

MERRIAM CITY COUNCIL AGENDA
CITY HALL
9001 WEST 62ND STREET
September 9, 2019
7:00 P.M.

<p>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.</p>
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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 August 26, 2019.
2. Confirm the appointment of Brian Dailey to the Board of Structure Appeals for the term expiring December 31, 2019.
3. Confirm the appointment of Rueben Cozmyer to the Board of Structure Appeals for the term expiring December 31, 2021.
4. Consider acceptance of the bid from Toshiba Business Solutions for multi-function copier/printer/scanner devices including service and maintenance.
5. Consider approval of a budget adjustment of \$2,750 from Transient Guest Fund Contingency to Transient Guest Fund/Special Events.
6. Consider approval of 2019 Audit Engagement letter with Allen Gibbs Houlik (AGH).

V. MAYOR'S REPORT

1. Pat Gantt 911 save video, Overland Park Fire Department.

2. Presentation of Life Saving Award to MPO Matthew Hirsch.

VI. COUNCIL ITEMS

A. Finance and Administration

1. Community Center Update.
2. Consider approval of a property conveyance agreement between the City of Merriam and Johnson County Library Board.
3. Consider approval of an ordinance adopting the 2019 Standard Traffic Ordinance (STO). (recommend waiving the first reading)
4. Consider approval of an ordinance adopting the 2019 Uniform Public Offense Code (UPOC). (recommend waiving the first reading)
5. Consider approval of an ordinance amending sections of Chapter 44 of the Merriam Code of Ordinance related to controlled substances. (recommend waiving the first reading)
6. Appointment of City voting delegates for the Kansas League of Municipalities Annual Conference.
7. Special Sales Tax renewal presentation.
8. Monthly Finance Report.

B. Community Development/Public Works/CIP

1. CIP Update.(included in packet)

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
August 26, 2019
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

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

Staff present: Chris Engel, City Administrator; Nicole Proulx Aiken, City Attorney; Todd Allen, Acting Police Chief; Cindy Ehart, Finance Director; Jim MacDonald, Acting Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Sari Maple, Human Resource Coordinator; Anna Slocum, Parks and Recreation Director; 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.***

Billy Crook, 6636 Wedd St., commented that previously there was some discussion about a postcard system used by Prairie Village for resident input prior to a Capital Improvement Project coming to their neighborhood. Mr. Crook indicated that he hopes the City of Merriam could implement that system to allow residents to receive information and give input on those projects that would affect their neighborhoods.

Whitney Yadrich, 9620 W 57th Pl., commented that she is a candidate for the Ward 2 city council seat, and she attended the gun safety roundtable hosted by Congresswoman Sharice Davids last Saturday. She was surprised to learn that the state has passed legislation back in 2014 that does not allow municipalities to regulate additional restrictions on guns. She was able to talk with some folks and gather information and engage with individuals who had differing opinions, thoughts and beliefs than hers. This interaction enlightened her to discover that while elected representatives at the municipal level really are powerless regarding this issue, as an individual, she does have the power to make changes.

Mayor Sissom commented that regarding the postcard comment, there will be further discussion by the council on this issue in the future.

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 August 12, 2019.

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

V. MAYOR'S REPORT

1. Confirm the appointment of Chris Engel as City Treasurer.

City Administrator Chris Engel provided the background for this item.

The Finance Director, Cindy Ehart will be retiring September 23, 2019 which leaves the city without a Finance Director or City Treasurer as she holds both of those positions. This appointment is not a permanent solution, as a new Finance Director will be hired within a couple of weeks of her departure. There were discussions among staff to leave the position vacant for that time period, however there are several reasons why that position cannot be vacant.

Appointing the City Administrator as the Treasurer was suggested by the Finance Director as the most logical choice as the City Administrator is already

a signatory on all of the city accounts. Naming someone else would require new authorizations on these accounts only to undo that authorization in a few weeks.

Mr. Engel explained that many cities the size of Merriam do not have a Treasurer position, as the practice of a City Treasurer was implemented many years ago when the city did not have professional staff such as a Finance Director. Duties of the Treasurer include being a signatory on all the accounts and checks, and providing a quarterly Treasurer's Report depicting account balances which is published by the Treasurer. Additional duties of the Treasurer include a signatory on all Cereal Malt Beverage Licenses, as well as a signatory on the city's business licenses. Business licenses are issued on a daily basis, and per Merriam City Code, the Treasurer has to sign off on business licenses. While the code could be changed to eliminate this requirement, it would take a couple of council meetings to get that legislation approved.

Mr. Engel recognized that there may be some concern that appointing the City Administrator as the City Treasurer results in no segregation of duties when it comes to check signing. However, currently all checks require two signatures, the Mayor and City Treasurer. The city's check issuing system goes through many checks and balances and has many internal controls through the city's accountant, accounting clerk, and a positive pay system. The positive pay system requires all checks issued by the city to be digitally sent to the bank in order for that check to be paid. The City Administrator does not have the ability to send or authorize checks to be paid through positive pay. The city's accountant must send the file to the bank to confirm that the check is legitimate or it does not get paid.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL CONFIRM THE APPOINTMENT OF CHRIS ENGEL AS CITY TREASURER EFFECTIVE SEPTEMBER 24, 2019. COUNCILMEMBER FRISBY SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

2. Confirm the appointment of Kyle Cooper (Ward 1) to the Parks and Recreation Advisory Board for the term expiring December 31, 2019.

Kyle Cooper, 1009 W. 50th Ter. introduced himself and provided a brief biography. Mr. Cooper grew up in Kansas City, Kansas and he and his wife purchased their first home in Merriam 5 years ago. Growing up, his father always told him to be a good citizen. He never knew what that really meant until he was grown and had his own family. He has a young son and is always looking for

outdoor and community activities to engage him in. He feels that being on the Park Board will provide him an opportunity to add input and improve the community.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL CONFIRM THE APPOINTMENT OF KYLE COOPER TO THE PARKS AND RECREATION ADVISORY BOARD FOR THE TERM EXPIRING DECEMBER 31, 2019. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

VI. COUNCIL ITEMS

A. Finance and Administration

B. Community Development/Public Works/CIP

1. Community Development Update.

Community Development Director Bryan Dyer provided the following Community Development updates:

The Comprehensive Plan Update Advisory Committee held their first meeting on July 31st. Their next meeting will be October 16th. All information presented at that meeting is on the city's website. The consultants are working on a website dedicated to the Comprehensive Plan.

The Audi dealership is open for business as of last Friday.

Advent Health has opened the new parking garage and the new access road to the garage is open as well. The medical office building on their campus is nearly ready for tenant finish as the shell of the building is complete.

The medical office building on E. Frontage Rd. will be the new facility for ENT Associates and they are nearly complete with the tenant finish for the two suites in that building as well.

Reed Automotive has submitted building permit plans for their new dealership.

Switzer Senior Villas have also submitted building permit plans for their project.

- VII. STAFF ITEMS
- VIII. NEW BUSINESS
- IX. EXECUTIVE SESSION
- X. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL,
COUNCILMEMBER PAPE MOVED TO ADJOURN AT 7:35 PM.
COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS
UNANIMOUSLY APPROVED.

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk



AGENDA ITEM INFORMATION FORM

AGENDA ITEM:	Consider acceptance of the bid from Toshiba Business Solutions for seven (7) Multifunction devices and one (1) Large Format Multifunction device.
SUBMITTED BY:	Juli Pinnick, City Clerk
MEETING DATE:	September 9, 2019

PROJECT BACKGROUND/DESCRIPTION:

In June 2018 the city solicited proposals from copier vendors to replace eight (8) leased multi-function Copier/Printer/Scanners that were all coming off lease. Prior to soliciting the RFP, all departments completed an equipment survey to determine their individual needs for a multifunction device. Those results were used to provide specifications in the RFP for each department's device.

The RFP also included options for maintenance services for city-owned devices and replacement of a wide format (36" wide) scanner with an all-in-one wide format device. Currently the City has eight (8) leased devices and all leases were negotiated individually by each department as their need for new devices arose. This resulted in a number of devices being on different lease schedules, with different rates and ages of equipment. Staff believed that procuring the devices under one lease as a fleet of services would result in cost savings, and provide staff with the newest equipment and technology to meet their needs.

Four bids were received, with Toshiba Business Solutions offering the lowest and most complete bid.

It is estimated that procuring the devices as a fleet of services under one master lease agreement will realize a savings of over \$800.00 per month (\$9,600 annually). The lease agreement includes all devices, maintenance and repair, including parts, labor, and supplies (which includes toner and staples). In addition, Toshiba Business Solutions will provide service and maintenance on a small number of city-owned devices. The master lease agreement will include 20,000 b/w copies per month and 12,000 color copies per month. Copies produced in excess of the included amounts are billed at a per page cost on a quarterly basis. Toshiba had the lowest copy overage rates.

The list of devices under the new fleet of services will include:

- City Hall Mail Room with fax
- Community Center
- Community Development
- Municipal Court with fax
- Public Works with fax
- Visitors Bureau
- CIP
- Wide Format (36") color Scanner/Printer (used for all City Departments)

Due to the staggered lease schedules on our current equipment, the new fleet of services lease will begin January 2020. At that time, all currently leased devices, except the Police Department will have come to their end of lease term.

The Police Department has one (1) device currently under lease until August 2022. The RFP included an option to buy out this lease and provide new equipment. Because Toshiba Business Solutions is our current vendor for this device, we will continue with the lease until its term end. The maintenance portion of the Police Department monthly payment on that device will be eliminated as it will be covered under the pooled maintenance on the fleet of services master lease agreement.

The City has on an on-going relationship with Toshiba Business Solution for the past 10 years and is very satisfied with their level of service. Staff believes there is value in continuing that relationship as they are familiar with our IT infrastructure and staff is familiar with the Toshiba line of products and operation of the devices.

Some features of the new devices include the ability to print on waterproof/tear proof paper to create banners and signs. A wide format (36" wide) color scanner/ printer will provide staff the ability to print large posters and other promotional signs. Private print options for all devices, safeguarding confidential information. Automated meter reading and supply ordering. All machines are equipped with the latest security and cloud compatible software. The City Clerk and City Attorney are currently finalizing the terms of the lease.

CITY COUNCIL GOALS AND OBJECTIVES

2.1 Improve the use of technology to increase efficiency.

FINANCIAL IMPACT

Amount of Request/Contract:	\$23,136.72/annually all departments
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Amount Budgeted:	\$40,650/annually all departments
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Funding Source/Account #:	Various department accounts (Equipment Rental line item)
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SUPPORTING DOCUMENTS

Toshiba lease schedule.

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends acceptance of the bid from Toshiba Business Solutions for multi-function copier/printer/scanners, service and maintenance as a fleet of services and authorize the City Administrator to sign the 48-month lease upon final approval by the City Attorney.

LESSEE/CUSTOMER: CITY OF MERRIAM, KS

Schedule A to Master Lease With Maintenance Schedule

Account Schedule #

This Schedule A is solely for use with Toshiba Financial Services lease with Maintenance only and should accompany the Master Lease with Maintenance Schedule.

LOCATION	STREET ADDRESS	LOCATION	CITY	STATE	ZIP CODE	MODEL	SERIAL NUMBER	CONFIGURATION SUMMARY/ITEM DESCRIPTION	LEASE PAYMENT	MINIMUM # MONO IMAGES	MINIMUM # COLOR IMAGES	EXCESS MONO CHARGE	EXCESS COLOR CHARGE
CITY HALL	9001 W. 62ND TERR	MAILROOM	MERRIAM	KS	66202	ESTUDIO551ACT		55 PPM COLOR/65 PPM BW MFP	\$ 462.08	6,000	5,000	\$0.0043	\$0.0395
		COMMUNITY DEVELOPMENT				ESTUDIO2515AC		25 PPM COLOR/25 PPM BW MFP	\$ 107.93	700	400	\$0.0043	\$0.0395
		MUNICIPAL COURT				ESTUDIO2010AC		20 PPM COLOR/20 PPM BW MFP	\$ 98.12	400	400	\$0.0043	\$0.0395
		ENGINEERING				KIP 660		BW/COLOR WIDE FORMAT	\$ 576.95	2,000 sq ft	0		
COMMUNITY CENTER	5701 MERRIAM DRIVE	ADMINISTRATION	MERRIAM	KS	66203	ESTUDIO3015AC		30 PPM COLOR/30 PPM BW MFP	\$ 216.68	1,200	1,750	\$0.0043	\$0.0395
PUBLIC WORKS	6901 KNOX DRIVE	ADMINISTRATION	MERRIAM	KS	66203	ESTUDIO2515AC		25 PPM COLOR/25 PPM BW MFP	\$ 130.50	1,300	650	\$0.0043	\$0.0395
		CIP				ESTUDIO2010AC		20 PPM COLOR/20 PPM BW MFP	\$ 111.28	300	1,000	\$0.0043	\$0.0395
VISITOR'S BUREAU	6304 E FRONTAGE RD	ADMINISTRATION	MERRIAM	KS	66202	ESTUDIO2010AC		20 PPM COLOR/20 PPM BW MFP	\$ 99.86	400	700	\$0.0043	\$0.0395
POLICE DEPARTMENT	9010 W. 62ND TERR	ADMINISTRATION	MERRIAM	KS	66202	ESTUDIO5506ACT		SERVICE ONLY UNIT	\$ 117.35	8,000	2,100	\$0.0043	\$0.0395
		BOOKING				ESTUDIO255U		SERVICE ONLY UNIT	\$ 6.45	1,500	N/A	\$0.0043	N/A
		PROPERTY RM				LEXMARK XM3150		SERVICE ONLY UNIT	\$ 0.86	200	N/A	\$0.0043	N/A
ALLOWANCE TOTALS										20,000	12,000		
TOTAL LEASE PAYMENTS:									\$ 1,928.06				

This Schedule A to the Master Lease with Maintenance Schedule incorporates all of the Terms and Conditions of the Master Lease Agreement With Maintenance.

LESSEE/CUSTOMER ("You")

By: _____

(Please Print)

Title: _____

Date: _____

(date of signature)



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Consider approval of a budget adjustment from Transient Guest Contingency to Transient Guest Fund/Special Events for Merriam Drive Live

SUBMITTED BY: Anna Slocum, Director of Parks and Recreation

MEETING DATE: September 9, 2019

PROJECT BACKGROUND/DESCRIPTION:

Merriam Drive Live is scheduled for Saturday, October 5, 2019 at the Merriam Marketplace. The event will feature two stages of music throughout the day, children's entertainment, artisan vendors, food trucks and alcohol. Event expenditures of \$12,850 will be offset by \$10,750 in sponsorship revenues secured by staff. *Net City cost for the event is \$2,100.*

However, we have only \$10,100 in expenditure authority in Transient Guest Fund/Special Events, leaving a shortage of \$2,750 (\$12,850 estimated expenditures - \$10,100 available budget). Staff requests use of Transient Guest Fund Contingency to fund the difference.

City Administrator and Finance Director concur with use of contingency.

CITY COUNCIL GOALS AND OBJECTIVES

Enhance Community Identity and Connections

FINANCIAL IMPACT

Amount of Request/Contract:	\$2,750
Amount Budgeted:	\$0
Funding Source/Account #:	Transient Guest Contingency Fund

SUPPORTING DOCUMENTS

Detailed budget for Merriam Drive Live Event
Proposed budget adjustment

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends City Council approve a budget adjustment of \$2,750 from Transient Guest Fund Contingency to Transient Guest Fund/Special Events for expenses related to Merriam Drive Live.

Merriam Drive Live 2019

Expenditures	2019
Stage and Sound	\$ 2,650.00
Entertainment (5 Bands)	\$ 6,750.00
Four Fried Chickens and a Coke	
Red Guitar	
Stolen Winnebagos	
Fast Times	
Noe Palma	
Childrens Entertainment	\$ 1,500.00
Inflatables	
Face Painters	
Balloon artist	
VIP Tent Supplies	\$ 325.00
Marketing	\$ 1,100.00
Volunteer Food	\$ 325.00
Banners	
Barricades	\$ 200.00
Expenditure Total	\$ 12,850.00
Revenues	
Sponsors	
DMP	\$ 5,000.00
MPR Foundation	\$ 3,000.00
LINDAN	\$ 1,000.00
US Bank	\$ 1,000.00
Goodcents	\$ 250.00
Alenco	\$ 500.00
Other Sponsor	
TOTAL Sponsor	\$ 10,750.00

2019 Budget Transfer

City Council Approval (if required)



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Consider approval of an engagement letter with Allen, Gibbs & Houlik, L.C. for audit of the 2019 financial statements

SUBMITTED BY: Cindy Ehart, Finance Director

MEETING DATE: September 9, 2019

PROJECT BACKGROUND/DESCRIPTION:

In October 2018, the City Council awarded Allen, Gibbs & Houlik, L.C. (AGH) a five-year contract following a Request for Proposals (RFP) process. Auditing standards require annual acceptance of the audit engagement terms. Attached are two relevant documents:

1. The "engagement letter" outlines the audit objective, reporting, fees and conditions/limitations (for signature by the Mayor). Note: Staff does not currently recommend the "Optional Human Resource Assessment" offered in the letter.
2. AGH's "System Review Report" is prepared by an independent CPA firm. The report demonstrates that the AGH quality control system meets professional standards. A new report will be available later this fall.

Ms. Tara Laughlin will continue as the City's engagement officer. The proposed 2019 audit fee is \$27,175, as agreed to in the original contract. Preliminary fieldwork is planned for December 2019 with year-end fieldwork commencing March 2020. The final report will be available in May 2020.

CITY COUNCIL GOALS AND OBJECTIVES

2.0 Provide Exceptional Service Delivery

FINANCIAL IMPACT

Amount of Request/Contract:	\$27,175
Amount Budgeted:	\$28,500
Funding Source/Account #:	001.1015.415.33.20

SUPPORTING DOCUMENTS

- 2019 AGH Engagement Letter
- AGH System Review Report

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends approval of the engagement letter for the audit of the 2019 financial statements with Allen, Gibbs & Houlik, L.C. for an amount not to exceed \$27,175, and authorization for signature by the Mayor.

August 9, 2019

The Honorable Mayor and City Council Members
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202

Attention Mayor and Council Members:

THE OBJECTIVE AND SCOPE OF THE AUDIT OF THE FINANCIAL STATEMENTS

You have requested that we audit the financial statements of City of Merriam, Kansas (City), which comprise governmental activities, each major fund and aggregate remaining fund information as of and for the year-ended December 31, 2019 which collectively comprise the basic financial statements. We will also a) report on whether supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole, and b) apply certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

Our audit will be conducted with the objective of our expressing an opinion on the financial statements.

You have informed us that you intend to prepare a Comprehensive Annual Financial Report (CAFR) and submit it for evaluation by the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting. Our association with the CAFR is to consist of procedures required under generally accepted auditing standards for Other Information (including the Introductory and Statistical Sections of the CAFR), and for Supplementary Information presented in the CAFR.

REPORTING

We will issue a written report upon completion of our audit of the City's financial statements. Our report will be addressed to the governing body of the City. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

PROFESSIONAL FEES

Our charges for professional services will be made based on our regular hourly rates plus out-of-pocket expenses, which include reimbursements for travel subsistence, report reproduction, and computer time charges. We estimate the aggregate professional fees for the examination services discussed above, excluding out-of-pocket, will not exceed approximately \$27,175.

Interim billings will be submitted as work progresses and as expenses are incurred. We will submit our final bill for those services promptly upon rendering the report. Billings are due upon submission. Invoices not paid within 30 days will be charged a service fee of 1½% per month.

Our fees for the audit and accounting services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement, plus direct expenses. Our fee estimate and completion of our work is based upon the following criteria:

1. Anticipated cooperation from City personnel
2. Timely responses to our inquiries
3. Timely completion and delivery of client assistance requests
4. Timely communication of all significant accounting and financial reporting matters
5. The assumption that unexpected circumstances will not be encountered during the engagement

OPTIONAL HUMAN RESOURCE ASSESSMENT

Human capital is one of your organization's most valuable assets. Although it is not reflected as an asset on your financial statements, your workforce has a direct impact on your bottom line. Our Employer Solutions consultants are pleased to provide employers an objective third party analysis of your organization's human resource practices, policies, procedures and strategies to protect the organization, establish best practices and identify opportunities for improvement.

In an effort to provide a full scope of services while maintaining a reasonable cost, we have developed a rotational program extending over three years:

Year 1: *Human Resource Compliance* – review of employment policies, personnel files, required notices and postings, and employment processes related to employment law compliance

Year 2: *Payroll and Benefits Compliance* – review of overall payroll system setup, including taxability of earnings, benefits and deduction categories and reporting compliance

Year 3: *Human Resource Strategies* – review of talent management practices including recruitment strategies, training and development programs, succession planning, employee engagement and communication initiatives, performance management systems, etc.

These procedures are optional and are a separate engagement from the financial statement audit. This supplemental engagement is not designed to detect errors, irregularities, or illegal acts, including fraud or defalcations, if they exist. It is designed to identify potential areas of risk and provide ideas for improvements and best practices within the human resource area of your company.

- ☐ Yes, I agree to enter into a separate engagement for the additional recommended services outlined above. Estimated annual costs are based on the size of the organization and would not exceed the amount outlined in the table below:

# of Employees	Annual Cost
<100	\$4,000
100-249	\$5,000
250-499	\$6,000
500-999	\$7,500
1,000+	TBD

- ☐ No, I decline the additional recommended services outlined above. In doing so, I understand that these services are not a part of the financial statement audit procedures.

CONDITIONS AND LIMITATIONS

To assist you in understanding the scope of our services and other matters related to the completion of these attest services, we have attached a copy of the Allen, Gibbs & Houlik, L.C. *“Attest Services Conditions and Limitations.”* Our attest services are expressly subject to these conditions and limitations, and by signing below and by signing the standard management representation letter, you will be agreeing to them.

It is understood that any non-attest services provided by Allen, Gibbs & Houlik, L.C. (AGH) are in the nature of advisory service to the City’s management, and related recommendations, accordingly, are subject to management oversight. Further, in providing our current non-attest services or those we may provide in the future, it is agreed that AGH is not assuming any management responsibilities, decisions or functions for the City. Management acknowledges its responsibilities to make all management decisions and perform all management functions for the City, to oversee the services provided by AGH, to evaluate the adequacy and results of those services, and to accept management responsibility for the services rendered. In that regard, the City agrees to designate a management employee to oversee services provided by AGH; the City’s Finance Director has been designated to oversee the non-attest services provided by AGH. Further, the undersigned hereby acknowledges that it is the responsibility of the City’s management to establish and maintain the City’s internal controls, including monitoring ongoing activities.

The terms and conditions set forth in the City’s Request for Proposal dated August 7, 2018 and our proposal dated September 7, 2018, supplement the understanding of the arrangements for services described in this letter.

As part of AGH’s ongoing commitment to serve as a trusted advisor, we offer several other resources that provide additional value beyond this engagement itself. AGHUniversity.com offers a full schedule of complimentary education and other updates to clients throughout the year. AGH alerts and newsletters also include periodic mailings or emails to alert clients to new accounting, audit and tax standards or regulations. We appreciate our relationship with your company and look forward to serving you in the future.

The Honorable Mayor and
City Council Members
City of Merriam

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August 9, 2019

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities.

Respectfully,

ALLEN, GIBBS & HOULIK, L.C.



Tara J. Laughlin
Vice President, Assurance Services

TJL:akg

Enclosure

Acceptance: Your signature below confirms your acceptance of the preceding information and your receipt and acceptance of the Allen, Gibbs & Houlik, L.C. *"Attest Services Conditions and Limitations."*

I have also reviewed and selected an option relating to the Optional Human Resource Assessment, as discussed above.

Signature

Date

Attest Services Conditions and Limitations

In the course of providing attest services, Allen, Gibbs & Houlik, L. C. (AGH) applies customary practices intended to fulfill our professional responsibilities in a cost effective manner. This document defines our professional responsibilities and the standards that we employ in providing you with our attest services. We find that by more clearly defining our professional service responsibilities, and your responsibilities as a client of AGH, we can prevent any uncertainties in providing our attest services. By signing the "Understanding of Engagement," you are agreeing to the conditions and limitations described below.

The Responsibilities of the Auditor

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS. Also, an audit is not designed to detect errors or fraud that are immaterial to the financial statements.

In making our risk assessments, we consider internal control relevant to the City's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

We will also communicate to the governing body (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements that becomes known to us during the audit, and (b) any instances of noncompliance with laws and regulations that we become aware of during the audit (unless they are clearly inconsequential).

The funds that you have told us are maintained by the City and that are to be included as part of our audit are the same as those included in the previous year's audited financial statements.

