvement district.

(Ord. No. 896, § 32, 8-3-1981)

From: [Robert Weems](#)
To: [Cindy Ehart](#)
Subject: Goals
Date: Monday, May 11, 2015 2:05:06 PM

Hello Cindy,

One of the goals that I would have for the city to look at would be the completion of a sidewalk system within the city. We have many sidewalks that just end like the bridge to nowhere. That would be one of the main goals that I would have.

Thank You

Robert Weems

Ward 1 Councilmember

2015-2016 Citywide Goals and Objectives

Proposed Additions

May 2015

- I. **Goal: Code Enforcement**
 - a. Reduce code violations involving maintenance of yards, trash receptacles, and residential properties including rental homes *
- II. **Goal: Community Development**
 - a. Continue the emphasis on maintenance and capital improvement efforts *
 - b. Complete the City's sidewalk system
 - c. Support neighborhoods with better island maintenance
 - d. Update the easement acquisition policy**
- III. **Goal: Citizen Advocacy**
 - a. Provide citizens with a more effective way to communicate with council reps by adding a website link to allow for citizen input
 - b. Explore ways to increase Parks & Rec program registrations
- IV. **Goal: Economic Development**
 - a. Expand the I-35 TIF to include the K-Mart property
 - b. Increase financial support and resources for the Flags 4 Freedom event
- V. **Goal: Administrative Focus**
 - a. Maintain adequate funding for public safety and public works as we continue to grow as a City
 - b. Fiscal responsibility by "right size" of the mill levy
- VI. **Goal: Sustainable Planning**
 - a. Plan for renovation of pool and community center*

*Objective included in 2014-2015 goals/objectives

**Staff suggestion

2015-2016 Citywide Goals and Objectives

New Objectives per 5/18/2015 Work Session

II. **Goal: Community Development**

- a. Complete the City's sidewalk system
- b. Partner with neighborhoods to provide better island maintenance
- c. Update the easement acquisition policy

III. **Goal: Citizen Advocacy**

- a. Facilitate better communication between council reps and citizens

IV. **Goal: Economic Development**

- a. Explore expansion of the I-35 TIF to include the K-Mart property
- b. Increase administrative and financial support for the Flags 4 Freedom event

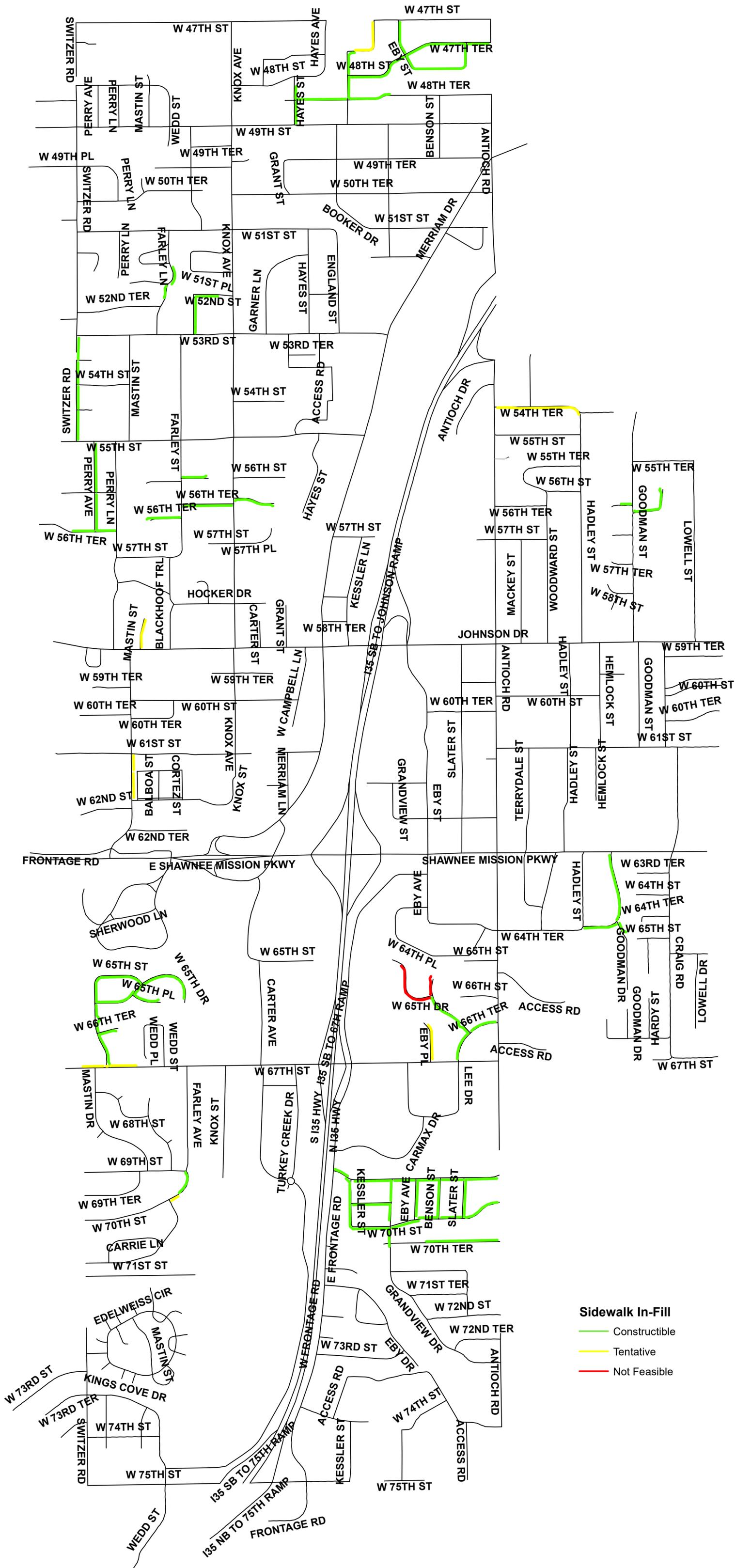
Excluded submissions:

- Reduce code violations [reason for exclusion: already on G&O list]
- Emphasis of CIP efforts [reason for exclusion: already on G&O list]
- Planning for the CC/pool renovations [reason for exclusion: already on the G&O list]
- Explore ways to increase Parks/Rec program registrations [reason for exclusion: this is an ongoing, basic priority and we offer many options for ease of registration]
- Maintain funding for public safety/public works [reason for exclusion: this is an ongoing, basic priority]
- Mill levy [reason for exclusion: examination of the mill levy is inherent in the annual budget process]

City Council Goals and Objectives - Approved June 8, 2015

Goals Objectives Initiatives	Dept.	Status as of June 30, 2015
I. Code Enforcement - Enforce City codes fairly to improve physical conditions in the community.		
A. Reduce code violations involving maintenance of yards and trash receptacles	CD	For 2015, the City has three full-time employees involved in codes enforcement - the Neighborhood Services Manager and two Codes Compliance Officers. Recent change to the ordinance was made in spring 2015 in response to citizen concerns.
B. Reduce the number of repeat code offenders. 1. Investigate charging an administrative fee for code enforcement violations that result in a court appearance. 2. Continue to work with and educate banks/property maintenance firms that are caring for foreclosed properties on Merriam's property maintenance requirements.	CD	Municipal Court will review whether this fee structure is permissible or feasible. Staff will also review with Judge Harvell. Community Development monitors foreclosure property and contacts the bank/property maintenance firm when a foreclosed property is in need of maintenance. These activities will be aided by the addition of the Neighborhood Services Manager.
C. Establish methods to measure progress toward reduced code violations. Report information to City Council on a regular basis (weekly, monthly, or quarterly).	CD/ Admin	Staff is considering two finalists for new Community Development software and expects to make a recommendation in May/June 2015. The new software will greatly assist in tracking code violations statistics.
II. Community Development - Improve value of property and the quality of life through investment in and redevelopment of our neighborhoods.		
A. Sustain capital improvement efforts. 1. Merriam residents approved a referendum for a ¼-cent sales tax dedicated to street and storm water improvements. Staff has obtained federal and county grant funds for related projects to leverage the use of City funds from the new tax. (See five year CIP Plan for project schedule.) 2. Construct the Upper Turkey Creek mitigation project.	CIP	The 1/4 cent tax is in place through 2020. This dedicated tax will fund Meyer Creek stormwater project, the SMPW Bridge/BNSF Rail, Residential Infill Projects and others per the current program. (New phase) The approved feasibility study will now go to the Secretary of the Army and the federal Office of Management and Budget. From there it will go to Congress for inclusion in the next Authorization Bill. USACE would like to obtain funding for design via an appropriation bill in 2016 or 2017 prior to full authorization.
B. Sustain street lighting program. 1. Monitor LED light project for efficiency	PW	On-going. The energy savings are significant, but cost for the LED bulbs are considerably higher than high pressure sodium (\$600 vs. \$23). LED lights last up to twice as long as high pressure sodium (5yrs vs 10yrs), but LED illumination degrades in the later years.
2. Accelerate streetlight conversion program to accommodate modern metered lighting	PW	Installed 70 decorative streetlights in 2014 and another 130 decorative streetlights are programmed for 2015. CIP 5-Year budget provides for systematic replacement of old streetlights.
C. Support a public art project(s) in a prominent Merriam location.	Admin	The CIP budget includes \$100k+/per year for public art from 2015-2019. An outside consultant is assisting the art committee with the selection process. The ad hoc committee includes three councilmembers, city administrator, and three residents. Detailed proposals from 4 artists will be considered in May 2015.
D. Complete the City's sidewalk system	PW/CIP	\$1.8 million is programmed in the CIP for 2017-2019
E. Partner with neighborhoods to provide better island maintenance	PW	NEW
F. Update the easement acquisition policy	CIP	NEW

Sidewalk Program - Constructibility MAP



**Capital Improvement Program - Five Year Plan
Expense Summary by Project**

Project Name	Total Project Estimate	Expenditures Through 3/31/15	Remaining Anticipated Expenditures by Year					
			2015	2016	2017	2018	2019	2020
General Projects								
Brown Park Pavilion	90,000	-	-	90,000	-	-	-	-
CDBG Streetlights 2016	135,280	-	-	135,280	-	-	-	-
CDBG Streetlights 2015 (Switzer to Knox)	160,470	-	160,470	-	-	-	-	-
CIP/Public Works Information Integration/Asset Mgmt	120,000	80,685	39,315	-	-	-	-	-
Community Center Structural/Mech Study	120,690	-	120,690	-	-	-	-	-
Corrugated Metal Pipe Replacement (47th/Eby/Antioch)	1,100,000	-	-	1,100,000	-	-	-	-
E. Frontage Rd (72nd to 75th St) Streetlights	92,000	-	92,000	-	-	-	-	-
Fence Replacement	72,050	-	-	72,050	-	-	-	-
HAWK Signal - Jo Dr/Goodman	37,100	-	37,100	-	-	-	-	-
Overlay Supplement	4,651,127	2,401,127	250,000	400,000	400,000	400,000	400,000	400,000
Park Signage	100,000	-	-	50,000	50,000	-	-	-
Police Department Facility Study	40,000	-	-	40,000	-	-	-	-
Project Administration 2013+	2,511,576	556,762	239,852	310,365	325,883	342,177	359,286	377,251
Public Art	565,000	5,602	107,398	113,000	113,000	113,000	113,000	-
Recreational Facilities Needs Assessment	150,000	-	-	150,000	-	-	-	-
Residential Streetlight Program	1,014,460	562,460	82,000	80,000	64,000	79,000	67,000	80,000
Shawnee Msn Pkw Streetlight Metering	75,000	-	-	75,000	-	-	-	-
Sidewalk Infill Project	1,815,000	-	-	-	715,000	550,000	550,000	-
Small Drainage Projects - Replacement/Rehabilitation	1,924,018	124,018	300,000	300,000	300,000	300,000	300,000	300,000
Storm Drain Inventory	400,000	-	100,000	100,000	100,000	100,000	-	-
Streamway Trail Ext (71st Street)	500,000	-	-	-	-	-	500,000	-
Streamway Trail Ext (Brown Park)	200,000	-	-	-	200,000	-	-	-
Upper Turkey Creek Drainage Improvement	4,297,000	-	-	-	-	176,250	575,000	3,545,750
Waterfall Park Development	509,196	364,196	-	60,000	-	-	85,000	-
Transfer to 1/4 Cent Stormwater/Street Projects	3,000,000	-	-	900,000	1,200,000	-	150,000	750,000
Transfer to 1/4 Cent Street Projects (Old)	1,300,000	1,500,000	(200,000)	-	-	-	-	-
Contingency	1,832,642	307,642	150,000	300,000	200,000	175,000	250,000	450,000
Subtotal General Projects	\$ 26,812,610	\$ 5,902,492	1,478,825	4,275,695	3,667,883	2,235,427	3,349,286	5,903,001
		<i>project fund balance</i>	\$ 7,517,734	\$ 7,371,344	\$ 7,525,749	\$ 7,905,636	\$ 6,824,211	\$ 3,132,863
I-35 Redevelopment District Projects								
City Hall Parking Lot Overlay/Drainage Repair	85,000	-	85,000	-	-	-	-	-
IKEA Way Mill/Overlay	98,000	-	98,000	-	-	-	-	-
Parking Lot - Vavra Park/Aquatic Center	115,000	-	-	115,000	-	-	-	-
W. Frontage Rd Curb/Gutter	1,220,000	-	-	120,000	1,100,000	-	-	-
W. Frontage Roundabout	290,000	24,729	265,271	-	-	-	-	-
Transfer from I-35 to Gen Projects for Admin	856,991	556,991	50,000	50,000	50,000	50,000	50,000	50,000
Transfer from I-35 to General Fund	1,349,000	831,500	67,500	90,000	90,000	90,000	90,000	90,000
Transfer from I-35 to SMPK Bridge/BNSF	312,070	-	-	-	312,070	-	-	-
Contingency	1,354,113	104,113	200,000	200,000	250,000	200,000	200,000	200,000
Subtotal I-35 Redevelopment District Projects	\$ 5,680,174	\$ 1,517,333	\$ 765,771	\$ 575,000	\$ 1,802,070	\$ 340,000	\$ 340,000	\$ 340,000
		<i>project fund balance</i>	\$ 3,469,703	\$ 4,704,703	\$ 4,712,633	\$ 6,287,633	\$ 7,912,633	\$ 10,737,633
Merriam Town Center District Projects								
Antioch Rd Overlay (Jo Dr to 54th Terr)	422,883	-	422,883	-	-	-	-	-
Antioch Rd Streetlight Metering (N. of Jo Dr)	115,000	-	115,000	-	-	-	-	-
Antioch Rd Streetlights (Jo Dr to 54th Terr)	316,046	-	-	316,046	-	-	-	-
Projects from Merriam Town Center TIF Enhancement	1,336,799	-	-	690,000	646,799	-	-	-
Traffic Signal Upgrades - Antioch Rd	161,480	-	161,480	-	-	-	-	-
Transfer from MTC to 2017 Antioch Rd Overlay	274,800	-	-	-	274,800	-	-	-
Subtotal Merriam Town Center District Projects	\$ 2,627,008	\$ -	\$ 699,363	\$ 1,006,046	\$ 921,599	\$ -	\$ -	\$ -
		<i>project fund balance</i>	\$ 1,630,264	\$ 921,599	\$ -	\$ -	\$ -	\$ -

Sidewalk Program

City Wide – Sidewalk In-Fill



Project Information

Project #:
Construction Year: 2017-2019
Project Status: Preliminary
Project Engineer: N/A
Funding Source: General CIP
Contractor: Public Works

Project Description

Fill in approximately 27,053 linear feet of sidewalk in areas that either have no sidewalk or have partial sidewalks that need to be connected. It is proposed to break this project into three phases so that it can be properly managed and constructed with lower impact on the residents.

<u>Project Costs</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>
ENGINEERING	\$150,000			\$150,000
CONSTRUCTION	\$500,000	\$500,000	\$500,000	1,500,000
LEGAL	\$5,000			\$5,000
EASEMENT / ROW ACQUISITION	\$10,000			\$10,000
CONTINGENCY	\$50,000	\$50,000	\$50,000	\$150,000
TOTAL PROJECT COST:	\$715,000	\$550,000	\$550,000	\$1,815,000

Impact on Operating Budget

This project is not expected to have a significant effect on operating budget.

**Community Development Staff Report
Planning Commission – October 5, 2016
2017-2021 Capital Improvement Plan**

Request: Consider finding the *City of Merriam 2017-2021 Capital Improvement Program* to be in conformance with the *Merriam, Kansas Comprehensive Plan*

Applicant: City of Merriam, Public Works Department

Background/Description of Item:

Each year the City of Merriam adopts a five-year Capital Improvement Program (CIP) to guide the City Council in decisions related to capital improvements. The CIP prioritizes future street improvements, drainage enhancements, park improvements and other community facility improvements. The City Council is responsible for the development, budgeting and prioritization of projects identified in the CIP.

Attached is the 2017-2021 Capital Improvement Program that was adopted by the City Council on July 25, 2016. The CIP continues the City of Merriam's commitment to improving the city's infrastructure. Highlights of the 2017 program include: Antioch Road rehabilitation from 47th Street to 54th Terrace, bridge rehabilitation on Shawnee Mission Pkwy over BNSF Railroad, corrugated metal storm sewer pipe replacement from 47th Street to Antioch Road, and a sidewalk infill program.

Beginning this year, the city wide sidewalk infill program will be phased over a three-year period. To improve pedestrian connectivity approximately 27,000 linear feet of new or infill sidewalk is programmed for construction. The first phase of construction is currently under design.

Supporting infill development is a key component in the City of Merriam Comprehensive Plan. A central tenant of Section 7 - Future Land Use in the Comprehensive Plan is the need for the city to encourage infill development. Additionally, Section 9 - Public Facilities & Services discusses the need for the continued improvement to the city's stormwater drainage system. The 2017-2021 Capital Improvement Program details the continuous improvement to the City's infrastructure as a key element in Merriam's ability to attract new businesses and residents thus encouraging infill development.

Per Section 50-47 of the Merriam Municipal Code, the Planning Commission is responsible for finding that the CIP complies with the City's adopted comprehensive plan. Staff has reviewed the proposed projects in relation to the *Merriam, Kansas Comprehensive Plan* and finds the proposed improvements to be in conformity with the City's adopted comprehensive plan. A copy of the *City of Merriam 2017-2021 Capital Improvement Program* is included in the packet information.

Staff Recommendation:

The Planning Commission find that the *City of Merriam 2017-2021 Capital Improvement Program* is in conformance with the *Merriam, Kansas Comprehensive Plan*.

Enclosure: 2017-2021 Capital Improvement Program

Kevin Bruemmer
Public Works Director

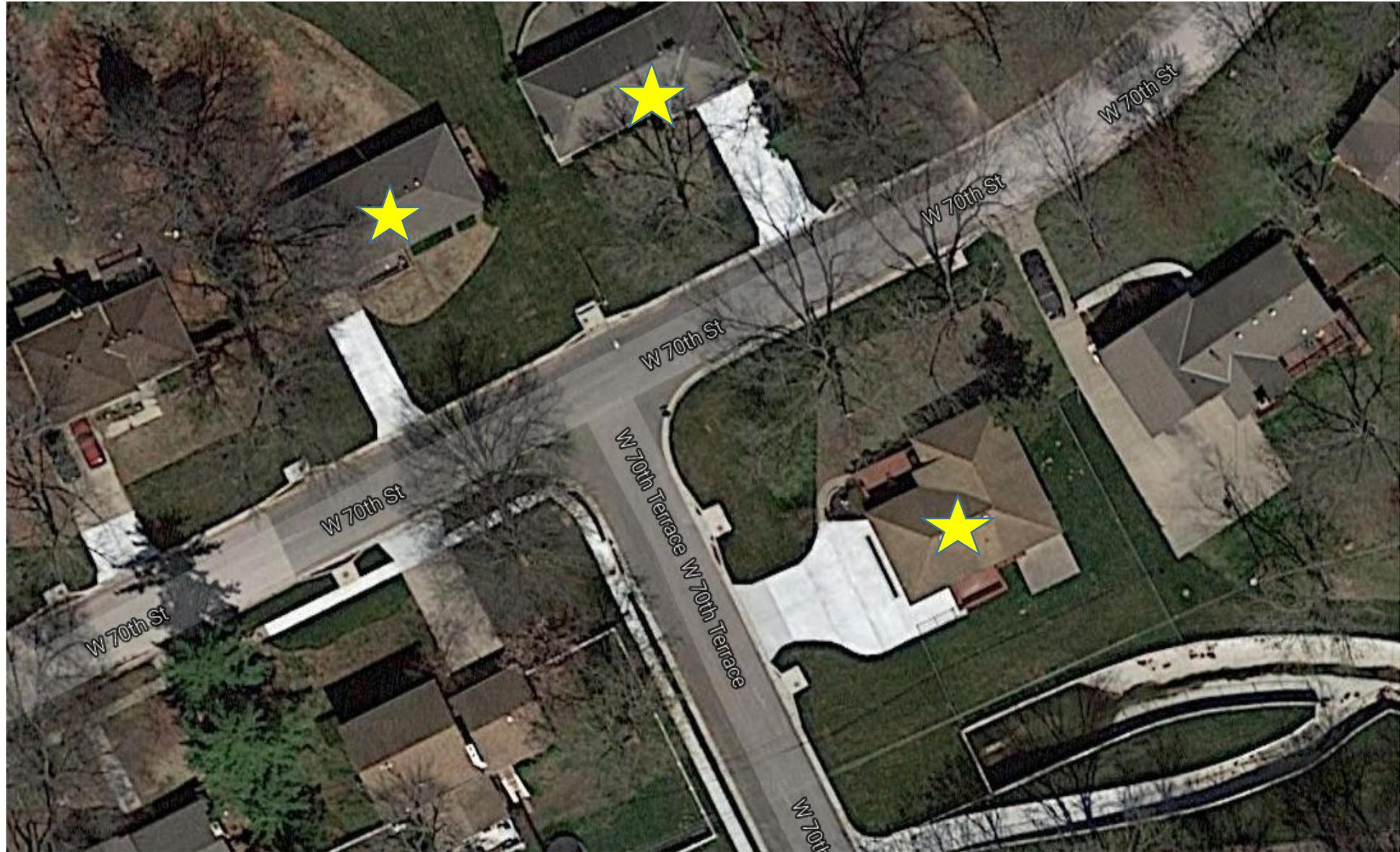
OBJECTIVE

D. Complete the City's sidewalk system.

Sidewalk Exercise - West 70th Street



West 70th Street & West 70th Terrace



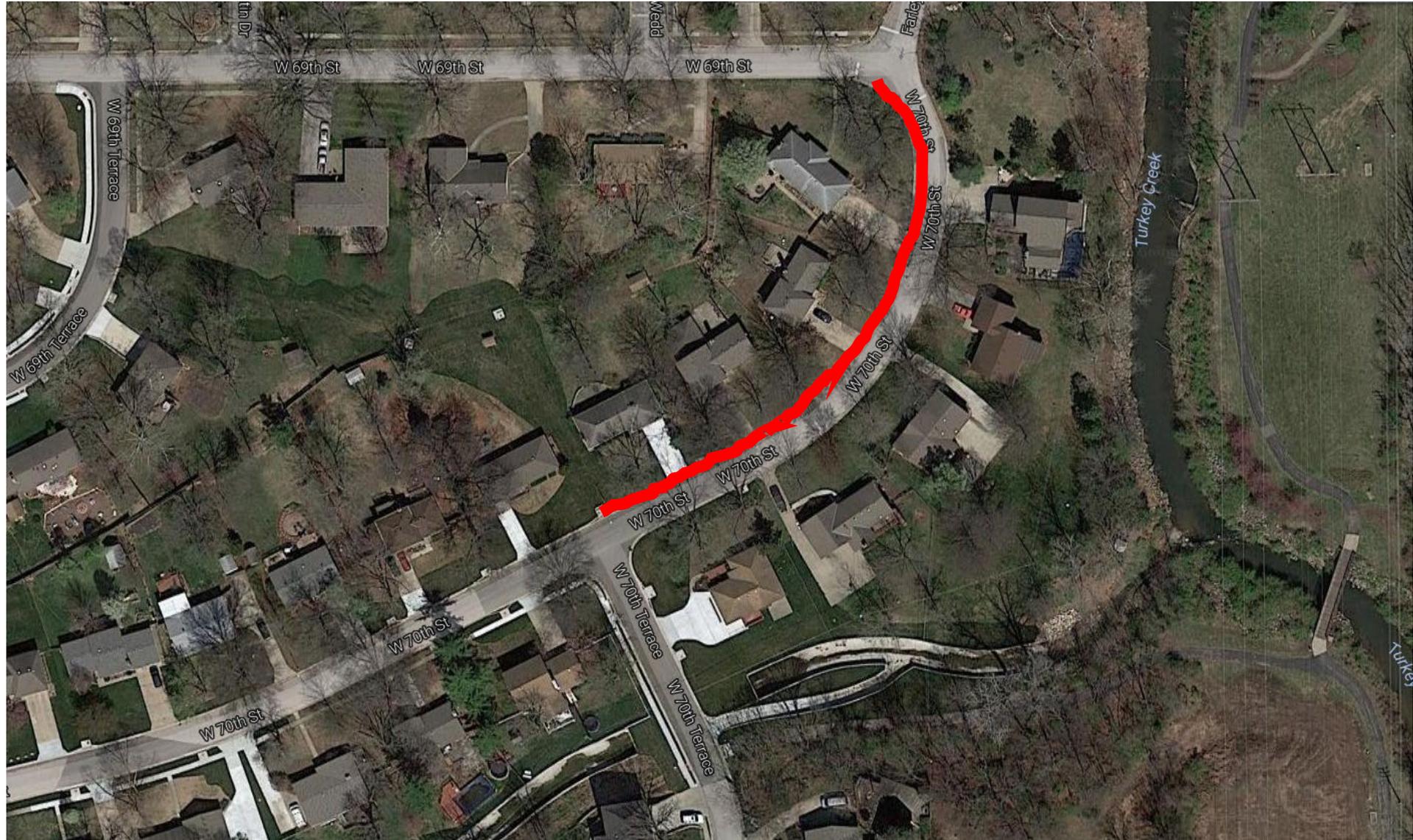
Intersection (looking North)



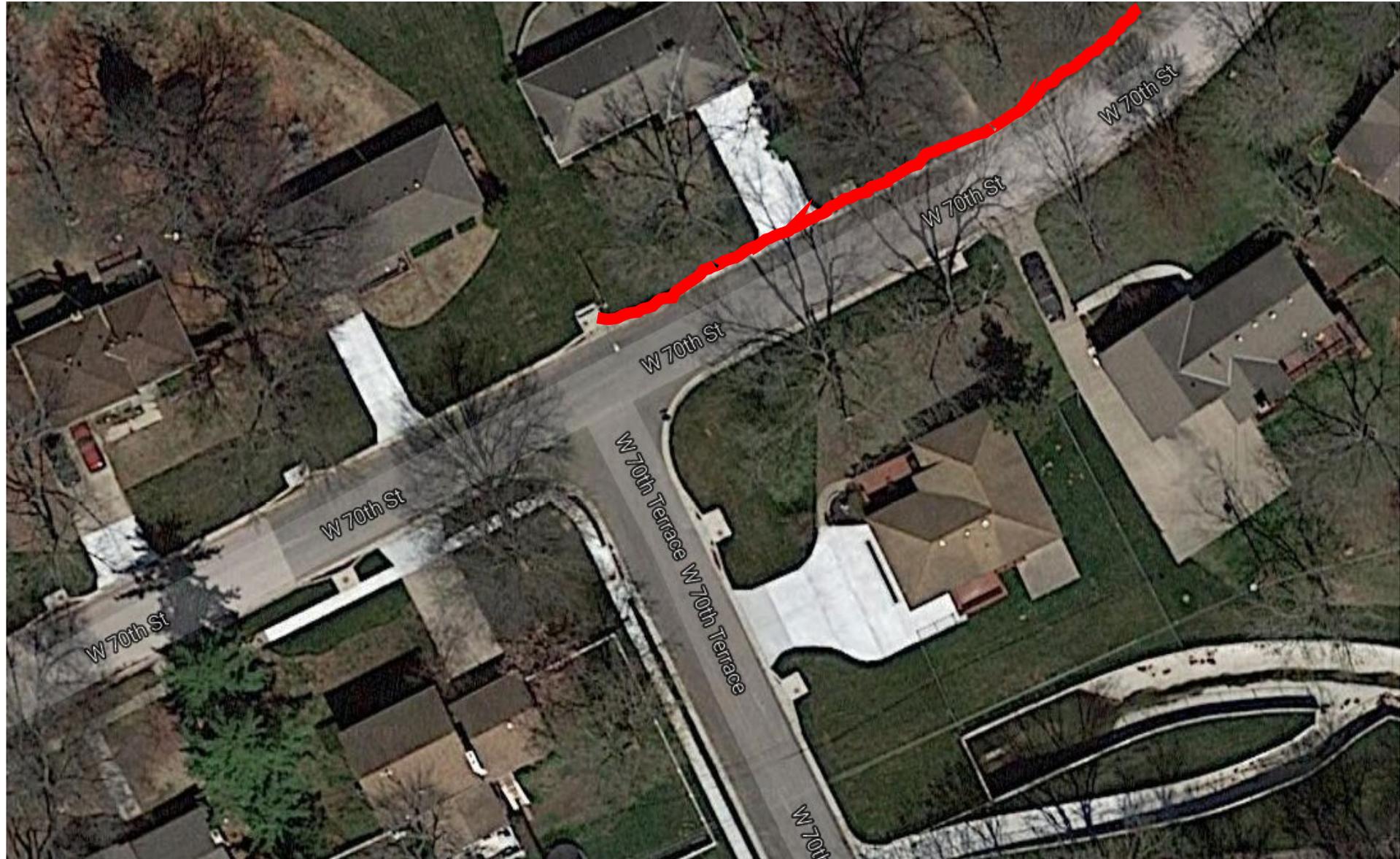
Intersection (looking East)



West 70th Street Sidewalk



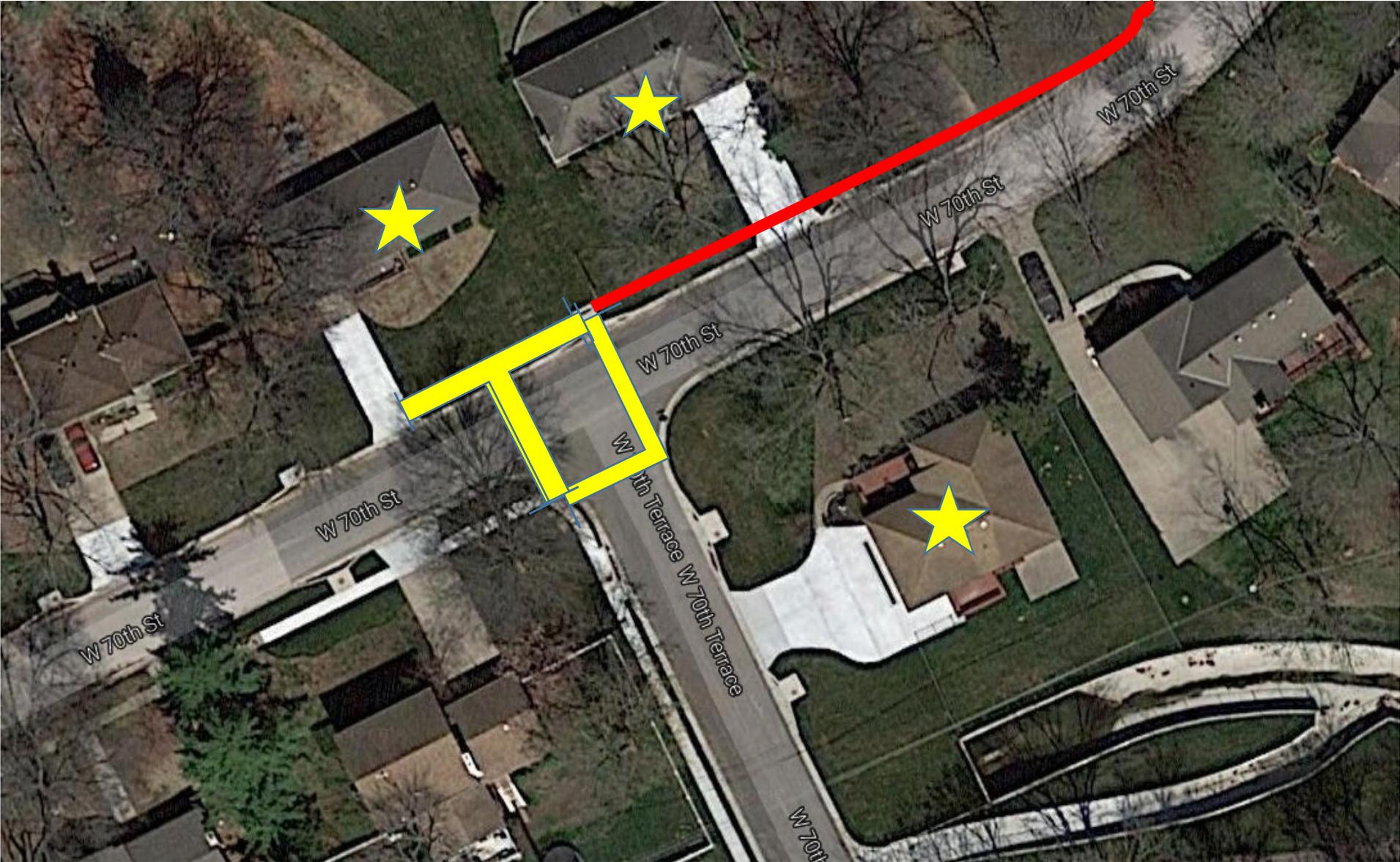
West 70th Street & West 70th Terrace



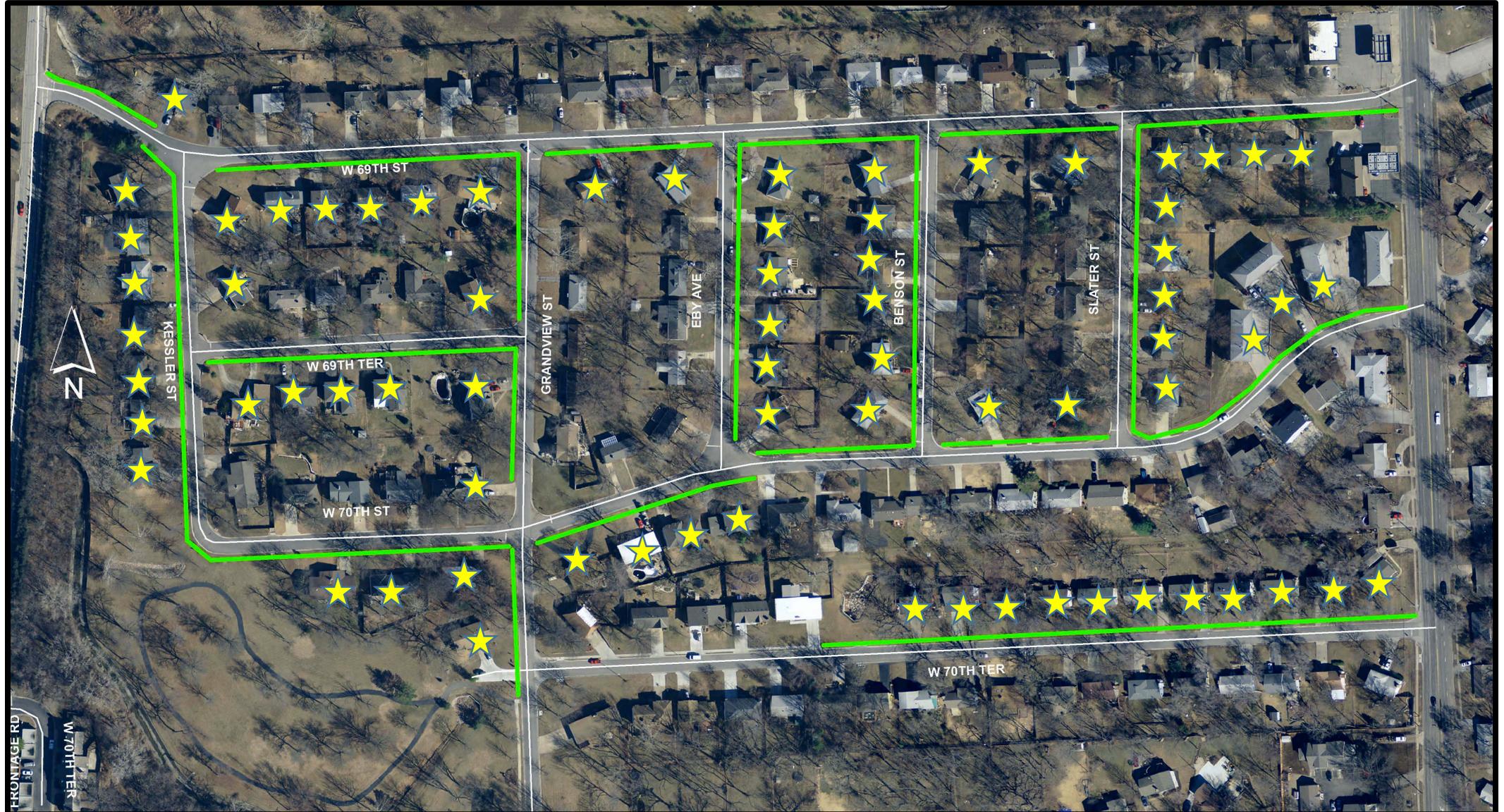
How do we get from There to Here?



Midblock Crossing Scenarios

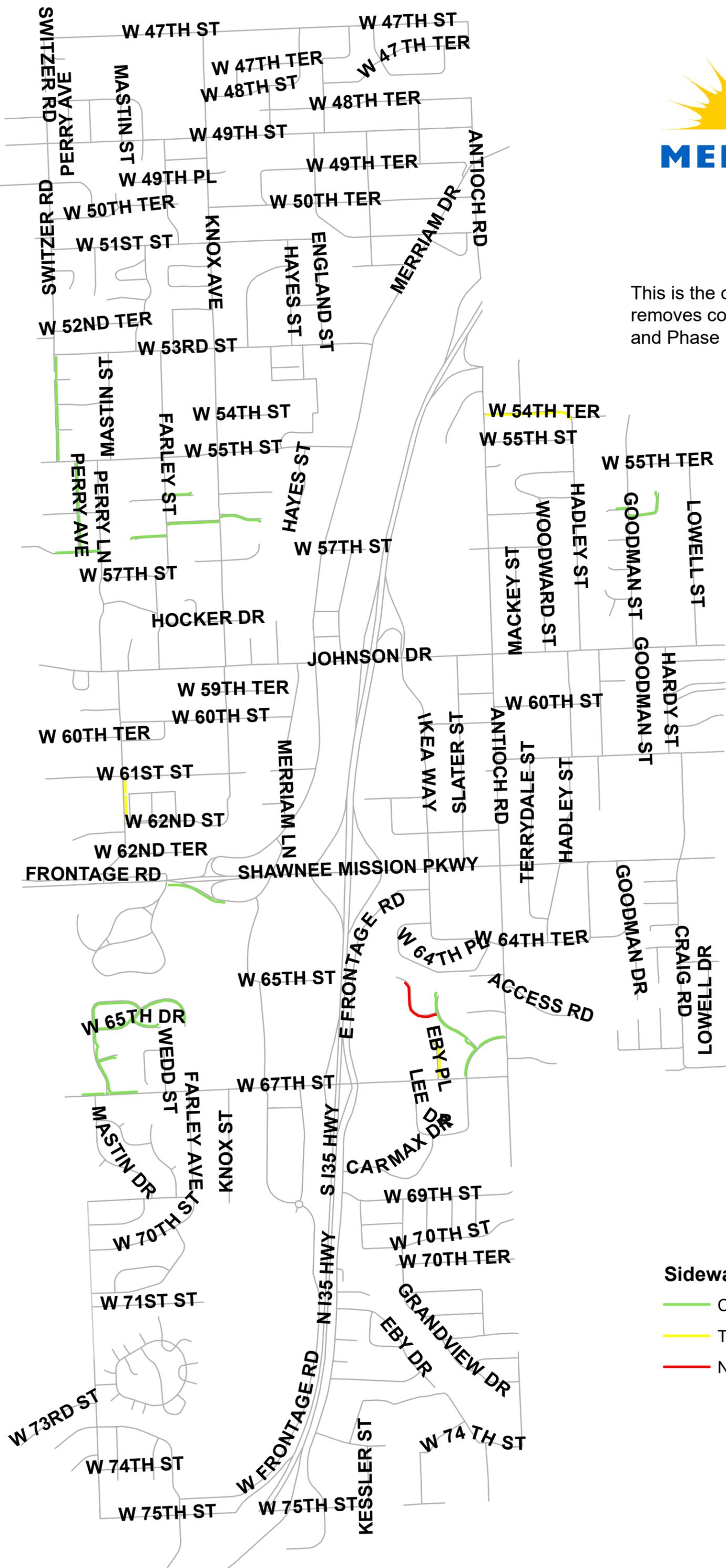


Phase One – Millburn West (Spring 2017)





This is the current map that removes completed Phase I and Phase II streets.



- Sidewalk In-Fill**
- Constructible
 - Tentative
 - Not Feasible



2019 Residential Sidewalk Infill Program



Program Information

merriam.org/sidewalks

November 21, 2018

Dear Property Owner/Resident:

In 2015, Merriam City Council created the Sidewalk Infill Program. Committed to constructing sidewalks in areas where none currently existed, the Council implemented the program to provide safe pedestrian travel in and across our community and improve walkability to our neighborhood parks, schools, shops, and restaurants.

City staff and its design team from George Butler Associates, Inc. (GBA) identified your neighborhood as one needing sidewalks.

In the next few weeks, we anticipate GBA employees to be out in your neighborhood determining the best placement of sidewalks. During this process, they will consider:

1. Public safety.
2. Walkability/connectivity within the community.
3. Minimize impact to the neighborhood, including trees, lawn grading, and driveways.

After preliminary plans are complete, we will contact you by mail and invite you to attend a public meeting that is not yet scheduled. City staff and the design team encourages attendance and participation.

We know you will have many questions, and we are committed to sharing with you as much information as available. While we currently have no specific details about your particular neighborhood, we have included a list of frequently asked questions. You can check for updates on our website at merriam.org/sidewalks. Please contact me with any questions.

Let's all work together to make our community safe for children, families, neighbors, and friends.

Regards,

Carl Sanders

Carl Sanders
CIP Project Coordinator
City of Merriam
913-322-5521
csanders@merriam.org



2019 Residential Sidewalk Infill Program



FREQUENTLY ASKED QUESTIONS

Q: What is the sidewalk infill program?