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework

Our audit will be conducted on the basis that management and when appropriate, those charged with governance, acknowledge and understand that they have responsibility:

- a. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
- b. To evaluate subsequent events through the date the financial statements are issued or available to be issued and to disclose the date through which subsequent events were evaluated in the financial statements. Management also agrees that they will not evaluate subsequent events earlier than the date of the management representation letter referred to below;
- c. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
- d. For establishing and maintaining effective internal control over financial reporting and for informing us of all significant deficiencies and material weaknesses in the design or operation of such controls of which it has knowledge;
- e. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud or abuse, and for informing us about all known or suspected fraud or abuse affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud or abuse could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or abuse, or suspected fraud or abuse, affecting the entity received in communications from employees, former employees, analysts, regulators, or others; and
- f. To provide us with:
 - (1) Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;

- (2) Additional information that we may request from management for the purpose of the audit; and
- (3) Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management and when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit including among other items:

- a. That management has fulfilled its responsibilities as set out in the terms of this letter; and
- b. That it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for the preparation of the required supplementary information (RSI) and supplementary information presented in relation to the financial statements as a whole in accordance with accounting principles generally accepted in the United States of America. Management agrees to include the auditor's report on the RSI or supplementary information in any document that contains the supplementary information and that indicates that the auditor has reported on such RSI or supplementary information. Management also agrees to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance of the supplementary information and the auditor's report thereon.

The governing board is responsible for informing us of its views about the risks of fraud within the entity, and its knowledge of any fraud or suspected fraud affecting the entity.

You have informed us that you may issue public debt in the future and that you may include our report on your financial statements in the offering statement. You have further informed us that you do not intend that we be associated with the proposed offering.

We agree that our association with any proposed offering is not necessary, providing the City agrees to clearly indicate that we are not associated with the contents of any such official statement or memorandum. The City agrees that the following disclosure will be prominently displayed in any such official statement or memorandum:

Allen, Gibbs & Houlik, L.C., our independent auditor, has not been engaged to perform, and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. Allen, Gibbs

& Houlik, L.C. also has not performed any procedures relating to this [official statement] [memorandum].

Other Terms and Conditions

If, in connection with our audit, you request us to perform accounting services necessary for the preparation of the financial statements (such as maintaining depreciation schedules, drafting the financial statements, etc.), you agree to designate an appropriate individual to oversee the services, make all management decisions involved in those services, evaluate the adequacy and results of the services, and accept responsibility for the results of the services.

If circumstances arise relating to the conditions of your records, the availability of sufficient, competent evidential matter, or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting, misappropriation of assets or noncompliance which, in our professional judgment, prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawal from the engagement.

The working papers for this engagement are the property of AGH, and constitute confidential information. However, you acknowledge and grant your assent that representatives of the cognizant or oversight agency or their designee, other government audit staffs and the U.S. Government Accountability Office shall have access to the audit working papers upon their request; and that we shall maintain the working papers for a period of at least five years after the date of the report, or for a longer period if we are requested to do so by the cognizant or oversight agency. Access to requested work papers will be provided under the supervision of AGH audit personnel and at a location designated by our firm.

In determining our fees, the factors having a direct impact on our time and billings include the timely closing and overall condition of the accounting records and the extent to which we must compile information or make bookkeeping adjustments to your records to conform to appropriate accounting rules. In that regard, we have furnished your personnel with a listing of the routine accounting records and schedules we normally need in connection with our services. In order to keep our charges to a minimum, we suggest that your personnel provide us with these records, schedules and other assistance from time to time by compiling necessary information and locating supporting documents. This assistance enables us to spend a minimum amount of time performing routine accounting or clerical tasks and thus concentrate more strictly on audit services. If delays in the timing of our receipt of these records, incompleteness or errors cause us to spend extra time to complete the above services, this will result in increased fees. We will, of course, make every effort to minimize any unnecessary disruption of your staff's schedule.

In the event we are requested or authorized by the City or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for the City, the City will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

If you intend to publish or otherwise reproduce the financial statements and/or make reference to us or our audit in a document other than an official statement, you agree to provide us with the printer's proofs or a master for our review and consent before reproduction and/or release occurs. You also agree to provide us with a copy of the final reproduced material for our consent before it is distributed or released. Our fees for any additional services that may be required under our quality assurance system as a result of the above will be established with you at the time such services are determined to be necessary. In the event our auditor/client relationship has been terminated when the Government seeks such consent, we will be under no obligation to grant such consent or approval.

It is understood that an audit, and any other services, provided by AGH necessarily rely, to some extent, on information provided by the City, including management representations, as well as other information and documents. Accordingly, the City hereby indemnifies AGH and its owners and employees, and holds them harmless from all claims, liabilities, losses, or costs in connection with any services provided by AGH that are in any way related to circumstances where there has been a knowing misrepresentation by a member of the City's management which has caused, in any respect, AGH's breach of contract or negligence. This indemnification shall survive any terminations under this letter.

Both parties to this agreement have made a substantial investment in their respective employees and depend upon them to generate future profits. Because of this, we agree that neither party (including related affiliates) shall hire, nor solicit for hire, any person employed by the other during the term of the service relationship and for a period of one year after the termination of services. Since our professional standards require that we perform certain additional procedures on current and previous years engagements whenever a shareholder or professional employee leaves the firm and is subsequently employed by or associated with a client, you agree to compensate AGH for any additional costs incurred as a result of the City's employment of a shareholder or professional employee of AGH.

We agree that any dispute arising out of, or relating to, this agreement or an interpretation of this agreement that we are not able to resolve ourselves shall be submitted to mediation under the American Arbitration Association Rules for Professional Accounting and Related Services Disputes before resorting to arbitration, litigation or some other dispute resolution procedure.

Costs and expenses of the mediation shall be borne equally by each of us. Mediation shall take place within two weeks after notification by the aggrieved party of a request for mediation unless extended by the mediator, and shall not be subject to pre-hearing discovery except as specifically authorized by the mediator. If the mediation does not result in an agreement acceptable to all sides, any party may take such other further action as he, she, or it deems advisable under law or equity. In the event any party takes such legal action without first submitting the issue(s) to mediation as required by this clause, that party shall pay the legal expenses of the responding party plus all court costs incurred by said action.

It is agreed by the City and AGH or any successors in interest that no claim, by or on behalf of either party, arising out of services rendered pursuant to this agreement shall be asserted more than two years after the date of the last audit report issued or one year after the date of termination of AGH's services, whichever date occurs first.

If any term or provision of this agreement is determined to be invalid or unenforceable, such term or provision will be deemed stricken and all other terms and provisions will remain in full force and effect.

During the course of our engagement, we may accumulate records containing data which should be reflected in your books and records. You will determine that all such data, if necessary, will be so reflected. Accordingly, you will not expect us to maintain copies of such records in our possession. We shall maintain the audit working papers for a period of five years after the date of the audit report or after the termination of service.

The financial statements and our report on them are not to be modified in any manner. The final version supersedes all prior drafts. Any preliminary draft version of the financial statements previously provided to you in an electronic format should be deleted from your computer, and all printed copies of any superseded preliminary draft versions should likewise be destroyed.

This agreement also sets forth the terms and conditions agreed to by AGH and the City for the transmittal of data through the Internet into or from AGH's e-mail system. Internet data transfers are susceptible to security breaches. You agree that AGH shall not have any liability for lost data, unauthorized access to records, data or files, destruction of records, data or files, viruses, delays or failure of performance or suitability. You agree that data transmitted by the City to AGH will not include a) any employee personal information such as social security numbers or dates of birth, or b) bank or investment account identification numbers. You agree to hold harmless AGH, its shareholders, agents or employees from any damages or expenses arising out of or resulting from any use of AGH's e-mail system, whether or not authorized. AGH agrees that it will provide reasonable alternatives that are more secure than e-mail for the transmittal of data, upon request.

AGH acknowledges that it has access to nonpublic information of the City and its consumers and such information constitutes valuable and proprietary assets of the City. AGH also acknowledges that the City has a responsibility to its own consumers and employees to keep records and information confidential and proprietary. AGH agrees that it shall maintain confidentiality of any nonpublic personal information about consumers of the City obtained by AGH in the course of its performing services for the City.

AGH may mention the City's name and provide a general description of the engagement in AGH's client lists and marketing materials.

From time to time, and depending upon the circumstances, we may use third-party service providers to assist us in providing professional services to you. In such circumstances, it may be necessary for us to disclose confidential client information to them. We enter into confidentiality agreements with all third-party service providers and we are satisfied that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others.

Other Services

It is understood that, from time to time, Allen, Gibbs & Houlik, L.C. (AGH) may provide other services that are not contemplated hereby or are not otherwise encompassed in this understanding of arrangements for services. Such other services may be the subject of a separate letter addressing the arrangements for those services. However, in some cases, such other services may not be specifically addressed by a separate arrangement letter. In the event that AGH provides other services not encompassed by this arrangement letter, or another arrangement letter, engagement letter, or contract, it is understood and agreed that any such services will be expressly subject to then current "*Allen, Gibbs & Houlik, L.C. Other Services Conditions and Limitations*," in effect when the services is provided, which are located at www.aghlc.com/otherservices/terms. You may contact AGH to request a printed copy. It is further agreed that any services provided by AGH prior to the date of this letter, and not subject to a written arrangement letter, engagement letter, or similar contractual arrangement, shall be subject to this "Other Services" provision, in this arrangement letter, and the referenced Other Services Conditions and Limitations as of that date.

Addendum to Engagement Letter Agreement Dated August 9, 2019, between Allen, Gibbs & Houlik, L.C. and the City of Merriam, Kansas for services for the year ended December 31, 2019:

Compliance with Laws. We shall keep fully informed of, and shall comply with, all local, state and federal ordinances, statutes, laws, codes, rules, resolutions and regulations affecting our performance of the obligations contained herein (regardless of whether such requirements are specifically referred to in this letter of understanding). We shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents against any claims or liability arising from or based on any violation of the same.

Indemnification. Without in any way limiting indemnification obligations that may be set forth elsewhere in this letter of understanding, we agree to 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 our services or those services of our agents, employees, or subcontractors, provided that any such claim, damage, loss, or expense is caused in whole or in part by our negligent or intentional act, error or omission, or the negligent or intentional act, error or omission of our agents, employees, or subcontractors in the performance of services confirmed in this letter of understanding. We shall give the City immediate written notice of any claim, suit, or demand that may be subject to this provision.

Amendments. This letter of understanding may not be amended unless such amendment is in writing and signed by both parties.

Assignment. Neither this letter of understanding nor any rights or obligations hereunder shall be assigned or otherwise transferred by us without the prior written consent of the City. This letter of understanding is binding upon and fully enforceable against our successors and assigns, whether consented to or not.

Applicable Law. This letter of understanding shall be governed by, interpreted and construed in accordance with the laws of the State of Kansas.

Legal Action. We agree that the appropriate venues for any legal actions arising out of this letter of understanding are the District Court of Johnson County, Kansas, or, if federal jurisdiction exists, the United States District Court of Kansas.

Insurance.

- A. General. We shall secure and maintain, throughout the duration of this letter of understanding, 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. Coverage on policies in which the City is named an additional insured shall be primary and noncontributory. We 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. We, upon receiving notice of any claim in connection with this letter of understanding, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

- C. Reduction of Policy Limits. We 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 letter of understanding) if our limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required hereunder. In that event, we shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- D. Industry Ratings. We agree that our insurance carrier must:
1. a. Be licensed to do business in the State of Kansas;
b. Carry a Best's policyholder rating of "A" or better; and
c. Carry at least a Class VIII financial rating; OR
 2. Be acceptable to the City.
- E. Insurance Required. We agree to secure and maintain the following insurance:
1. Commercial General Liability. We shall maintain General Liability coverage including Premises-Operations Liability, Independent Contractors Liability, Products and Completed Operations, and Broad Form Property Damage within these minimum limits:

Bodily Injury & Property Damage \$1,000,000 combined single limits per occurrence:
\$2,000,000 annual aggregate

Fire Damage Liability \$50,000

Medical Payments \$5,000

The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damages to underground property.
 2. Comprehensive Automobile Liability. We shall maintain Automobile Liability coverage including coverage for Owned, Hired and Non-owned Liability providing for 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 these minimum limits:

Bodily Injury & Property Damage \$1,000,000 combined single limit per occurrence
 3. Workers' Compensation and Employer's Liability. We shall maintain Workers' Compensation coverage for all claims made under applicable state workers' compensation laws. We shall also 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
Employers' Liability

Statutory Limits
\$500,000 each accident
\$500,000 disease – policy limit
\$500,000 disease – each employee

4. Professional Liability Insurance. We shall maintain Professional Liability Insurance in an amount of no less than \$1,000,000.

Compliance with Equal Opportunity Laws, Regulations, and Rules.

- A. Discrimination Prohibited. We agree 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 letter of understanding because of race, religion, color, sex, disability, national origin or ancestry, or age.
- B. Solicitations. In all solicitations or advertisements for employees, we shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission (Commission).
- C. Non-Compliance. We shall be deemed to have breached this letter of understanding and it may be cancelled, terminated, or suspended in whole or in part by the City, if we:
1. Fail to comply with the reporting requirements of K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto; or
 2. Are 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. We shall include the provisions of Subsections 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 are recommended but not enforceable against us if:
1. We employ fewer than four employees at all times during the term of this letter of understanding; or
 2. All of our 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. We also agree 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.

Cash Basis and Budget Laws. We agree that the City's right to enter into this letter of understanding is subject to the provisions of the Cash-Basis Law (K.S.A. 10-1101 et seq.), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This letter of understanding shall be construed and interpreted in such a manner as to ensure the City shall remain in conformity with such laws. The City reserves the right to unilaterally sever, modify, or terminate the services confirmed in this letter of understanding at any time if, in the opinion of its legal counsel, the letter of understanding may be deemed to violate the terms of any laws of the State of Kansas.

Independent Contractor. In no event, while performing under this letter of understanding, shall we be deemed to be acting as an employee of the City; rather we shall be deemed to be an independent contractor. Nothing expressed in this letter of understanding or implied herein shall be construed as creating between us and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

Survivorship. Notwithstanding the termination of this letter of understanding, our obligations with respect to Indemnification, Insurance, and any other terms and conditions which by their nature should survive termination, shall survive the termination of this letter of understanding.

Waiver. We agree that failure of either party to insist upon the strict performance of any of the terms or conditions of this letter of understanding 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.

Incorporation of Exhibits. Exhibit A (City's Request for Proposal) and Exhibit B (our Proposal) are incorporated herein by reference and are a part of this letter of understanding to the same extent as if fully set forth herein.

By:



Allen, Gibbs & Houlik, L.C.

By: _____

Title: _____

Attest: _____

Date: _____

City of Merriam, Kansas



SYSTEM REVIEW REPORT

October 20, 2016

To the Shareholders and Officers of
Allen, Gibbs & Houlik, L.C.
and the Peer Review Committee of the Kansas Society of CPAs

We have reviewed the system of quality control for the accounting and auditing practice of Allen Gibbs & Houlik, L.C. (the firm) in effect for the year ended May 31, 2016. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*; audits of employee benefit plans, audits performed under FDICIA, and examinations of service organizations [Service Organizations Control (SOC) 1 and SOC 2 engagements].

In our opinion, the system of quality control for the accounting and auditing practice of Allen Gibbs & Houlik, L.C. in effect for the year ended May 31, 2016, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Allen Gibbs & Houlik, L.C. has received a peer review rating of *pass*.

ARNETT CARBIS TOOTHMAN LLP

Arnett Carbis Toothman LLP



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: Johnson County Library Property Conveyance Agreement

SUBMITTED BY: Meredith Hauck, Assistant City Administrator

MEETING DATE: September 9, 2019

PROJECT BACKGROUND/DESCRIPTION:

The City began conversations with the Library and Johnson County in spring 2017 about an opportunity to co-locate a new branch on the same site as the new community center after learning the Johnson County Library Board had identified the Antioch branch as a location that needed to be rebuilt as part of their master plan. In November 2018, the City Council and Johnson County Library Board approved a Memorandum of Understanding that outlined JCL's intent to build an approximately 16,000 sq. ft. library branch that provides library services to the general public on the same site as the new community center. As part of the MOU, the City agreed to sell the land to JCL for a sum of \$1.00.

The next step in the process is for both the City and JCL to approve the Property Conveyance Agreement. It outlines the following:

- The anticipated timeline for the library project (summarized in Exhibit D) indicates a 2021 Q3 - Closing; 2021 Q4 - Construction Kick Off; and 2023 – Opening.
- The City will utilize this property during construction of the community center and as open space once the community center construction is complete until the library project begins.
- The City and JCL will cooperate on the maintenance and on-going use of shared infrastructure within the site, including the plaza space between the buildings, parking structure, and the internal access drive. The specific details of the on-going maintenance and use will be negotiated in the next agreement. In addition, JCL will construct portions of the plaza that are on their property or directly adjacent to it.

The final agreement between the two parties will be the Shared Parking and Maintenance Agreement (referenced in both the MOU and the Property Conveyance Agreement). It will be brought forth for City Council and JCL Board no later than 90 days prior to the 2021 closing date.

CITY COUNCIL GOALS AND OBJECTIVES

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

1.2.A. – Explore mutually beneficial partnership opportunities

FINANCIAL IMPACT

Amount of Request/Contract: N/A

Amount Budgeted: N/A

Funding Source/Account #: N/A

SUPPORTING DOCUMENTS

- Property Conveyance Agreement

ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends approval of this item.

PROPERTY CONVEYANCE AGREEMENT

BY AND BETWEEN

THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY

and

CITY OF MERRIAM, KANSAS

PROPERTY CONVEYANCE AGREEMENT

THIS PROPERTY CONVEYANCE AGREEMENT (“Agreement”) is made as of this _____ day of _____, 2019 (“**Effective Date**”), by and between **THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY**, Johnson County, Kansas (“**JCL**”) and **CITY OF MERRIAM, KANSAS** (“**City**”). Collectively, JCL and the City are referred to as the “**Parties**”.

RECITALS:

A. City and JCL are parties to that certain Memorandum of Understanding dated January 10, 2019, a copy of which is attached as **Exhibit A (“MOU”)**; and

B. City is the owner of real property located west of Slater Street and east of Ikea Way (“**Property**”) which is on land that is currently used as Lucyann C. Vavra Memorial Park and is shown and legally described on **Exhibit B**, which is entitled “Legal Description and Survey of the Property to Be Conveyed by the City of Merriam to the Board of Directors of the Johnson County Library,” and which is attached to and incorporated in this Agreement by reference; and

C. City has proposed a redevelopment plan for a project area contiguous with the Property, referred to as the Vavra Park Project (“**Vavra Development**”), which will be a development incorporating a community center, outdoor aquatic center, and shared parking structure serving the Vavra Development and which may include infrastructure improvements on the Property in contemplation of the redevelopment plan for such project area; and

D. JCL desires to acquire Property and develop a new library facility within the Vavra Development as a possible enhancement of existing library services and to provide a unique and beneficial opportunity for both Parties and the community; and

E. City desires to grant and convey the Property to JCL, subject to and upon the terms and conditions set forth in this Agreement; and

F. City’s conveyance of the Property is in consideration of JCL’s intention to construct upon the Property an approximately sixteen thousand (16,000) sq. ft. library facility (“**Project**”) in approximately the location and form as shown on the Project site diagram attached to and incorporated in this Agreement as **Exhibit C (“Development Diagram”)** and in accordance with the terms and subject to the conditions contained in the MOU, the approved Final Development Plan, as provided in **Section 5**, and other applicable Project documents.

NOW, THEREFORE, for valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged by the parties, City and JCL agree as follows:

1. Transfer of Property.

1.1 General. City agrees to grant, transfer and convey to JCL, and JCL agrees to accept transfer of marketable fee simple title from City to the Property, together with all easements, rights of way or other agreements affecting the Property and approved by JCL, and improvements thereon, and all tangible and intangible personal property, leases, contracts and agreements used in connection with the land and improvements on the Property and approved by JCL, if any, subject to the Permitted Exceptions as defined in **Section 6.3**.

1.2 Consideration. The parties agree that consideration for the City's transfer of the Property is One Dollar (\$1.00) and JCL's obligation to construct the Project.

1.3 Internal Access Drive. The parties agree that a internal access drive may be constructed on the Property east of the Project in substantially the form and location as shown on the Development Diagram. City shall be solely responsible for the cost of constructing the internal access drive. JCL shall own the internal access drive and underlying real property. JCL shall dedicate to the City at no charge, the required access easement as reflected on the approved preliminary or final plat for the Project. JCL and City shall share in the costs of maintenance in amounts proportional to the City's and JCL's use of the internal access drive, as more specifically provided in the Maintenance Agreement described in **Section 3.1**.

1.4 Legal Description. The Parties agree that the legal description of the Property for conveyance purposes shall conform to the legal descriptions as accepted by the City and JCL on the Property Survey prepared in accordance with **Section 6.2**, subject to adjustment for dedicated right of way and appurtenances upon terms reasonably acceptable to JCL and the City.

1.5 City Use of Property. Until Closing, as defined in **Section 7.1**, the City maintains all rights and obligations of ownership with respect to the Property, including but not limited to, the right to use such Property and to landscape the Property, including constructing and providing sidewalks or similar pedestrian access as the City deems necessary and appropriate (collectively, "**City Use**") provided such City Use does not create any liens or other encumbrances on the Property or create any detrimental environmental issues on the Property. The City acknowledges that City Use may be interrupted or destroyed by JCL Project construction. JCL shall have no responsibility to compensate City for damage or destruction to City Use on the Property by JCL for Project Construction, except as provided in **Section 2.3**.

1.6 Property Grading. The parties acknowledge that the City's contractor has been utilizing the Property as a construction staging area. Unless otherwise agreed to in writing by both parties, no later than ninety (90) days before the date of Closing, the City shall grade, at its sole expense, in accordance with grading plans incorporated into the Final Development Plan, as defined in **Section 5 ("Grading Plans")**. City shall convey

the Property to JCL at Closing in a clean, graded condition in accordance with the Grading Plans.

1.7 Parking Structure and Parking Agreement. City shall permit JCL to utilize the sixty-six thousand eight hundred (66,800) sq. ft. shared parking structure serving the Vavra Development (“**Parking Structure**”) to satisfy the daily parking needs of the Project. The City shall construct the Parking Structure at no cost to JCL as part of the Vavra Development. The City shall provide free parking to JCL patrons. The Parties shall agree upon terms for shared Parked Structure use and maintenance by executing an agreement not later than ninety days (90) before the Closing Date (“**Parking Agreement**”) setting forth the terms and conditions under which JCL will participate in an annual payment to assist with the maintenance of the Parking Structure. The annual payment shall be strictly for maintenance and will not include costs relating to Parking Structure construction. City shall allot parking stalls in the Parking Structure for JCL’s use. City and JCL shall cooperate to determine the number of JCL-allotted parking stalls based upon JCL’s actual staff needs at the Project. JCL and City shall determine JCL’s annual fee based on the approximate number of JCL’s allotted parking stalls and patron use of parking stalls in the Parking Structure compared to the overall number of parking stalls in the Parking Structure, as will be more specifically provided in the Parking Agreement. The Parties agree the Parking Agreement will be incorporated as part of the comprehensive Maintenance Agreement, more specifically described in **Section 3.1**.

1.8 Project Timeline. JCL agrees it will timely update a project and construction timeline with anticipated dates and schedule for construction plans on the Project as it makes progress on its site development (“**Detail Project Timeline**”), attached and incorporated in this Agreement as **Exhibit D**.

1.9 Development TIF District. The parties acknowledge that portions of the Property that will be conveyed by the City to the Library lie in a tax increment financing redevelopment district (“**TIF District**”) created by the City. The City agrees no redevelopment project plan has been approved for the Property and the City will not undertake any approval of redevelopment project plan for the Property. The City further agrees that JCL shall in no way have any obligations arising under the TIF District for the Property and that the City shall indemnify and hold the Library harmless on any claims arising from such portions of the Property lying within the TIF District. Any depiction of TIF District boundary line shown on the Final Development Plan or other diagram shall have no effect on the Library or cause the Property to become subject to any TIF District.

2. Construction of Project and Property.

2.1 Construction. The Parties acknowledge and agree JCL will begin Project construction during or after the third (3rd) quarter of calendar year 2021 after Closing, unless the City provides written consent to commence construction at a different time. JCL shall timely update the Detail Project Timeline with reasonably anticipated changes or confirmations of construction scheduling on the Project. JCL shall be responsible for the design, approval, construction, improvement, equipping, and installation of the Project and all improvements and infrastructure on the Property , including the public sanitary sewer,

water, electric, telecom, gas, and all other utilities (“Utilities”) located on the Property that serve the Project. City shall cause to be constructed at City’s cost Utilities located outside the Property boundaries within the Vavra Development for purposes of connecting Utilities to the Property to serve the Project, including points of connection for Utilities. JCL agrees, at its sole expense, to modify the irrigation installed on the Property to accommodate construction of the Project.

2.2 Laydown Area. The City and JCL shall cooperate to designate for JCL the use of an area of ground or paved space of not less than fifteen thousand square feet (15,000 sq. ft.), adjacent to and outside the bounds of the Property within the Vavra Development in approximately the location shown on the Laydown Area Diagram attached to and incorporated in this Agreement as **Exhibit E (“Laydown Area”)**. The City shall permit JCL to utilize the Laydown Area for construction offices, receiving, storing, and assembling Project construction equipment and materials before and after Closing in conjunction with construction of the Project. JCL agrees that the City shall not be liable or obligated to JCL for any loss or damage to the construction offices or Project construction and materials. JCL shall operate and maintain the Laydown Area in a safe and controlled manner and repair any damage caused by JCL usage of the Laydown Area.