A: The program is the City Council's commitment to providing safe pedestrian travel in and around our community and improving walkability to our neighborhood parks, local schools, shops, and restaurants. The sidewalk infill program accomplishes this by constructing sidewalks in all areas of the City that do not currently have a sidewalk on at least one side of the street.

Q: Who pays for the construction of the sidewalk?

A: The City will pay for the sidewalk from the annual Capital Improvement Program.

Q: Who is responsible for future repairs?

A: The City will maintain the sidewalk.

Q: Which side of the street will the sidewalk be located?

A: In most cases, sidewalks will be installed on the side of the street that is least disruptive to the most properties and best connects to existing sidewalks.

Q: How wide will the sidewalk be?

A: The sidewalk will be four feet wide unless it must be narrowed to avoid obstacles.

Q: Will the sidewalk be installed right next to the street?

A: No, we anticipate sidewalks being constructed primarily in the right of way (ROW) and off-set two feet from the back of the existing curb.

Q: What if a tree is in the area of the proposed sidewalk?

A: The City will make every effort to save the tree and place the sidewalk around the tree.

Q: What happens if the sidewalk is placed around a tree, and will fall outside the ROW? A: The City will work to acquire an easement from the property owner for the portion of sidewalk outside the ROW.

Q: What will happen to any bushes and other plantings in the path of the sidewalk?

A: The City will make every effort to not disrupt existing conditions. If removal is necessary and a property owner wishes to keep these items, the property owner will be responsible for their relocation. Otherwise, they will be removed during construction.

Q: Where is the ROW on my street?

A: Every street varies; the ROW will be surveyed for identification during the design process.

Q: How will the placement of sidewalk on my property affect my driveway?

A: The driveway approach will be removed and newly replaced to accommodate the sidewalk.

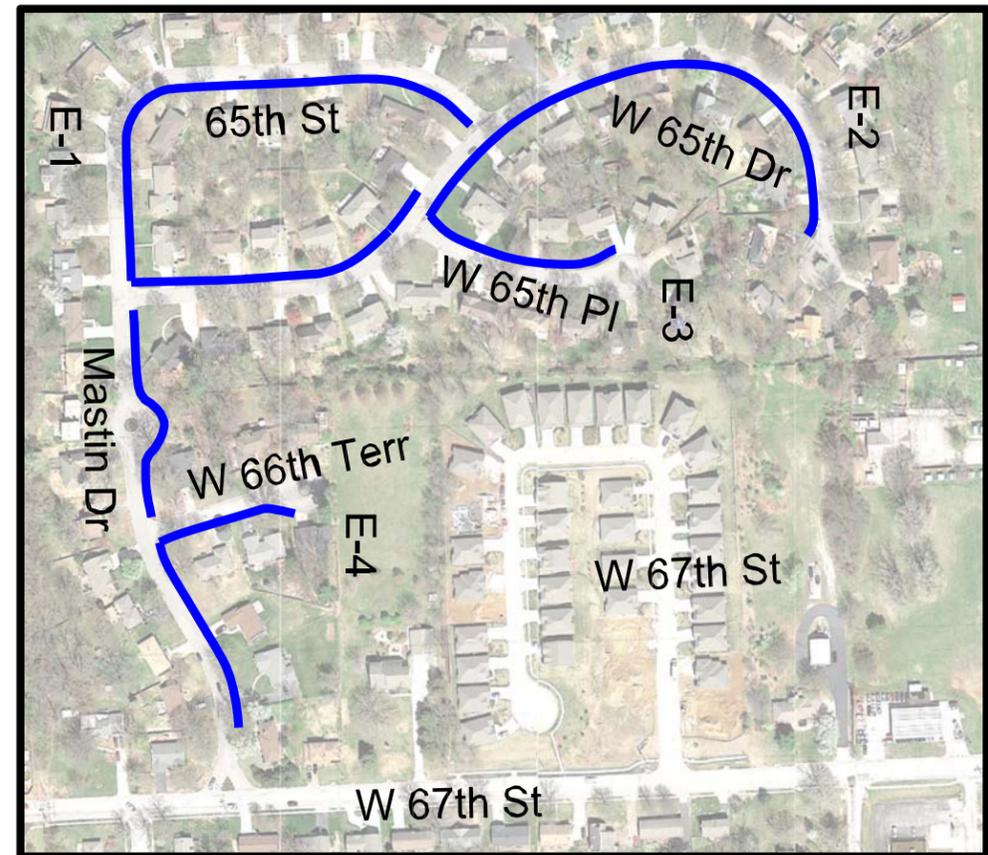
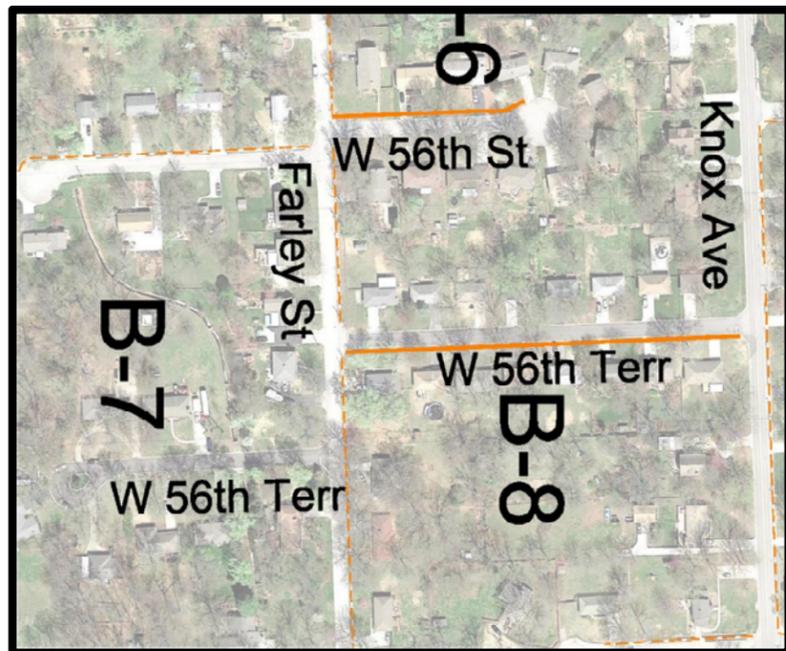
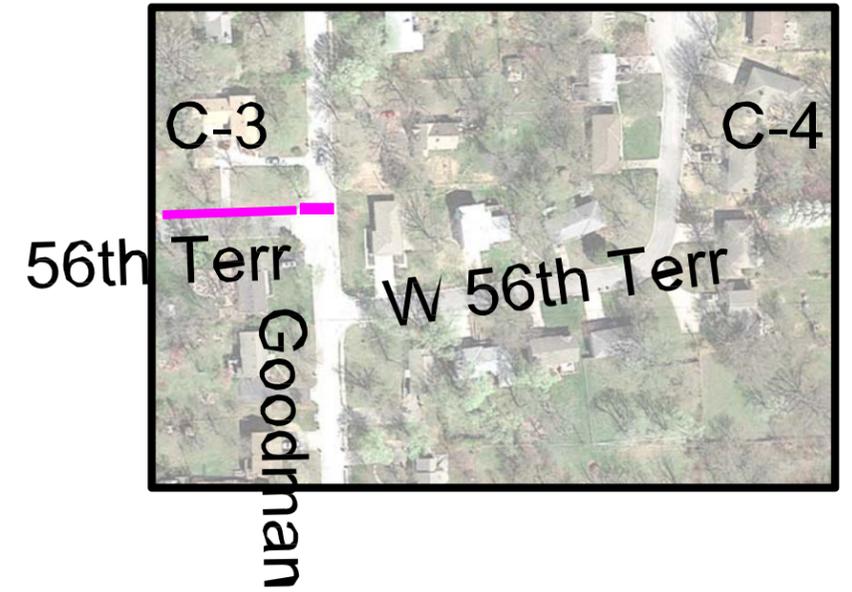
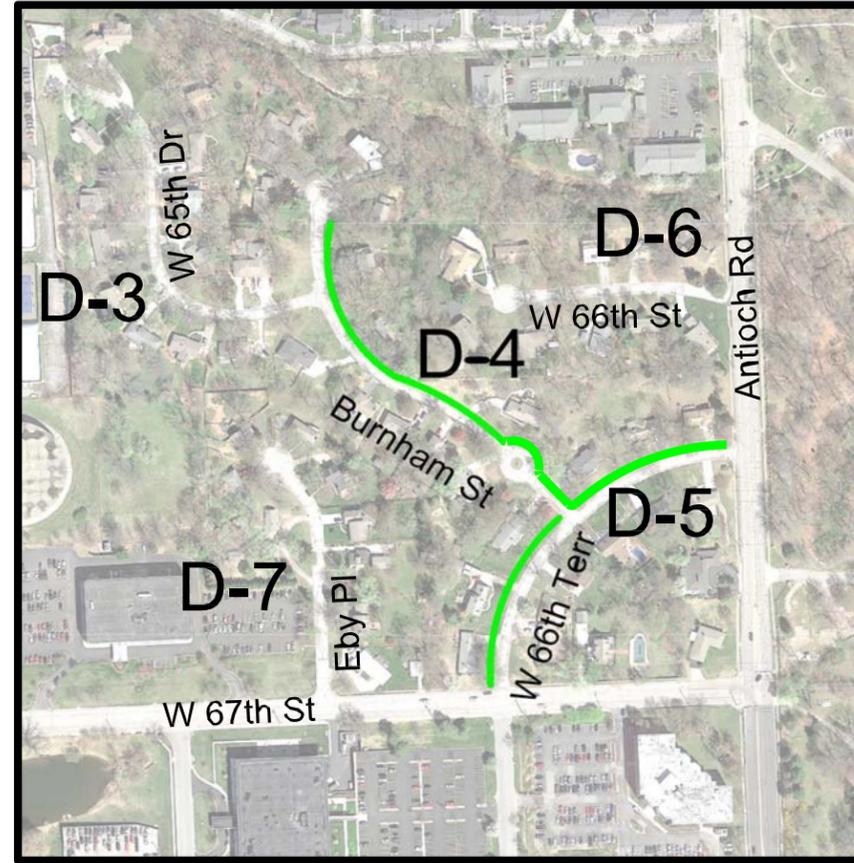
Q: What happens if I have an asphalt driveway?

A: The driveway approach will be replaced to the ROW with concrete.

Q: What will be done to the areas disturbed by construction?

A: Areas disturbed by the construction of sidewalks and driveways will be restored with sod or seed.

2019 Phase 3 Sidewalk In-Fill Locations



W 55TH ST

PHASE 4 - 2020

PERRY AVE

PERRY LN

W 56TH ST

W 56TH TER



PHASE 4 - 2020

W 56TH TER

KNOX AVE

Date: 5/15/2019



Chris Engel

From: Sari Maple
Sent: Friday, May 10, 2019 10:45 AM
To: Chris Engel
Subject: FW: Liability Question

See response below regarding liability for injury on sidewalks.

From: Jason McMahon <jason@mprisk.org>
Sent: Friday, May 10, 2019 10:39 AM
To: Sari Maple <smapple@merriam.org>
Subject: RE: Liability Question

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The city will most likely get sued for that type of thing. But, if the sidewalk is being maintained and there are no issues with it, then there will likely be no liability on the city. Responsibility does not always mean liability. Sounds like the city is planning on maintaining them, so you should be in good shape. As with almost everything, documentation of work performed, inspections and complaints/repairs is vital to providing a defense against claims.

You have a great weekend as well,

Jason McMahon,
Risk Management Advisor
Office: (816) 292-7532
Fax: (816) 817-2000

From: Sari Maple <smapple@merriam.org>
Sent: Friday, May 10, 2019 8:57 AM
To: Jason McMahon <jason@mprisk.org>
Subject: Liability Question

Hi Jason!

We had a meeting with citizens last night about sidewalk repairs in Merriam. As a result, we need to know if we build a sidewalk in our right-of-way, but in front of homeowner's house, if a child (or anyone) falls and breaks an arm (or any appendage) who gets sued for the damages? Will the City or the homeowner be liable?

We will be maintaining and making repairs to cracks, etc. The homeowner is responsible for keeping clear of debris.

Thanks! Have a great Friday and weekend!

Sari Maple, SHRM-SCP, IPMA-SCP
Human Resources/Risk Manager
City of Merriam
913-322-5502 (office)
913-322-5505 (fax)

Additional Sidewalk FAQs

Q: Do I have to maintain/repair the sidewalks?

A: The installation and maintenance of city sidewalks is performed by the City.

Q: Do I have to cut the grass between the sidewalk and the street?

A: Yes. Per City Code the property owner/occupant is responsible for the area between the sidewalk and curb.

Q: If someone gets injured on a sidewalk who is the responsible party?

A: According to the City's primary insurance provider, since the City is committed to installing and maintaining the sidewalk system, the City is the party most likely to be sued if the sidewalk is believed to play a role in an injury.

Q: Who is responsible for snow removal from the sidewalk?

A: The City does not remove snow from residential sidewalks. Owners of property adjacent to a public sidewalk are encouraged to remove snow, ice and other debris therefrom. However, there is no ordinance that requires residents to remove snow from sidewalks.



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Consider approval of an ordinance amending sections of the Merriam City Code concerning alcoholic beverages.

SUBMITTED BY: Nicole Proulx Aiken, city attorney

MEETING DATE: June 24, 2019

PROJECT BACKGROUND/DESCRIPTION:

The Kansas Legislature recently passed SB 70, concerning alcoholic beverages. The new law, which took effect May 2, 2019, made the following changes:

Consumption of Alcoholic Liquor on Streets, Alleys, Roads, Sidewalks, or Highways

Public venues, hotels, hotel caterers, drinking establishment caterers, or drinking establishment licensees may now extend their licensed premises to a public street, alley, road, sidewalk, or highway for an event if the event is approved by ordinance by the city council.

Temporary Permit Holders

Temporary permit holders:

- may offer samples in accordance with new state law;
- must mark the boundary of any premises covered by their permit with a line of demarcation;
- may only sell alcoholic liquor that is dispensed from original containers;
- must follow new hiring regulations.

The new law also allows individuals to carry an original container of alcoholic liquor onto an event premises if the temporary permit holder allows it, the temporary permit holder does not store the container, and the individual carrying the container removes it when they leave the premises.

This ordinance amends sections of the Merriam Code concerning alcoholic beverages to align with the new state laws. The city administrator, parks and recreation director, acting police chief, and city prosecutor reviewed this ordinance.

CITY COUNCIL GOALS AND OBJECTIVES

Enhance Community Identity and Connections & Maintain Economic Vitality

FINANCIAL IMPACT

Amount of Request/Contract: _____

Amount Budgeted: _____

Funding Source/Account #: _____

SUPPORTING DOCUMENTS

Redline version of ordinance

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends the city council approve this ordinance amending sections of the Merriam Code concerning alcoholic beverages.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING ALCOHOLIC BEVERAGES; AMENDING SECTIONS 5-1, 5-4, 5-6, 5-223, 5-224, 5-227; REPEALING SECTION 5-198; AND REPEALING THE SECTIONS HEREBY AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MERRIAM, KANSAS:

SECTION 1. That section 5-1 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic liquor means alcohol, spirits, wine, beer, and alcoholic candy (as those terms are defined in K.S.A. [41-102](#) and amendments thereto), and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being, but shall not include cereal malt beverage (CMB).

Alcoholic liquor retailer means a person who is licensed under the Kansas liquor control act, K.S.A. 41-101 *et seq.*, and Article III of this chapter who sells at retail, or offers for sale at retail, alcoholic liquors or cereal malt beverages. "Alcoholic liquor retailer" does not include a microbrewery, microdistillery or a farm winery.

Beer means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter, and similar beverages having such alcoholic content.

Caterer means an individual, partnership or corporation licensed pursuant to K.S.A. [41-2601 et seq.](#) which sells alcoholic liquor by the individual drink, and provides services relating to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a state or local temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

Cereal malt beverage (CMB) means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined herein, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

Class A club means a premises licensed pursuant to K.S.A. [41-2601 et seq.](#) and which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director of alcoholic beverage control of the state department of revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

Class B club means a premises licensed pursuant to K.S.A. [41-2601 et seq.](#) and which is operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Club or private club means a class A or class B club.

Club and Drinking Establishment Act means the provisions of K.S.A. [41-2601 et seq.](#) and any amendments thereto.

Distributor means the person importing or causing to be imported into the state or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this chapter and the Kansas liquor control act or CMB for sale or resale to retailers licensed under this chapter and K.S.A. [41-2702](#), and amendments thereto.

Domestic beer means beer which contains not more than 15 percent alcohol by weight and which is manufactured in this state.

Domestic fortified wine means wine which contains more than 14 percent, but not more than 20 percent alcohol by volume and which is manufactured in this state.

Domestic table wine means wine which contains not more than 14 percent alcohol by volume and which is manufactured without rectification or fortification in this state.

Drinking establishment means premises licensed pursuant to K.S.A. [41-2601 et seq.](#) and that may be open to the general public, where alcoholic liquor by the individual drink is sold. "Drinking establishment" includes a railway car.

Farm winery means a winery licensed by the director of alcoholic beverage control of the state department of revenue to manufacture, store and sell domestic table wine and domestic fortified wine.

Flavored malt beverage shall have the meaning set forth in K.S.A. 2010 Supp. 41, 2729 ([41-2729](#)) and amendments thereto.

Food means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or CMB, used or intended for use or for sale, in whole or in part, for human consumption.

General CMB retailer is a person who is licensed under the Kansas cereal malt beverage act, as that act is defined in K.S.A. 41-2728, and Article II of this chapter to sell cereal malt beverages (CMBs) or beer containing not more than 6% alcohol by volume at retail only for consumption on the licensed premises.

Hard cider means any alcoholic beverage that: (1) contains less than 8.5 percent alcohol by volume; (2) has a carbonation level that does not exceed 6.4 grams per liter; and (3) is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

Legal age for consumption of cereal malt beverages means 21 years of age, except that "legal age for consumption of CMB" means 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume CMB are repealed or otherwise invalidated or nullified.

Limited CMB retailer is a person who is licensed under the Kansas cereal malt beverage act, as that act is defined in K.S.A. 41-2728, and Article II of this chapter to sell CMBs or beer containing not more than 6% alcohol by volume at retail only in original and unopened containers and not for consumption on the premises.

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or CMB.

Manufacturer means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or CMB. "Manufacturer" does not include a microbrewery, microdistillery or a farm winery.

Microbrewery means a brewery licensed by the director of alcoholic beverage control of the state department of revenue to manufacture, store and sell domestic beer and hard cider.

Microdistillery means a facility which produces spirits from any source or substance that is licensed by the director of alcoholic beverage control of the state department of revenue to manufacture, store and sell spirits.

Minor means a person under 21 years of age.

Morals charge means a charge involving the sale of sexual relations; procuring any person; soliciting of a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

Nonprofit, religions, charitable, fraternal, educational, or veterans' organization shall have those meanings as ascribed and defined in K.S.A. [79-4701](#).

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve.

Place of business means any place at which CMBs or beer containing not more than 6% alcohol by volume are sold.

Premises means the specific area described in the license application and approved as the location upon which the CMB or alcoholic liquor may be sold or consumed under the license.

Railway car means a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route and which derives from sales of food for consumption on the railway car not less than 30 percent of its gross receipts from all sales of food and beverages in a 12-month period.

Sale means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

School means any institution of learning, whether public or private. This definition includes, but is not limited to, a primary school, secondary school, trade school, college and university.

Sell at retail and *sale at retail* mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits. "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a state or local temporary permit.

Sleeve means a package of two or more 50-milliliter (3.2-fluid-ounce) container of spirits.

~~*Special event* means a picnic, bazaar, festival or other similar community gathering, which has been approved by the city council.~~

~~*State temporary permit* means a temporary permit issued by this state pursuant to K.S.A. [41-2601](#), and amendments thereto and does not mean a local temporary alcoholic liquor permit or local CMB special event retailer's permit issued by the city pursuant to article VII of this chapter pursuant to K.S.A. [41-1201](#), and amendments thereto.~~

To sell means to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

SECTION 2. That section 5-4 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-4. - Consumption, possession prohibited in certain places; exceptions.

(a) *Public places.*

(1) Except as otherwise provided for herein and in K.S.A. 8-1599, and amendments thereto, no person shall drink, ~~or~~ consume, or possess any open container of alcoholic liquor or CMB on the public streets, alleys, roads, highways, sidewalks, parking lots, or other such similar public place open to use by the public or where the public may congregate, whether owned publicly or privately, or within any vehicle in or upon such place.

(2) Exceptions.

a. Alcoholic liquor may be consumed ~~at a special event or catered event held~~ on public streets, alleys, roads, sidewalks or highways when:

1) a state temporary permit has been issued pursuant to ~~K.S.A. 41-2645~~, K.S.A. 41-1201, and amendments thereto, and a local temporary alcoholic liquor permit has been issued pursuant to article VII of this chapter, for such ~~special an~~ event;

2) ~~or when the~~ caterer's licensee has provided the required notification ~~for a catered event~~ pursuant to K.S.A. ~~41-26435~~, and amendments thereto, and the caterer has a caterer's license issued by the city pursuant to article VI of this chapter.

3) a public venue, hotel, hotel caterer, drinking establishment caterer or drinking establishment licensee has been authorized to extend its licensed premises pursuant to K.S.A. 41-2608, and amendments thereto, and such licensee has been issued the appropriate license or permit by the city pursuant to this chapter.

b. Consumption of alcoholic liquor on public streets, alleys, roads, sidewalks or highways ~~Such special event~~ must be approved by ordinance by the city council. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads, sidewalks or highways at any ~~such special event or catered event~~ time.

c. No person shall remove any alcoholic liquor from inside the boundaries of an event as designated by the city council, from the boundaries of a catered event, or from the extended licensed premises of a public venue, hotel, hotel caterer, drinking establishment caterer, or drinking establishment. Such boundaries shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed.

db. CMB may be consumed at a ~~special~~ event held on public streets, alleys, roads, sidewalks or highways when a local CMB special event retailer's permit has been issued pursuant to article VII of this chapter for such ~~special~~ event. Such ~~special an~~ event must be approved by ordinance by the city council. No CMB may be consumed inside vehicles while on public streets, alleys, roads, sidewalks or highways at any such ~~special~~ event.

(b) *Private property.*

(1) *Alcoholic liquor.* It is unlawful for any person to drink or consume alcoholic liquor on private property, or to have in his possession any open container of alcoholic liquor on private property, except:

a. On premises where the sale of liquor by the individual drink is authorized by the Club and Drinking Establishment Act and this chapter;

b. Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor, or for any substance mixed with any alcoholic liquor

and if no sale of alcoholic liquor in violation of K.S.A. [41-803](#), and amendments thereto, takes place;

- c. In a lodging room of any hotel, motel or boardinghouse by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. [41-803](#), and amendments thereto, takes place;
 - d. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or an organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. [41-803](#), and amendments thereto, takes place;
 - e. On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. [41-305](#), [41-308a](#), K.S.A. [41-308b](#) or K.S.A. [41-354](#), and amendments thereto; or
 - f. On the premises of an unlicensed business as authorized pursuant to subsection (d).
- (2) *CMB*. It is unlawful for any person to drink or consume CMBs on private property, or to have in his possession any open container of CMB on private property, except:
- a. On premises licensed pursuant to this chapter for on-premises consumption of CMBs;
 - b. Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving of any CMB;
 - c. In a lodging room of any hotel, motel or boardinghouse by the person occupying such room and by the guests of such person, if no charge is made for the serving of any CMB; or
 - d. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or an organization for a private party and if no sale of any CMB takes place.
- (c) *City-owned property*. It is unlawful for any person to drink or consume any alcoholic liquor or CMB on city-owned property, or to have in his possession any open alcoholic liquor or CMB on city-owned property, subject to the following exceptions:
- (1) Alcoholic liquor may be served, dispensed and consumed during a city-sponsored event on city-owned property, provided that such serving, dispensing and consumption shall be in accordance with written rules and regulations relating to city-owned properties approved by the city council.
 - (2) Alcoholic liquor may be served, dispensed and consumed during events not sponsored by the city at the Community Center or Merriam Marketplace, provided that such serving, dispensing and consumption shall be in accordance with written rules and regulations relating to city-owned properties approved by the city council.
 - (3) Upon the city council's approval, alcoholic liquor may be offered for sale, sold and served for consumption during a city-sponsored event on city-owned property, pursuant to a valid state caterer's license and caterer's license issued by the city pursuant to article VI of this chapter.
- (d) *Unlicensed business*.
- (1) An unlicensed business may authorize patrons or guests of such business to consume alcoholic liquor on the premises of such business provided:
 - a. Such alcoholic liquor is in the personal possession of the patron and is not sold, offered for sale or given away by the owner of such business or employees thereof;

- b. Possession and consumption of alcoholic liquor shall not be authorized between the hours of 12:00 a.m. and 9:00 a.m.;
 - c. The business, or any owner thereof, shall not have had a license issued under either the Kansas liquor control act or the club and drinking establishment act revoked for any reason; and
 - d. No charge of any sort may be made by the business for the privilege of possessing or consuming alcoholic liquor on the premises, or for mere entry onto the premises.
- (2) It shall be a violation of this subsection for any unlicensed business to authorize the possession or consumption of alcoholic liquor by a patron of such business when such authorization is not in accordance with the provisions of this subsection.
- (3) For the purpose of this subsection, "patron" means a natural person who is a customer or guest of an unlicensed business.
- (e) *Violation.* Violation of any provision of this section is a misdemeanor, punishable by a fine of not less than \$50.00 or more than \$200.00 or by imprisonment for not more than six months, or both. Upon a conviction, plea of no contest, or guilty plea for violation of this section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. [8-1008](#), and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

SECTION 3. That section 5-6 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-6. - Certain sales acts prohibited for alcoholic liquor.

- (a) No club, drinking establishment, caterer, or holder of a state temporary permit or local temporary alcoholic liquor permit nor any person acting as an employee or agent thereof, shall:
 - (1) Offer or serve any free CMB or alcoholic liquor in any form to any person;
 - (2) Offer or serve to any person an individual drink at a price that is less than the acquisition cost of the individual drink to the licensee or permit holder;
 - (3) Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;
 - (4) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or CMB or the awarding of individual drinks as prizes;
 - (5) Sell, offer to sell or serve free of charge any form of powdered alcohol as defined in K.S.A. [41-102](#), and amendments thereto; or
 - (6) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsection (a)(1) through (5) of this section.
- (b) A club, drinking establishment, caterer or holder of a state temporary permit or local temporary alcoholic liquor permit may:
 - (1) Offer free food or entertainment at any time;

- (2) Sell or deliver wine by the bottle or carafe;
 - (3) Sell, offer to sell and serve individual drinks at different prices throughout the day;
 - (4) Sell or serve beer or CMB in a pitcher capable of containing not more than 64 fluid ounces;
 - (5) Offer samples of alcohol liquor free of charge as authorized by the Club and Drinking Establishment Act, K.S.A. [41-2601 et seq.](#), or [K.S.A. 41-1204](#), and [amendments thereto](#); or
 - (6) Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the director of alcoholic beverage control of the department of revenue in a pitcher containing not more than 64 fluid ounces.
- (c) A hotel of which the entire premises is licensed as a drinking establishment may, in accordance with rules and regulations adopted by the secretary of revenue, distribute to its guests coupons redeemable on the hotel premises for drinks containing alcoholic liquor. The hotel shall remit liquor drink tax in accordance with the provisions of the liquor drink tax act, K.S.A. [79-41a01 et seq.](#), and amendments thereto, on each drink served based on a price which is not less than the acquisition cost of the drink.
- (d) (1) A club or drinking establishment may offer customer self-service of beer or wine, or both, from automated devices on licensed premises so long as the licensee monitors and has the ability to control the dispensing of such beer or wine, or both, from the automated devices.
- (2) a. For the purposes of this subsection, "automatic device" shall mean any mechanized device capable of dispensing wine or beer, or both, directly to a customer in exchange for compensation that a licensee has received directly from the customer.
- b. No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of alcoholic beverage control of the department of revenue of the licensee's intent to use the automated device. The licensee shall provide the notification at least 48 hours before any automated device is used on the licensed premises.
- c. Each licensee offering customer self-service of wine or beer, or both, from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage, from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director of alcoholic beverage control of the department of revenue or other authorized law enforcement agent.
- d. The compensation required by subparagraph a. shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for beer or wine dispensed from the automated device. Access cards may be sold, used or reactivated only during a business day. Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this subsection, an access card shall be deemed active if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine or 32 ounces of beer. Each purchase of an access card under this subparagraph shall be subject to the liquor drink tax imposed by K.S.A. [79-41a02](#), and amendments thereto.
- e. In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver's license, identification card or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer's valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subparagraph d.

- f. Each access card shall become inactive at the end of each business day.
- g. Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine or 32 ounces of beer to a customer. Once an access card has been used to dispense 15 ounces of wine or 32 ounces of beer to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer's valid identification to the licensee or licensee's employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine or 32 ounces of beer from an automated device.

Subparagraph d., e., f. or g. shall not apply to wine or beer that is dispensed directly to the licensee or the licensee's agent or employee.

- (3) Notwithstanding any other provision of law, all laws and rules and regulations applicable to the sale of alcoholic liquor to persons under the legal age of consumption shall be applicable to the sales transaction of the prepaid access card.
- (e) A hotel of which the entire premises is not licensed as a drinking establishment may, in accordance with rules and regulations adopted by the secretary of revenue, through an agreement with one or more clubs or drinking establishments, distribute to its guests coupons redeemable at such clubs or drinking establishments for drinks containing alcoholic liquor. Each club or drinking establishment redeeming coupons issued by a hotel shall collect from the hotel the agreed price, which shall not be less than the acquisition cost of the drink plus the liquor drink tax from each drink served. The club or drinking establishment shall collect and remit the liquor drink tax in accordance with the provisions of the liquor drink tax act, K.S.A. [79-41a01 et seq.](#), and amendments thereto.
- (f) For purposes of this section, the term day means from 6:00 a.m. until 2:00 a.m. the following calendar day.

SECTION 4. That section 5-198 of the Code of Ordinances, City of Merriam, Kansas, concerning Special Events is hereby repealed.

SECTION 5. That section 5-223 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-223. - Permit regulations.

- (a) No local temporary alcoholic liquor permit holder shall allow the serving, mixing or consumption of alcoholic liquor on the premises covered by the event between the hours of 2:00 a.m. and 9:00 a.m. on any day at an event for which a local temporary alcoholic liquor permit has been issued. Upon request or demand made at any time by any police officer during the hours of the event for which a local temporary alcoholic liquor permit has been issued hereunder, the permit holder, owner or manager, or assistant manager, or other person then in charge of the event, shall produce and deliver to such officer for inspection and copying, or for other purposes consistent with the provisions of this chapter, a list which correctly reflects the names, addresses and ages of all persons employed by such permit holder on the date upon which such request or demand is made.
- (b) A local temporary alcoholic liquor permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which will be specified in the state temporary permit as well as on the local temporary alcoholic liquor permit; provided, however, that a local temporary alcoholic liquor permit may be issued for a ~~special~~ event approved by the city pursuant to Section 5-227 for the entire period of such ~~special~~ event, but in no event shall such permit be issued for a period of time

that exceeds 30 consecutive days. Not more than four local temporary alcoholic liquor permits may be issued to any one applicant in a calendar year.

- (c) A local temporary alcoholic liquor permit shall not be transferable or assignable.
- (d) The local temporary alcoholic liquor permit holder shall cause the permit to be placed in plain view on any premises within the city where the holder of the permit is serving or mixing alcoholic liquor for consumption on the premises.

(e) The boundary of any premises covered by a temporary permit shall be marked by a line of demarcation.

(f) All alcoholic liquor sold at an event covered by a temporary permit shall be dispensed only from original containers.

(g) An individual may carry an original container of alcoholic liquor onto the event premises with the approval of the temporary permit holder and under the following conditions:

(1) The temporary permit holder shall not store any such containers of alcoholic liquor on the event premises; and

(2) each individual carrying any such container onto the event premises shall remove such container when the individual exits the event premises.

(he) The permit holder is responsible for the cleaning of litter and other material during and after the event.

SECTION 6. That section 5-224 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-224. - Unlawful acts of permit holder.

It is unlawful for any licensee under this section to:

- (1) Employ or use the services of any person under the age of 18 years in connection with the serving of alcoholic liquor.
- (2) Employ knowingly, ~~or~~ continue in employment, or use the services of any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other municipality, this state or any other state, or of the United States.
- (3) Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors or a similar law of this and any other municipality, this state, or any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of this or any other municipality, this state or any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years.

- (4) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee.
- (5) ~~Employ or use the services of any person who is under the age of 21 and not supervised by the temporary permit holder or an employee who is at least 21 years of age. Permit any employee of the licensee who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee at any time when such employee is not under the on premises supervision of either the licensee or an employee who is 21 years of age or over.~~
- (6) Employ or use the services of any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

(7) Employ or use the services of any person who has been convicted within the previous two years of a violation of any intoxicating liquor law of this or any other municipality, this state or any other state, or of the United States, to dispense, mix, or serve alcohol.

SECTION 7. That section 5-227 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-227. - Local temporary alcoholic liquor permit for ~~special~~ events.

- (a) A local temporary alcoholic liquor permit may be issued for the consumption of alcoholic liquor on a city street, alley, road, sidewalk or highway for an special event if:

~~(1); provided that~~ such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the city council for such ~~special~~ event;

~~(2);~~ a written request for such consumption and possession of such alcoholic liquor has been made to the city council; and

~~(3)~~ the ~~special~~ event is approved by the city council by ordinance.

The boundaries of such ~~special~~ event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such ~~special~~ event.

- (b) Drinking establishments that are immediately adjacent to, or located within the licensed premises of an special event, for which ~~a~~ state and local temporary permits have ~~ever~~ been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the ~~special~~ event for the duration of the state and local temporary permit issued for such ~~special~~ event.

~~(c) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a state and local temporary permit have been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.~~

~~(d) No alcoholic liquor may be consumed inside vehicles while on a public street, alley, road, sidewalk or highway at any special event.~~

~~(e) No person shall remove any alcoholic liquor from inside the boundaries of a special event as designated by the city council.~~

~~(f) No person shall possess or consume alcoholic liquor inside the premises licensed as a special event that was not sold or provided by the licensee holding the local temporary alcoholic liquor permit for such special event.~~

SECTION 8. Savings Clause. The repeal of any Ordinance or Code Section, as provided herein, shall not revive an Ordinance previously repealed, nor shall the repeal affect any right which accrued, any duty imposed, any penalty incurred or any proceeding commenced, under or by virtue of the Ordinance repealed. Said Ordinance or Code repealed continues in force and effect after the passage, approval, and publication of this Ordinance for the purpose of pursuing such rights, duties, penalties, or proceedings.

SECTION 9. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the Governing Body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 10. Repeal. Sections 5-1, 5-4, 5-6, 5-223, 5-224, 5-227 of the Code of Ordinances of the City of Merriam, Kansas as they existed before the above amendments are hereby repealed.

SECTION 11. Existing Sections. Those sections of Chapter 5 of the Code of Ordinances of the City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 12: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED BY THE City Council the _____ day of _____, 2019.

APPROVED BY THE Mayor the _____ day of _____, 2019.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Nicole Proulx Aiken, City Attorney

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING ALCOHOLIC BEVERAGES; AMENDING SECTIONS 5-1, 5-4, 5-6, 5-223, 5-224, 5-227; REPEALING SECTION 5-198; AND REPEALING THE SECTIONS HEREBY AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MERRIAM, KANSAS:

SECTION 1. That section 5-1 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic liquor means alcohol, spirits, wine, beer, and alcoholic candy (as those terms are defined in K.S.A. [41-102](#) and amendments thereto), and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being, but shall not include cereal malt beverage (CMB).

Alcoholic liquor retailer means a person who is licensed under the Kansas liquor control act, K.S.A. 41-101 *et seq.*, and Article III of this chapter who sells at retail, or offers for sale at retail, alcoholic liquors or cereal malt beverages. "Alcoholic liquor retailer" does not include a microbrewery, microdistillery or a farm winery.

Beer means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter, and similar beverages having such alcoholic content.

Caterer means an individual, partnership or corporation licensed pursuant to K.S.A. [41-2601 et seq.](#) which sells alcoholic liquor by the individual drink, and provides services relating to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a state or local temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

Cereal malt beverage (CMB) means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined herein, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

Class A club means a premises licensed pursuant to K.S.A. [41-2601 et seq.](#) and which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director of alcoholic beverage control of the state department of revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

Class B club means a premises licensed pursuant to K.S.A. [41-2601 et seq.](#) and which is operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Club or private club means a class A or class B club.

Club and Drinking Establishment Act means the provisions of K.S.A. [41-2601 et seq.](#) and any amendments thereto.

Distributor means the person importing or causing to be imported into the state or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this chapter and the Kansas liquor control act or CMB for sale or resale to retailers licensed under this chapter and K.S.A. [41-2702](#), and amendments thereto.

Domestic beer means beer which contains not more than 15 percent alcohol by weight and which is manufactured in this state.

Domestic fortified wine means wine which contains more than 14 percent, but not more than 20 percent alcohol by volume and which is manufactured in this state.

Domestic table wine means wine which contains not more than 14 percent alcohol by volume and which is manufactured without rectification or fortification in this state.

Drinking establishment means premises licensed pursuant to K.S.A. [41-2601 et seq.](#) and that may be open to the general public, where alcoholic liquor by the individual drink is sold. "Drinking establishment" includes a railway car.

Farm winery means a winery licensed by the director of alcoholic beverage control of the state department of revenue to manufacture, store and sell domestic table wine and domestic fortified wine.

Flavored malt beverage shall have the meaning set forth in K.S.A. 2010 Supp. 41, 2729 ([41-2729](#)) and amendments thereto.

Food means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or CMB, used or intended for use or for sale, in whole or in part, for human consumption.

General CMB retailer is a person who is licensed under the Kansas cereal malt beverage act, as that act is defined in K.S.A. 41-2728, and Article II of this chapter to sell cereal malt beverages (CMBs) or beer containing not more than 6% alcohol by volume at retail only for consumption on the licensed premises.

Hard cider means any alcoholic beverage that: (1) contains less than 8.5 percent alcohol by volume; (2) has a carbonation level that does not exceed 6.4 grams per liter; and (3) is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

Legal age for consumption of cereal malt beverages means 21 years of age, except that "legal age for consumption of CMB" means 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume CMB are repealed or otherwise invalidated or nullified.

Limited CMB retailer is a person who is licensed under the Kansas cereal malt beverage act, as that act is defined in K.S.A. 41-2728, and Article II of this chapter to sell CMBs or beer containing not more than 6% alcohol by volume at retail only in original and unopened containers and not for consumption on the premises.

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or CMB.

Manufacturer means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or CMB. "Manufacturer" does not include a microbrewery, microdistillery or a farm winery.

Microbrewery means a brewery licensed by the director of alcoholic beverage control of the state department of revenue to manufacture, store and sell domestic beer and hard cider.

Microdistillery means a facility which produces spirits from any source or substance that is licensed by the director of alcoholic beverage control of the state department of revenue to manufacture, store and sell spirits.

Minor means a person under 21 years of age.

Morals charge means a charge involving the sale of sexual relations; procuring any person; soliciting of a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

Nonprofit, religions, charitable, fraternal, educational, or veterans' organization shall have those meanings as ascribed and defined in K.S.A. [79-4701](#).

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve.

Place of business means any place at which CMBs or beer containing not more than 6% alcohol by volume are sold.

Premises means the specific area described in the license application and approved as the location upon which the CMB or alcoholic liquor may be sold or consumed under the license.

Railway car means a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route and which derives from sales of food for consumption on the railway car not less than 30 percent of its gross receipts from all sales of food and beverages in a 12-month period.

Sale means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant or employee. *School* means any institution of learning, whether public or private. This definition includes, but is not limited to, a primary school, secondary school, trade school, college and university.

Sell at retail and *sale at retail* mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits. "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a state or local temporary permit.

Sleeve means a package of two or more 50-milliliter (3.2-fluid-ounce) container of spirits.

State temporary permit means a temporary permit issued pursuant to K.S.A. 41-1201, and amendments thereto.

To sell means to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

SECTION 2. That section 5-4 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-4. - Consumption, possession prohibited in certain places; exceptions.

(a) *Public places.*

(1) Except as otherwise provided for herein and in K.S.A. [8-1599](#), and amendments thereto, no person shall drink, consume, or possess any open container of alcoholic liquor or CMB on the public streets, alleys, roads, highways, sidewalks, parking lots, or other such similar public place

open to use by the public or where the public may congregate, whether owned publicly or privately, or within any vehicle in or upon such place.

(2) Exceptions.

- a. Alcoholic liquor may be consumed on public streets, alleys, roads, sidewalks or highways when:
 - 1) a state temporary permit has been issued pursuant to K.S.A. 41-1201, and amendments thereto, and a local temporary alcoholic liquor permit has been issued pursuant to article VII of this chapter, for such an event;
 - 2) a caterer's licensee has provided the required notification for a catered event pursuant to K.S.A. [41-2643](#), and amendments thereto, and the caterer has a caterer's license issued by the city pursuant to article VI of this chapter.
 - 3) a public venue, hotel, hotel caterer, drinking establishment caterer or drinking establishment licensee has been authorized to extend its licensed premises pursuant to K.S.A. 41-2608, and amendments thereto, and such licensee has been issued the appropriate license or permit by the city pursuant to this chapter.
- b. Consumption of alcoholic liquor on public streets, alleys, roads, sidewalks or highways must be approved by ordinance by the city council. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads, sidewalks or highways at any time.
- c. No person shall remove any alcoholic liquor from inside the boundaries of an event as designated by the city council, from the boundaries of a catered event, or from the extended licensed premises of a public venue, hotel, hotel caterer, drinking establishment caterer, or drinking establishment. Such boundaries shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed.
- d. CMB may be consumed at an event held on public streets, alleys, roads, sidewalks or highways when a local CMB special event retailer's permit has been issued pursuant to article VII of this chapter for such event. Such an event must be approved by ordinance by the city council. No CMB may be consumed inside vehicles while on public streets, alleys, roads, sidewalks or highways at any such event.