2.3 Construction Damage. The Parties acknowledge and understand construction of the Project may result into damage to landscaping, improvements, or facilities adjacent to the Property in the Vavra Development, including but not limited to the Laydown Area and the Internal Access Road. JCL shall use reasonable efforts to mitigate the risk of damage to landscaping, improvements, or facilities in the Vavra Development during Project construction. JCL, at its sole expense, shall cause Project construction damage to be repaired and returned to the same or similar condition existing before Project construction.

2.4 Indemnification.

(a) **JCL.** To the extent permitted by Kansas law, JCL agrees to indemnify, defend, assume all responsibility for, and hold the City and its respective elected and appointed officers and employees and agents, harmless from and against all costs (including reasonable attorney’s fees and costs), claims, demands, liabilities, or judgments arising out of or resulting from any accident, injury, or damage to any person or property because of: (1) any failure by JCL to perform or comply with the terms of this Agreement, and (2) any accidents, injuries, or damages, which are proximately caused by any of JCL’s activities under this Agreement, including the construction of the Project; provided, that in no event shall JCL be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* and amendments thereto. This indemnity shall survive the expiration or earlier termination of this Agreement.

(b) **City.** To the extent permitted by Kansas law, City agrees to indemnify, defend, assume all responsibility for, and hold JCL and its

respective appointed officers, employees, and agents, harmless from and against all costs (including reasonable attorney's fees and costs), claims, demands, liabilities, or judgments arising out of or resulting from any accident, injury, or damage to any person or property because of: (1) any failure by City to perform or comply with the terms of this Agreement, and (2) any accidents, injuries, or damages, which are proximately caused by any of City's activities under this Agreement, including City's construction of the Vavra Development; provided, that in no event shall City be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* and amendments thereto. This indemnity shall survive the expiration or earlier termination of this Agreement.

2.5 Construction Fence. JCL shall erect a temporary construction fence in approximately the location of the Property boundaries ("**Construction Fence**") after Closing and before commencement of Project construction. The Construction Fence is a construction barrier that substantially encloses the Property. The Construction Fence will be made of (1) jersey barrier material starting at the ground and extending vertically to a height of four feet (4') and (2) a solid plywood or similar material starting at the top of the jersey barrier and extending vertically to a height of eight feet (8'). JCL will work with the City on communication or images on the Construction Fence that would generate interest in the Project. JCL, at its sole expense, shall cause the Construction Fence to be erected and maintained at all times until its removal at completion of the Project construction.

2.6 Stormwater Maintenance. City shall construct, at the City's sole cost, stormwater maintenance facilities ("**Stormwater Facilities**") that adequately serve the Vavra Development and the Property in accordance with industry requirements. City shall not cause to be constructed Stormwater Facilities on the Property or the Vavra Development that would affect the Project design or construction. JCL shall repair, at JCL's sole cost, any damage to Stormwater Facilities on the Property or in Vavra Development caused by Project construction. City represents and warrants that the Stormwater Facilities will be adequate to manage and maintain the Project and Property's stormwater.

2.7 Project Structure Setbacks. City shall permit JCL to construct and design the Project per the approved Final Development Plan as provided in Section 5 without imposing building or setback line requirements between the Project structure and the Public Road or the Property boundary line.

2.8 Regular Mail Receptacle. City and JCL acknowledge that delivery of regular postal mail to the Project facility is not possible by the United States Postal Service. City shall permit JCL to install a receptacle ("**Mail Receptacle**") to exclusively serve the needs of the Project for receipt of regular postal mail. City shall permit JCL to install the Mail Receptacle along Slater Street adjacent to the Vavra Development in a location mutually agreed upon by JCL and City. JCL shall be solely responsible for all costs to install and maintain the Mail Receptacle.

3. Project and Property Maintenance.

3.1 Maintenance Agreement. The Parties acknowledge this Agreement provides for ongoing obligations and activities by the Parties that will occur after Closing and construction of the Project for operation and maintenance of the Property and Vavra Development (“**Property Maintenance**”). Property Maintenance includes but is not limited to Waste Disposal and Exterior Improvements and Public Road maintenance. The Parties shall agree upon terms for Property Maintenance by executing an agreement not later than ninety days (90) before the Closing Date (“**Maintenance Agreement**”). City and JCL shall cooperate to agree upon terms and fees for maintenance and JCL use of Vavra Development’s Parking Structure and Plaza. The Parties agree fees and costs contemplated in this Agreement for Property Maintenance and Vavra Development or Parking Structure use and maintenance by JCL shall be for a five-year term and adjusted based on the previous year’s actual costs, as more specifically provided in the Maintenance Agreement.

3.2 Trash and Recycling Disposal from Property. The Parties acknowledge and understand the City will cause to be collected and removed trash and recycling waste from the Vavra Development. JCL anticipates requiring routine trash and recycling waste removal from the Property. The City shall provide trash and recycling removal and disposal (“**Waste Disposal**”) from the Property, including waste generated from the Project’s interior and exterior spaces on the Property as part of Property Maintenance. The Parties agree to cooperate to determine the actual cost for routine Waste Disposal and set an according fee for the Waste Disposal. The Parties shall memorialize the fee to be paid by JCL to the City and a procedure for Waste Disposal in the Maintenance Agreement.

3.3 Project Exterior Landscaping and Design. JCL shall design and pay the initial capital investment to improve the Property with landscaping and constructed hardscape improvements adjacent to the Project’s exterior (“**Exterior Improvements**”). JCL shall cooperate with the City to ensure the Exterior Improvements design is reasonably compatible with the City’s master plans, declarations, and design for the Vavra Development, as provided in the Final Development Plan. JCL acknowledges Exterior Improvements are subject to the approval of the City. City shall perform ongoing maintenance of the Exterior Improvements for a fee paid by JCL as part of Property Maintenance. JCL and City shall cooperate to determine the City’s actual costs to maintain the Exterior Improvements and memorialize terms for the maintenance and the corresponding JCL fee in the Maintenance Agreement.

3.4 Vavra Development Plaza. City is developing and constructing, at its sole cost, amenities and improvements to the Vavra Development. Adjacent to the Property in the Vavra Development is a public space with public right of way for pedestrians with access to the Project and other Vavra Development improvements, including but not limited to the community center, aquatic center, and Parking Structure (“**Plaza**”). City and JCL shall agree upon terms for Plaza management by City and use of the Plaza by JCL. City may make available the Plaza, or portions of the Plaza, for license to JCL for JCL programming purposes when City scheduling permits. The Parties acknowledge the Maintenance Agreement will address terms for Plaza use, management, and maintenance. In conjunction with construction of the Project, JCL shall construct a total of approximately

Five Hundred (500) square feet of pavement in two locations adjacent to the Property within the area of the Plaza in approximately the location depicted in the color red on the Development Diagram. JCL shall repair damage to the Plaza and Vavra Development caused by JCL's construction of the Project.

4. Investigation Period.

City acknowledges that, to enable JCL to proceed with this Property conveyance, JCL may undertake or cause to have undertaken various studies, including but not limited to feasibility, engineering and soil studies, and JCL has or will further engage design professionals to prepare engineering drawings, schematic plans and specifications, evaluations of the development potential of the site, and other reviews and approvals (hereinafter collectively referred to as "**Studies**") so as to determine whether, in JCL's sole discretion, it is feasible, economically or otherwise, to proceed with JCL's acquisition of the Property to develop the Project on the Property. As of the Effective Date, JCL has conducted and received acceptable phase I environmental Studies and geotechnical Studies. JCL is presently undertaking the Survey of the Property and adjacent area, including the Parking Structure, which if deemed acceptable by JCL, shall be incorporated in this Agreement as part of the Studies.

JCL shall have one hundred eighty (180) days from the Effective Date (herein, the "**Investigation Period**") in which to undertake any further Studies which JCL, in its sole discretion, deems necessary to determine the feasibility of its acquisition.

If, for any reason whatsoever during the Investigation Period, JCL elects, in JCL's sole and absolute discretion, not to proceed with the transaction contemplated by this Agreement, JCL may terminate the Agreement by notifying City of such election. A failure to so notify City on or before the expiration of the Investigation Period shall be deemed as notice to City that JCL has elected to proceed with the transaction contemplated hereby, subject to the Conditions Precedent (hereinafter defined) and the Permitted Exceptions.

JCL and its agents, contractors or employees shall have the right to enter upon the Property at all times for the purpose of performing its Studies, to take core samples, and to otherwise determine, in JCL's sole, reasonable discretion, the condition of the Property. JCL shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed promptly and with reasonable diligence upon its being notified of same. JCL shall repair and/or reimburse City for any damage to the Property arising from these Studies and indemnify, defend and hold harmless the City against all claims, costs, demands and expenses arising from these Studies. Provided, however, that the Parties agree that JCL shall have no obligation to indemnify City for acts for which JCL would otherwise be immune under the Kansas Tort Claims Act (K.S.A. 75-6104 *et seq.*), and amendments thereto, nor will the indemnity obligations set forth herein act as a waiver of JCL's protections under such provisions, and further that any liability of JCL shall be subject to the liability limitations under K.S.A. 75-6105, and amendments thereto. Additionally, and notwithstanding anything set forth herein to the contrary, the parties specifically agree that the terms of this section, and the terms of this Agreement, shall be subject to and limited by the Kansas Cash Basis Law (K.S.A. 10-1101 *et seq.*), and

amendments thereto, and the Kansas Budget Law (K.S.A. 75-2935 *et seq.*), and amendments thereto. JCL's obligations imposed by this **Section 4** shall survive termination of this Agreement.

5. Final Development Plan and Plat.

5.1 Final Development Plan. City and JCL shall cooperate to agree upon a development plan for the Project within the Vavra Development ("**Final Development Plan**"). The Final Development Plan will provide for the intended topography of the Property, Grading Plans, and establish the Parties' design expectations for the Project within the Vavra Development. JCL agrees the Project scale and aesthetic will be reasonably compatible with the City's master plans, declarations, and design for the Vavra Development, which will be reflected in the Final Development Plan. JCL acknowledges the Project design is subject to the approval of the City and that JCL is responsible for all costs associated with the Final Development Plan submittal. JCL and the City shall cooperate to agree upon this Final Development Plan not less than ninety (90) days before the Closing Date.

5.2 Plat. Closing will occur after JCL has filed the plat, including dedication of easements for the internal access road and drainage easements, with Johnson County. JCL will be responsible for all costs associated with filing the plat.

6. Title Requirements, Survey and Permitted Exceptions.

6.1 Title Evidence. JCL shall have the right, at JCL's expense, to obtain an owner's commitment for title insurance or an acceptable pro forma title policy ("**Title Commitment**"), by which a title company deemed acceptable by JCL ("**Title Company**") shall insure fee simple title to the Property to JCL in an amount to be determined by JCL and containing such endorsements as JCL may require and without exceptions for any matters except as described in this **Section 6**.

6.2 Survey. JCL is obtaining as of the Effective Date a boundary survey of the Property certified to ALTA requirements, to be prepared at JCL's cost and expense by a duly licensed Kansas land surveyor ("**Survey**").

6.3 Objections; Cure of Title and Survey Objections. JCL shall have until ninety (90) days before the Closing Date to make written objections ("**Objections**") to the form and/or contents of the Title Commitment or the Survey. JCL's failure to make objections within the Objection Period shall constitute JCL's waiver of Objections. Any matter shown on the Title Commitment or on the survey which is not objected to by JCL or which is affirmatively accepted by JCL is a permitted exception ("**Permitted Exception**"). City shall exercise reasonable efforts to remove any Objections raised by JCL, on or until the later of thirty (30) days after receipt of the Objections to attempt to cure the Objections ("**Cure Period**"). If City is unwilling or unable to cure the Objections within the Cure Period, JCL shall have the right to elect to: (1) terminate this Agreement by delivering written notice thereof to City and the Escrow Agent; or (2) may accept such title as City can deliver.

6.4 Conditions Precedent to Closing. Closing of the transfer of title to the Property shall be and hereby is conditioned upon the following (“**Conditions Precedent**”): (i) approval of this Agreement by the Board of Directors of the Johnson County Library; (ii) approval of this Agreement by the City Council of the City of Merriam, Kansas; (iii) approval of this Agreement by the Board of County Commissioners of Johnson County, Kansas; and (iv) JCL receiving all applicable planning, zoning, and plat approvals for the Project. If any Condition Precedent is not satisfied on or before the Closing Date, this Agreement may be canceled by City or JCL, or at JCL’s option, by written notice from JCL to City to extend the Closing Date provided the parties can reach a mutually agreeable Closing Date. Either Party shall have the right to unilaterally waive any Condition Precedent by providing written notice to the other. JCL shall be deemed to have waived the Conditions Precedent if JCL acquires the Property.

7. Closing.

7.1 Closing Date. The consummation of the transfer of title to the Property (“**Closing**”) shall take place at the offices of an escrow agent acceptable to both JCL and the City (“**Escrow Agent**”) on the date which is the earlier of the following dates: (i) the date which is thirty (30) days before the date upon which the Public Building Commission of Johnson County, Kansas is to meet to adopt resolutions to issue bonds in conjunction with the Project, (ii) on a date designated by JCL, provided JCL gives City notice of the designation at least 30 days prior to such designation dated, or (iii) a date JCL and City may agree to in writing, provided that, regardless of the foregoing, the Parties agree the Closing Date shall be after March 31, 2021 (“**Closing Date**”). Possession of the Property shall be granted by City to JCL on the Closing Date.

7.2 City’s Obligations at Closing. On the Closing Date, City shall execute and/or deliver to JCL, through the Escrow Agent as applicable, the following:

(a) **Deed.** Kansas Special Warranty Deed in a form reasonably acceptable to City and JCL (“**Special Warranty Deed**”), conveying the Property to JCL.

(b) **FIRPTA Affidavit.** A non-foreign affidavit properly executed and containing such information as is required by Internal Revenue Code Section 1445(b)(2) and its regulations.

(c) **Title Documents.** Such affidavits of City or other documents as may be reasonably required by Title Company or the Johnson County Register of Deeds, in order to record the closing documents and issue the Title Insurance Policy.

(d) **Additional Documents.** Such other documents as may be required by this Agreement, including an Affidavit of Real Property Value as required by law.

7.3 JCL's Obligations at Closing. On the Closing Date, JCL shall execute and/or deliver to City, through the Escrow Agent as applicable, the following with respect to the Project:

(a) **Title Documents.** Such affidavits of JCL or other documents as may be reasonably required by Title Company in order to record the closing documents and issue the Title Insurance Policy.

(b) **Additional Documents.** Such other documents as may be required by this Agreement or by law.

7.4 Closing Costs.

(a) City shall pay the following costs and expenses in connection with the Closing:

(i) Its costs of document preparation and its attorneys' fees; and

(ii) One-half of any escrow fees, if applicable.

(b) JCL shall pay the following costs arising in connection with the Closing:

(i) All recording fees, transfer taxes, if any, and all documentary stamps payable upon the recording of the Special Warranty Deed in connection with the conveyance of the Property;

(ii) All Studies, due diligence, or inspection costs incurred by JCL;

(iii) The premium payable for the owner's policy of title insurance and all endorsements thereto;

(iv) The cost of document preparation and its attorneys' fees; and

(v) One-half of any escrow fees, if applicable.

7.5 Prorations. City shall pay all general real estate taxes levied and assessed against the Property and all installments of special assessments for the years prior to the calendar year of Closing. All such taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall be pro-rated between City and JCL on the basis of such calendar year of Closing. The proration for taxes and assessments, if not known for the year of Closing at the time of Closing, shall be computed based upon the previous year's ad valorem taxes and assessments.

7.6 Damage. If, prior to the Closing Date, all or any part of the Property is substantially damaged by casualty, including act of God, the elements or any other cause, City shall immediately give notice to JCL of such fact and at JCL's option (to be exercised within fifteen (15) days after City's notice), this Agreement shall terminate, in which event neither party will have any further obligations under this Agreement, except for those obligations which expressly survive the termination hereof; or if JCL fails to elect to terminate despite such damage, or if JCL elects to proceed to Close on the Property, City and JCL shall proceed to Closing, and City shall assign to JCL at the Closing all of City's right, title and interest to receive any proceeds of insurance related to such damage.

7.7 Condemnation. If, prior to the Closing Date, the City obtains knowledge that eminent domain proceedings are commenced against all or any part of the Property by any entity having such authority, City shall immediately give notice to JCL of such fact and at JCL's option (to be exercised within fifteen (15) days after City's notice), this Agreement may, at JCL's option, terminate, in which event neither party will have further obligations under this Agreement, except for those obligations which expressly survive the termination of this Agreement. If JCL elects not to terminate, despite such eminent domain proceedings, City shall assign to JCL at the Closing all of City's right, title and interest in and to any award made or to be made in the condemnation proceedings.

8. Representations and Warranties.

8.1 Representations and Warranties of City. City, to the best of its knowledge, hereby represents and warrants to JCL that the following are true and correct as of the Effective Date and shall be true and correct as of the Closing Date:

(a) The execution of this Agreement and all documents and instruments executed pursuant to this Agreement by City, the delivery thereof to JCL, City's performance hereof and the transactions contemplated hereby have been duly authorized by all requisite action and approvals on the part of City and do not conflict with or result in a violation of any applicable statute, ordinance, law, or any judgment, order or decree of any court or proceeding to which City is a party and all such documents are valid and binding obligations of City and are enforceable in accordance with their terms.

(b) City is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

(c) To City's knowledge, there is no action, litigation, investigation, condemnation or proceeding of any kind against any portion of the Property which would have a material adverse effect upon transfer of any portion of the Property to JCL.

(d) To City's knowledge, the Property has not been used for the production, storage, deposit or disposal of hazardous substances, no well is

located on the Property, no above ground or below ground gas storage tank is located on the Property, and City has not received any written notice from any applicable governmental authority or any third party that any such substances have been placed or located upon the Property in violation of applicable environmental laws.

(e) City is not aware of any existing options or rights of first refusal with respect to the Property, other than JCL's rights.

(f) To City's knowledge, the Property is not occupied by any tenant.

(g) To City's knowledge, other than debris or other construction-related material that is on the Property as a result of the use of the Property as a staging area for the construction associated with the City's construction of Vavra Development, there is no construction or other debris located in or on the Property and no dumping has occurred in or on the Property. As provided in **Section 1.6**, the City shall convey the Property to JCL in a clean condition and graded, at its sole expense, in accordance with the Final Development Plan.

Whenever any representation or warranty of City is stated in this Agreement to be "to City's knowledge" or "to the best of City's knowledge", such words shall mean the actual knowledge, without any obligation of inquiry or investigation.

Notwithstanding the foregoing provisions of this **Section 8.1**, if City learns of any actual or alleged material inaccuracy in such representations or warranties, City shall advise JCL thereof. City shall, on or before the earlier of the scheduled Closing Date or the date ten (10) days after receiving such written notice from JCL or of learning of such actual or alleged material inaccuracy, make commercially reasonable efforts, without cost or expense to City, to cure such inaccuracy.

Failing such cure by City, City shall, within the period described in the preceding sentence, notify JCL in writing of such failure to cure, and JCL's remedies shall be limited to an election, on or before the earlier of the scheduled Closing Date or the date five (5) business days after receiving such written notice from City, to either (i) waive such breach and proceed to consummate the transaction contemplated by this Agreement or (ii) terminate this Agreement. If JCL elects to terminate this Agreement pursuant to this **Section 8**, neither party will have any further rights or obligations regarding this Agreement or the Property except for any obligations which are to expressly survive the termination of this Agreement.

8.2 Representations and Warranties of JCL. JCL hereby represents and warrants to City that the following are true and correct as of the Effective Date and shall be true and correct as of the Closing Date:

(a) JCL is a quasi-municipal corporation organized under the laws of the state of Kansas and is authorized to enter into this Agreement.

(b) The execution of this Agreement and all documents and instruments executed pursuant to this Agreement by JCL, the delivery thereof to City, JCL's performance hereof and the transactions contemplated hereby have been duly authorized by all requisite action on the part of JCL and do not conflict with or result in a violation of JCL's Administrative Regulation Manual or any judgment, order or decree of any court or proceeding to which JCL is a party and all such documents are valid and binding obligations of JCL and are enforceable in accordance with their terms.

9. Default.

9.1 Default by City. If City fails to perform any of City's covenants under this Agreement, or if City otherwise defaults hereunder, JCL shall have the right of specific performance of City's obligation to convey title to the Property to JCL pursuant to this Agreement, or JCL, at its option, may elect to terminate this Agreement and in addition thereto, pursue any remedies at law or in equity available to JCL for City's breach or default.

9.2 Default by JCL.

(a) In the event JCL should fail to consummate the transaction contemplated herein for any reason except for (i) any permissible reasons set forth in this Agreement or (ii) City's failure to close in accordance with the requirements of this Agreement, City may, after giving JCL five (5) days prior notice of a default by JCL, terminate this Agreement, and the parties shall have no further obligations to each other, except as provided in this **Section 9**.

(b) As partial consideration for JCL's agreement to evaluate the Property for development, the parties specifically agree that in the event of a JCL default prior to Closing, City shall have no other recourse or claim to any claims, damages, losses, or any other rights, remedies, relief or recourse against JCL ("**Default Recourse**"), and in no event shall such Default Recourse in any case be collectible, enforceable or available to City, except as provided in this **Section 9**.

(c) Notwithstanding anything in this **Section 9** or this Agreement to the contrary, if after Closing and during or after the third (3rd) quarter of calendar year 2021, as provided in **Section 2.1**, JCL fails to commence construction of the Project within forty-five (45) days after issuance of a building permit and thereafter fails to diligently pursue construction of the Project, unless such dates and times are extended upon mutual agreement of the Parties as evidenced in writing, then JCL shall within thirty (30) days after written notice from City, unless such time is extended by written mutual agreement of both parties, convey the Property to the City ("**Re-Conveyance**"), such obligation to survive the Closing of this Agreement. Such Re-Conveyance shall be with no additional encumbrances or liens than existed when JCL received the Property, except for such encumbrances and liens

(A) for utility service related to the Project, or (B) consented to, in writing by the City.

9.3 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of this Agreement or the collection of any funds due JCL or City pursuant to this Agreement, each party shall bear its own costs incurred, including without limitation reasonable attorneys' and paralegals' fees and costs, whether such fees and costs are incurred at trial, on appeal or in any bankruptcy proceedings.

10. Brokerage Commission.

City and JCL warrant each to the other that they have not dealt with any real estate broker which is entitled to compensation or commission with regard to this transaction respecting conveyance of the Property. Each party agrees to indemnify and hold harmless the other party from any and all claims for commissions by any broker or third party arising by virtue of this transaction whose commissions might legally arise from acts of the indemnifying party. The obligations of indemnity of JCL and City as contained in this **Section 10** shall survive the Closing

11. Escrow.

Unless otherwise agreed to by the parties in writing, the Title Company shall be First American Title Insurance Company and Cheryl Fay shall be designated as the Escrow Agent to facilitate the deposit and payment from the escrow established hereby. The parties shall instruct the Escrow Agent to hold such funds and to disburse the same only in accordance with the terms and conditions of this Agreement.

12. Other Contractual Provisions.

12.1 Assignment. JCL may not assign its rights under this Agreement without the prior written consent of City. Any assignment shall be subject to all the provisions, terms, covenants and conditions of this Agreement.

12.2 Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee) (i) when delivered by personal delivery, (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service addressed to the party to whom notice is intended to be given at the address set forth below:

To JCL:	Sean Casserley, County Librarian
	Johnson County Central Library
	9875 W. 87 th St.
	Overland Park, KS 66212
	Phone: 913-826-4600
	Fax: 913-826-4730

Email: CasserleyS@jocolibrary.org

With a Copy to: Fred J. Logan, Jr.
Logan, Logan & Watson
8340 Mission Rd., Suite 106
Prairie Village, KS 66206
Phone: 913-381-1121
Fax: 913-381-6546
Email: flogan@loganlaw.com

To City: Meredith Hauck, Assistant City Administrator
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Phone: 913-322-5515
Fax: 913-322-5505
mhauck@merriam.org

With a Copy to: City Attorney
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Phone: 913-322-5500
Fax: 913-322-5505

Escrow Agent: _____

Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this **Section 12.2**, but notice of change of address is effective only upon receipt.

12.3 Entire Agreement. This Agreement, subject to the applicable MOU provisions referenced herein, constitutes the entire understanding among the parties with respect to the Property conveyance transaction contemplated herein, and supersedes all prior or contemporaneous agreements, understandings, representations and statements, oral or written. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

12.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. The parties hereby consent to jurisdiction and venue in Johnson County, Kansas, and agree that such jurisdiction and venue shall be

sole and exclusive for any and all actions or disputes related to this Agreement or any related instruments.

12.5 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

12.6 Binding Effect. Subject to the provisions of **Section 12.1**, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

12.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

12.8 Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and neuter and vice versa. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

12.9 Severability. In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12.10 Time of Essence. Time is of the essence of every term, provision and covenant of this Agreement. The expiration of any period of time prescribed in this Agreement shall occur at 11:59 p.m. of the last day of the period. Should any period of time prescribed herein end on a Saturday, Sunday or legal holiday (recognized by either the City or JCL), the period of time shall automatically be extended to 11:59 p.m. of the next full business day.

12.11 No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof, and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

12.12 Exclusivity. City agrees that, until the termination or cancellation of this Agreement, City shall cease all negotiations for the sale or conveyance of the Property to any other party.