(b) *Private property.*

- (1) *Alcoholic liquor.* It is unlawful for any person to drink or consume alcoholic liquor on private property, or to have in his possession any open container of alcoholic liquor on private property, except:
 - a. On premises where the sale of liquor by the individual drink is authorized by the Club and Drinking Establishment Act and this chapter;
 - b. Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor, or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. [41-803](#), and amendments thereto, takes place;
 - c. In a lodging room of any hotel, motel or boardinghouse by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. [41-803](#), and amendments thereto, takes place;

- d. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or an organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. [41-803](#), and amendments thereto, takes place;
 - e. On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. [41-305](#), [41-308a](#), K.S.A. [41-308b](#) or K.S.A. [41-354](#), and amendments thereto; or
 - f. On the premises of an unlicensed business as authorized pursuant to subsection (d).
- (2) *CMB*. It is unlawful for any person to drink or consume CMBs on private property, or to have in his possession any open container of CMB on private property, except:
- a. On premises licensed pursuant to this chapter for on-premises consumption of CMBs;
 - b. Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving of any CMB;
 - c. In a lodging room of any hotel, motel or boardinghouse by the person occupying such room and by the guests of such person, if no charge is made for the serving of any CMB; or
 - d. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or an organization for a private party and if no sale of any CMB takes place.
- (c) *City-owned property*. It is unlawful for any person to drink or consume any alcoholic liquor or CMB on city-owned property, or to have in his possession any open alcoholic liquor or CMB on city-owned property, subject to the following exceptions:
- (1) Alcoholic liquor may be served, dispensed and consumed during a city-sponsored event on city-owned property, provided that such serving, dispensing and consumption shall be in accordance with written rules and regulations relating to city-owned properties approved by the city council.
 - (2) Alcoholic liquor may be served, dispensed and consumed during events not sponsored by the city at the Community Center or Merriam Marketplace, provided that such serving, dispensing and consumption shall be in accordance with written rules and regulations relating to city-owned properties approved by the city council.
 - (3) Upon the city council's approval, alcoholic liquor may be offered for sale, sold and served for consumption during a city-sponsored event on city-owned property, pursuant to a valid state caterer's license and caterer's license issued by the city pursuant to article VI of this chapter.
- (d) *Unlicensed business*.
- (1) An unlicensed business may authorize patrons or guests of such business to consume alcoholic liquor on the premises of such business provided:
 - a. Such alcoholic liquor is in the personal possession of the patron and is not sold, offered for sale or given away by the owner of such business or employees thereof;
 - b. Possession and consumption of alcoholic liquor shall not be authorized between the hours of 12:00 a.m. and 9:00 a.m.;
 - c. The business, or any owner thereof, shall not have had a license issued under either the Kansas liquor control act or the club and drinking establishment act revoked for any reason; and
 - d. No charge of any sort may be made by the business for the privilege of possessing or consuming alcoholic liquor on the premises, or for mere entry onto the premises.

- (2) It shall be a violation of this subsection for any unlicensed business to authorize the possession or consumption of alcoholic liquor by a patron of such business when such authorization is not in accordance with the provisions of this subsection.
- (3) For the purpose of this subsection, "patron" means a natural person who is a customer or guest of an unlicensed business.
- (e) *Violation.* Violation of any provision of this section is a misdemeanor, punishable by a fine of not less than \$50.00 or more than \$200.00 or by imprisonment for not more than six months, or both. Upon a conviction, plea of no contest, or guilty plea for violation of this section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. [8-1008](#), and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

SECTION 3. That section 5-6 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-6. - Certain sales acts prohibited for alcoholic liquor.

- (a) No club, drinking establishment, caterer, or holder of a state temporary permit or local temporary alcoholic liquor permit nor any person acting as an employee or agent thereof, shall:
 - (1) Offer or serve any free CMB or alcoholic liquor in any form to any person;
 - (2) Offer or serve to any person an individual drink at a price that is less than the acquisition cost of the individual drink to the licensee or permit holder;
 - (3) Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;
 - (4) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or CMB or the awarding of individual drinks as prizes;
 - (5) Sell, offer to sell or serve free of charge any form of powdered alcohol as defined in K.S.A. [41-102](#), and amendments thereto; or
 - (6) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsection (a)(1) through (5) of this section.
- (b) A club, drinking establishment, caterer or holder of a state temporary permit or local temporary alcoholic liquor permit may:
 - (1) Offer free food or entertainment at any time;
 - (2) Sell or deliver wine by the bottle or carafe;
 - (3) Sell, offer to sell and serve individual drinks at different prices throughout the day;
 - (4) Sell or serve beer or CMB in a pitcher capable of containing not more than 64 fluid ounces;
 - (5) Offer samples of alcohol liquor free of charge as authorized by the Club and Drinking Establishment Act, K.S.A. [41-2601 et seq.](#), or K.S.A. 41-1204, and amendments thereto; or
 - (6) Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the director of alcoholic beverage control of the department of revenue in a pitcher containing not more than 64 fluid ounces.

- (c) A hotel of which the entire premises is licensed as a drinking establishment may, in accordance with rules and regulations adopted by the secretary of revenue, distribute to its guests coupons redeemable on the hotel premises for drinks containing alcoholic liquor. The hotel shall remit liquor drink tax in accordance with the provisions of the liquor drink tax act, K.S.A. [79-41a01 et seq.](#), and amendments thereto, on each drink served based on a price which is not less than the acquisition cost of the drink.
- (d) (1) A club or drinking establishment may offer customer self-service of beer or wine, or both, from automated devices on licensed premises so long as the licensee monitors and has the ability to control the dispensing of such beer or wine, or both, from the automated devices.
- (2) a. For the purposes of this subsection, "automatic device" shall mean any mechanized device capable of dispensing wine or beer, or both, directly to a customer in exchange for compensation that a licensee has received directly from the customer.
- b. No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of alcoholic beverage control of the department of revenue of the licensee's intent to use the automated device. The licensee shall provide the notification at least 48 hours before any automated device is used on the licensed premises.
- c. Each licensee offering customer self-service of wine or beer, or both, from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage, from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director of alcoholic beverage control of the department of revenue or other authorized law enforcement agent.
- d. The compensation required by subparagraph a. shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for beer or wine dispensed from the automated device. Access cards may be sold, used or reactivated only during a business day. Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this subsection, an access card shall be deemed active if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine or 32 ounces of beer. Each purchase of an access card under this subparagraph shall be subject to the liquor drink tax imposed by K.S.A. [79-41a02](#), and amendments thereto.
- e. In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver's license, identification card or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer's valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subparagraph d.
- f. Each access card shall become inactive at the end of each business day.
- g. Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine or 32 ounces of beer to a customer. Once an access card has been used to dispense 15 ounces of wine or 32 ounces of beer to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer's valid identification to the licensee or licensee's employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine or 32 ounces of beer from an automated device.

Subparagraph d., e., f. or g. shall not apply to wine or beer that is dispensed directly to the licensee or the licensee's agent or employee.

- (3) Notwithstanding any other provision of law, all laws and rules and regulations applicable to the sale of alcoholic liquor to persons under the legal age of consumption shall be applicable to the sales transaction of the prepaid access card.
- (e) A hotel of which the entire premises is not licensed as a drinking establishment may, in accordance with rules and regulations adopted by the secretary of revenue, through an agreement with one or more clubs or drinking establishments, distribute to its guests coupons redeemable at such clubs or drinking establishments for drinks containing alcoholic liquor. Each club or drinking establishment redeeming coupons issued by a hotel shall collect from the hotel the agreed price, which shall not be less than the acquisition cost of the drink plus the liquor drink tax from each drink served. The club or drinking establishment shall collect and remit the liquor drink tax in accordance with the provisions of the liquor drink tax act, K.S.A. [79-41a01 et seq.](#), and amendments thereto.
- (f) For purposes of this section, the term day means from 6:00 a.m. until 2:00 a.m. the following calendar day.

SECTION 4. That section 5-198 of the Code of Ordinances, City of Merriam, Kansas, concerning Special Events is hereby repealed.

SECTION 5. That section 5-223 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-223. - Permit regulations.

- (a) No local temporary alcoholic liquor permit holder shall allow the serving, mixing or consumption of alcoholic liquor on the premises covered by the event between the hours of 2:00 a.m. and 9:00 a.m. on any day at an event for which a local temporary alcoholic liquor permit has been issued. Upon request or demand made at any time by any police officer during the hours of the event for which a local temporary alcoholic liquor permit has been issued hereunder, the permit holder, owner or manager, or assistant manager, or other person then in charge of the event, shall produce and deliver to such officer for inspection and copying, or for other purposes consistent with the provisions of this chapter, a list which correctly reflects the names, addresses and ages of all persons employed by such permit holder on the date upon which such request or demand is made.
- (b) A local temporary alcoholic liquor permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which will be specified in the state temporary permit as well as on the local temporary alcoholic liquor permit; provided, however, that a local temporary alcoholic liquor permit may be issued for an event approved by the city pursuant to Section 5-227 for the entire period of such event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days. Not more than four local temporary alcoholic liquor permits may be issued to any one applicant in a calendar year.
- (c) A local temporary alcoholic liquor permit shall not be transferable or assignable.
- (d) The local temporary alcoholic liquor permit holder shall cause the permit to be placed in plain view on any premises within the city where the holder of the permit is serving or mixing alcoholic liquor for consumption on the premises.
- (e) The boundary of any premises covered by a temporary permit shall be marked by a line of demarcation.

(f) All alcoholic liquor sold at an event covered by a temporary permit shall be dispensed only from original containers.

(g) An individual may carry an original container of alcoholic liquor onto the event premises with the approval of the temporary permit holder and under the following conditions:

(1) The temporary permit holder shall not store any such containers of alcoholic liquor on the event premises; and

(2) each individual carrying any such container onto the event premises shall remove such container when the individual exits the event premises.

(h) The permit holder is responsible for the cleaning of litter and other material during and after the event.

SECTION 6. That section 5-224 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-224. - Unlawful acts of permit holder.

It is unlawful for any licensee under this section to:

- (1) Employ or use the services of any person under the age of 18 years in connection with the serving of alcoholic liquor.
- (2) Employ knowingly, continue in employment, or use the services of any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other municipality, this state or any other state, or of the United States.
- (3) Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. [21-5607](#), and amendments thereto, furnishing alcoholic liquor to minors or a similar law of this and any other municipality, this state, or any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of this or any other municipality, this state or any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years.
- (4) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee.
- (5) Employ or use the services of any person who is under the age of 21 and not supervised by the temporary permit holder or an employee who is at least 21 years of age.
- (6) Employ or use the services of any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.
- (7) Employ or use the services of any person who has been convicted within the previous two years of a violation of any intoxicating liquor law of this or any other municipality, this state or any other state, or of the United States, to dispense, mix, or serve alcohol.

SECTION 7. That section 5-227 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 5-227. - Local temporary alcoholic liquor permit for events.

- (a) A local temporary alcoholic liquor permit may be issued for the consumption of alcoholic liquor on a city street, alley, road, sidewalk or highway for an event if:
 - (1) Such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the city council for such event;
 - (2) a written request for such consumption and possession of such alcoholic liquor has been made to the city council; and
 - (3) the event is approved by the city council by ordinance.

The boundaries of such event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such event.

- (b) Drinking establishments that are immediately adjacent to, or located within the licensed premises of an event, for which state and local temporary permits have been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the event for the duration of the state and local temporary permit issued for such event.

SECTION 8. Savings Clause. The repeal of any Ordinance or Code Section, as provided herein, shall not revive an Ordinance previously repealed, nor shall the repeal affect any right which accrued, any duty imposed, any penalty incurred or any proceeding commenced, under or by virtue of the Ordinance repealed. Said Ordinance or Code repealed continues in force and effect after the passage, approval, and publication of this Ordinance for the purpose of pursuing such rights, duties, penalties, or proceedings.

SECTION 9. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the Governing Body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 10. Repeal. Sections 5-1, 5-4, 5-6, 5-223, 5-224, 5-227 of the Code of Ordinances of the City of Merriam, Kansas as they existed before the above amendments are hereby repealed.

SECTION 11. Existing Sections. Those sections of Chapter 5 of the Code of Ordinances of the City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 12: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED BY THE City Council the _____ day of _____, 2019.

APPROVED BY THE Mayor the _____ day of _____, 2019.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Nicole Proulx Aiken, City Attorney



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Approve Public Art Committee Recommendation for New Community Center
Public Art Pieces

SUBMITTED BY: Meredith Hauck, Assistant City Administrator

MEETING DATE: June 24, 2019

PROJECT BACKGROUND/DESCRIPTION:

At its May 4, 2019 work session, the Public Art Committee heard presentations from five finalists for the public art pieces at the new community center. These finalists were selected from an initial pool of 126 artists that submitted following the nation-wide call for artists. From that meeting, the Committee selected Blessing Hancock as its recommendation to the City Council as the artist to move forward with. In addition to the quality of her designs, one of the reasons the committee selected Blessing was the public engagement she does as part of the design process to incorporate the community into the project. Blessing plans to have a booth at both the August 3 Farmers Market and August 6 National Night Out where residents can participate in a piece of the project design.

The proposal Blessing submitted (attached) includes preliminary designs that are approximately 80% complete. Following the initial selection by the Public Art Committee, Blessing worked with the community center's design team to make an initial round of adjustments – moving the parking garage structure piece to the east side of the elevator tower, and moving both free standing pieces into the courtyard (updated renderings attached). Please note that the design team is also working the building design committee to further refine the courtyard design following the selection of art. Once the contract is approved, Blessing will continue her refinement and design process. The contract states she has 150 days to submit an updated design to the City.

Funding for all three pieces is already included as part of the new community center project budget. The final negotiated budget is less than the artist's proposed budget because McCarthy will handle a portion of the installation in conjunction with the project.

CITY COUNCIL GOALS AND OBJECTIVES

Goal 1.2 – Design and construct a Uniquely-Merriam Community Center and Aquatic Center.

Goal 1.3 – Support a public art program throughout the city.

FINANCIAL IMPACT

Amount of Request/Contract:	\$283,000
Amount Budgeted:	\$36,600,000
Funding Source/Account #:	301-0000-514-33-99 #BM1802 – New Community Center Project

SUPPORTING DOCUMENTS

- Contract, including initial proposal and updated placement renderings

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends approving the Public Art Committee's recommendation for New Community Center Public Art Pieces

**AGREEMENT FOR THE PURCHASE AND EXHIBITION OF A WORK OF ART FOR THE CITY OF MERRIAM'S
PUBLIC ART COLLECTION**

This Public Artwork Agreement ("Agreement") is entered into this _____ day of _____, 2019, by and between the City of Merriam, Kansas (the "City") and SKYRIM STUDIO (the "Artist").

WHEREAS, the City desires to enhance the public space at the Merriam Community Center (the "Site") with artwork.

WHEREAS, the Artist submitted an artwork proposal and the City selected the proposal, which is described in Exhibit B, Artist's Proposal (the "Project").

WHEREAS, the City and Artist wish to enter into this Agreement to set forth the specific terms and conditions of their relationship.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the parties agree as follows:

1. **SCOPE OF SERVICES.** Artist agrees to create, to deliver, and to install the Project at the Artist's expense on the Site using the scope and process outlined in **Exhibit A**, Scope of Work, which is incorporated by reference herein (the "Services"). Artist is responsible for all costs associated with design, fabrication, delivery, and installation. The Artist's work must be of high quality, in compliance with generally accepted standards of workmanship, and in conformance with this Agreement. Artist is responsible for providing a detailed maintenance schedule to include but is not limited to materials, application standards, service intervals, etc.
2. **SCHEDULE OF PERFORMANCE.** The parties agree that time is of the essence. The specific date of installation and delivery shall be no later than **May 31, 2020**, and will be coordinated with the City. The City agrees to grant reasonable extensions of time to the Artist in the event that there is a delay caused by conditions beyond the Artist's control or acts of God render timely performance of the Artist's services impossible. The Artist must provide written notification to the City within 14 days after the cause of the delay. Failure to fulfill contractual obligations due to conditions beyond the Artist's reasonable control will not be considered a breach of contract; but the obligations will be suspended only for the duration of the conditions.
3. **COMPENSATION.** The total fee paid by the City to the Artist under this Agreement will be **\$283,000**. Compensation is based on the specifications provided in **Exhibits A and B**, which is incorporated by reference herein. The fee includes all design, materials, labor, delivery, and installation of the project.

4. PAYMENT SCHEDULE AND TERMS. Payment shall occur as follows:

(\$56,600.00) 20% Payment Upon Execution of this Agreement which shall address development of the concept design including all consulting, design coordination, public engagement, design review, and project approval.

(\$56,600.00) 20% Progress Payment upon initiation of artwork fabrication, as evidenced by a sworn written statement from the Artist, in form and content satisfactory to the City.

(\$28,300.00) 10% Progress Payment upon 50 percent of completion of artwork fabrication, as evidenced by a sworn written statement from the Artist, in form and content satisfactory to the City.

(\$28,300.00) 10% upon 100 percent completion of all site preparations (artwork foundation system and artwork electrical system).

(\$28,300.00) 10% upon 100 percent completion of the artwork fabrication, as evidenced by a sworn statement from the Artist, in form and content satisfactory to the City. 10%

(\$56,600.00) 20% upon final installation of the project and acceptance by the City.

(\$28,300.00) Final 10% upon receipt of all close out documents including but not limited to: transfer of title to the City, submission of reports, description of work, artist's statement, final guarantee, release of rights, maintenance requirements, maintenance agreements, formal City Council acceptance of the project and all other acts and documents required of the Artist by this written Agreement.

Invoices for Services shall be submitted via email to **Meredith Hauck, Assistant City Administrator, 9001 W. 62nd Street, Merriam, KS 66202.** Payment as set forth under this Agreement will be made payable to Artist and will be remitted by check. Unless disputed in writing by the City before due, the City will pay Artist within 30 calendar days of the City's receipt of invoice from Artist.

5. PERMITS, PROTECTION, PREVENTION OF SITE ACCESS AND RISK

- a. **Permits.** The Artist shall secure and maintain throughout the term of this Agreement all permits, licenses, and certifications necessary to perform the Services and deliver and install the Project on the Site.
- b. **Protection.** The Artist must keep competent supervisory personnel on the Project and provide efficient supervision, using Artist's best skill and attention. The Artist must use reasonable efforts at all times to safely guard the Project, the City's property, and

adjacent property, including underground utilities, from damage, injury, or loss in connection with the Project.

- c. **Condition of Premises.** During installation of the Project, Artist shall clean up the Site at reasonable intervals and at other times when directed by the City. At all times while finish work is being accomplished, the Site shall be clean and free of construction debris and trash. Directly upon completion of the Project, Artist shall remove from the Site all equipment and any waste materials not previously disposed of, leaving the Site thoroughly clean and ready for the City's final inspection.
- d. **Risk of loss.** The risk of loss or damage to the Project shall be borne by the Artist until final acceptance by the City. The Artist shall take measures as are necessary to protect the Project from loss or damage until such final acceptance.

6. REPRESENTATION AND WARRANTIES:

- a. **Uniqueness.** The Artist represents and warrants to the City that:
 - i. The Project is solely the result of the artistic effort of the Artist;
 - ii. The Project is unique and original and does not infringe upon any copyright;
 - iii. The Project, or a duplicate, has not been accepted for sale or display elsewhere;
 - iv. The Project is free and clear of any liens from any source whatsoever;
 - v. Prior to final payment, Artist will furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the Project that all monies due have been paid; and
 - vi. The Artist shall defend, indemnify, and hold harmless the City if a third party asserts a copyright infringement or claim involving the Project.
- b. **Workmanship.** The Artist warrants to the City that all work on the Project shall be performed using applicable design standards required by federal, state, local laws, and codes and such standards recognized and used in the industry in the performance of services under this Agreement.
- c. **Materials.** The Artist agrees to use materials for the Project that are of good quality, fit for the selected purpose, within manufacturer tolerances and warranties, and free from all faults and defects not inherent to the quality required.
- d. **Defects and Deficiencies.** For a period of one year from the date of the City's final acceptance of the Project, the Artist agrees to replace or correct any material defects in the Project that relate to a defect in the design, workmanship, or materials. The City shall also give notice to the Artist of any observed material defect. If the Artist fails to cure any such material defects, or to make arrangements to do so within a reasonable time satisfactory to the City, the City has the right to arrange for such replacements and corrections, and the Artist must reimburse the City for the costs of such. If the City asks the Artist to repair damage caused to the Project not related to the design, workmanship, or materials, for example by vandalism, collision, extreme environmental

conditions, or other unforeseeable causes, the City will reimburse the Artist for reasonable material and labor costs for such repair, except to the extent such damage is due to a defect in the design, workmanship, or materials used in the Project. This warranty excludes any responsibility on the part of the Artist to remedy any defects or deficiency caused by any abuse, misuse, or failure to properly maintain by the City or others, and changes or modifications not performed by the Artist.

7. **CITY'S RESPONSIBILITIES.** The City shall make available for Artist's examination and use all applicable information regarding the Site, including but not limited to: plans, specifications, reports, narratives, publications, statistics, records, and other information pertinent to Artist's performance under this Agreement. Further, the City shall provide its reviews and approvals of Artist's design services in a prompt and timely manner according to the schedule established herein.

8. **OWNERSHIP AND RIGHTS.**

a. **Ownership:** Upon completion and installation of the Project and upon final acceptance and final payment to the Artist, ownership of the Project shall pass to the City.

b. **Copyright:** The Artist shall retain the ownership of copyrights in and to the Project, plans, drawings, schematics, design studies, and models prepared by the Artist in connection with this Project, except as limited by this paragraph. The Artist agrees that it will not make any additional, exact duplicates, or three dimensional reproductions of the exact design dimensions and materials of the Project, nor grant others permission to do so, except with the written permission of the City. If the Artist fails to achieve milestones tied to this Agreement, the City reserves the right to complete the Project and retain ownership of the copyrights. In such case, the Artist agrees to transfer ownership of all copyrights associated with the Project without additional charge.

c. **Reproduction and Credit:** The Artist grants the City a license to use photographic reproductions of the Project in advertising brochures, media publicity, and promotion of its activities, catalogues, site guides, books, and publications for non-commercial purposes. If reproductions are made by either party where the Project is the central focus, there shall be included credits listing the Artist as the creator of the Project and owner of its copyright, and the City as the party that owns and commissioned the Project.

d. **Rights under the Visual Artists' Right Act:** To the extent that the uses, modification, destruction, or removal of the Project under this Agreement affect any rights the Artist may have under the provisions of federal or state law, including the 1990 Visual Artists' Rights Act under 17 U.S.C. §106A(a) and §113, the Artist hereby knowingly waives any rights provided by those laws.

9. MAINTENANCE, REPAIRS, REMOVAL AND DESTRUCTION.

- a. **Maintenance.** The Parties acknowledge that maintenance of the Project is essential although anticipated to be minimal. The Parties agree that the City will conduct periodic inspections and assessments of the condition of the Project for the purposes of coordinating any maintenance and repairs necessary to preserve the condition of the Project and to maintain the condition for public safety purposes. Such maintenance will be provided by the City at the City's expense, and the Artist agrees to allow any necessary maintenance or repairs to occur.

- b. **Removal, relocation, or destruction.** Nothing in this Agreement shall preclude any right of the City in its sole discretion to (i) remove the Project from public display; (2) move or relocate the Project to another location selected by the City for public display; or (iii) destroy the Project. The Artist waives any rights that he might have in connection with the removal or destruction of the Project under 17 U.S.C. § 106A(a) and §113.

10. INDEMNIFICATION. Without in any way limiting indemnification obligations that may be set forth elsewhere in this Agreement, Artist shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents, from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of Artist's services, provided that any such claim, damage, loss, or expense is caused in whole or in part by a negligent and/or intentional act, error or omission of the Artist, its subcontractors, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Artist's services. The Artist shall give the City immediate written notice of any claim, suit, or demand that may be subject to this provision.

11. INSURANCE.

- a. **General.** Artist shall secure and maintain, throughout the duration of the Agreement, insurance (on an occurrence basis unless otherwise agreed in writing) of such types and in at least such amounts as required herein. The City shall be named as an additional insured and loss payee for all coverages required herein except workers' compensation coverage and professional liability coverage. Coverage on policies in which the City is named an additional insured shall be primary and noncontributory. Artist shall provide certificates of insurance and renewals thereof on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least 30 days before material modification or cancellation of any policy listed on the Certificate.

- b. **Notice of Claim.** Artist, upon receiving notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

c. **Reduction of Policy Limits.** Artist shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by this Agreement) if the Artist’s limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required hereunder. In that event, Artist shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

d. **Industry Ratings.** Artist agrees that its insurance carrier must:

- i. Be licensed to do business in the State of Kansas;
- ii. Carry a Best’s policyholder rating of “A” or better; and
- iii. Carry at least a Class VIII financial rating; OR
- iv. Be acceptable to the City.

e. **Specific Coverage Requirements**

i. **General Liability Insurance:** Artist shall procure and maintain Comprehensive General Liability Insurance with limits not less than \$2,000,000 for each occurrence combined single limit for bodily injury and property damage and \$1,000,000 personal and advertising injury limit. The Policy shall be on an Occurrence Form and include the following coverages: personal and advertising injury, contractual liability, broad form property damage, premises operations, products and completed operations, medical payments, and if any subcontracted work, independent contractors. The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damages to underground property.

ii. **Comprehensive Automotive Liability:** Artist shall maintain Automobile Liability coverage including coverage for Owned, Hired, and Non-Owned Liability providing all injuries to members of the public and damage to property of others arising from the use of motor vehicles on and off the work site with a minimum limit of \$1,000,000 for each occurrence combined single limit for bodily injury and property damage.

iii. **Workers’ Compensation Insurance:** Artist shall maintain Workers’ Compensation coverage for all claims made under applicable state workers’ compensation laws. Artist shall always maintain Employer’s Liability coverage for claims made for injury, disease, or death of an employee which, for any reason, may not fall within the provisions of a workers’ compensation law. The following minimum limits shall apply:

Workers’ Compensation	Statutory Limits
Employer’s Liability	\$100,000 per accident
	\$500,000 disease – policy limit

\$100,000 disease – each employee

- iv. **Professional Liability Insurance:** Artist shall maintain a Professional Liability Insurance Policy in an amount of no less than \$1,000,000.

12. COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS, AND RULES.

- a. **Discrimination prohibited.** Artist agrees to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry, or age.
- b. **Solicitations.** In all solicitations or advertisements for employees, Artist shall include the phrase “equal opportunity employer” or a similar phrase approved by the Kansas Human Rights Commission (Commission).
- c. **Non-compliance.** Artist shall be deemed to have breached this Agreement and it may be cancelled, terminated, or suspended in whole or in part by the City, if the Artist:
 - i. fails to comply with the reporting requirements of K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto; or
 - ii. is found guilty of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Commission that has become final.
- d. **Flow through requirements.** Artist shall include the provisions of Section 12(a)-(c) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- e. **Exempt contractors.** The provisions of this Section 12(a)-(d) are recommended but not enforceable against Artist if:
 - i. Artist employs fewer than four employees at all times during the term of this Agreement; or
 - ii. All of Artist s contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City pursuant to K.S.A. 44-1030(c).
- f. **ADA compliance.** Artist also agrees to comply with the American with Disabilities Act of 1990 (“ADA”), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.

13. TERMINATION AND DEFAULT.

- a. **Termination.** The City may terminate this agreement at any time on no less than 14 calendar days written notice to the Artist. In such event, the City will compensate the Artist for all services performed and materials provided or procured to the date the Artist receives the notice of the termination, together with reasonable expenses and prorated profit then due, unless the parties agree otherwise in writing. Under no circumstances will the Artist be entitled to anticipatory profits or consequential damages. The provisions regarding indemnity and insurance shall survive the termination of this Agreement.

- b. **Default.** Each and every term and condition of this Agreement is deemed to be a material element of this Agreement. If either party fails or refuses to perform according to the terms of this Agreement, it may be declared in default thereof. A declaration of default by either party must be made in writing to the other party, describe how the allegedly defaulting party has failed to perform according to the terms of this Agreement, and provide an opportunity for consultation with the other party to review what steps may be necessary to cure the default.

- c. **Remedies Upon Default.** If one party declares the other in default of this Agreement and performance is possible, the allegedly defaulting party will have a period of 14 calendar days within which to cure the default. If the allegedly defaulting party fails to correct the default or timely performance is not possible, the party declaring the default may elect to:
 - i. Immediately terminate the Agreement;
 - ii. Treat the Agreement as continuing and require specific performance; or
 - iii. Avail itself to any other remedy at law or equity.

If either party elects to terminate the agreement for default, termination will be effective upon mailing, by the terminating party, of written notice to terminate to the defaulting party, and the City will compensate the Artist for all services performed and materials provided or procured in accordance with the terms of this Agreement up to the point of termination and the Artist will deliver or otherwise make available all design plans, sketches, fabrications, or other materials that the Artist may have created or purchased in performance of the Agreement up to the point of termination. Under no circumstances will the Artist be entitled to anticipatory profits or consequential damages. The provisions regarding indemnity and insurance shall survive the termination of this Agreement.

14. MISCELLANEOUS PROVISIONS.

- a. **NON-ASSIGNABILITY.** Artist will not assign, transfer, or subcontract the creative and artistic portions of the Conceptual Design, Final Design, or the Project to another party without the prior written consent of the City. This Agreement is binding upon and fully enforceable against the successors and assigns of Artist, whether consented to or not.
- b. **SUBCONTRACTORS.** Artist may not, without first obtaining the City's written consent, subcontract any of the Project. Notwithstanding the City's consent to any subcontracting, Artist shall remain fully responsible for all obligations under this Agreement.
- c. **INDEPENDENT CONTRACTOR STATUS.** In no event, while performing under this Agreement, shall Artist be deemed to be acting as an employee of the City; rather, Artist shall be deemed to be an independent contractor. Artist shall be responsible for and pay all taxes and withholdings required by law upon the compensation paid under this Agreement, and shall defend, indemnify, and hold harmless the City from liability in connection therewith. Nothing expressed herein or implied herein shall be construed as creating between Artist and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.
- d. **COMPLIANCE WITH CASH-BASIS LAW.** This Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law, K.S.A. 10-1101 *et seq.*, as amended. The City is only obligated to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Agreement during the City's current budget year. Notwithstanding any other provision of this Agreement, in the event that the City does not budget and appropriate funds for any renewal term, for any reason in its sole discretion, the parties agree that they shall be relieved of all obligations under this Agreement without penalty. To the extent that the City does budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.
- e. **GOVERNING LAW.** This Agreement shall be governed by the laws of the state of Kansas. Any action in regard to the Agreement or arising out of its terms and conditions shall be instituted and litigated in the courts of the State of Kansas within Johnson County, Kansas.
- f. **ENTIRE AGREEMENT.** This document and the documents incorporated by reference herein constitute the entire Agreement between the parties and supersedes all prior understandings and discussions. This Agreement may only be modified in writing by an amendment signed by both parties.
- g. **AUTHORITY.** The Artist warrants that the individual executing this Agreement is properly authorized to bind the Artist to this Agreement.

- h. **DESCRIPTIVE HEADINGS AND CAPITALIZATION.** The descriptive headings of the provisions of this Agreement are formulated and used only for convenience and shall not be deemed to affect the meaning and construction of any such provision. Some terms are capitalized throughout the Agreement, but use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.
- i. **SEVERABILITY.** If any part, term, or provision of this Agreement is held by the Courts to be illegal or in conflict with any law of the State of Kansas, the validity of the remaining portions or provisions shall be unaffected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- j. **DISPUTES.** The parties agree that disputes relative to the Project performed should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis of the dispute shall be free to take such steps as it deems necessary to protect its interest; provided, however, that notwithstanding any such dispute, the Artist shall proceed with its Services under this Agreement as though no dispute exists; and provided further, that no arbitration proceedings shall be initiated by Artist without prior written consent of the City.
- k. **PHRASEOLOGY.** In this Agreement, the singular includes the plural, the plural includes the singular, and any gender includes the other gender.
- l. **WAIVER.** The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.
- m. **NOTICE.** Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if the notice is in writing and personally delivered or sent by First Class mail, postage prepaid, to the party to whom said notice is to be given. Notices delivered in person shall be deemed to be served effective as of the date the notice is delivered. Notices sent by First Class Mail shall be deemed to be served 72 hours after the date the notice is postmarked to the addressee, postage prepaid.

Until changed by written notice given by one party to the other, notice to the Artist shall be made at the address set forth following the Artist's signature block. Notice to the City shall be made as follows:

City of Merriam, Kansas
Meredith Hauck, Assistant City Administrator

9001 W. 62nd Street
Merriam, KS 66202

- n. **SURVIVORSHIP**. Notwithstanding the termination of this Agreement, Artist's obligations with respect to the Warranty Period, Indemnification, Insurance, and any other terms or conditions that by their nature should survive termination, shall survive the termination of this Agreement.

15. ARTIST'S RIGHTS

- a. **Identification and Maintenance.** The City shall, at its expense, prepare and install at the Site, at street level, a plaque identifying the Artist, the title of the Work, and the year of completion. The Artist may submit suggestions to the City for design and content of the plaque. The City shall maintain the plaque for as long as the Work is displayed.
- b. **Repairs and Restoration.** The City shall have the sole right to determine when and if, it will undertake repair, restoration, and/or maintenance of the Work, and if so, the nature and extent of such repair, restoration, and/or maintenance. The Artist shall be reasonably available to consult with the City on maintenance issues and depending on the extent of the artist's services, may be paid a fee for such services as are agreed to in advance by the City and the Artist and set forth in writing. At the City's sole option, the Artist may personally supervise repairs and/or restorations, and if so, shall be paid a fee for any such services agreed to in advance by the City and Artist and set forth in writing. Notwithstanding the foregoing, and pursuant to Article 7 of this Agreement, no fee will be paid to the Artist for any services Artist may render in connection with curing a breach of warranty. If the City declines to follow the Artist's recommendations for repair, restoration, or maintenance, the Artist's sole remedy will be to dissociate Artist name from the Work, and the City agrees that it will no longer use the Artist's name or the name of the Work in connection therewith. If a plaque is installed identifying the Artist and the Work, as provided in Article 10.1, it shall be removed or modified at the Artist's option, with final approval of any modification to rest with the City.
- c. **Artist's Address.** The Artist shall notify the City in writing of change(s) in Artist's address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce those provisions of this Agreement that require the express approval of the Artist or notice to Artist.
- d. **Additional Rights and Remedies.** Nothing contained in this Article 10 shall be construed as a limitation on such other rights and remedies available to the Artist or the City under the law which may now or in the future be applicable.
- e. **Artist as Independent Contractor.** The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.

EXHIBIT A: SCOPE OF WORK

The Artist agrees to provide the following Services which shall include all things necessary to create, design, fabricate, transport, and install the Project defined herein.

1. DESIGN DEVELOPMENT.

- a. The Artist agrees to design and produce the Project generally as illustrated and detailed in **EXHIBIT B.**
- b. The Artist agrees, within 150 days of the execution of this Agreement, to prepare and submit to the City detailed working drawings and plans for fabrication and installation of the Project for approval by the City. Such submittals will be incorporated into this Agreement at **EXHIBIT C.**
- c. The Artist will determine the specific location of the Project at the Site and submit to the City for approval.

2. FABRICATION.

- a. The Artist agrees that the City has the right to inspect the Project at reasonable times during the fabrication state at the City's expense subject to the appropriation by the City.
- b. The Artist agrees to ensure that the Project has the necessary structural capacity to be installed in an unsecured public place and to withstand normal wear and tear without excessive maintenance. The Artist further insures that the Project can withstand seasonal extremes of weather typical of that in Merriam, Kansas.

3. DELIVERY AND INSTALLATION

- a. The Artist agrees to provide the City with full engineering drawings and send any mounting hardware/location templates ahead of sculpture installation so that the City Contractor will complete site preparation, including installation of two foundations and wall mounting prep for the sun sculpture.
- b. The Artist agrees to be responsible for the transportation of all components of the Project to the Site and notify the City for final preparation of the Site for installation.
- c. The Artist agrees to advise, consult, and inspect the completed installation at the Site to ensure that the installation is in conformance with the Artist's proposal.
- d. The City will be responsible for installing lighting for the Project. The Artist will identify the location for lighting in coordination with the City.

4. MAINTENANCE

- a. Artist agrees to provide a detailed maintenance schedule to include, but not be limited to materials, application standards, service intervals, etc.

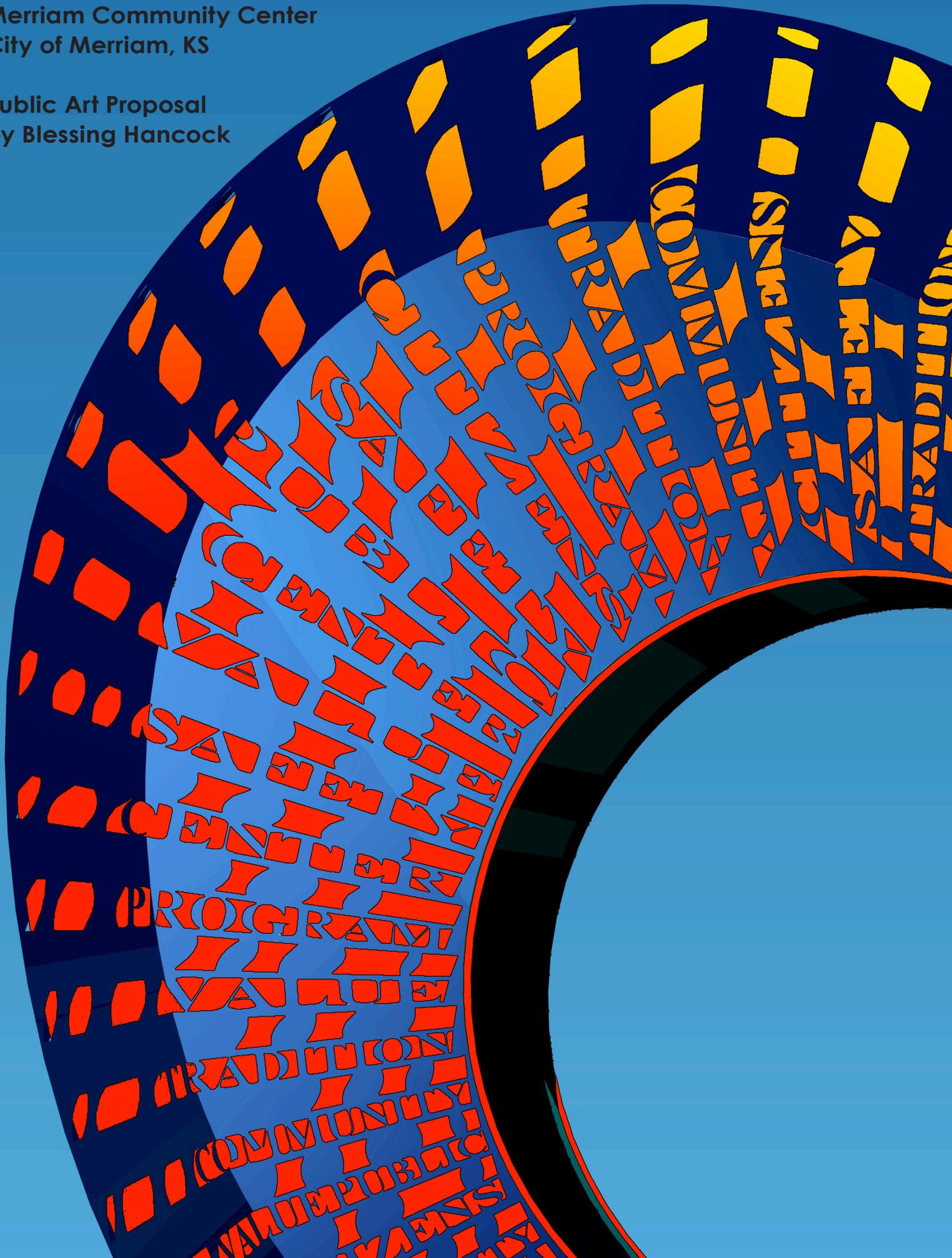
5. FINAL ACCEPTANCE

- a. The Artist will advise the City in writing when all Services required under this Scope of Scope have been completed.
- b. The City will notify the Artist of its final acceptance of the project in writing. Final acceptance shall be effective as of the date of the City's notification of final acceptance.
- c. The Artist will be available, at their own expense, at a mutually agreed upon time for any dedication ceremonies.

EXHIBIT B: ARTIST'S PROPOSAL

Merriam Community Center
City of Merriam, KS

Public Art Proposal
by Blessing Hancock



Concept and Narrative:

I believe there is enormous potential for public art that is skillfully integrated with the new Merriam Community Center design concept and emphasizes older youth. I am proposing a series of three illuminated sculptures that draw inspiration from nature and recreation.

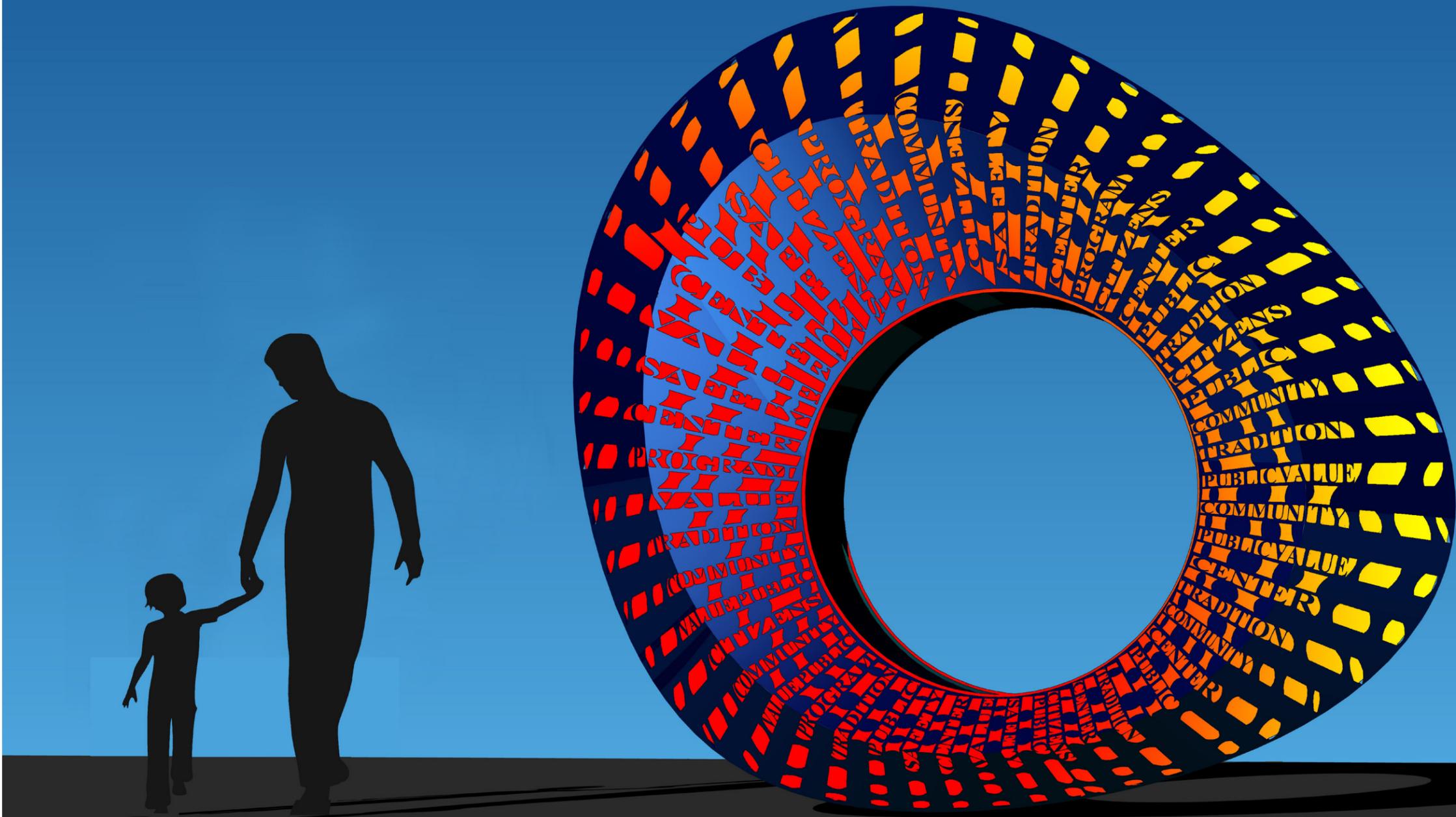
This series relates to the surrounding environment and community activities, offering an abstraction of the sun, pools, and water windows, that shape the public space network.