12.13 Incorporation into Agreement of Recitals; Incorporation by Reference of Exhibits. The recitals set forth above are incorporated herein by reference and made a part of this Agreement. Unless expressly provided herein, all exhibits attached hereto are incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their respective signatures.

[Remainder of page intentionally left blank; signature pages follow.]

CITY:

CITY OF MERRIAM, KANSAS

By: _____
Ken Sissom, Mayor

Attest:

Juliana Pinnick, City Clerk

Approved As To Form:

City Attorney

ACKNOWLEDGMENT

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

On this _____ day of _____, 2019 before me appeared Ken Sissom, who acknowledged himself to be Mayor of the City of Merriam, Kansas, and that he, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

JCL:

**BOARD OF DIRECTORS OF THE
JOHNSON COUNTY LIBRARY**

By: _____
Bethany Griffith
Chair

Approved As To Form:

Fred J. Logan, Jr., Counsel for the Board
of Directors of the Johnson County Library

ACKNOWLEDGMENT

STATE OF_KANSAS)
)ss.
COUNTY OF JOHNSON)

On this _____ day of _____, 2019 before me appeared Bethany Griffith, who acknowledged herself to be Chair of the Board of Directors of the Johnson County Library, and that she, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

MEMORANDUM OF UNDERSTANDING (MOU)

[Remainder of page intentionally left blank; Exhibit A follows.]

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into this 10th day of January, ~~2018~~²⁰¹⁷, by and between the City of Merriam, Kansas with its principal office located at 9001 W. 62nd Street, Merriam, Kansas 66202 ("CITY") and the Board of Directors of Johnson County Library, Johnson County, Kansas, with administrative offices located at 9875 W. 87th St., Overland Park, Kansas 66212 ("JCL").

RECITALS

WHEREAS, the CITY is a municipal corporation organized under the laws of the state of Kansas; and

WHEREAS, JCL is a quasi-municipal corporation organized under the laws of the state of Kansas and is authorized to enter into this MOU by the powers vested in it by K.S.A. 12-1223 *et seq.*; and

WHEREAS, the CITY is the owner of real property located west of Slater Street and east of Ikea Way (the "Property") which is on land that is currently used as Lucyann C. Vavra Memorial Park and is legally described on Exhibit A, which is entitled "Legal Description of the Property to Be Conveyed by the City of Merriam to the Board of Directors of the Johnson County Library," and which is attached hereto and incorporated herein by reference; and

WHEREAS, the CITY has proposed a redevelopment plan for a project area contiguous with the Property, referred to as the Vavra Park Project ("Vavra Development"), which will be a development incorporating a community center, outdoor aquatic center, and shared parking structure serving the Vavra Development and which may include infrastructure improvements on the Property in contemplation of the redevelopment plan for such project area; and

WHEREAS, in a letter dated December 4, 2017, the CITY invited JCL to explore moving the current Antioch branch library and constructing a new library branch on the Property within the Vavra Development; and

WHEREAS, location of a new library -branch within the Vavra Development provides a unique and beneficial opportunity for both parties and for the community; and

WHEREAS, the parties desire to enter into this MOU setting forth their intentions with respect to their responsibilities to each other and this MOU memorializes the same subject to the terms, conditions and subsequent agreements as described herein.

NOW, THEREFORE, for the mutual promises and covenants contained herein, the parties agree as follows:

1. **PROJECT.** JCL intends to construct an approximately 16,000 square foot library branch that provides library services to the general public on the Vavra Development site (the "Project"). The Project will be constructed of high quality materials and will be architecturally compatible with the Vavra Development components. A general site plan depicting the location of the Project is marked as "Future Library Site" on Exhibit B attached hereto and incorporated herein by reference.

A. Development Review Process. JCL agrees to submit to the land use, development and building permit review and approval process related to the Project in accordance with the CITY's Code of Ordinances.

B. Parking. JCL shall utilize shared parking in the 66,800 sq. ft. shared parking structure serving the Vavra Development (the "Parking Structure") to satisfy the daily parking needs of the Project. The Parking Structure shall be constructed by the CITY at no cost to JCL as part of the Vavra Development and will provide free parking to the public. The parties will enter into a subsequent agreement setting forth the terms and conditions under which JCL will participate in an annual payment to assist with the maintenance of the Parking Structure. It is anticipated that the payment will be allocated in proportion to JCL's projected and then actual estimated use of the Parking Structure; the payment will not include any costs relating to the cost of construction. The fee will be adjusted every five years based upon the agreement of the parties as to JCL's estimated use of the Parking Structure for the previous year.

2. **LAND CONVEYANCE.** The CITY will sell the Property to JCL for the sum of \$1.00, to allow JCL to construct the Project defined herein.

A. Public Purpose. The CITY finds that use of the Property by JCL for a public library is a good public use and further finds that such Project and the patrons thereof will be beneficial to the City and the City's Vavra Development.

B. Value. The Property shall be sold for the sum of \$1.00 by the CITY to JCL for this Project consistent with the provisions of this MOU.

C. Conveyance.

(1) JCL, may, but is not obligated to, secure Title Insurance and/or an ALTA Survey on the Property, but shall do so at its expense.

(2) The CITY and JCL intend to enter into a Property Conveyance Agreement within one hundred eighty (180) days after execution of the MOU. The conveyance (or "Closing") will occur within thirty (30) days of the date upon which the Public Building Commission of Johnson County, Kansas is to meet to adopt resolutions to issue bonds in conjunction with the Project. To facilitate the development and building plan approvals, the CITY shall grant JCL the right to

make application for all of its development plan approvals and building permit submission prior to Closing.

(3) Closing is anticipated to occur in calendar year 2021. At Closing, the Parties shall prorate the ad valorem real estate taxes and special assessments on the Property as of the date of Closing. This MOU imposes no responsibility on JCL for payment of any ad valorem real estate and special assessments on the Property JCL would not otherwise be obligated by law to pay.

D. TIF District Has No Legal Effect on the Property. The parties acknowledge that portions of the Property that will be conveyed by the City to the Library lie in a tax increment financing district ("TIF District") created by the City. The City agrees no redevelopment project plan has been approved for the Property and the City will not undertake any approval of redevelopment project plan for the Property. The City further agrees that JCL shall in no way have any obligations arising under the TIF District for the Property and that the City shall indemnify and hold the Library harmless on any claims arising from such portions of the Property lying within the TIF District. Any depiction of a TIF District boundary line shown on the Future Library Site plan or other diagram shall have no effect on the Library or cause the Property to become subject to any TIF District.

3. **SCHEDULE.** JCL agrees to diligently pursue the Project subject to written agreement of the Parties addressing the Project's timeline. Provided JCL is diligently prosecuting the work, JCL shall not be in default so long as it is making reasonable progress in accordance with a timeline agreed upon by the JCL and CITY staff.

4. **OBLIGATIONS TO PROCEED.** The obligation of the parties to proceed beyond this MOU is dependent upon the following:

A. The CITY Governing Body must approve this MOU and comply with the provisions of K.S.A. 12-1301;

B. The Library Board of JCL must approve this MOU and then, pursuant to K.S.A. 12-1223, submit the MOU for ratification and approval by the Board of County Commissioners of Johnson County, Kansas;

C. CITY and JCL entering into a mutually agreeable Property Conveyance Agreement, which will then be submitted to the Board of County Commissioners of Johnson County, Kansas for ratification; and

D. JCL obtaining all applicable CITY development approvals.

5. **NO LIMITATION OF POWER.**

A. Nothing in this MOU shall be construed as a limitation on the ability of the CITY to exercise its governmental functions or to diminish, restrict or limit the police

powers of the CITY granted by the Constitution of the state of Kansas and the United States, statutes, or by general law.

B. Nothing in this MOU shall be construed as a limitation on the powers, rights, authority, duty and responsibility conferred upon and vested in JCL by the laws and Constitution of the state of Kansas and the United States.

6. COOPERATION. The Parties agree to exercise good faith and cooperate with each other to finalize and execute all documents and agreements necessary to complete the Project as contemplated herein and as required by CITY code or state law.

7. NOTICES. Any notice, request, approval, demand, instruction, or other communication to be given to either party hereunder, unless specifically stated otherwise herein, shall be in writing and shall be conclusively deemed to be delivered (i) when personally delivered, (ii) when deposited in the U.S. mail, sent by certified mail return receipt requested, (iii) when sent by overnight courier, or (iv) when sent by facsimile with a confirmed receipt, but in all cases addressed to the parties as follows:

To JCL: Sean Casserley, County Librarian
Johnson County Central Library
9875 W. 87th St.
Overland Park, KS 66212
Phone: 913-826-4600
Fax: 913-826-4730
Email: CasserleyS@jocolibrary.org

With a Copy to: Fred J. Logan, Jr.
Logan, Logan & Watson
8340 Mission Rd., Suite 106
Prairie Village, KS 66206
Phone: 913-381-1121
Fax: 913-381-6546
Email: flogan@loganlaw.com

To CITY: Meredith Hauck, Assistant City Administrator
City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Phone: 913-322-5515
Fax: 913-322-5505
mhauck@merriam.org

With a Copy to: Nicole Proulx Aiken, City Attorney
City of Merriam
9001 W. 62nd Street

Merriam, KS 66202
Phone: 913-568-5219
Fax: 913-322-5505
naiken@merriam.org

8. TERMINATION. Unless otherwise amended in writing, this MOU shall automatically terminate and be of no further force and effect upon the earlier of:

- A. Failure of JCL to obtain all applicable development approvals;
- B. Execution of a subsequent Development Agreement or similar instrument that expressly terminates this MOU;
- C. Failure of JCL to submit for a building permit within one hundred eighty (180) days after obtaining all applicable development approvals;
- D. Failure of JCL to commence vertical construction of the Project on or before forty-five (45) days following issuance of building permit unless mutually agreed upon in writing by the Parties;
- E. Completion of the Project as contemplated in this MOU; or
- F. Mutual Agreement of the Parties to terminate the MOU as evidenced in writing signed by both parties.

9. GENERAL MATTERS.

- A. This MOU shall be governed by and construed under the laws of the state of Kansas.
- B. Neither party shall assign this MOU without the written consent of both parties.
- C. The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this MOU. This MOU constitutes the entire agreement between the Parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This MOU may be modified or amended only upon written instrument executed by the parties required to consent to such amendment.
- D. No member of the Governing Body, official or employee of the CITY shall be personally liable to JCL, or any successor in interest to JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by the CITY.
- E. No member of the Board of Directors, official or employee of JCL shall be personally liable or obligated to perform the obligations of JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by JCL.

F. The signatories to this MOU covenant and represent that each is fully authorized to enter into and to execute this MOU on behalf of the above named party.

G. It is agreed that nothing in this MOU is intended to, nor does it create or establish a joint venture between the CITY and JCL, or as constituting any agency relationship.

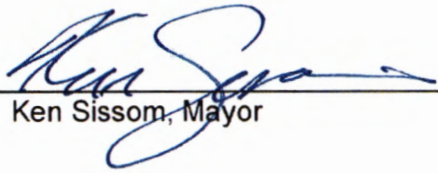
H. Nothing contained in this MOU shall be construed to confer upon any other party the rights of a third party beneficiary.

The parties have executed this MOU on the date first written above.

[Signature Pages Follow]

CITY OF MERRIAM, KANSAS

By: _____



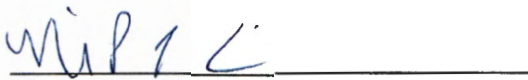
Ken Sissom, Mayor

Attest:



Juliana Pinnick, CITY Clerk

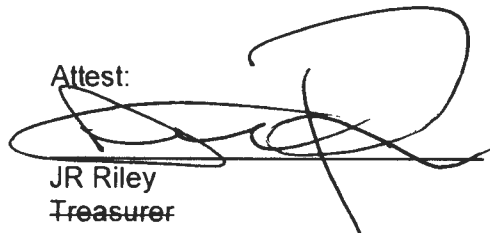
Approved As To Form:



Nicole Proulx Aiken, CITY Attorney

**BOARD OF DIRECTORS OF JOHNSON
COUNTY LIBRARY**

By: 
Bethany Griffith
Vice Chair

Attest: 
JR Riley
Treasurer

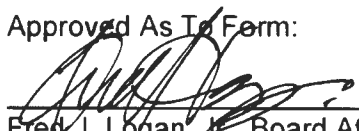
Approved As To Form:

Fred J. Logan, Jr., Board Attorney

EXHIBIT A

**Legal Description of the Property to Be Conveyed by the City of Merriam
to the Board of Directors of the Johnson County Library**

November 9, 2018

EXHIBIT A
DESCRIPTION FOR FUTURE LIBRARY LITE IN MERRIAM, KANSAS
PART OF LOT 1, VAVRA
CITY OF MERRIAM, JOHNSON COUNTY, KANSAS

All that part of Lot 1, VAVRA, a subdivision of land in the City of Merriam, Johnson County, Kansas, more particularly described as follows:

Commencing at the most Easterly Southeast corner of said Lot 1, said point also being on the West right-of-way line of Slater Street, as now established; thence N 2° 01' 52" W, along the East line of said Lot 1 and along the West right-of-way line of said Slater Street, a distance of 175.86 feet, to the point of beginning; thence S 87° 57' 16" W, a distance of 212.79 feet; thence N 2° 05' 17" W, a distance of 147.08 feet; thence N 23° 19' 56" E, a distance of 91.91 feet; thence S 70° 02' 51" E, a distance of 187.18 feet, to a point on the East line of said Lot 1 and the West right-of-way line of said Slater Street; thence S 2° 01' 52" E, along the East line of said Lot 1 and along the West right-of-way line of said Slater Street, a distance of 160.00 feet, to the point of beginning, containing 41,270 square feet, more or less, equal to 0.947 acres, more or less.





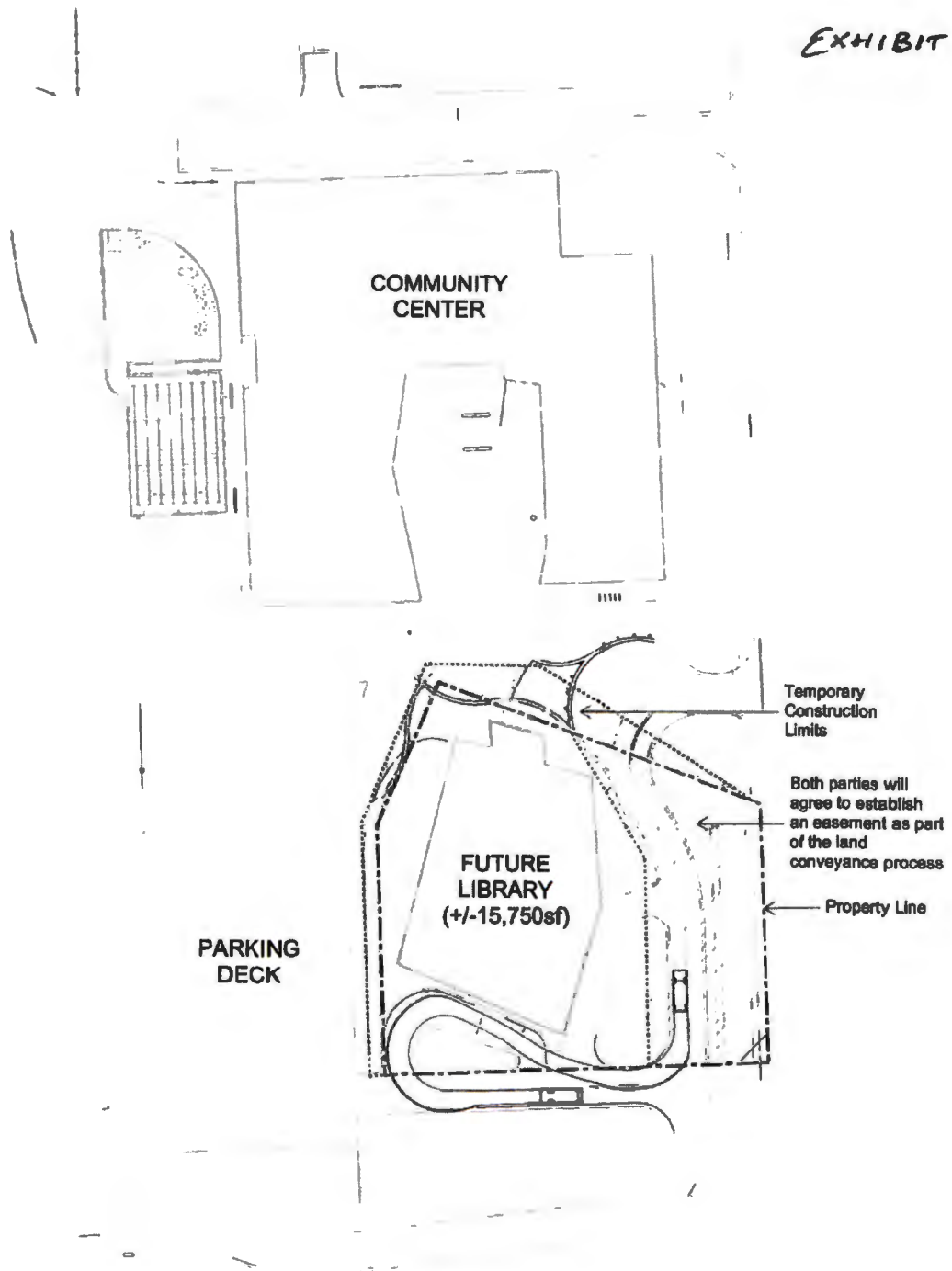
McClure Engineering Company
11250 Corporate Avenue
Lenexa, Kansas 66219
www.mccluresolutions.com

C:\Users\slloyd\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\CRPLQ37NM\Merriam Library.docx




EXHIBIT B

Future Library Site

EXHIBIT B



PLAN KEY

-  Both parties will agree to establish an easement as part of the land conveyance process
-  Temporary Construction Limits
-  Library Property Line



FUTURE LIBRARY SITE

80 30 0 60



EXHIBIT B

LEGAL DESCRIPTION AND SURVEY OF THE PROPERTY
TO BE CONVEYED BY THE CITY OF MERRIAM TO
THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY LIBRARY

[Remainder of page intentionally left blank; Exhibit B follows.]

MERRIAM LIBRARY



McCLURETM
ENGINEERING CO.
building strong communities.

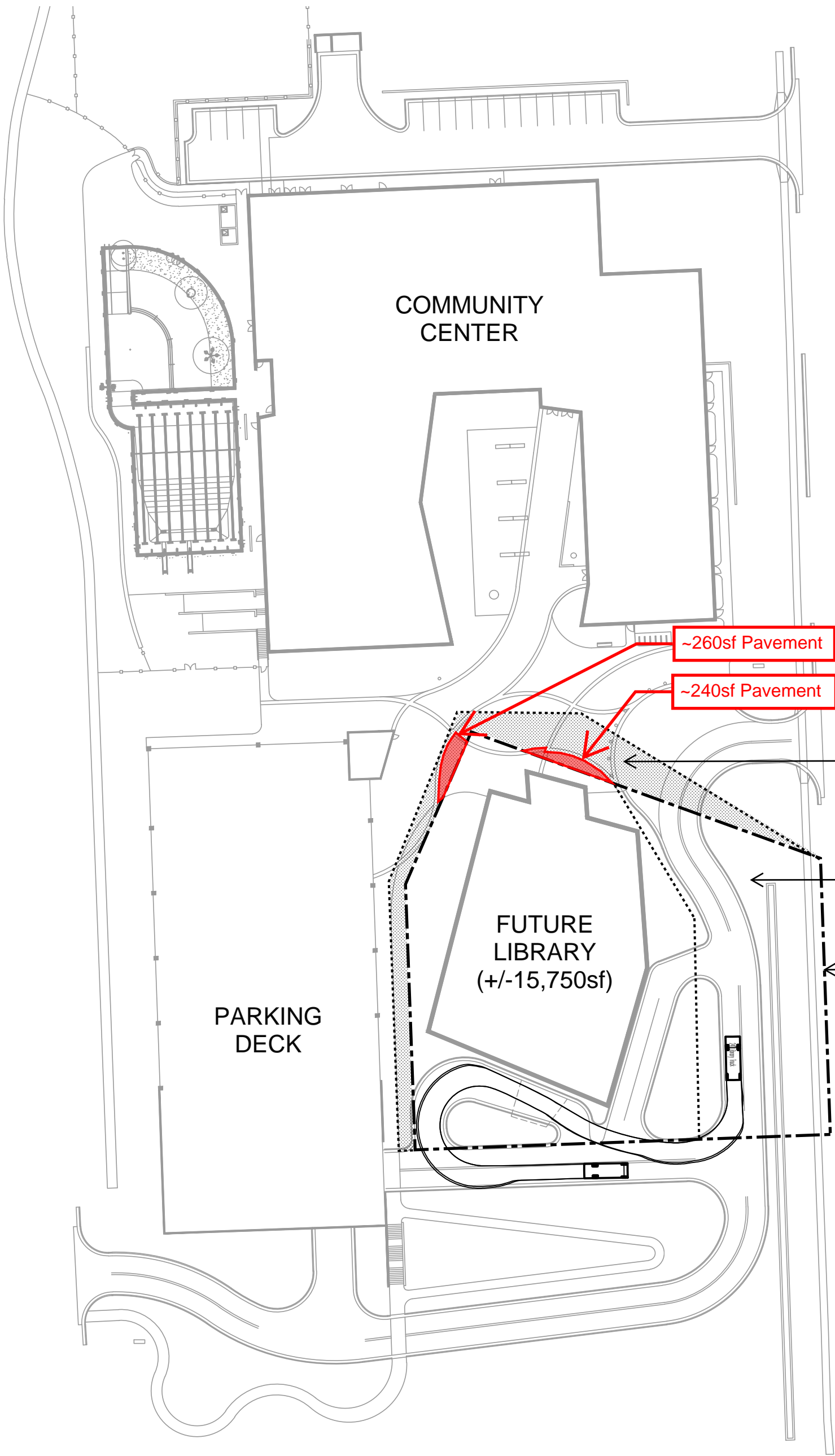
CLIENT
Johnson County Facilities Management Department
111 S. Cherry Street, Suite 2100
Olathe, Kansas 66061

EXHIBIT C

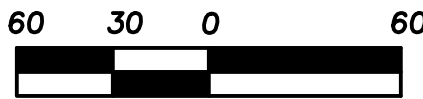
VAVRA DEVELOPMENT AND LIBRARY BRANCH

DEVELOPMENT DIAGRAM

[Remainder of page intentionally left blank; Exhibit C follows.]



DEVELOPMENT DIAGRAM



PLAN KEY


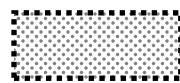

-  Both parties will agree to establish an easement as part of the land conveyance process
-  Temporary Construction Limits
-  Library Property Line

EXHIBIT D

DETAIL PROJECT TIMELINE

[Remainder of page intentionally left blank; Exhibit D follows.]

Antioch Replacement Anticipated Timeline

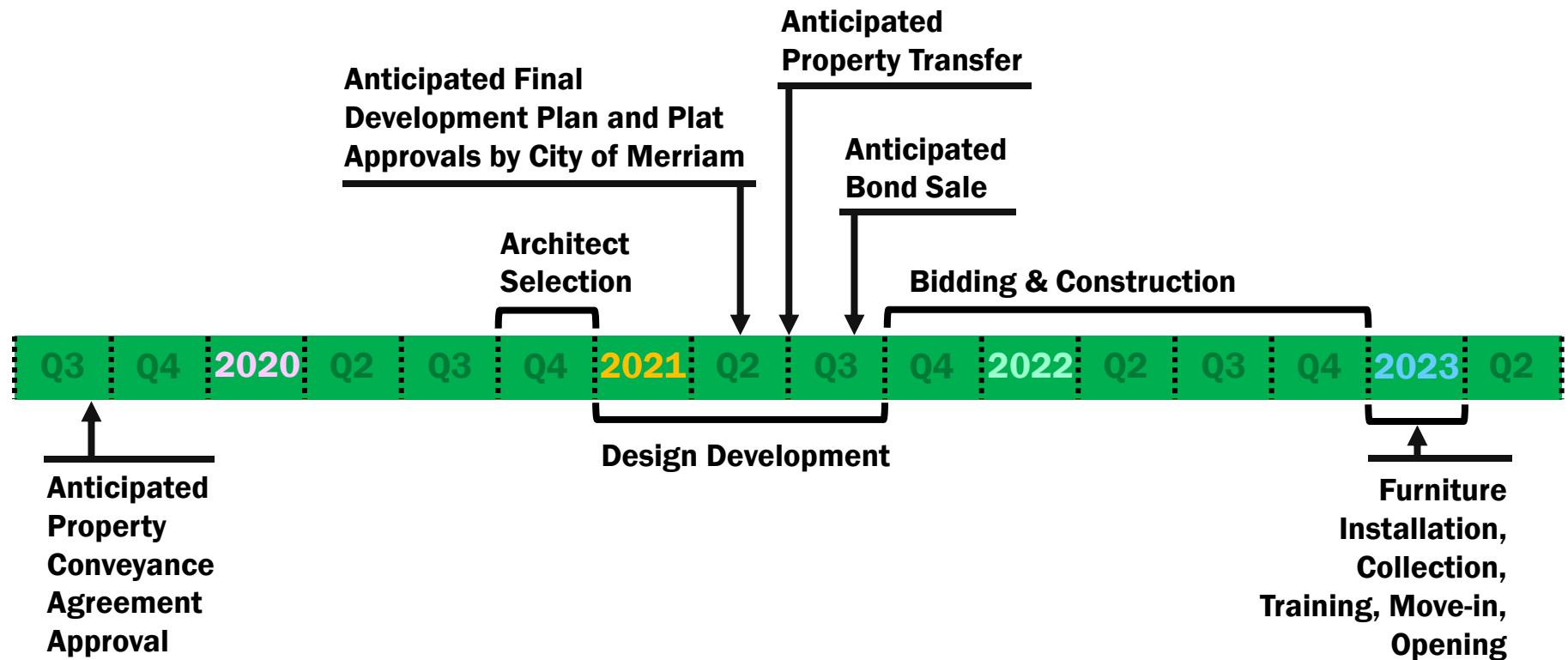


EXHIBIT E

LAYDOWN AREA DIAGRAM

[Remainder of page intentionally left blank; Exhibit E follows.]



AGENDA ITEM INFORMATION FORM

AGENDA ITEM: *Consider approval of an ordinance adopting the 2019 Standard Traffic Ordinance*

SUBMITTED BY: *Captain Todd Allen*

MEETING DATE: *September 9, 2019*

PROJECT BACKGROUND/DESCRIPTION:

Each year the Kansas League of Municipalities publishes an updated version of the Standard Traffic Ordinance (STO) for Kansas Cities. The 2019 edition is available and should be “incorporated by reference”. Passing and publishing this ordinance will bring our traffic ordinance into compliance with any changes made by the latest Kansas Legislative session.

There were several changes to the 2019 STO:

Section 1 Definitions

Added: Electric Assisted Scooter
Digital Network
Habitual Violator
Identifying Numbers
Lien Holder
Light Weight Roadable Vehicle
Local Authorities
Manufacturer
Transportation Network Company
Transportation Network Company Driver

Amended:
Farm Tractor
Governing Body
Implement of Husbandry
Owner
Passenger Car
Pole Trailer
Semi-Trailer
Specially Constructed Vehicle
Trailer
Truck

Section 6.1 Road Construction Zone

Section 30.2 Preliminary Breath Test

Section 33.1 Special Speed Limitations Applicable to Certain Vehicles and Portions of Highways; Powers of Secretary and Local Authorities; Violations, Evidence of Safe Speed

Section 38.1 Driving in Defiles or Canyons

Section 76 Obedience to Signal Indicating Approaching of Train

Section 105.1 Criminal Penalties for Violation of Size and Weight Laws; Exceptions

Section 105.2 Width of Vehicles and Loads Thereon

Section 105.3 Projecting Loads to the Front and Rear

Section 114.1	Unlawful Operation of All-Terrain Vehicle
Section 114.5	Unlawful Operation of a Work-Site Utility Vehicle
Section 115	Unlawful Riding on Vehicles
Section 135.1	Electric-Assisted Scooters, Traffic Law Application
Section 151.1	Air Conditioning Equipment
Section 156	Lamps or Flags on Projecting Loads
Section 158	Lamps on Other Vehicles and Equipment
Section 158.1	Lights; Lamps and Reflectors on Farm Tractors; Slow-moving Vehicle and Slow-moving Vehicle Emblem Defined; Requirements for Slow-moving Vehicles; Unlawful Acts; Exception
Section 160.1	Wreckers, Tow Trucks or Car Carriers; Operation of Emergency Lights; When
Section 162.1	Display of Vehicular Hazard Warning Signal Lamps and Warning Devices by Certain Stopped or Disabled Vehicles
Section 169	Special Restrictions on Lamps
Section 169.1	Transportation Network Lighting Device
Section 173	Brakes; Performance Requirements
Section 177	Windshields Must Be Unobstructed and Equipped with Wipers; Eye Protection
Section 181	One-Way Glass and Sun Screening Devices
Section 182.1	Seat Belts
Section 182.1.2	Safety Belts and Shoulder Harnesses
Section 190.1	Approval of Braking Systems on Motor-driven Cycles; Suspension or Revocation of Registrations; Prohibited
Section 192	Driver's License
Section 193	Driver's License in Possession
Section 201	Penalties
Section 201.1	Failure to Comply with a Traffic Citation

The changes are detailed in the attached memo.

CITY COUNCIL GOALS AND OBJECTIVES

Provide Exceptional Service Delivery

FINANCIAL IMPACT

Amount of Request/Contract: N/A

Amount Budgeted: N/A

Funding Source/Account #: N/A

SUPPORTING DOCUMENTS

- Memo
- Ordinance 1803

ACTION NEEDED/STAFF RECOMMENDATION

Waive the first reading.

Approve the 2019 Standard Traffic Ordinance for Kansas Cities.



CHIEF OF POLICE

Merriam Police Department

9010 W 62 St., Merriam, KS 66202-2815

TO: Chris Engel

FROM: Acting Police Chief Todd Allen

CC: City Attorney Nicole Aiken, City Prosecutor Chris Mann

DATE: August 29, 2019

RE: Changes to 2019 Standard Traffic Ordinance

The following is a list of amendments and deletions made to the 2018 version of the Standard Traffic Ordinances published by the Kansas League of Municipalities.

There were several changes to state traffic statutes in 2019.

Specifics listed below:

SECTION 1. DEFINITIONS

Added: Electric Assisted Scooter

Digital Network

Habitual Violator

Identifying Numbers

Lien Holder

Light Weight Roadable Vehicle

Local Authorities

Manufacturer

Transportation Network Company

Transportation Network Company Driver

Amended: Farm Tractor

Governing Body

Implement of Husbandry
Owner
Passenger Car
Pole Trailer
Semi-Trailer
Specially Constructed Vehicle
Trailer
Truck

SECTION 6.1 ROAD CONSTRUCTOIN ZONE

New: It shall be unlawful for any person to fail, neglect or refuse to comply with restrictions or traffic regulations in a road construction zone or fail to comply with traffic orders or traffic directions by a flagman in a road construction zone.

SECTION 30.2 PRELIMINARY BREATH TEST

Amended: Subsection (a) removed the portions which contained language establishing that every driver of a vehicle was deemed to have given consent to a preliminary breath test. Subsection (c), which required an officer to give both written and oral notice to the suspect has been deleted.

Subsection (b) which will now be subsection (a), has been amended by deleting the word saliva and replacing it with the term oral fluid. The bill also removed the traffic infraction for refusing to submit to a preliminary breath test from the state statutes. The League removed that charge in the 2016 edition of the STO due to concerns with the constitutionality of the charge.

SECTION 33.1 SPECIAL SPEED LIMITATIONS APPLICABLE TO CERTAIN VEHICLES AND PORTIONS OF HIGHWAYS: POWERS OF THE SECRETARY AND LOCAL AUTHORITIES; VIOLATIONS, EVIDENCE OF SAFE SPEED

New: (a) No person shall drive a vehicle which is towing a house trailer at a speed greater than a maximum of fifty-five (55) miles per hour.

(b) No person shall drive any vehicle equipped with solid rubber tires a speed greater than a maximum of ten (10) miles per hour.

(c) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(d) The secretary of transportation and local authorities on highways under their respective jurisdictions may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this article, the secretary or local authority shall determine and declare the maximum speed of vehicles which such structure can safely withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained not less than one hundred (100) feet before each end of such structure.

(e) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said secretary and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

SECTION 38.1 DRIVING IN DEFILES OR CANYONS

New: The driver of a motor vehicle traveling through defiles or canyons or on highways with steep grades shall hold such motor vehicle under control and as near the right-hand edge of the roadway as reasonably possible and, except when driving entirely to the right of the center of the roadway, shall give audible warning with the horn of such motor vehicle upon approaching any curve where the view is obstructed within a distance of two hundred (200) feet along the highway.

SECTION 76 OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN

Amended: This section expanded the requirement to stop for a train and also for "other on-track equipment".

SECTION 105.1 CRIMINAL PENALTIES FOR VIOLATION OF SIZE AND WEIGHT LAWS; EXCEPTIONS

New: A lengthy section that deals with size, weight and penalties for certain vehicles and exceptions thereof.

SECTION 105.2 WIDTH OF VEHICLES AND LOADS THEREON

New: A lengthy section that deals with the width of vehicles and loads. The times when allowed to be moved and required signs to be attached.

SECTION 105.3 LOADS ON PASSENGER VEHICLES EXTENDING TO EITHER SIDE

New: No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the left side of such vehicle nor extending more than six (6) inches beyond the right side thereof.

SECTION 114.1 UNLAWFUL OPERATION OF ALL-TERRAIN VEHICLE

SECTION 114.5 UNLAWFUL OPERATION OF A WORK-SITE UTILITY VEHICLE

Amended both sections. The change is the same for both sections and concerns the operation of these vehicles for an agricultural purpose. Both ATV's and UTV's can now be operated on federal and state highways with a speed limit of 65 MPH or less if they are being used for an agricultural purpose and the operators meet other requirements. They are not authorized under this bill to operate within the city limits unless authorized by the city. If a city currently allows the operation of these vehicles within the city they can. If they choose to, they can amend the city ordinance to allow the operation on a state or federal highway if all the requirements surrounding the agricultural exemption are included.

SECTION 115 UNLAWFUL RIDING ON VEHICLES; PERSONS 14 YEARS OF AGE AND Older

Amended: This section shall not apply to: (c) (1) changed from an employee to an employee under the age of 14.

SECTION 135.1 ELECTRIC-ASSISTED SCOOTERS, TRAFFIC LAW APPLICATION

New: (a) It shall be unlawful for any person to operate an electric-assisted scooter on any interstate highway, federal highway or state highway.

(b) Notwithstanding the provisions (a), traffic regulations applicable to bicycles, Sections 127 to 133, inclusive, shall be applicable to electric-assisted scooters.

(c) The governing body of a city or county may adopt an ordinance or resolution that further restricts or prohibits the operation of electric-assisted scooters on any public highway, street or sidewalk within the city or county.

(d) Except as otherwise provided in subsection (c), the provisions of subsection (a) shall not prohibit an electric-assisted scooter from crossing a federal or state high.

SECTION 151.1 AIR CONDITIONING EQUIPMENT

New: The term “air-conditioning equipment” as used or referred to in this section shall mean mechanical vapor compression refrigeration equipment which is used to cool the driver’s side or passenger compartment of any motor vehicle.

(b) Air-conditioning equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public, and shall not contain any refrigerant which is toxic to persons or which is flammable.

(c) The secretary of transportation may adopt and enforce safety requirements, rules and regulations and specifications consistent with the requirements of this section applicable to such equipment, which shall correlate with and so far as possible, conform to the current recommended practice or standard applicable to such equipment approved by the society of automotive engineers.

(d) No person shall have for sale, offer for sale, sell or equipment any motor vehicle with any such equipment unless it complies with requirements of this section.

(e) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless said equipment complies with the requirements of this section.

SECTION 156 LAMPS OR FLAGS ON PROJECTING LOADS

Added: (b) No passenger vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders of the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

SECTION 158 LAMPS ON OTHER VEHICLES AND EQUIPMENT

Added: (b) Every animal-drawn vehicle shall be equipped at all times with a slow-moving vehicle emblem complying with subsection (g) of K.S.A. 8-1717. (K.S.A. 8-1718)

SECTION 158.1 LIGHTS, LAMPS AND REFLECTORS ON FARM TRACTORS; SLOW-MOVING VEHICLE AND SLOW-MOVING VEHICLE EMBLEM DEFINED; REQUIREMENTS FOR SLOW-MOVING VEHICLES; UNLAWFUL ACTS; EXCEPTION

New: Lengthy section definitions and requirements of farm tractors, towed vehicles, slow-moving vehicles.

SECTION 160.1 WRECKERS, TOW TRUCKS OR CAR CARRIERS; OPERATION OF EMERGENCY LIGHTS; WHEN

New: (a) Wreckers, tow trucks or car carriers designated as authorized emergency vehicles under subsection (c) of K.S.A. 8-2010, and amendments thereto, shall operate such lights authorized under K.S.A. 8-1720, and amendments thereto, only when such wreckers, tow trucks or car carriers are stationary and providing wrecker or towing service at the scene of a vehicle accident or providing emergency service on the side of a highway.

(b) The provisions of this section shall be part of and supplemental to the uniform act regulations traffic on highways. (K.S.A. 8-2010c)

SECTION 162.1 DISPLAY OF VEHICULAR HAZARD WARNING SIGNAL LAMPS AND WARNING DEVICES BY CERTAIN STOPPED OR DISABLED VEHICLES

New: Deals with any truck, bus, truck-trailer, trailer, semitrailer or pole trailer eighty (80) inches or more in overall width or thirty (30) feet or more in overall length is stopped upon a roadway or adjacent shoulder, the driver immediately shall actuate vehicle hazard warning signal lamps meeting the requirements of K.S.A.8-1722. Describes the exceptions and explains the requirements and types of lights.

SECTION 169 SPECIAL RESTRICTIONS ON LAMPS

Amended: (c) added sections 158.1, 162, and 171.

SECTION 169.1 TRANSPORTATION NETWORK LIGHTING DEVICE

New: (a) A driver for a transportation network company who is logged on to the transportation network company's digital network, may equip the vehicle with a lighting device capable of displaying light visible from directly in front of the center of the vehicle. Such lighting device may display: (1) Steady light; and (2) Light of any color. except red.

The words and phrase used in this section have the meaning respectively ascribed thereto in Section1 and K.S.A. 8-2702, and amendments thereto, unless a different meaning is plainly required by the context. (2019 Kansas Laws Ch. 61 SB 63).

SECTION 173 BRAKES; PERFORMANCE REQUIREMENTS

Amended: Changed (c) to (d) and added the new (c). *When necessary for the safe operation of any vehicle or class of vehicles, the secretary of transportation may require additional braking systems. Every vehicle must comply with any additional requirements.*

SECTION 177 WINDSHIELDS MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS; EYE PROTECTION

Amended: Removed (e) The driver of a motor vehicle which is not equipped with a windshield shall wear an eye-protective device.

SECTION 181 ONE-WAY GLASS AND SUN SCREENING DEVICES

Amended: Changed (b) Subsection (a) (3) shall not apply to window of a law enforcement motor vehicle. Added the provision (4) The driver or occupant of the vehicle that possesses a signed statement from a licensed physician or licensed optometrist.(A) (B) States that, in the physician's or optometrist's professional opinion, the equipping of the vehicle with material is necessary to safeguard the health of the driver or occupant of the vehicle. Also, makes reference the specified minimum light transmittance of 70% and the abrasion resistance of AS-14 glazing, as specified in the federal standard.

SECTION 182.1 SEAT BELTS

Amended: added the traffic infraction language.

SECTION 182.1.2 SAFETY BELTS AND SHOULDER HARNESSSES

New: Describes minimum requirements of all vehicles.

SECTION 190.1 APPROVAL OF BRAKING SYSTEMS ON MOTOR-DRIVEN CYCLES; SUSPENSION OR REVOCATION OF REGISTRATION; PROHIBITED

New: (a) The secretary of transportation is authorized to require an inspection of the braking system on any motor-driven cycle and to disapprove the braking system on any such vehicle which it finds will not comply with the performance ability standard set forth in K.S.A. 8-1808, or which in the opinion of the secretary is equipped with a braking system that is not designed or constructed as to ensure reasonable and reliable performance in actual use.

(b) The director may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when the secretary of transportation determines that the braking

system thereon does not comply with the provisions of this section. (c) No person shall operate on any highway any vehicle referred to in this section in the event the secretary of transportation has disapproved the braking system upon such vehicle. (K.S.A. 8-1809)

SECTION 192 DRIVERS LICENSE AND VEHICLE TAGS

Amended: (b) Any person operating in this city a motor vehicle, shall be a holder of a driver's license that is classified for the operation of such vehicle, and any person operating in this city a motorcycle that is registered in the state of Kansas shall be the holder of a class M driver's license. (c) No person shall drive any motorized bicycle upon a highway of this state unless such person: (1) Has a valid driver's license, that entitles the licensee to drive a motor vehicle in any class or classes; (2) is at least 15 years of age and has passed the written and visual examinations required for obtaining a class C driver's license, in which case the division shall issue to such person a class C driver's license, which shall clearly indicate that such license is valid only for the operation of motorized bicycles; (3) has had the driving privileges suspended, for a violation other than a violation of K.S.A. 8-2,144 and amendments thereof, or a second or subsequent violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto and such person: (A) Has completed the mandatory period of suspension as provided in K.S.A.8-1014, and amendments thereto; and (B) has made application and submitted a \$40 nonrefundable application fee to the division for the issuance of a class C license for the operation of motorized bicycles, in accordance with paragraph (2) in which case the division shall issue to such person a class C license, which shall clearly indicate that such license is valid only for the operation for the operation of motorized bicycles; or (4) has had their driving privileges revoked under K.S.A. 8-286, and amendments thereto, has not had a test refusal or test failure or alcohol or drug-related conviction as those terms are defined in K.S.A. 8-1013, and amendments thereto, in the last five years, has not been convicted of a violation of K.S.A.8-1568(b) and amendments thereto, in the last five years and has made application to the division for issuance of a class C license for the operation of motorized bicycles, in accordance with the paragraph (2), in which case the division shall issue such person a class C license, which shall clearly indicate that such license is valid only for the operation of motorized bicycles. As used in this subsection, "motorized bicycles" shall have the meaning ascribed to it in K.S.A. 8-126, and amendments thereto.

(d) Violation of this section is punishable by a fine or not more than \$1,000 or by imprisonment for not more than six months or by both such fine and imprisonment. (K.S.A. 8-235)

SECTION 193 DRIVER'S LICENSE IN POSSESSION

Added: (b) Every license operating a motor vehicle shall promptly **deliver** such person's driver's license upon demand of any law enforcement officer when the license is in such person's immediate possession at the time of the demand. (K.S.A. 8-244)

SECTION 201 PENALTIES

Added: (b) K.S.A.8-2503 refers to a traffic infraction not violation.

SECTION 201.1 FAILURE TO COMPLY WITH A TRAFFIC CITATION

Amended: (e) A person who is assessed a reinstatement fee pursuant to subsection (c) may petition the court that assessed the fee at any time to waive payment of the fee, any additional charge imposed pursuant to subsection (f) or any portion thereof. If it appears to the satisfaction of the court that payment of the amount due impose would manifest hardship on the person or the person's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

ORDINANCE NO. 1803

AN ORDINANCE AMENDING CHAPTER 68, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING STANDARD TRAFFIC REGULATIONS; AMENDING SECTION 68-19 BY INCORPORATING BY REFERENCE THE “2019 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES,” 47th EDITION WITH AMENDMENTS THERETO; AND REPEALING THE SECTION HEREBY AMENDED.

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

Section 1. That section 68-19 of the Code of Ordinances, City of Merriam, Kansas, is hereby amended to read as follows:

Sec. 68-19. Incorporating the standard traffic ordinance.

(a) There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Merriam, Kansas, that certain standard traffic ordinance known as the “2019 Standard Traffic Ordinance for Kansas Cities,” 47th edition, (“STO”) prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed by this Ordinance or by Chapter 68 of the Code of Ordinances, City of Merriam, Kansas.

(b) At least one copy of the STO shall be marked or stamped “Official Copy as Incorporated by Ordinance No.1803” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of the incorporating ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. Severability. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

Section 3. Savings Clause. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, nor the repeal of Ordinance No. 1783, shall in any manner affect the prosecution for violation of this Ordinance or a violation of Ordinance 1783, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Ordinance, nor be construed as affecting any of the provisions of these Ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Ordinance, and all rights and obligations thereunder shall continue in full force and effect.

Section 4. Penalties for violation of this Ordinance or the Standard Traffic Ordinance incorporated herein shall be as set forth in Section 68-21 of the Code of Ordinances, City of Merriam, Kansas.

Section 5. Repeal. That section 68-19 of the Code of Ordinances, City of Merriam, Kansas, as it existed before the above amendment is hereby repealed.

Section 6. Existing Sections. Those sections of Chapter 68, Article II of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

Section 7. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the official City newspaper, all as provided by law.

PASSED by the Governing Body this _____ day of _____, 2019.

APPROVED AND SIGNED by the Mayor this _____ 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: *Consider approval of an ordinance adopting the 2019 Uniform Public Offense Code and approve an ordinance amending Chapter 44 of the Merriam Municipal Code*

SUBMITTED BY: *Captain Todd Allen*

MEETING DATE: *September 9, 2019*

PROJECT BACKGROUND/DESCRIPTION:

Each year the Kansas League of Municipalities publishes an updated version of the Uniform Public Offense Code (UPOC) for Kansas Cities. The 2019 edition is available and should be "incorporated by reference". Passing and publishing this ordinance will bring our ordinances into compliance with any changes made by the latest Kansas Legislative session.

There were several changes to the 2019 UPOC:

Article **7.A. Crimes Affecting Public Trust**
 8. Crimes Involving Violation of Personal Rights
 (formerly Denial of Civil Rights)

Section 1.1 Definitions

Added: Cannabidiol Treatment Preparation
 Debilitating Medical Condition
 Federal Law Enforcement Officer
 State of Nudity
 Transmission
 Visual Depiction

Amended: Alcoholic Liquor
 Nonferrous Metal
 Public Employee

Section 3.1.1 Domestic Battery

Section 3.2.1 Sexual Battery

Section 3.4 Unlawful Interference with an Emergency Medical Services Attendant

Section 3.7.1 Interference with Custody of a Committed Person

Section 3.10 Hazing

Section 3.13 Stalking

Section 5.1.2 Unlawful Possession of a Visual Depiction of a Child

Section 5.1.3 Unlawful Transmission of a Visual Depiction of a Child

Section 5.3 Unlawfully Hosting Minors Consuming Alcoholic Liquor or Cereal Malt Beverages

Section 6.1 Theft

Section 6.6 Criminal Damage to Property

Section 6.7.1 Trespassing on Railroad Property

Section 6.16 Giving a Worthless Check

Section 6.23.1 Unlawful Use of Recordings

Section 6.24 Commercial Fossil Hunting

Section 6.25 Counterfeiting

Section 6.26 Automobile Master Key Violation

Section 7.4 Interference with the Judicial Process

Section 7.15 Intimidation of a Witness or Victim

Section 7.16 Obstructing Apprehension or Prosecution

Section 8.2 Unlawful disclosure of Tax information

Section 8.3 Unjustifiably Exposing a Convicted or Charged Person

Section 9.9.1 – Unlawful Possession of Marijuana and Tetrahydrocannabinols.

We are not adopting this section; amendments were made to Merriam Municipal Code Sec. 44-242.1 – Unlawful possession of controlled substances.

Section 9.9.2 – Sec. 9.9.2. Possession of Drug Paraphernalia and Simulated Controlled Substances.

We are not going to adopt this section; because it is in Merriam Code section 44-242.3 – Unlawful possession of certain drug precursors and drug paraphernalia.

Section 9.9.3 - Sec. 9.9.3 Unlawful Distribution of Controlled Substances. We are not going to adopt this section, because it is in Merriam Code section 44-242 – Unlawful distribution of controlled substances.

Section 9.9.4 – Sec. 9.9.4. Unlawful Possession of Controlled Substances

We are not going to adopt this section, because it is in Merriam Code section 44-242.1 – Unlawful possession of controlled substances.

Section 9.9.5 – Sec. 9.9.5 Unlawful Possession of a Simulated Substance.

We are not going to adopt this section, because it is in Merriam Code section 44-242.5 – Unlawful possession of a simulated controlled substance.

Section 9.9.6 – Sec. 9.9.6 Distribution of a Non-Controlled Substance.

We are not going to adopt this section, because it is in Merriam Code section 44-242.6 – Unlawful representation that non-controlled substance is controlled substance.

Section 10.2 Possession of a Firearm Under the Influence

Section 10.4 Failure to Register Explosives

Section 10.21 Selling Beverage Containers with Detachable Tabs

Section 10.28 Endangering the Food Supply

Section 11.1 Promoting Obscenity

Section 11.2 Promoting Obscenity to Minors

Section 11.9.1 Illegal Bingo Operation

Section 11.10 Possession of a Gambling Device

Section 11.11 Cruelty to Animals

Section 11.13 Unlawful Possession of Dog Fighting Paraphernalia;
Unlawful Attendance of Dog Fighting

Section 11.14 Illegal Animal Ownership

Section 11.15 Permitting a Dangerous Animal to be at Large

Section 11.16 False Membership Claim

The changes are detailed in the attached memo.

CITY COUNCIL GOALS AND OBJECTIVES

Provide Exceptional Service Delivery

FINANCIAL IMPACT

Amount of Request/Contract: N/A

Amount Budgeted: N/A

Funding Source/Account #: N/A

SUPPORTING DOCUMENTS

- *Memo*
- *Ordinance 1804*
- *Ordinance for Chapter 44 Amendments (redlined and clean versions)*

ACTION NEEDED/STAFF RECOMMENDATION

Waive the first reading of both ordinances.

Approve the 2019 Uniform Public Offense for Kansas Cities.

Approve the ordinance for amendments to Chapter 44 of the Merriam Municipal Code.