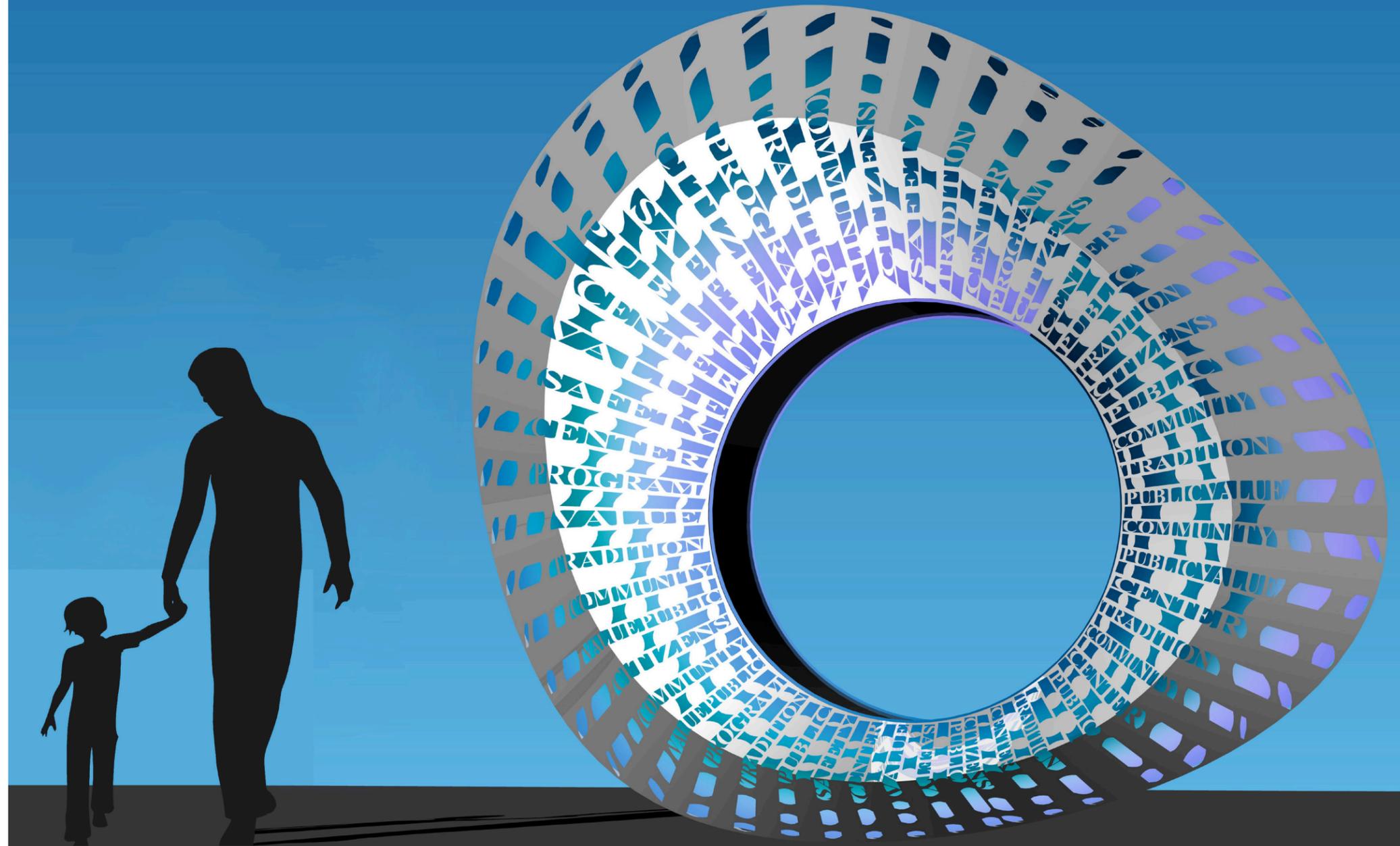
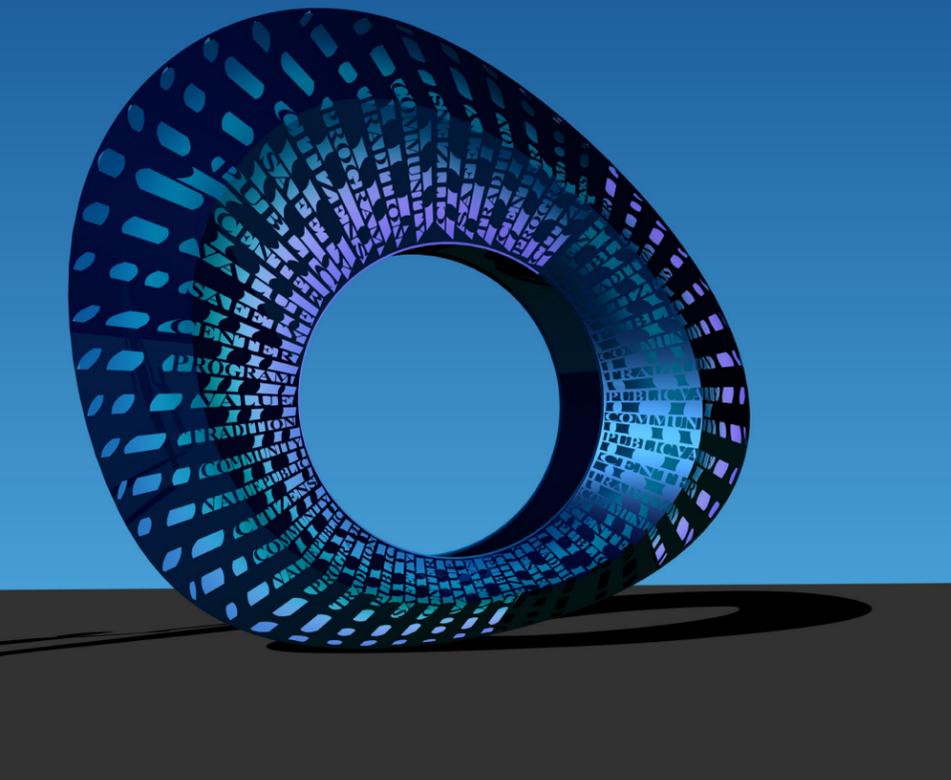
The three individual sculptures will incorporate a high level of community engagement, with each one incorporating language collected from the public. These artworks will become an elegant abstraction of community interests with contemporary interactive elements.

My training as a public engagement artist and landscape architect often draws me to study sophisticated natural and cultural systems through my artwork. Merriam Community Center offers a perfect contextual setting to explore the concept of 'inclusive spaces that foster belonging'.

The series offers an eye-catching sequence of elements that attract visitors, invite physical interaction and promote wayfinding throughout the center. The public will be interested in lounging within the unusual volumetric forms while also learning from the language covering the many surfaces.

In the evening color-changing lighting will illuminate the artworks, creating a soft, diffused glow within the forms. With the use of programmable LED fixtures the sculptures will come alive in the evenings and early mornings with pre-programmed lighting sequences.









The three sculptures tie into the natural ecosystem and recreational themes of Merriam Community Center that has been established. My interest is in highlighting the significance of gateway and interactive artworks.

I believe this artwork will offer Merriam Community Center visitors a new way to live with art - a way in which art enriches the human experience and creates an atmosphere of participation, curiosity, and connection to community.

Community Engagement:
The surface text pattern of each sculpture will be decided through a collaborative relationship between the artist and the local community. My aim is that the sculptures will prioritize meaningful resident engagement and increasing civic participation.

The sculptures are a signature artwork series that place emphasis on ecology, education and interactivity. They are well suited for the progressive City of Merriam and will help to promote this identity.

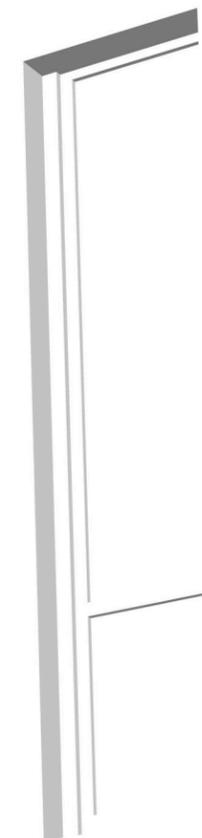
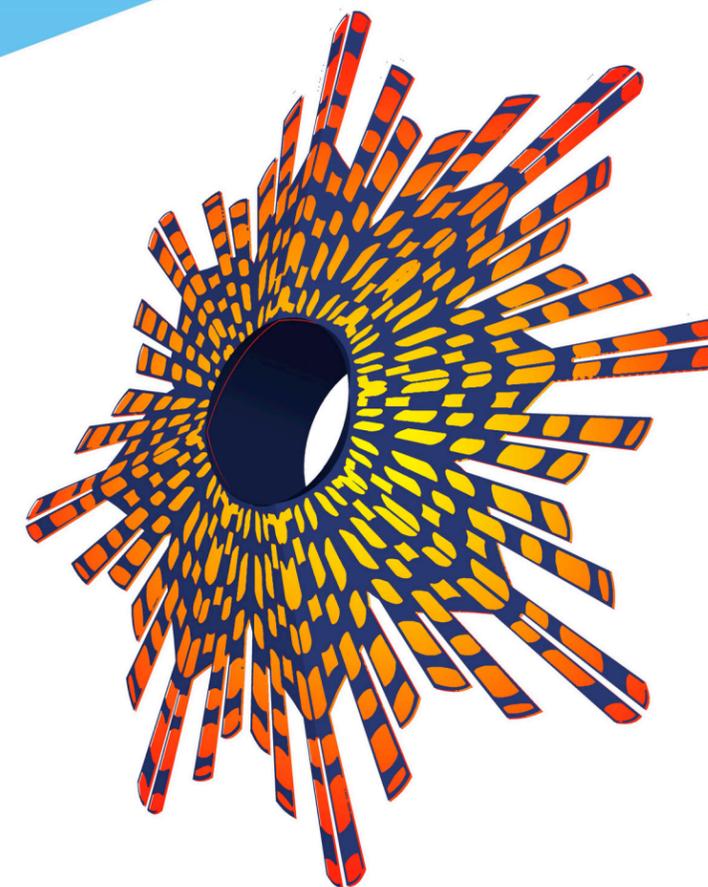
Placement/Dimensions of Three Artworks:
1. Plaza: 1 sculpture (approx 10' dia x 3' depth)
2. Parking Garage: 1 sculpture (approx 15' dia)
3. Switchback: 1 sculpture (approx 4.5' dia x 2' depth)

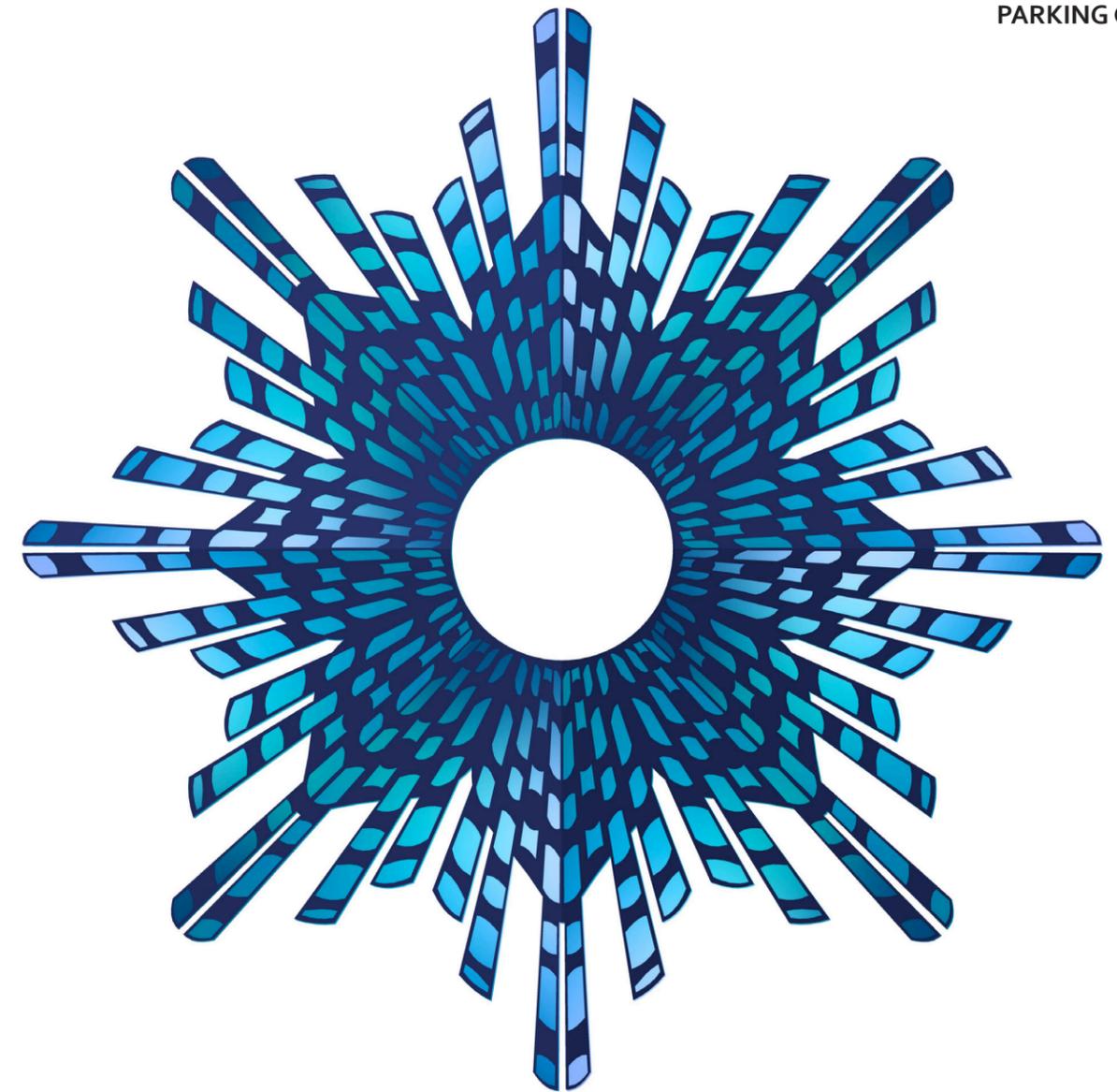
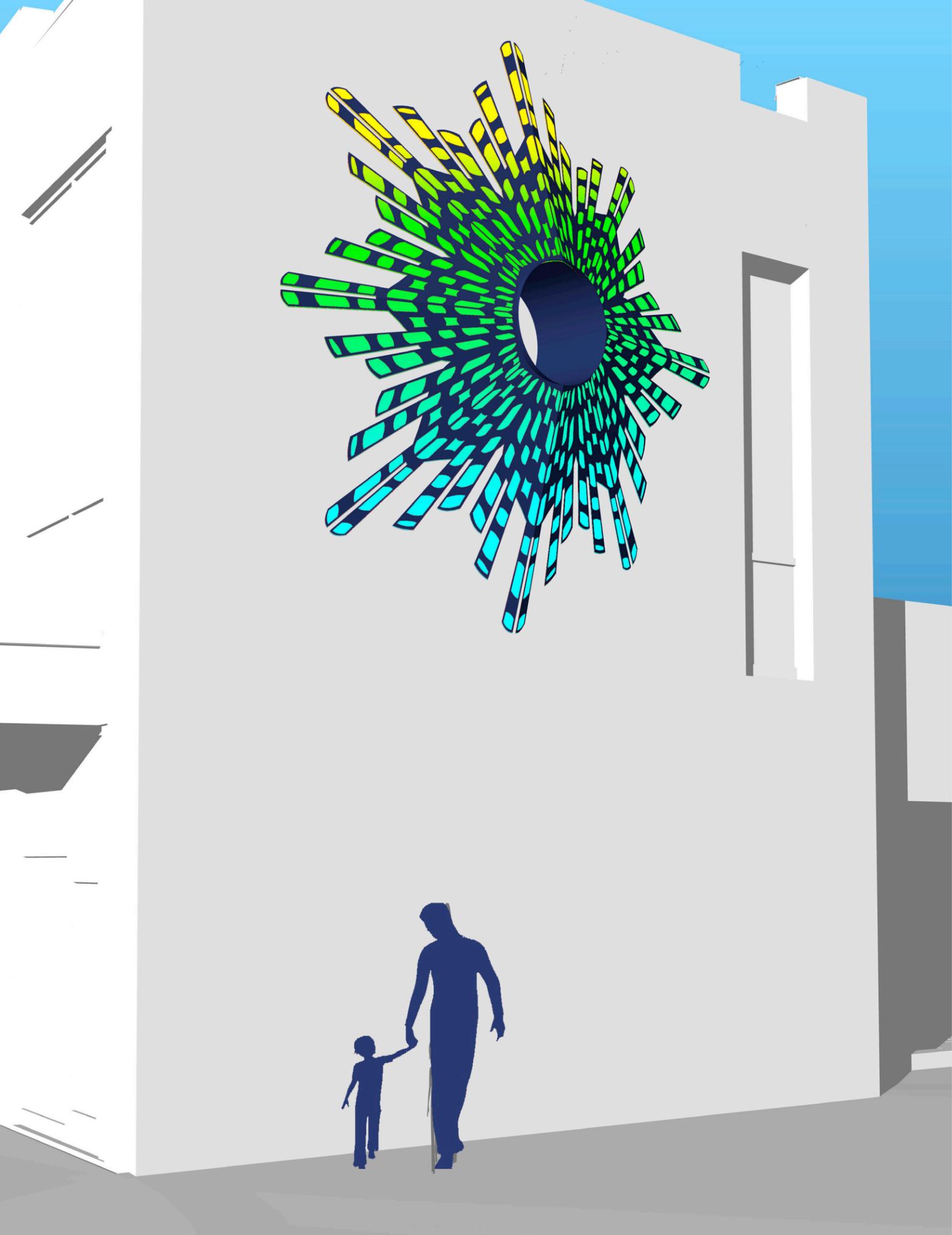
Materials:
Exterior Surface - Water jet cut stainless steel with custom pattern designs and satin finish. Thickness TBD.

Interior Glazing - Polycarbonate diffusing surface. This material will back the stainless steel and is highly UV stable. I will use outdoor grade products designed to provide superior light diffusion characteristics while maintaining high light transmission. Eliminates visible hot spots from pinpoint LED lights. The material is easy to form and fabricate and has excellent impact strength and dimensional stability.