CHIEF OF POLICE

Merriam Police Department

9010 W 62 St., Merriam, KS 66202-2815

TO: Chris Engel
FROM: Acting Police Chief Todd Allen
CC: City Attorney Nicole Aiken, City Prosecutor Chris Mann
DATE: September 5, 2019
RE: Changes to 2019 Uniform Public Offense Code

The following is a list providing the changes made to the 2019 version of the Uniform Public Offense Code published by the Kansas League of Municipalities.

ARTICLE 7A. ADDED CRIMES AFFECTING PUBLIC TRUST

Sec. 7A.1. Official Misconduct.

(a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

- (1) Knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another;
- (2) Knowingly failing to serve civil process when required by law;
- (3) Using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to intentionally cause harm to another;
- (4) Except as authorized by law, with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:
 - (A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;
 - (B) Accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or
 - (C) Altering any bid or proposal submitted by a bidder on a contract or proposed contract;

(5) Except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime; or

(6) Knowingly submitting to a governmental entity a claim for expenses which is false or duplicates 92

expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in:

(A) Subsections (a)(1) through (a)(4) is a class A nonperson violation;

(B) Subsection (a)(5) is a class A nonperson violation if the evidence is evidence of a crime which is a misdemeanor; and

(C) subsection (a)(6) is a class A nonperson violation if the claim is less than \$1,000. If the claim is more than \$1,000 the offense is classified by state law as a felony and will be referred to the appropriate prosecuting authority.

(2) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) Constitutes misuse of public funds, as defined in K.S.A. 21-6005, and amendments thereto.

(d) As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto. (K.S.A 21-6002)

Sec. 7A.2. Compensation for Past Official Acts.

(a) Compensation for past official acts is intentionally giving or offering to give to any public officer or employee any benefit, reward or consideration for having given, in such official capacity as public officer or employee, a decision, opinion, recommendation or vote favorable to the person giving or offering such benefit, reward or consideration, or for having performed an act of official misconduct.

(b) Compensation for past official acts is a class B nonperson violation.⁹³

(c) Subsection (a) shall not apply to the following:

(1) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationships independent of the official status of the receiver; or

(2) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality. (K.S.A. 21-6003)

Sec. 7A.3. Presenting a False Claim; Permitting a False Claim.

(a) Presenting a false claim is, with the intent to defraud, presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

(b) Permitting a false claim is the auditing, allowing or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or public employee who knows such claim or demand is false or fraudulent in whole or in part.

(c) (1) Presenting a false claim or permitting a false claim for less than \$1,000 is a class A nonperson violation. Any claims over \$1,000 are considered felony violations under state law and will be referred to the appropriate prosecuting authority.

(2) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee's office or employment.

(K.S.A. 21-6004)

Sec. 7A.4. Misuse of Public Funds.

(a) Misuse of public funds is knowingly using, lending or permitting another to use public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of such person's official position.

(b) (1) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is a class A nonperson violation if the amount is less than \$1,000. If the amount 94

is more than \$1,000 the offense is considered a felony under state law and will be referred to the appropriate prosecuting authority.

(2) Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.

(c) As used in this section, "public money" means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof. (K.S.A. 21-6005)

SECTION 1.1 DEFINITIONS

Added:	Cannabidiol Treatment Preparation
	Debilitating Medical Condition
	Federal Law Enforcement Officer
	State of Nudity
	Transmission
	Visual Depiction
Amended:	Alcoholic Liquor
	Nonferrous Metal
	Public Employee

SECTION 3.1.1 DOMESTIC BATTERY

Amended: added (c)-In determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense under this section, a court shall consider information presented to the court relating to any person.

Added: (3) Protective Order section.

SECTION 3.2.1. SEXUAL BATTERY

Added to the section the reference of case law of State v. Adams, No 114,276,(Kan. App. August 26, 2016) Unpublished opinion. Notes that since municipal courts are not a court of record the conviction will not subject the defendant to registering as a sexual offender, therefore these cases will be prosecuted in Franklin County District Court.

SECTION 3.4 UNLAWFUL INTERFERENCE WITH A EMERGENCY MEDICAL SERVICES ATTENDANT

New:

- (a) Unlawful interference with an emergency medical service provider is knowingly:
 - (1) Interfering with any emergency medical service provider while engaged in the performance of such emergency medical service provider's duties; or
 - (2) Obstructing, interfering with or impeding the efforts of any emergency service provider to reach the location of an emergency.
- (b) Unlawful interference with an emergency medical service provider is a Class B person violation.
- (c) As used in this section, "emergency medical service provider" means the same as K.S.A.65-6112, and amendments thereto.
- (d) A person who violates the provisions of this section may also be prosecuted for, convicted of and punished for assault or battery (K.S.A. 21-6326)

SECTION 3.7.1 INTERFERENCE WITH CUSTODY OF A COMMITTED PERSON

New:

- (a) Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of such person's lawful custodian without privilege to do so.
- (b) Interference with custody of a committed person is a Class A nonperson violation.
- (c) As used in this section, "committed person" means any person committed other than by criminal process to any institution or other custodian by a court, officer or agency authorized by law to make such commitment. (K.S.A. 21-5416)

SECTION 3.10 HAZING

New:

- (a) Hazing is recklessly coercing, demanding or encouraging another person to perform, as a condition of membership in a social to fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted.
- (b) Hazing is a Class B nonperson violation.

SECTION 3.13 STALKING

Amended:

- (f) Upon a first conviction, stalking as described in subsection (a) is a Class A violation. Subsequent violations are considered felonies under state law and will be referred to the appropriate prosecuting authority. (K.S.A. 21-5427).

SECTION 5.1.2 UNLAWFUL POSSESSION OF A VISUAL DEPICTION OF A CHILD

SECTION 5.1.3 UNLAWFUL TRANSMISSION OF A VISUAL DEPICTION OF A CHILD

New: Both sections are very lengthy and describe the possession and transmission of the depiction of a child. 5.1.2 discusses possession of a visual depiction of a child 12 years of age or older but less than 16 years of age in a state of nudity by a person less than 19 years of age. 5.1.3 discusses transmission of a visual depiction of a child 12 years or older but less than 18

years of age in a state of nudity by a person less than 19 years of age. It does not apply to a child who transmits an image of themselves.

Possession of a visual depiction of a child is a Class B person violation. Upon a first conviction, unlawful transmission of a visual depiction of a child is a class A person violation.

SECTION 5.3 UNLAWFULLY HOSTING MINORS CONSUMING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGES.

Amended:

If the court sentences the offender to perform community or public service work as a probation, as described in subsection (b)(10) of K.S.A. 21-6607, and amendments thereto, the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility. (K.S.A. 21-5608)

SECTION 6.1 THEFT

Added:

Violation of some of the facts in this section are considered felony violations over which municipal court has no jurisdiction and should be referred to the appropriate prosecuting authority.

SECTION 6.6 CRIMINAL DAMAGE TO PROPERTY

Added:

(c) In determining the amount of damage to property damages may include the cost of repair or replacement of the property that was damaged, the reasonable cost of the loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material cost of any kind and any reasonable cost that are attributed to equipment that is used to abate or repair the damage to property. (K.S.A. 21-5813)

SECTION 6.7.1. TRESPASSING ON RAILROAD PROPERTY

Amended:

Removed the following: Trespassing on railroad property *that results in demonstrable monetary loss, damage, or destruction less than \$1,500.*

SECTION 6.16 GIVING WORTHLESS CHECK

Amended:

Added When the case is a felony under state statute *will be referred to the appropriate prosecuting authority.* (K.S.A. 21-5821)

SECTION 6.23.1 UNLAWFUL USE OF RECORDINGS

New:

(a) Unlawful use of recordings is:

- (1) Knowingly, and without the consent of the owner, duplicating or causing to be duplicated any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, or recording or causing to be recorded any live performance, with the intent to sell rent or cause to be sold or rented, any such duplicated sounds or any such recorded performance, or to give away such

- duplicated sounds or recorded performance as part of a promotion for any product or service;
- (2) Distributing or possessing with the intent to distribute, any article produced in violation of subsection (a)(1) knowing or having reasonable grounds to know that such article was produced in violation of law;
 - (3) Possessing any article produced in violation of subsection (a)(1) knowing or having reasonable grounds to know that such article was produced in violation of the law; or
 - (4) Knowingly selling, renting, offering for sale or rental, or possessing, transporting or manufacturing with intent to sell or rent, any phonograph record, audio or video disc, wire, audio or video tape, film or other article now known or later developed on which sounds, images, or both sounds and images are recorded or otherwise stored, unless the outside cover, box or jacket clearly and conspicuously discloses the name and address of the manufacturer of such recorded article.
- (b) Unlawful use of recordings:
- (1) As defined in (a)(1) is a felony and as such shall be referred to the appropriate prosecuting authority;
 - (2) As defined in subsection (a)(2) or (a)(4), is a class A nonperson violation if the offense involves fewer than seven audio visual recordings, or fewer than 100 sound recordings during a 180-day period; and
 - (3) As defined in subsection (a)(3), is Class B nonperson violation.
- (c) The provisions of subsection (a)(1) shall not apply to:
- (1) Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;
 - (2) Any person who duplicates such sounds or such performance for personal use, and without compensation for such duplication; or
 - (3) Any sounds initially fixed in a tangible medium of expression after February 15, 1972.
- (d) The provisions of subsections (a)(1) and (a)(3) shall not apply to any computer program or any audio or visual recording that is part of any computer program or to any article or device on which is exclusively recorded any such computer program.
- (e) As used in this section:
- (1) **Owner** means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles now known or later developed upon which sound is recorded or otherwise stored, and from which the duplicated recorded sounds are directly or indirectly derived, or the person who owns the right to record such live performance; and
 - (2) **Computer program** means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

(f) It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of this section and that are possessed for the purpose of selling or renting such recorded devices, and all equipment and components used or intended to be used to knowingly manufacture recorded devices that do not conform to the provisions of such section for the purpose of selling or renting such recorded devices. The nonconforming recorded devices that are possessed for the purpose of selling or renting such recorded devices are contraband and shall be delivered to the district attorney for the county in which the confiscation was made, by court order, and shall be destroyed or otherwise disposed of, if the court finds that the person claiming title to such recorded devices possessed such recorded devices for the purpose of selling or renting such recorded devices. The equipment and components confiscated shall be delivered to the district attorney for the county in which the confiscation was made, by court order upon conviction, and may be given to a charitable or educational organization.

(K.S.A. 21-5806)

Section 6.24. Commercial Fossil Hunting

New:

(a) It is unlawful for any commercial fossil hunter to:

(1) Go upon the land of another in search of fossils unless the commercial fossil hunter has obtained the written authorization of the landowner to go upon such land for such purpose and when requesting such written authorization has identified oneself to the landowner as a commercial fossil hunter who intends to explore the land and sell any fossils of value found on the land. The written authorization shall state that the landowner has been informed of such intended activities by the commercial fossil hunter; or

(2) Remove a fossil from the land of another upon which the fossil is located unless the landowner is first provided with a description of the fossil and the landowner authorizes in writing the removal of the fossil.

(b) (1) Violation of subsection (a)(1) is a Class B nonperson Violation.

(2) Violation of subsection (a)(2) is a Class A nonperson Misdemeanor.

(c) As used in this section:

(1) **Commercial fossil hunter** means an individual who goes upon the land of another in search of fossils with the intent to sell fossils of value found upon such land;

(2) **Fossil** means any impression or trace of an animal or plant of a past geological age preserved in the earth's crust;

(3) **Landowner** means the record owner of the fee in real estate or the tenant of such owner who occupies such real estate, if so authorized by the owner; and

(4) **Land of another** means all real estate other than that owned or leased by any governmental entity or the commercial fossil hunter.

(d) This section is supplemental to and not in lieu of any other ordinance of this city or law of this state relating to entering or remaining upon the land of another and relating to the removal of items of value from the property of another.

(e) It shall not be a defense that the person did not know or have reason to know that such person was on the landowner's property. (K.S.A. 21-5811)

Section 6.25. Counterfeiting

New:

(a) Counterfeiting is manufacturing, using, displaying, advertising, distributing or possessing with intent to distribute any item or services knowing such item or services bear or are identified by a counterfeit mark.

(b) Counterfeiting is a class A nonperson violation, if the retail value of such item or service is less than \$1,000.

(c) A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to distribute.

(d) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(e) As used in this section:

(1) **Counterfeit mark** means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) Intellectual property affixed to any

item knowingly sold, offered for sale, manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property;

(2) **Intellectual property** means any trademark, service mark or trade name as such terms are defined in K.S.A. 81-202, and amendments thereto; and

(3) **Retail value** means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(f) The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes or possesses. (K.S.A. 21-5825)

Section 6.26. Automobile Master Key Violation

New:

(a) Automobile master key violation is:

(1) Selling or offering to sell a motor vehicle master key knowing it to be designed to fit the ignition switch of more than one motor vehicle; or

(2) Possession of a motor vehicle master key designed to fit the ignition switch of more than one motor vehicle by a person knowing it to be such a key.

(b) Automobile master key violation is a Class C misdemeanor.

(c) The provisions of this section shall not apply to a:

(1) Law enforcement officer;

(2) person who is regularly carrying on the business of garage proprietor or locksmith;

(3) Owner of two or more vehicles who possess such motor vehicle master key for any or all of the motor vehicles so owned; or

(4) Person who sells a motor vehicle master key to a person described in subsection (c)(3).

(K.S.A. 21-5833)

Sec. 7.4. Interference With the Judicial Process

Amended:

(d) Interference with the judicial process is a Class A violation, except that a second or subsequent conviction of section (a)(5) is a severity level 9, person felony and *will be referred to the appropriate prosecuting authority. (K.S.A. 21-5905)*

Section 7.15. Intimidation of a Witness or Victim

New:

(a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or

(2) Any witness, victim or person acting on behalf of a victim from:

(A) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer, judicial officer, the secretary for children and families, the secretary for aging and disability services, or any agent or representative of either secretary, or any person required to make a report pursuant to K.S.A. 38-2223, and amendments thereto;

(B) Causing a complaint, indictment or information to be sought and prosecuted or causing a violation of probation, parole or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution;

(C) Causing a civil action to be filed and prosecuted and assisting in its prosecution; or

(D) Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) Intimidation of a witness or victim is a Class B person violation.

(c) As used in this section

(1) **Victim** means any individual:

(A) Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or

(B) Who suffers a civil injury or loss; and

(2) **Witness** means any individual:

(A) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;

(B) Whose declaration under oath is received or has been received as evidence for any purpose;

(C) Who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;

(D) Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or

(E) Who is believed by the offender to be an individual described in this subsection.

(K.S.A. 21-5908; 21-5909)

Section 7.16. Obstructing Apprehension or Prosecution

New:

- (a) Obstructing apprehension or prosecution is knowingly harboring, concealing or aiding any person who has committed or who has been charged with committing a misdemeanor under the laws of this state or an ordinance violation under the code of this city, other than a violation of K.S.A. 22-4903, and amendments thereto, or a misdemeanor under the laws of another state or the United States with intent that such person shall avoid or escape from arrest, trial, conviction or punishment for such offense.
- (b) Obstructing apprehension or prosecution is a Class C Violation. (K.S.A. 21-5913)

Section 8.2. Unlawful Disclosure of Tax Information

New:

- (a) Unlawful disclosure of tax information is recklessly disclosing or using for commercial purposes any information obtained in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns, unless such disclosure is:
- (1) Consented to by the taxpayer in a separate, written document;
 - (2) Expressly authorized by state or federal law;
 - (3) Necessary to the preparation of the return; or
 - (4) Pursuant to an order of any court of competent jurisdiction.
- (b) Unlawful disclosure of tax information is a class A nonperson violation.
- (c) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns if the person does either of the following:
- (1) Advertises or gives publicity to the effect that such person prepares or assists others in the preparation of state or federal income tax returns; or
 - (2) Prepares or assists others in the preparation of state or federal income tax returns for compensation.
- (d) Contacting a taxpayer to obtain the taxpayer's written consent to disclosure does not constitute a violation of this section. (K.S.A. 21-6104)

Section 8.3. Unjustifiably Exposing a Convicted or Charged Person

New:

- (a) Unjustifiably exposing a convicted or charged person is unjustifiably communicating or threatening to communicate to another any oral or written statement that any person has been charged with or convicted of a felony, with intent to interfere with the employment or business of the person so charged or convicted.
- (b) Unjustifiably exposing a convicted or charged person is a Class B nonperson violation.
- (c) This section shall not apply to any person or organization who furnishes information about a person to another person or organization requesting the same. (K.S.A. 21-6105)

Section 9.9.1 – Unlawful Possession of Marijuana and Tetrahydrocannabinols.

We are not adopting this section; amendments were made to Merriam Municipal Code Sec. 44-242.1 – Unlawful possession of controlled substances.

Section 9.9.2 – Sec. 9.9.2. Possession of Drug Paraphernalia and Simulated Controlled Substances.

We are not going to adopt this section; because it is in Merriam Code section 44-242.3 – Unlawful possession of certain drug precursors and drug paraphernalia.

Section 9.9.3 - Sec. 9.9.3 Unlawful Distribution of Controlled Substances. We are not going to adopt this section, because it is in Merriam Code section 44-242 – Unlawful distribution of controlled substances.

Section 9.9.4 – Sec. 9.9.4. Unlawful Possession of Controlled Substances

We are not going to adopt this section, because it is in Merriam Code section 44-242.1 – Unlawful possession of controlled substances.

Section 9.9.5 – Sec. 9.9.5 Unlawful Possession of a Simulated Substance.

We are not going to adopt this section, because it is in Merriam Code section 44-242.5 – Unlawful possession of a simulated controlled substance.

Section 9.9.6 – Sec. 9.9.6 Distribution of a Non-Controlled Substance.

We are not going to adopt this section, because it is in Merriam Code section 44-242.6 – Unlawful representation that noncontrolled substance is controlled substance.

Section 10.2. Possession of a Firearm Under the Influence

New:

(a) Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.

(b) Possession of a firearm under the influence is a class A nonperson violation.

(c) This section shall not apply to:

(1) A person who possesses or carries a firearm while in such person's own dwelling or place of business or on land owned or possessed by such person; or

(2) the transitory possession or use of a firearm during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.

(d) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.

- (e) (1) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:
- (A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;
 - (B) a registered nurse or a licensed practical nurse;
 - (C) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or
 - (D) a phlebotomist.
- (2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (d).
- (3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.
- (4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.
- (5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.
- (6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (d).
- (7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:
- (A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;
 - (B) a registered nurse or a licensed practical nurse; or
 - (C) a law enforcement officer of the same sex as the person being tested. The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy

is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in paragraphs (2) and (3) shall apply to the collection of a urine sample.

(8) The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who is acting in accordance with this section shall not be liable in any civil and criminal proceeding involving the action.

(f) (1) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of possession of a firearm under the influence of alcohol or drugs, or both.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) In any criminal prosecution for a violation of this section, if the court finds that a person refused to submit to testing when requested pursuant to this section, the county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this section, a civil penalty not exceeding \$1,000 for each violation.

(g) If a person who holds a valid license to carry a concealed handgun issued pursuant to K.S.A. 75-7c01 et seq., and amendments thereto, is convicted of a violation of this section, such person's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

(h) In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(1) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol or drugs, or both.

(2) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol.

(3) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapacitated, that fact may be considered to determine if the defendant was under the influence of alcohol or drugs, or both.

(i) The provisions of subsection (h) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.

(j) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(K.S.A. 21-6332)

Section 10.4. Failure to Register Explosives

New:

(a) Failure to register explosives is, with no requirement of a culpable mental state, the omission by:

(1) The seller of any explosive or detonating substance, to keep a register of every sale or other disposition of such explosives made by the seller as required by this section; or

(2) any person to whom delivery of any quantity of explosive or other detonating substance is made, to acknowledge the receipt thereof by signing the person's name in the register provided in subsection (c) on the page where the record of such delivery is entered.

(b) Failure to register explosives as defined in:

(1) Subsection (a)(1) is a Class B nonperson violation; and

(2) subsection (a)(2) is a Class C violation.

(c) The register of sales required by subsection (a)(1) shall contain the date of the sale or other disposition, the name, address, age and occupation of the person to whom the explosive is sold or delivered, the kind and amount of explosive delivered, the place at which it is to be used and for what purpose it is to be used. Such register and record of sale or other disposition shall be open for inspection by any law enforcement officer, mine inspector or fire marshal of this state for a period of not less than one year after the sale or other disposition. (K.S.A. 21-6311)

Section 10.21. Selling Beverage Containers with Detachable Tabs

New:

(a) Selling beverage containers with detachable tabs is knowingly selling or offering for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

(b) Selling beverage containers with detachable tabs is a Class C violation.

(c) As used in this section:

(1) **Beverage container** means any sealed can containing beer, cereal malt beverages, mineral waters, soda water and similar soft drinks so designated by the director of alcoholic beverage control, in liquid form and intended for human consumption; and

(2) **In this state** means within the exterior limits of the state of Kansas and includes all territory within these limits owned by or ceded to the United States of America.

(K.S.A. 21-6320)

Section 10.28. Endangering the Food Supply

New:

(a) Endangering the food supply is knowingly:

(1) Bringing into this state any domestic animal which is infected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;

(2) exposing any animal in this state to any contagious or infectious disease;

(3) except as permitted under K.S.A. 2-2112 et seq., and amendments thereto, bringing or releasing into this state any plant pest as defined in K.S.A. 2-2113, and amendments thereto, or exposing any plant to a plant pest; or

(4) exposing any raw agricultural commodity, animal feed or processed food to any contaminant or contagious or infectious disease.

(b) As used in this section:

- (1) "Animal feed" means an article which is intended for use for food for animals other than humans and which is intended for use as a substantial source of nutrients in the diet of the animal, and is not limited to a mixture intended to be the sole ration of the animal;
- (2) "contagious or infectious disease" means any disease which can be spread from one subject to another by direct or indirect contact or by an intermediate agent, including, but not limited to, anthrax, all species of brucellosis, equine infectious anemia, hog cholera, pseudorabies, psoroptic mange, rabies, tuberculosis, vesicular stomatitis, avian influenza, pullorum, fowl typhoid, psittacosis, viscerotropic velogenic Newcastle disease, foot-and-mouth disease, rinderpest, African swine fever, piroplasmiasis, vesicular exanthema, Johne's disease, scabies, scrapies, bovine leukosis and bovine spongiform encephalopathy;
- (3) "processed food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration or milling; and
- (4) "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.
- (c) Endangering the food supply is a Class A violation except if the contagious or infectious disease is food-and-mouth disease in which class it is classified as a felony under state law and will be referred to the appropriate prosecuting authority.
- (K.S.A. 21-6317)

Section 11.1. Promoting Obscenity

Amended:

(f) Promoting obscenity is a Class A violation on conviction of a first offense. Subsequent violations considered felonies under state law and will be referred to the appropriate prosecuting authority.

Section 11.2. Promoting Obscenity to Minors

Amended:

(f) Promoting obscenity to minors is a Class A violation. Subsequent violations considered felonies under state law and will be referred to the appropriate prosecuting authority.

Section 11.9.1. Illegal Bingo Operation

New:

(a) Illegal bingo operation is the knowing management, operation or conduct of games of bingo in violation of the laws of the state of Kansas pertaining to the regulation, licensing and taxing of games of bingo or rules and regulations adopted pursuant thereto.

(b) Illegal bingo operation is a class A nonperson violation. (K.S.A. 21-6505)

Section 11.10. Possession of a Gambling Device

Amended:

(c) Violation of this section is a Class B violation.

(K.S.A. 21-6408)

Section 11.11. Cruelty to Animals

Amended:

- (d) On first conviction, cruelty to animals is a Class A violation. *Subsequent violations considered felonies under state law and will be referred to the appropriate prosecuting authority.* (K.S.A. 21-6412)

Section 11.13. Unlawful Possession of Dog Fighting Paraphernalia; Unlawful Attendance of Dog Fighting

New:

- (a) Unlawful possession of dog fighting paraphernalia is possession, with the intent to use in the unlawful conduct of dog fighting, any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia.
- (b) Unlawful attendance of dog fighting is, entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.
- (c) Penalties.
- (1) Unlawful possession of dog fighting paraphernalia is a class A nonperson violation.
- (2) Unlawful attendance of dog fighting is a Class B nonperson violation.
- (d) A person who violates the provisions of this section may also be prosecuted for, convicted of and punished for cruelty to animals.
- (K.S.A. 21-6414)

Section 11.14. Illegal Animal Ownership

New:

- (a) Illegal ownership or keeping of an animal is, with no requirement of a culpable mental state, owning, or keeping on one's premises, an animal by a person convicted of unlawful conduct of dog fighting as defined in K.S.A. 21-6414, and amendments thereto, or cruelty to animals as defined in subsection (a)(1) of K.S.A. 21-6412, and amendments thereto, within five years of the date of such conviction.
- (b) Illegal ownership or keeping of an animal is a class B nonperson violation. (K.S.A. 21-6415)

Section 11.15. Permitting a Dangerous Animal to be at Large

New:

- (a) Permitting a dangerous animal to be at large is the act or omission of the owner or custodian of an animal of dangerous or vicious propensities who, knowing of such propensities, permits such animal to go at large or keeps such animal without taking ordinary care to restrain it.
- (b) Permitting a dangerous animal to be at large is a Class B nonperson violation. (K.S.A. 21-6418)

Section 11.16. False Membership Claim

New:

(a) A false membership claim is knowingly and falsely representing oneself to be a member of a fraternal or veteran's organization.

(b) False membership claim is a class C violation. (K.S.A. 21-6410)

ORDINANCE NO. 1804

AN ORDINANCE AMENDING SECTION 44-1 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS REGULATING PUBLIC OFFENSES; INCORPORATING BY REFERENCE THE “2019 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES,” 35TH EDITION, WITH AMENDMENTS AND DELETIONS THERETO; REPEALING SECTION 44-2.2 OF THE MERRIAM CITY CODE, WHICH DEFINES ALCOHOLIC LIQUOR; AND REPEALING THE SECTION HEREBY AMENDED.

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

SECTION 1. That section 44-1 of the Code of Ordinances, City of Merriam, Kansas is hereby amended to read as follows:

“Sec. 44-1. Incorporating Uniform Public Offense Code. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Merriam, Kansas, that certain code known as the “2019 Uniform Public Offense Code for Kansas Cities,” 35th edition, (“UPOC”) prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified, or changed by this Ordinance or by Chapter 44 of the Code of Ordinances, City of Merriam, Kansas. At least one copy of the UPOC shall be marked or stamped “Official Copy as Incorporated by Ordinance No. 1804” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this Ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

SECTION 2. Deletion. Section 9.9.1 of the UPOC relating to Unlawful Possession of Marijuana and Tetrahydrocannabinols is hereby omitted and deleted.

SECTION 3. Deletion. Section 9.9.2 of the UPOC relating to Possession of Drug Paraphernalia and Certain Drug Precursors is hereby omitted and deleted.

SECTION 4. Deletion. Section 9.9.3 of the UPOC relating to Unlawful Distribution of Controlled Substances is hereby omitted and deleted.

SECTION 5. Deletion. Section 9.9.4 of the UPOC relating to Unlawful Possession of Controlled Substances is hereby omitted and deleted.

SECTION 6. Deletion. Section 9.9.5 of the UPOC relating to Unlawful Possession of a Simulated Substance is hereby omitted and deleted.

SECTION 7. Deletion. Section 9.9.6 of the UPOC relating to Distribution of a Non-controlled Substance is hereby omitted and deleted.

SECTION 8. Repeal. That section 44-2.2 of the Code of Ordinances, City of Merriam, Kansas, concerning Amendment to definition of alcoholic liquor in adopted code is hereby repealed.

SECTION 9. Repeal. That section 44-1 of the Code of Ordinances, City of Merriam, Kansas, as such section existed prior to the above amendment, is hereby repealed.

SECTION 10. Existing Sections. Those sections of Chapter 44 of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 11. Severability. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 12. Savings Clause. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, nor the repeal of Ordinance No. 1784, shall in any manner affect the prosecution for violation of this Ordinance or a violation of Ordinance No. 1784, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either ordinance, nor be construed as affecting any of the provisions of these ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder shall continue in full force and effect.

SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication in the official City newspaper, all as provided by law.

PASSED by the Governing Body this _____ day of _____, 2019.

APPROVED AND SIGNED by the Mayor this _____ 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 44, ARTICLE VI OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING CONTROLLED SUBSTANCES; AMENDING SECTIONS 44-241 AND 44-242.1; AND REPEALING THE SECTIONS HEREBY AMENDED.

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

SECTION 1: That section 44-241 of the Code of Ordinances, City of Merriam, Kansas is hereby amended to read as follows:

Sec. 44-241. - Definitions.

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

Cannabidiol treatment preparation shall have the meaning set forth in K.S.A. 2019 Supp. 65-6235, and amendments thereto.

Controlled substance means any drug, substance or immediate precursor included in any of the schedules designated in the Uniform Controlled Substance Act, Chapter 65, Article 41 of the Kansas Statutes Annotated (65-4101 et seq.).

Controlled substance analog means a substance that is intended for human consumption, and at least one of the following:

- (1) The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;
- (2) The substance has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or
- (3) With respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

Controlled substance analog does not include:

- (1) A controlled substance;
- (2) A substance for which there is an approved new drug application; or
- (3) A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act, 21

U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

Cultivate means the planting or promotion of growth of plants which contain or can produce controlled substances.

Debilitating medical condition shall have the meaning set forth in K.S.A. 2019 Supp. 65-6235, and amendments thereto.

Distribute means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. *Distribute* includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. *Distribute* does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

Drug means:

- (1) Substances recognized as drugs in the official United States pharmacopeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
- (2) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;
- (3) Substances, other than food, intended to affect the structure or any function of the body of humans or animals; and
- (4) Substances intended for use as a component of any article specified in subsections (1), (2) or (3) of this definition. It does not include devices or their components, parts or accessories.

Drug paraphernalia

(1) The term *drug paraphernalia* means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or Chapter 21, Article 57 of the Kansas Statutes Annotated (21-5701 et seq.), as from time to time amended. *Drug paraphernalia* shall include, but is not limited to:

(a) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(d) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used or intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(g) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(j) Containers and other objects used or intended for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(l) Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
2. Water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
3. Carburetion pipes, glass or other heat resistant tubes or any other device used, intended to be used or designed to be used to cause vaporization of a controlled substance for inhalation;
4. Smoking and carburetion masks;
5. Roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber smoking pipes;
8. Carburetor smoking pipes;
9. Electric smoking pipes;
10. Air-driven smoking pipes;
11. Chillums;
12. Bongs;
13. Ice pipes or chillers;

14. Any smoking pipe manufactured to disguise its intended purpose;
15. Wired cigarette papers; or
16. Cocaine freebase kits.

The term *drug paraphernalia* shall not include any products, chemicals or materials described in K.S.A. 2017 Supp. 21-5709(a), and amendments thereto.

- (2) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:
 - a. Statements by an owner or person in control of the object concerning its use;
 - b. Prior convictions, if any, of an owner or person in control of the object, under any city, state or federal law relating to any controlled substance;
 - c. The proximity of the object, in time and space, to a direct violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto;
 - d. The proximity of the object to controlled substances;
 - e. The existence of any residue of controlled substances on the object;
 - f. Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto, shall not prevent a finding that the object is intended for use as drug paraphernalia;
 - g. Oral or written instructions provided with the object concerning its use;
 - h. Descriptive materials accompanying the object which explain or depict its use;
 - i. National and local advertising concerning the object's use;
 - j. The manner in which the object is displayed for sale;
 - k. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;
 - l. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
 - m. The existence and scope of legitimate uses for the object in the community;
 - n. Expert testimony concerning the object's use;
 - o. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or

- p. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

Manufacture means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. *Manufacture* does not include:

- (1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance;
 - (a) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - (b) By a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.
- (2) The addition of diluents or adulterants, included, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.

Marijuana means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. *Marijuana* does not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination;
- (2) Any substance listed in schedules II through V of the uniform controlled substances act; or
- (3) Cannabidiol (other trade name: 2-[3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1, 3-benzenediol).

Person means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

Possession means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

Simulated controlled substance means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

SECTION 2: That section 44-242.1 of the Code of Ordinances, City of Merriam, Kansas is hereby amended to read as follows:

Sec. 44-242.1. – Unlawful possession of controlled substances.

(a) It shall be unlawful for any person to possess any of the following controlled substances or controlled substances analog thereof:

(1) Any depressant designated in K.S.A. 65-4105(e), K.S.A. 65-4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments thereto;

(2) Any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d)(2), (d)(4), (d)(5), or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;

(3) Any hallucinogenic drug designated in K.S.A. 65-4105(d), K.S.A. 65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;

(4) Any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-4111(c), (d), (e), (f) or (g), and amendments thereto;

(5) Any anabolic steroids as defined in K.S.A. 65-4109(f), and amendments thereto;

(6) Any substance designated in K.S.A. 65-4113, and amendments thereto; or

(7) Any substance designated in K.S.A. 65-4105(h), and amendments thereto.

(b) Except as provided in subsection (c), violation of subsection (a) is a Class A violation.

(c) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, violation of subsection (a) is a:

(1) Class B violation, except as provided in (c)(2);

(2) Class A violation if that person has a prior conviction under such subsection; under K.S.A. 2017 Supp. 21-5706, and amendments thereto; under K.S.A. 65-4162, prior to its repeal; under a substantially similar offense from another jurisdiction; or under any city ordinance or county resolution for a substantially similar offense.

(d) It shall be an affirmative defense to prosecution under this section arising out of a person's possession of any cannabidiol treatment preparation if the person:

(1) Has a debilitating medical condition or is the parent or guardian of a minor child who has such debilitating medical condition;

(2) is possessing a cannabidiol treatment preparation that is being used to treat such debilitating medical condition; and

(3) has possession of a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:

a. Shall be shown to a law enforcement officer on such officer's request;

b. is dated within the preceding 15 months and signed by the physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;

c. is on such physician's letterhead; and

d. identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.

~~(e4)~~ It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

SECTION 3. Savings Clause. The repeal of any Ordinance or Merriam 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 Merriam Code Section 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 4. 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 5: Repeal. That sections 44-241 and 44-242.1 of the Code of Ordinances, City of Merriam, Kansas as they existed before the above amendments are hereby repealed.

SECTION 6. Existing Sections. Those sections of Chapter 44, Article VI of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 7: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the official city newspaper, all 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 44, ARTICLE VI OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING CONTROLLED SUBSTANCES; AMENDING SECTIONS 44-241 AND 44-242.1; AND REPEALING THE SECTIONS HEREBY AMENDED.

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

SECTION 1: That section 44-241 of the Code of Ordinances, City of Merriam, Kansas is hereby amended to read as follows:

Sec. 44-241. - Definitions.

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

Cannabidiol treatment preparation shall have the meaning set forth in K.S.A. 2019 Supp. 65-6235, and amendments thereto.

Controlled substance means any drug, substance or immediate precursor included in any of the schedules designated in the Uniform Controlled Substance Act, Chapter 65, Article 41 of the Kansas Statutes Annotated (65-4101 et seq.).

Controlled substance analog means a substance that is intended for human consumption, and at least one of the following:

- (1) The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;
- (2) The substance has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or
- (3) With respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

Controlled substance analog does not include:

- (1) A controlled substance;
- (2) A substance for which there is an approved new drug application; or
- (3) A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act, 21

U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

Cultivate means the planting or promotion of growth of plants which contain or can produce controlled substances.

Debilitating medical condition shall have the meaning set forth in K.S.A. 2019 Supp. 65-6235, and amendments thereto.

Distribute means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. *Distribute* includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. *Distribute* does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

Drug means:

- (1) Substances recognized as drugs in the official United States pharmacopeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
- (2) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;
- (3) Substances, other than food, intended to affect the structure or any function of the body of humans or animals; and
- (4) Substances intended for use as a component of any article specified in subsections (1), (2) or (3) of this definition. It does not include devices or their components, parts or accessories.

Drug paraphernalia

(1) The term *drug paraphernalia* means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or Chapter 21, Article 57 of the Kansas Statutes Annotated (21-5701 et seq.), as from time to time amended. *Drug paraphernalia* shall include, but is not limited to:

- (a) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (b) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (c) Isomerization devices used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(d) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used or intended for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(g) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(j) Containers and other objects used or intended for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(l) Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
2. Water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
3. Carburetion pipes, glass or other heat resistant tubes or any other device used, intended to be used or designed to be used to cause vaporization of a controlled substance for inhalation;
4. Smoking and carburetion masks;
5. Roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber smoking pipes;
8. Carburetor smoking pipes;
9. Electric smoking pipes;
10. Air-driven smoking pipes;
11. Chillums;
12. Bongs;
13. Ice pipes or chillers;

14. Any smoking pipe manufactured to disguise its intended purpose;
15. Wired cigarette papers; or
16. Cocaine freebase kits.

The term *drug paraphernalia* shall not include any products, chemicals or materials described in K.S.A. 2017 Supp. 21-5709(a), and amendments thereto.

- (2) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:
 - a. Statements by an owner or person in control of the object concerning its use;
 - b. Prior convictions, if any, of an owner or person in control of the object, under any city, state or federal law relating to any controlled substance;
 - c. The proximity of the object, in time and space, to a direct violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto;
 - d. The proximity of the object to controlled substances;
 - e. The existence of any residue of controlled substances on the object;
 - f. Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of Chapter 44, Article VI of the Code of Ordinances of the City of Merriam, Kansas or K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto, shall not prevent a finding that the object is intended for use as drug paraphernalia;
 - g. Oral or written instructions provided with the object concerning its use;
 - h. Descriptive materials accompanying the object which explain or depict its use;
 - i. National and local advertising concerning the object's use;
 - j. The manner in which the object is displayed for sale;
 - k. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;
 - l. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
 - m. The existence and scope of legitimate uses for the object in the community;
 - n. Expert testimony concerning the object's use;
 - o. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or

- p. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

Manufacture means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. *Manufacture* does not include:

- (1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance;
 - (a) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - (b) By a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.
- (2) The addition of diluents or adulterants, included, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.

Marijuana means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. *Marijuana* does not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination;
- (2) Any substance listed in schedules II through V of the uniform controlled substances act; or
- (3) Cannabidiol (other trade name: 2-[3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1, 3-benzenediol).

Person means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

Possession means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

Simulated controlled substance means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

SECTION 2: That section 44-242.1 of the Code of Ordinances, City of Merriam, Kansas is hereby amended to read as follows:

Sec. 44-242.1. – Unlawful possession of controlled substances.

- (a) It shall be unlawful for any person to possess any of the following controlled substances or controlled substances analog thereof:
 - (1) Any depressant designated in K.S.A. 65-4105(e), K.S.A. 65-4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments thereto;
 - (2) Any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d)(2), (d)(4), (d)(5), or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;
 - (3) Any hallucinogenic drug designated in K.S.A. 65-4105(d), K.S.A. 65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;
 - (4) Any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-4111(c), (d), (e), (f) or (g), and amendments thereto;
 - (5) Any anabolic steroids as defined in K.S.A. 65-4109(f), and amendments thereto;
 - (6) Any substance designated in K.S.A. 65-4113, and amendments thereto; or
 - (7) Any substance designated in K.S.A. 65-4105(h), and amendments thereto.
- (b) Except as provided in subsection (c), violation of subsection (a) is a Class A violation.
- (c) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, violation of subsection (a) is a:
 - (1) Class B violation, except as provided in (c)(2);
 - (2) Class A violation if that person has a prior conviction under such subsection; under K.S.A. 2017 Supp. 21-5706, and amendments thereto; under K.S.A. 65-4162, prior to its repeal; under a substantially similar offense from another jurisdiction; or under any city ordinance or county resolution for a substantially similar offense.
- (d) It shall be an affirmative defense to prosecution under this section arising out of a person's possession of any cannabidiol treatment preparation if the person:
 - (1) Has a debilitating medical condition or is the parent or guardian of a minor child who has such debilitating medical condition;
 - (2) is possessing a cannabidiol treatment preparation that is being used to treat such debilitating medical condition; and
 - (3) has possession of a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:

- a. Shall be shown to a law enforcement officer on such officer's request;
 - b. is dated within the preceding 15 months and signed by the physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;
 - c. is on such physician's letterhead; and
 - d. identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.
- (e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

SECTION 3. Savings Clause. The repeal of any Ordinance or Merriam 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 Merriam Code Section 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 4. 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 5: Repeal. That sections 44-241 and 44-242.1 of the Code of Ordinances, City of Merriam, Kansas as they existed before the above amendments are hereby repealed.

SECTION 6. Existing Sections. Those sections of Chapter 44, Article VI of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 7: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the official city newspaper, all 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: Appointment of City voting delegates for the Kansas League of Municipalities Annual Conference

SUBMITTED BY: Juli Pinnick, City Clerk

MEETING DATE: September 9, 2019

PROJECT BACKGROUND/DESCRIPTION:

The League of Kansas Municipalities (LKM) membership Bylaws provide the city the opportunity to represent the city in the conduct and management of the affairs of the League. Their annual business meeting and policy session will be held on Monday afternoon October 14, 2019 during the Annual Conference which is October 12-14 this year. During that business meeting, city representatives are given the opportunity to vote on League issues.

The Bylaws prescribe the total number of votes provided to each member city based on population. The City of Merriam is allowed 3 voting delegates and may be any elected or appointed officer and may be elected as a voting delegate by the governing body. Voting delegates must be registered in advance by September 21st. Up to three alternate delegates are also allowed.

Typically, the city council elects members of the governing body who will be attending the conference. Once the voting delegates have been selected, the City Clerk will file the appropriate paperwork with the League by September 27.

CITY COUNCIL GOALS AND OBJECTIVES

n/a

FINANCIAL IMPACT

Amount of Request/Contract: n/a

Amount Budgeted: n/a

Funding Source/Account #: n/a

SUPPORTING DOCUMENTS

- League letter

ACTION NEEDED/STAFF RECOMMENDATION

Elect up to 3 voting delegates to represent the City of Merriam at the annual LKM business meeting.

August 9, 2019

Dear City Clerks, City Managers, or City Administrators:

Save the date for October 12-14, 2019 in Overland Park for the League's Annual Conference: Find Your Balance. Do you find it hard to manage competing funding priorities in your community? Do you get bogged down; knowing that productivity of your city can be improved but you just don't know how? Have you ever struggled to find balance between your public service work and your personal life? This year's League Annual Conference is for you! Additional information along with a conference schedule is in the July issue of the *Kansas Government Journal*.

The annual business meeting and policy session of city voting delegates will be held on Monday afternoon, October 14th, at the conference in Overland Park.

I am writing to request your governing body register their League voting delegates. K.S.A. Supp. 12-1601f provides that "The governing body of each member city may elect city delegates from among the city's officers to represent the city in the conduct and management of the affairs of the League of Kansas Municipalities."

Article 2, Section 2 of the League Bylaws states "When a city is a member of the League, any elected or appointed officers of such city may be elected by the city governing body as voting delegates and alternate voting delegates, in accordance with the provisions of Article 4 of these Bylaws, to represent the city in any meeting of the voting delegates and in the conduct of any other affairs of the instrumentality requiring action of the member cities. Alternate voting delegates may vote on matters before a meeting of the voting delegates in the absence of the regular delegate. A voting delegate or alternate shall qualify by having his or her name, city, title and address registered with the executive director and shall hold such position while qualified and until a successor is elected and qualified."

Article 4, Section 5 of the League Bylaws prescribes the total number of votes provided to each member city based on population. The number of delegate registration forms enclosed is based on the following table.

Population	Votes	Delegate Forms	Alternate Forms
1 – 2,500	1	1	1
2,501 – 7,500	2	2	2
7,501 – 17,500	3	3	3
17,501 – 37,500	4	4	4
37,501 – 77,500	5	5	5
77,501 – 117,500	6	6	6
117,501 – 157,500	7	7	7
157,501 – 197,500	8	8	8
197,501 – 237,500	9	9	9
237,501 – 277,500	10	10	10
277,501 – 355,500	11	11	11
355,501 – 395,500	12	12	12

- page 2

Each member city must file new registration forms with the League of Kansas Municipalities every year.

On the attached forms please print the information required for each delegate and circle whether the person is a voting delegate or alternate delegate and which delegate number they represent. The League must have a form on file for each voting delegate and each alternate delegate for their vote to count during the business meeting. The City may register any number of delegates up to the maximum number allowed per the Bylaws. You may send the forms via email to kwillis@lkm.org; or FAX to 785-354-4186. **Please send forms by Friday, September 27th to the attention of Kaitlyn Willis.** Forms received after this date may not be processed.

Please remember, the voting delegate forms are not conference registrations. You must also register for conference on our website at www.lkm.org.

As always, I thank you for your support and look forward to seeing you in Overland Park in October!

Sincerely,

A handwritten signature in dark ink, appearing to read "Erik A. Sartorius".

Erik A. Sartorius
Executive Director

Enclosures

Street & Stormwater Sales Tax Renewal

City Council Meeting
September 9, 2019



Recommendation

- Staff recommends renewal of existing sales tax
- Same language with same restrictions
- 1/4-cent sales tax
- 10-year; effective January 1, 2021
- Mail Ballot Election on January 28, 2020

Street & Stormwater Tax – Allowable Uses

- City Streets
- Bridges
- Associated Drainage
- Stormwater Drainage Projects
- Debt service for only those improvements, if needed

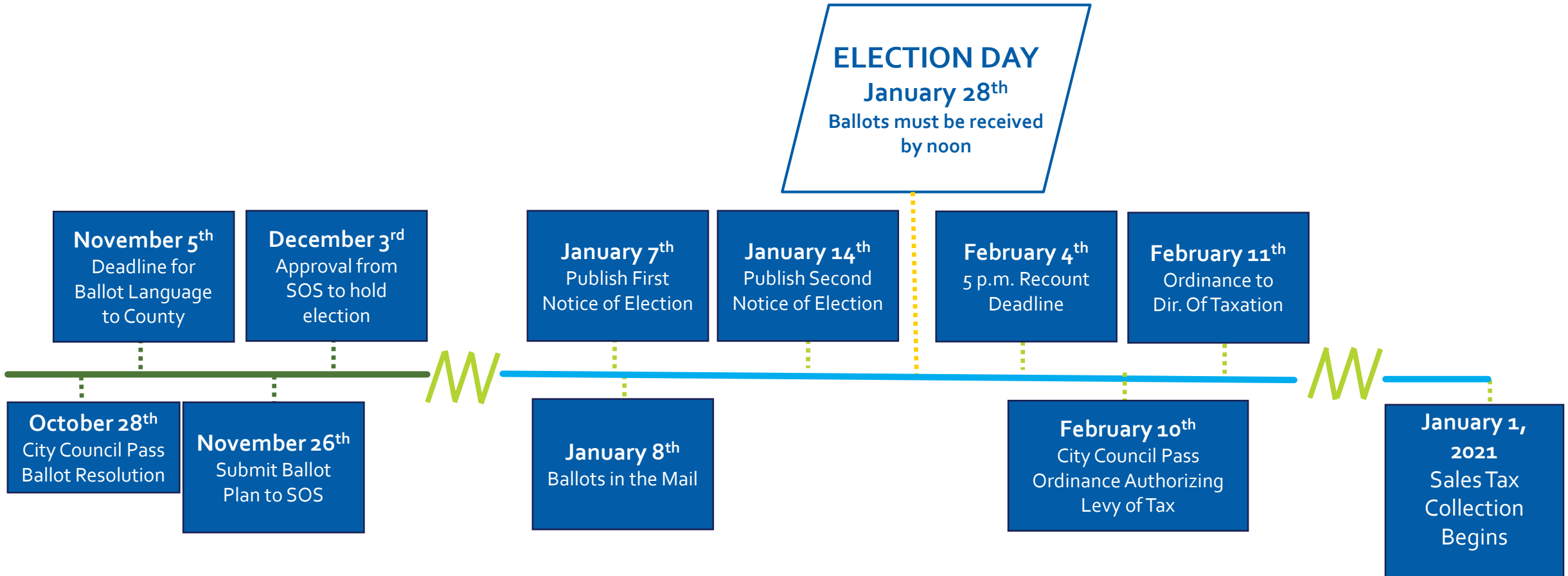
How much is a ¼-cent sales tax?

- \$10 = \$0.03
- \$50 = \$0.13
- \$100 = \$0.25
- \$250 = \$0.63
- \$500 = \$1.25
- \$1,000 = \$2.50

City Sales Tax Rates

City Where Sales Were Delivered	City Tax Rate
Prairie Village	8.975%
Leawood	9.100%
Overland Park	9.100%
Roeland Park	9.225%
Lenexa	9.350%
Merriam	9.475%
Olathe	9.475%
Mission	9.600%
Shawnee	9.600%
Fairway	9.975%

Election Timeline



Next Steps

- Sept 23 – City Council presentation
- Oct 14 – Draft Sales Tax Resolution to Council
- Oct 28 – Consider approval of Sales Tax Resolution
- Nov 12 – 1st of 3 Public Meetings

- Jan 28 – Mail Ballot Election

CITY OF MERRIAM, KANSAS

MONTHLY FINANCIAL REPORT

Finance Department



City of Merriam, KS
Monthly Financial Report - Executive Summary
August 2019

Revenues

	Current Month Actual	YTD Actual	YTD Budget/Est	Over/(Under) YTD Budget/Est
Various Funds:				
1% City Sales Tax	\$ 607,254	\$ 3,555,404	\$ 3,514,349	\$ 41,056
1/4% City Sales Tax-Storm/Street	155,678	922,487	915,815	6,672
1/4% City Sales Tax-Rec. Facilities	156,678	922,487	915,815	6,672
City Use Tax	61,192	370,413	324,000	46,413
County Sales Taxes - All	176,338	988,290	1,038,000	(49,710)
Real Property Taxes - Gen Fund	\$ -	\$ 4,703,838	\$ 4,789,471	\$ (85,633)
Transient Guest Tax	-	208,165	204,083	4,082
Franchise Fees	144,831	905,635	904,327	1,308
Court Fines	62,561	520,085	616,667	(96,582)

Expenditures

<i>General Fund - only:</i>	Current Mo. Actual	Monthly Bud/Est	Over/(Under) Bud/Est	Year to Date Actual	Year to Date Bud/Est	Over/(Under) YTD Bud/Est
Salaries and Benefits	\$ 817,892	\$ 677,634	\$ 140,259	\$ 5,583,581	\$ 5,421,070	\$ 162,511
Contractual Services:						
OP Fire Services	617,607	216,369	401,237	1,117,095	1,730,953	(613,858)
Utilities	29,783	35,903	(6,120)	206,834	287,227	(80,393)
Legal	-	6,250	(6,250)	31,319	50,000	(18,681)
Property Maint	32,256	54,683	(22,427)	353,052	437,463	(84,411)
Specific Contractual*	6,275	19,818	(13,543)	144,624	158,543	(13,920)
Other Contractual	35,641	75,133	(39,491)	519,980	601,060	(81,080)
Commodities:						
Gasoline/Diesel Fuel	9,949	10,452	(503)	65,184	83,613	(18,429)
Other Commodities	54,151	43,635	10,516	280,587	349,079	(68,492)

*Specific Contractual includes: specific ongoing outside contractors (Judge, Prosecutor, Auditor, prisoner care, Information Services, legislative monitor, payroll processing, and animal care). The City Attorney is included under the Legal line item.