PARKING GARAGE



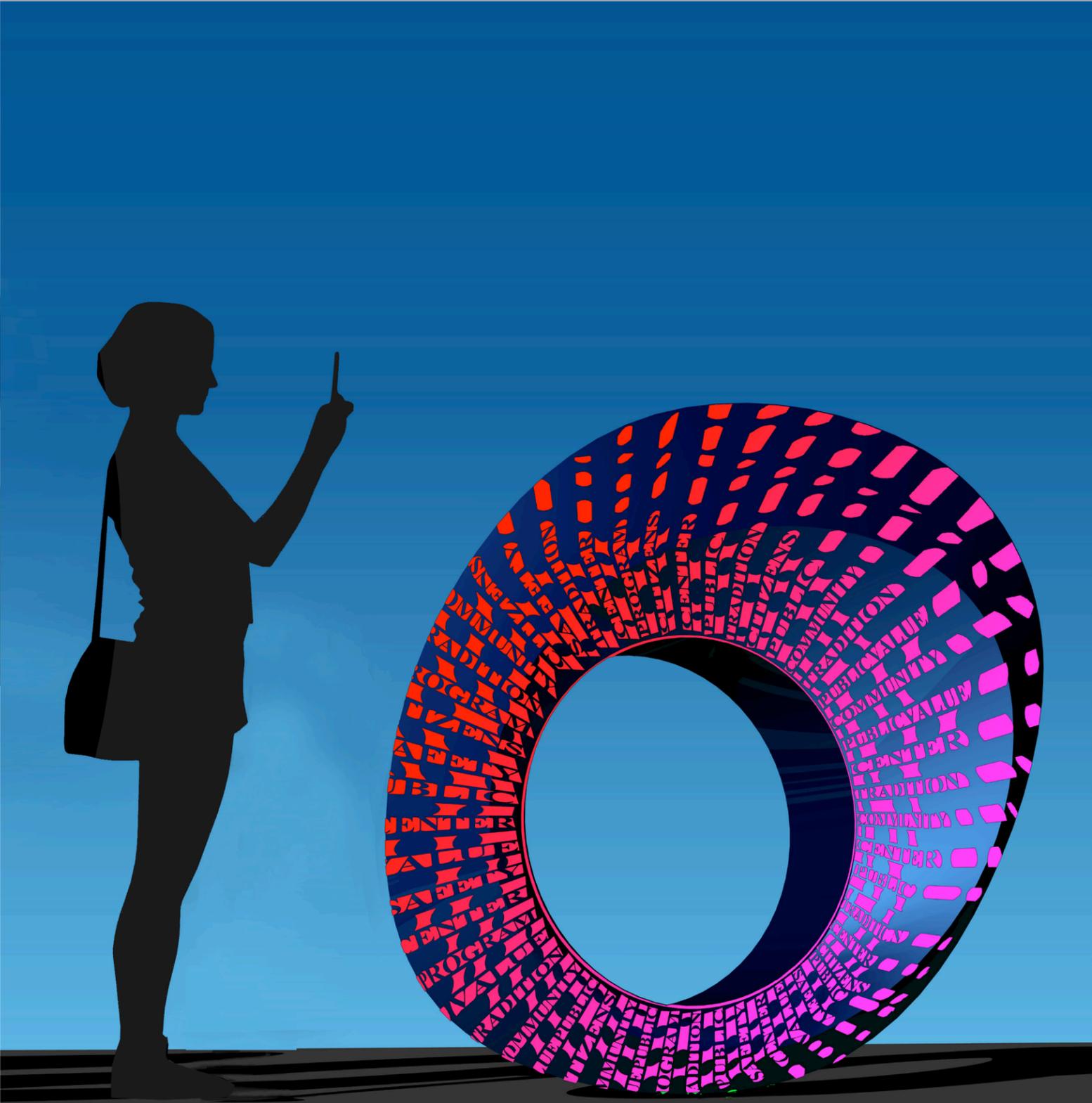


Structural Support -
Interior structural elements and footings will be designed and stamped by a structural engineer licensed in the state of Kansas. Final structural support design will be developed during the detail design phase following a thorough structural analysis. I will obtain structural stamps and design for weight loads and safety performance.

Lighting -
Color-changing LED light fixtures will be mounted within the sculptures. Lighting will provide a safe and welcoming experience.

Specific light fixture and exact lumens will be determined during the prototyping phase. Final decisions will be based on longevity, durability, and ease of replacement.

Lighting will be pre-programmed with animated lighting sequences mounted to the interior of the sculptures. Additional programming will not be necessary. Conduit and wiring will tie into the existing electrical supply. A junction box containing power supply and programmer will be located at an accessible location, TBD in consultation with the project team. Electronic components will be not be accessible to the public.



Installation:
The artworks will be fairly straightforward to install as they use standard construction techniques. I have experience with complex installations and would coordinate logistics with my contractor and the project team.

Maintenance Plan:
I have chosen materials that are well proven in high traffic areas. Using straightforward construction techniques my artwork will be durable and low maintenance. The physical portion of my concepts require little to no maintenance. Many aspects of the concepts will be modular so that if one section gets damaged due to vandalism that portion can be easily replaced.

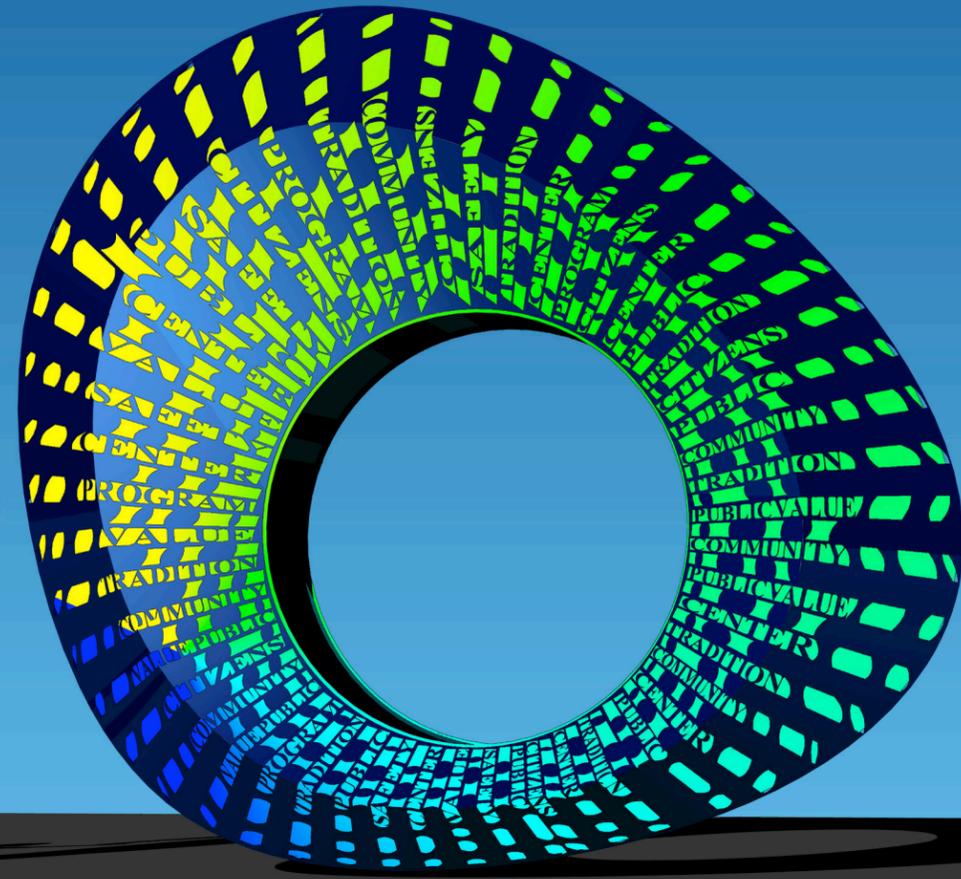
The artworks will contain discrete access hatches to allow for inspection of interior and ease of maintenance. In approximately ten years, the LED lighting may need to

be updated. At that time, the client can contact the artist or fabricator to purchase replacement light, or purchase off-the-shelf fixtures, full fixture specs will be provided. Lighting fixture components can be replaced by contacting a local electrician or project team equivalent.

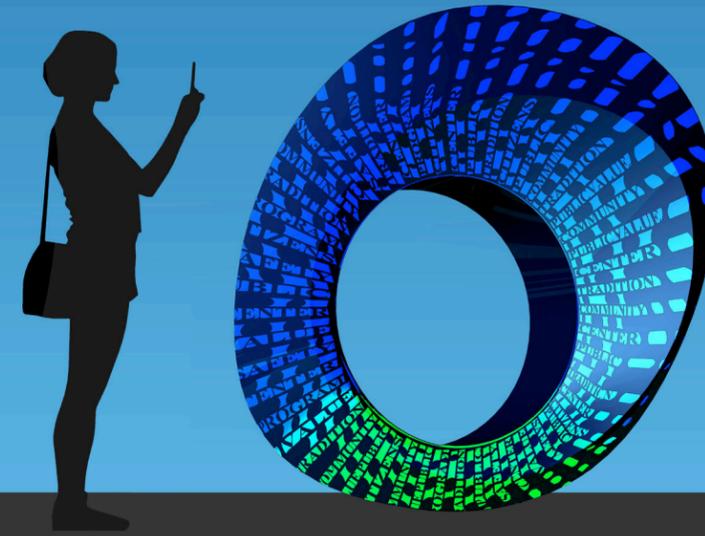
The artworks can be power-washed or spot cleaned with several common cleaning agents. As part of this public art contract I will create a thorough project manual that covers materials and maintenance of the artwork. I will leave this with the client following installation.

Schedule:
July 2019 - Contract Start Date
July - Dec 2019 - Design/Comm Engagement
Jan - April 2020 - Fabrication
May 2020 - Site Prep/Shipping/Install

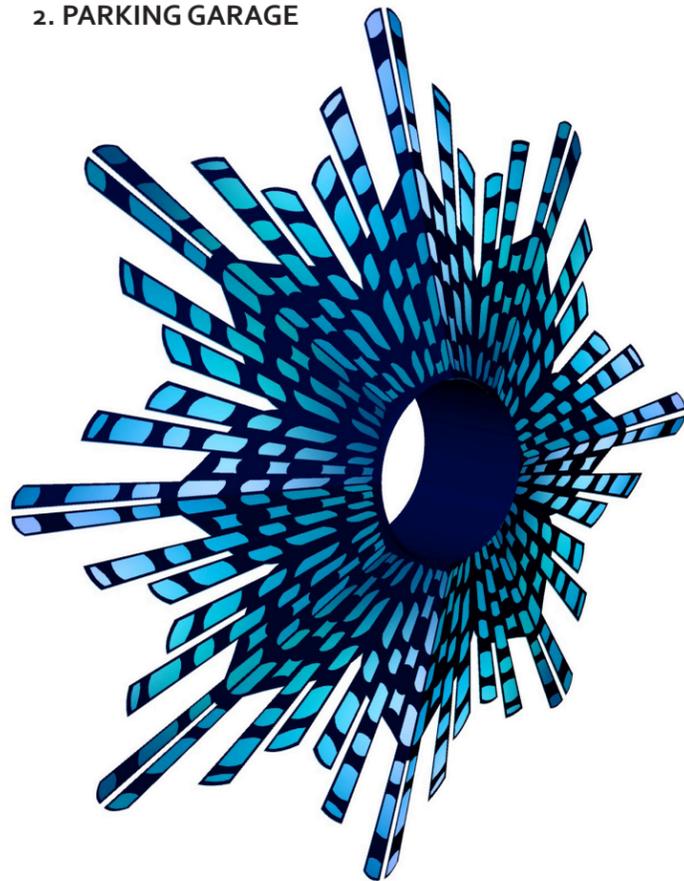
1. PLAZA



3. SWITCHBACK



2. PARKING GARAGE

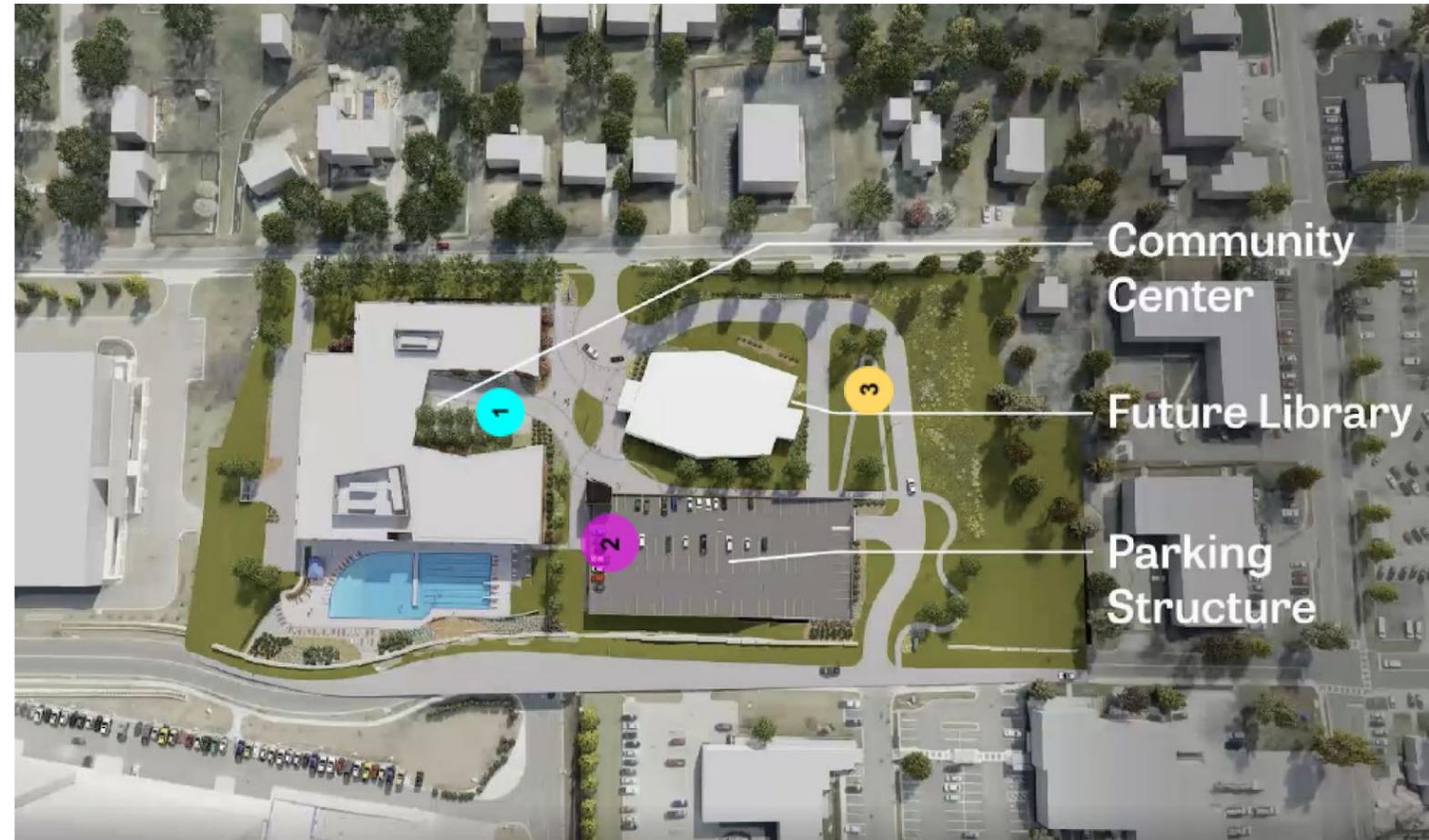


Preliminary Budget Plaza and Garage:

Materials/Fabrication	\$107,500
Project Consultants	\$20,000
Transportation	\$5,500
SitePrep/Installation	\$30,000
Insurance	\$2,500
Artist Travel	\$5,500
Artist Fee	\$48,000
Project Contingency	\$24,000
Total	\$243,000

Preliminary Budget Switchback:

Materials/Fabrication	\$17,500
Project Consultants	\$5,500
Transportation	\$1,500
SitePrep/Installation	\$7,500
Insurance	\$500
Artist Travel	\$2,500
Artist Fee	\$10,000
Project Contingency	\$5,000
Total	\$50,000

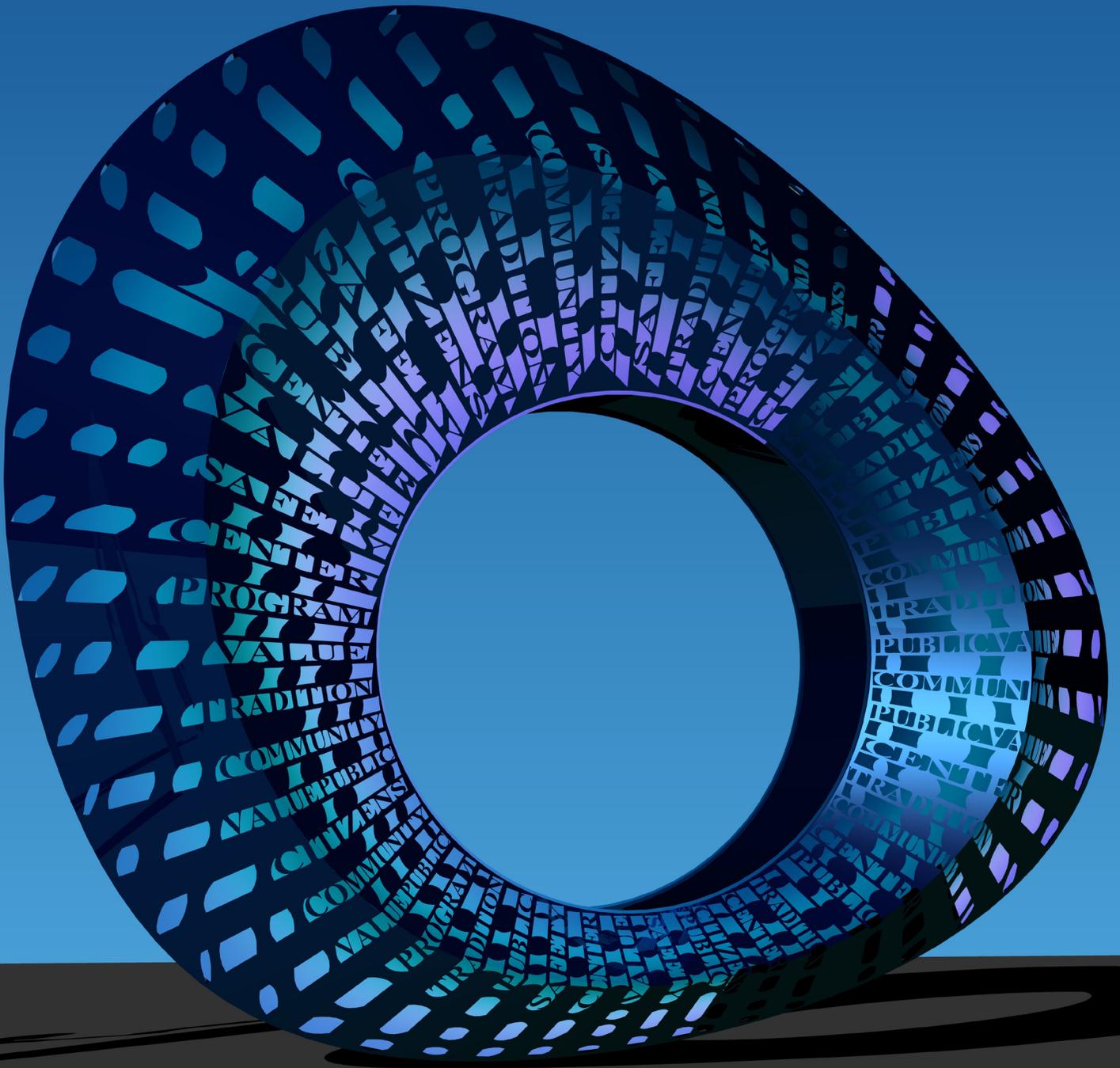


Blessing Hancock

520-275-9174

blessinghancock@gmail.com

www.blessinghancock.com





Updated View of Art on Elevator Tower.

Notes: Exact placement of grouped pieces in the courtyard is still being determined.



Updated View for Grouped Pieces.

Notes: Exact placement of grouped pieces in the courtyard is still being determined.

EXHIBIT C: DETAILED PLANS

Note: Per Exhibit A: Scope of Services, detailed plans are due within 150 days of the execution of this agreement and will be incorporated into this document once complete.



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Consider approval of the Gunter Construction bid for the 2019 CARS Program 67th Street Improvements (Antioch Road to West City Limits) Project #320001307.

SUBMITTED BY: Jim MacDonald, Public Works Superintendent

MEETING DATE: June 24, 2019

PROJECT BACKGROUND/DESCRIPTION:

On June 17, 2019, staff opened three (3) bids for the 2019 CARS Program 67th Street Improvements (Antioch Road to West City Limits). The City has budgeted \$3,066,344 for the entire project, with a construction budget of \$2,375,000.

The scope of the project includes removing & replacing the concrete pavement section at Antioch Road, concrete repairs within the I-35 interchange, 2-inch mill/overlay, new pavement markings, install new streetlights, update traffic signal system at East Frontage Road, replacement of curb/gutters/sidewalk & ADA ramps where needed, and place a new pedestrian bridge over Turkey Creek. A portion of this project lies within the I-35 TIF District and TIF funds will be utilized for the improvements within the TIF District.

As read bids were as follows:

Gunter Construction	\$2,223,035.00
Phoenix Concrete	\$2,546,632.50
J.M. Fahey	\$2,642,516.78
Engineer's Estimate	\$2,503,355.00

Affinis, Corp. has checked all bids for accuracy and recommends the Contract be awarded to Gunter Construction.

CITY COUNCIL GOALS AND OBJECTIVES

3.2 Sustain capital improvement efforts.

FINANCIAL IMPACT

Amount of Contract:	\$2,223,035.00
Amount Budgeted:	\$2,375,000 construction
Funding Source/Account #:	Capital Improvement Fund - Special Sales Tax + Jo Co CARS + I-35 Redevelopment Project Funds (TIF), Project No's. GC1901/GT1901 (TIF), accounts #301-0000-511-45.10 & 303-0000-511-45.10

SUPPORTING DOCUMENTS

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends the Council award the 2019 CARS Program 67th Street Improvements (Antioch Road to West City Limits) Project #320001307 construction contract to Gunter Construction in the amount of \$2,223,035.00.

CITY COUNCIL SUGGESTED MOTIONS FOR YOUR CONSIDERATION

CONSENT AGENDA

- 1. Move that the council approve Consent Agenda items 1-2.**

MAYOR'S REPORT

- 1. No motion.**

FINANCE AND ADMINISTRATION

- 1. Move that the council approve an ordinance amending sections of the Merriam City Code regarding alcoholic beverages.**
- 2. Move that the council concur with the recommendation of the Public Art Committee and approve the public art pieces for the new community center and authorize execution of the contract.**
- 3. No motion.**

COMMUNITY DEVELOPMENT/PUBLIC WORKS

- 1. Move that the council award the 2019 CARS, 67th St. Improvements Project to Gunter Construction in the amount of \$2,223,035.00.**
- 2. No motion.**