Comments:

- Year-to-date 1% and ¼% City sales taxes are 1.01% (\$54,400) better than revised 2019 budget estimates.
- Year-to-date 1% and ¼% City sales taxes are 4.71% (\$266,674) less than prior year actual.
 - Auto sales are 3.55% less than prior year actual.
 - Merriam Town Center/Johnson Drive sales are 5.44% less than prior year actual.
 - Other categories are 10.06% less than prior year actual.
- Salaries and Benefits are over budget for the month and year due to three payrolls being processing in August.
- Revenue and expenditure estimates reflect revised amounts used for the 2020 budget process.

City of Merriam, KS
Monthly Financial Report - Executive Summary
August 2019

Equipment Purchases >\$5,000

Month	Description	Amount
January	Fire – aerial fire truck	\$893,718
February	Police – 2019 Toyota Camry	\$25,300
	Public Works – pressure washer	\$8,274
March	None	\$0
April	Police – tablets and keyboards for police cars	\$52,437
May	Police – body and in-car cameras	\$85,977
	Public Works – two snow plows	\$28,230
June	None	\$0
July	City Hall – ADA compliant front door opener	\$5,842
	Police – body cameras and in-car cameras (final payment)	\$42,266
	Police – server	\$15,055
	Public Works – 2019 Ford F550 truck	\$45,874
August	Public Works – salt/sand spreader	\$32,894

Cash and Investment Balances

FHLB = Federal Home Loan Bank	15,240,000	29%
FHLMC = Federal Home Loan Mortgage Corp.	6,015,000	12%
FNMA = Federal National Mortgage Assn.	3,778,000	7%
FFCB = Federal Farm Credit Bank	5,420,000	10%
US Treasury Bills	4,080,000	8%
Municipal Bonds	240,000	1%
Bank of Blue Valley NOW Account	5,662,184	11%
TD Ameritrade MMA	2,589,835	5%
Total Investments	43,025,019	83%
US Bank Cash Account	9,212,200	17%
Total Cash plus Investments	52,237,218	100%

City of Merriam, KS
Monthly Financial Report - Executive Summary
August 2019

FAQ's

Question: What is the City Sales Tax rate effective January 1, 2019?

Answer: **9.475%** (6.500% to the State of Kansas; 1.475% to Johnson County; 1.50% to Merriam)

Question: How much does the City owe for general obligation bonds?

Answer: **\$2,680,000** is the current balance for the Series 2012 and **\$18,905,000** for Series 2018.

Question: What is the City's bond rating?

Answer: S & P Global Ratings rates the City's debt as "**AAA (Stable)**"

Question: What is the City's current mill levy?

Answer: **27.880 mills** (2018 levy supporting 2019 budgets)

Question: What is the City's assessed property valuation?

Answer: **\$205 million** per Johnson County Clerk as of June 1, 2019

Question: How much of the City's assessed property valuation is for Residential, Commercial, and Other?

Answer: **\$86 million** or 42% for Residential (including apartments);
\$112 million or 55% for Commercial;
\$7 million or 3% for Other (including vacant land, personal property, utilities)

Question: How many households are in the City?

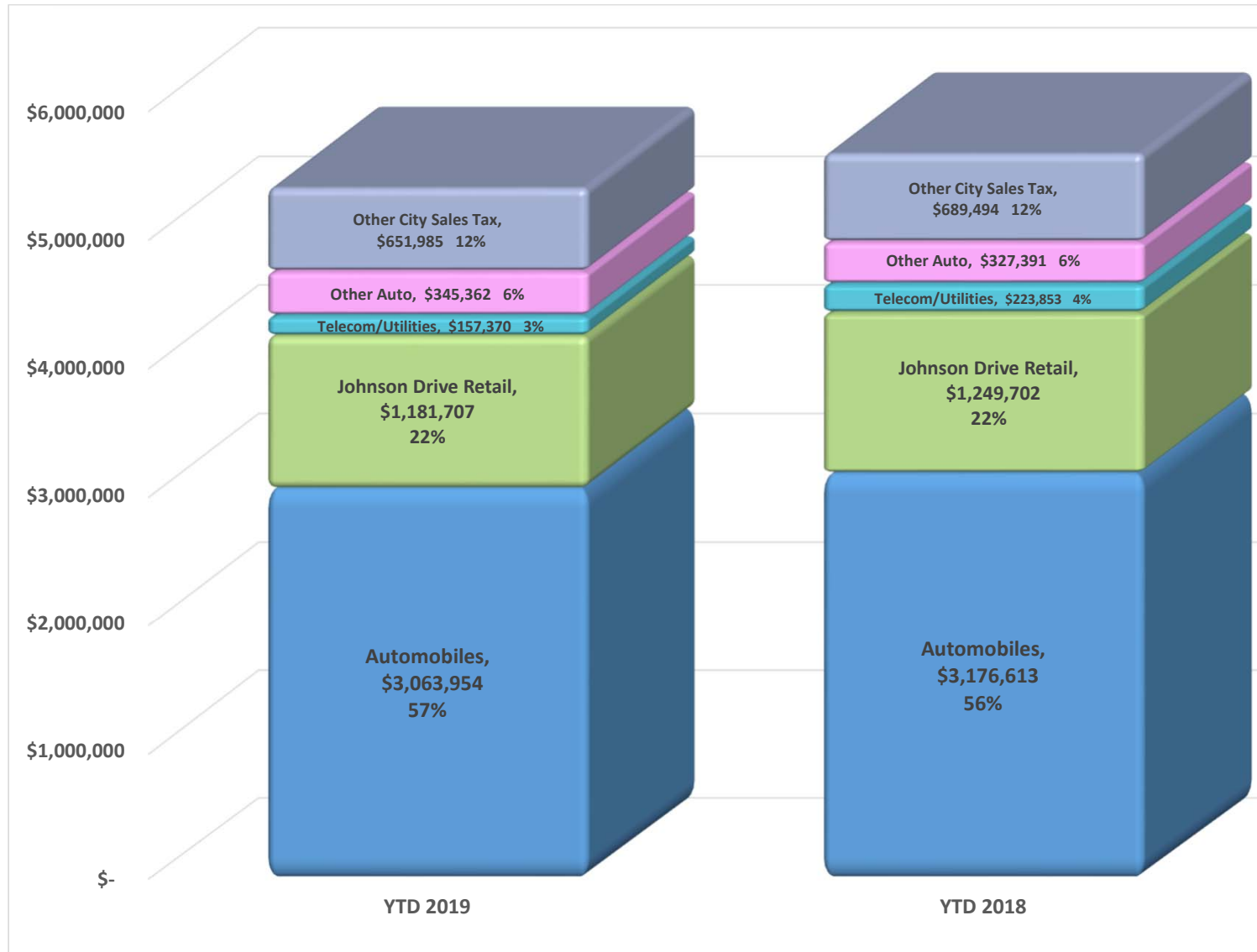
Answer: **5,224 households** (homes and apartments) per the 2010 U.S. Census Bureau

Question: What is the City's "pull factor" and what does this mean?

Answer: **4.76** is the City's pull factor per the Kansas Department of Revenue (December 2018 report). The term refers to how many non-residents a community "pulls" for shopping purposes. A pull factor greater than 1.00 indicates the community attracts more retail sales than it loses when residents shop outside the city. Merriam's is currently the highest in the State of Kansas.

City of Merriam Sales Tax Comparison - 1.50%

YTD 2019 vs 2018



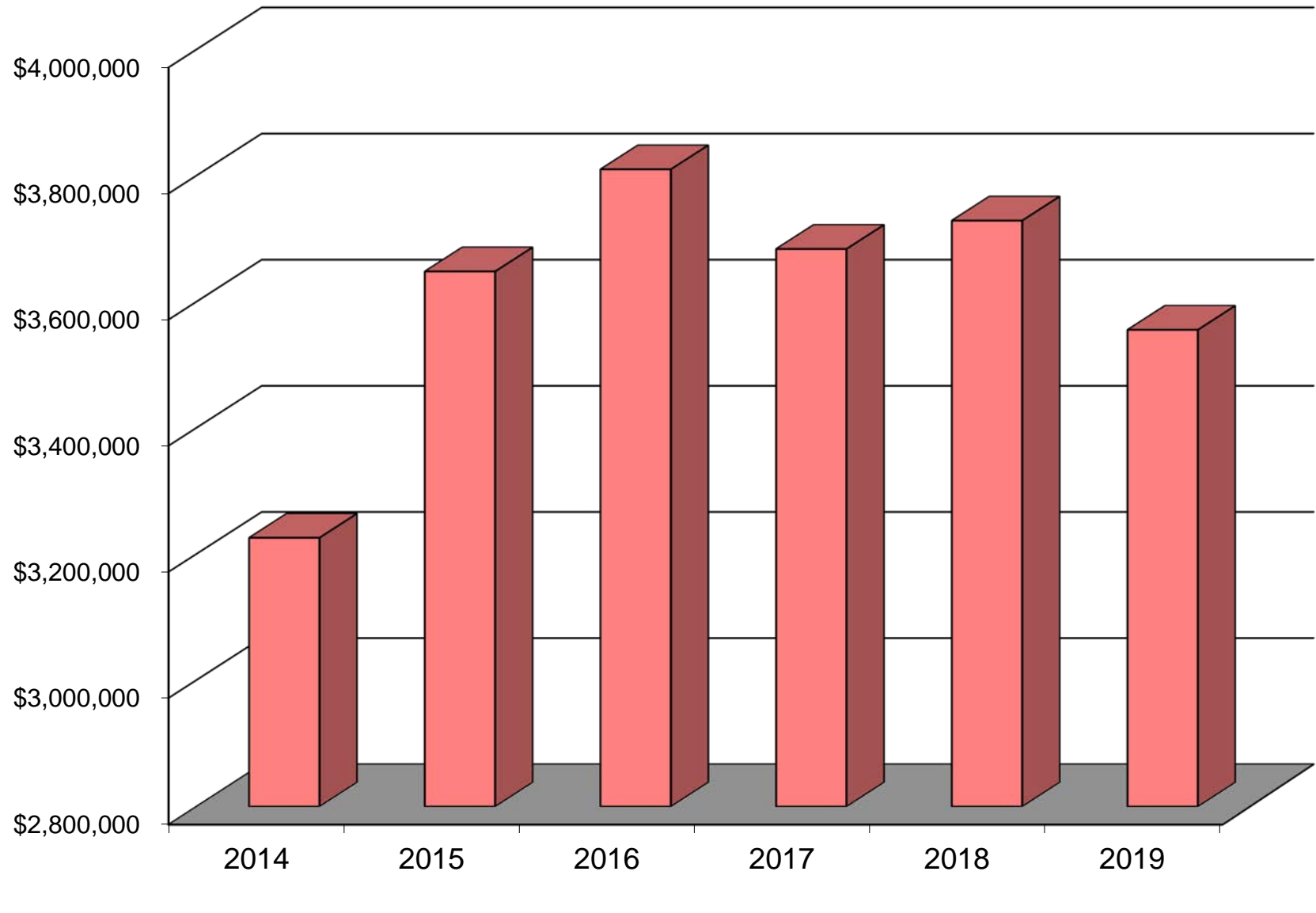
**CITY SALES TAX
(Regular 1%)**

Through: August 2019

Month Collected/Received	2014	2015	2016	2017	2018	2019	Comparison 2018 and 2019	Average 2014-2018
Jan/Mar	514,624	574,826	626,971	590,980	529,653	512,063	(17,590)	567,411
Feb/Apr	474,790	540,376	584,229	553,045	610,842	503,377	(107,465)	552,657
Mar/May	524,471	642,235	642,086	652,197	607,156	630,541	23,385	613,629
Apr/Jun	567,008	595,856	592,501	563,111	659,115	610,285	(48,829)	595,518
May/Jul	581,045	660,892	716,216	649,771	639,703	691,884	52,180	649,525
Jun/Aug	563,690	633,770	647,874	674,524	682,140	607,254	(74,886)	640,400
Jul/Sep	615,287	731,544	699,215	689,032	639,170			674,849
Aug/Oct	678,215	661,643	700,659	684,371	678,628			680,703
Sep/Nov	586,979	629,899	649,729	616,925	559,224			608,551
Oct/Dec	542,114	635,858	620,828	671,424	608,523			615,749
Nov/Jan	615,561	581,579	637,878	605,124	581,531			604,335
Dec/Feb	651,082	560,790	709,381	646,873	586,944			631,014
Total	6,914,867	7,449,269	7,827,566	7,597,377	7,382,628	3,555,404	(173,205)	7,434,341
YTD	2014	2015	2016	2017	2018	2019		
August 2019	3,225,629	3,647,956	3,809,877	3,683,628	3,728,610	3,555,404		

Average Collections Between 2014-2018	\$	7,434,341
Estimated 2019		7,028,697
Estimate Based on Current Collection Rate		7,110,809
Over/(Under) at Current Collection Rate	\$	82,112

1% City Sales Tax Year to Date Comparison 2014-2019
(use tax not included)



CITY SALES TAX
(1/4% - Stormwater & Streets, effective Jan 1, 2011, ending Dec 31, 2020)

Through: August 2019

Month Collected/Received	2014	2015	2016	2017	2018	2019	Comparison 2018 and 2019	Average 2014-2018
Jan/Mar	128,656	152,492	164,631	154,253	132,413	133,669	1,256	146,489
Feb/Apr	118,698	141,914	152,386	144,300	164,546	130,861	(33,685)	144,369
Mar/May	131,118	169,300	168,082	170,416	159,202	164,727	5,525	159,624
Apr/Jun	141,752	156,225	154,910	147,382	170,844	157,524	(13,320)	154,223
May/Jul	145,261	174,068	186,266	169,174	165,851	179,027	13,176	168,124
Jun/Aug	140,922	166,285	168,850	174,953	176,365	156,678	(19,687)	165,475
Jul/Sep	153,822	192,521	183,734	181,187	166,252			175,503
Aug/Oct	169,554	175,751	183,791	179,181	179,911			177,638
Sep/Nov	156,019	164,616	168,726	160,589	146,113			159,212
Oct/Dec	144,999	165,560	161,727	174,106	157,815			160,842
Nov/Jan	163,812	152,292	166,504	157,629	151,339			158,315
Dec/Feb	171,669	147,535	184,485	168,684	153,380			165,151
Total	1,766,283	1,958,559	2,044,092	1,981,855	1,924,031	922,487	(46,734)	1,934,964
YTD	2014	2015	2016	2017	2018	2019		
August 2019	806,407	960,283	995,126	960,479	969,221	922,487		

Average Collections Between 2014-2018	\$	1,934,964
Estimated 2019		1,831,630
Estimate Based on Current Collection Rate		1,844,974
Over/(Under) at Current Collection Rate	\$	13,344

CITY SALES TAX
(1/4% - Recreational Facilities, effective Jan 1, 2018, ending Dec 31, 2027)

Through: August 2019

Month Collected/Received	2018	2019
Jan/Mar	132,413	133,669
Feb/Apr	164,546	130,861
Mar/May	159,202	164,727
Apr/Jun	170,844	157,524
May/Jul	165,851	179,027
Jun/Aug	176,365	156,678
Jul/Sep	166,252	
Aug/Oct	179,911	
Sep/Nov	146,113	
Oct/Dec	157,815	
Nov/Jan	151,339	
Dec/Feb	153,380	
Total	1,924,031	922,487
YTD	2018	2019
August 2019	969,221	922,487

Estimated 2019	\$	1,831,630
Estimate Based on Current Collection Rate		1,844,974
Over/(Under) at Current Collection Rate	\$	13,344

CITY USE TAX *
(1.50% effective Jan 1, 2018, 1.25% prior years)

Through: August 2019

Month Collected/Received	2014	2015	2016	2017	2018	2019	Comparison 2018 and 2019	Average 2014-2018
Jan/Mar	77,095	38,593	39,717	41,068	55,165	72,636	17,470	50,328
Feb/Apr	75,466	47,210	36,535	41,117	44,762	50,495	5,733	49,018
Mar/May	96,096	58,503	48,686	46,167	72,113	54,298	(17,815)	64,313
Apr/Jun	68,701	45,793	49,281	40,197	78,365	54,492	(23,873)	56,467
May/Jul	159,678	48,767	28,682	39,300	53,770	77,300	23,531	66,039
Jun/Aug	102,766	51,635	48,787	45,665	53,546	61,192	7,646	60,480
Jul/Sep	85,830	45,551	44,854	41,455	56,892			54,916
Aug/Oct	63,160	45,296	39,447	46,047	55,103			49,810
Sep/Nov	133,417	30,449	44,789	52,239	47,492			61,677
Oct/Dec	75,031	42,577	37,236	41,623	54,762			50,246
Nov/Jan	80,456	38,250	40,162	52,663	63,649			55,036
Dec/Feb	104,997	43,804	49,866	52,544	72,797			64,802
Total	1,122,693	536,426	508,042	540,085	708,417	370,413	12,692	683,132
YTD	2014	2015	2016	2017	2018	2019		
August 2019	579,803	290,501	251,688	253,514	357,721	370,413		

Average Collections Between 2014-2018	\$	683,132
Estimated 2019		648,000
Estimate Based on Current Collection Rate		740,827
Over/(Under) at Current Collection Rate	\$	92,827

* Kansas imposes a use tax on items purchased outside of Kansas for use in Kansas. The rate is identical to the sales tax rate in effect where the customer takes delivery.

JOHNSON COUNTY SALES AND USE TAX
(City Share of Regular .5% County Sales/Use Tax)

Through: August 2019

Month Collected/Received	2014	2015	2016	2017	2018	2019	Comparison 2018 and 2019	Average 2014-2018
Jan/Mar	84,640	89,078	87,153	88,372	93,979	84,542	(9,437)	88,645
Feb/Apr	83,785	83,842	86,603	90,888	85,503	84,668	(835)	86,124
Mar/May	91,006	92,338	96,963	99,332	102,037	95,722	(6,314)	96,335
Apr/Jun	93,916	93,747	94,086	89,784	97,820	94,747	(3,073)	93,870
May/Jul	93,614	95,251	90,716	96,393	102,354	104,294	1,940	95,665
Jun/Aug	98,416	100,839	100,524	104,034	105,830	100,764	(5,065)	101,929
Jul/Sep	92,813	99,163	100,059	98,683	94,908			97,125
Aug/Oct	94,308	97,123	99,175	101,126	100,533			98,453
Sep/Nov	94,498	97,609	101,810	103,264	94,055			98,247
Oct/Dec	88,106	96,733	93,738	94,396	93,218			93,238
Nov/Jan	94,962	96,928	94,754	98,071	104,279			97,799
Dec/Feb	111,858	103,793	114,670	112,411	108,479			110,242
Total	1,121,922	1,146,444	1,160,251	1,176,755	1,182,993	564,737	(22,784)	1,157,673
YTD	2014	2015	2016	2017	2018	2019		
August 2019	545,376	555,095	556,046	568,804	587,521	564,737		

Average Collections Between 2014-2018	\$	1,157,673
Estimated 2019		1,188,000
Estimate Based on Current Collection Rate		1,129,475
Over/(Under) at Current Collection Rate	\$	(58,525)

JOHNSON COUNTY PUBLIC SAFETY TAX
(City Share of 1/4% County Sales/UseTax - effective Jan 1, 1995) *

Through: August 2019

Month Collected/Received	2014	2015	2016	2017	2018	2019	Comparison 2018 and 2019	Average 2014-2018
Jan/Mar	21,160	22,270	21,788	22,093	23,495	21,136	(2,359)	22,161
Feb/Apr	20,946	20,961	21,651	22,722	21,376	21,167	(209)	21,531
Mar/May	22,751	23,085	24,241	24,833	25,509	23,931	(1,579)	24,084
Apr/Jun	23,476	23,437	23,522	22,446	24,455	23,687	(768)	23,467
May/Jul	23,404	23,813	22,679	24,098	25,588	26,074	485	23,916
Jun/Aug	24,604	25,210	25,131	26,009	26,458	25,191	(1,266)	25,482
Jul/Sep	23,203	24,791	25,015	24,671	23,727			24,281
Aug/Oct	23,577	24,281	24,794	25,282	25,133			24,613
Sep/Nov	23,625	24,402	25,452	25,816	23,514			24,562
Oct/Dec	22,027	24,183	23,434	23,599	23,305			23,310
Nov/Jan	23,741	24,195	23,689	24,518	26,070			24,442
Dec/Feb	27,965	25,912	28,667	28,103	27,120			27,553
Total	280,478	286,539	290,064	294,189	295,749	141,185	(5,696)	289,404
YTD	2014	2015	2016	2017	2018	2019		
August 2019	136,341	138,774	139,013	142,201	146,881	141,185		

Average Collections Between 2014-2018	\$	289,404
Estimated 2019		296,000
Estimated Collection Rate		282,369
Over/(Under) at Current Collection Rate	\$	(13,631)

* This County special "Jail Tax" has no sunset date.

JOHNSON COUNTY PUBLIC SAFETY TAX
(City Share of 1/4% County Sales/Use Tax - effective Jan 1, 2009) *

Through: August 2019

Month Collected/Received	2014	2015	2016	2017	2018	2019	Comparison 2018 and 2019	Average 2014-2018
Jan/Mar	21,160	22,270	21,788	22,093	23,495	21,136	(2,359)	22,161
Feb/Apr	20,946	20,961	21,651	22,722	21,376	21,167	(209)	21,531
Mar/May	22,751	23,085	24,241	24,833	25,509	23,931	(1,579)	24,084
Apr/Jun	23,479	23,437	23,522	22,446	24,455	23,687	(768)	23,468
May/Jul	23,404	23,813	22,679	24,098	25,588	26,074	485	23,916
Jun/Aug	24,604	25,210	25,131	26,009	26,458	25,191	(1,266)	25,482
Jul/Sep	23,203	24,791	25,015	24,671	23,727			24,281
Aug/Oct	23,577	24,281	24,794	25,282	25,133			24,613
Sep/Nov	23,625	24,402	25,452	25,816	23,514			24,562
Oct/Dec	22,027	24,183	23,434	23,599	23,305			23,310
Nov/Jan	23,741	24,232	23,689	24,518	26,070			24,450
Dec/Feb	27,965	25,948	28,667	28,103	27,120			27,561
Total	280,481	286,612	290,064	294,189	295,749	141,185	(5,696)	289,419
YTD	2014	2015	2016	2017	2018	2019		
August 2019	136,344	138,774	139,013	142,201	146,881	141,185		
Average Collections between 2014-2018								\$ 289,419
Estimated 2019								296,000
Estimate Based on Current Collection Rate								282,369
Over/(Under) at Current Collection Rate								\$ (13,631)

* This County special Public Safety tax has no sunset date.

JOHNSON COUNTY PUBLIC SAFETY TAX
(City Share of 1/4% County Sales/Use Tax - effective April 1, 2017) *
(Used for CIP Projects)

Through: August 2019

Month Collected/Received	2017	2018	2019	Comparison 2018 and 2019	Average 2017-2018
Jan/Mar	n/a	23,457	21,135	(2,322)	n/a
Feb/Apr	n/a	21,336	21,167	(170)	n/a
Mar/May	n/a	25,421	23,931	(1,491)	n/a
Apr/Jun	22,395	24,397	23,687	(711)	23,396
May/Jul	24,062	25,526	26,073	547	24,794
Jun/Aug	25,932	26,387	25,191	(1,196)	26,159
Jul/Sep	24,642	23,727			24,184
Aug/Oct	25,225	25,133			25,179
Sep/Nov	25,776	23,514			24,645
Oct/Dec	23,564	23,305			23,435
Nov/Jan	24,388	26,990			25,689
Dec/Feb	27,991	27,120			27,555
Total	223,974	296,313	141,184	(5,342)	225,036

YTD	2017	2018	2019
August 2019	n/a	146,525	141,184

Average Collections Between 2017-2018	\$	225,036
Estimated 2019		296,000
Estimate Based on Current Collection Rate		282,367
Over/(Under) at Current Collection Rate	\$	(13,633)

* This County special "Courthouse" tax will expire March 31, 2027.

August 2019
REVENUE SUMMARY BY FUND

Fund Number	Revenues	Budget/Est.	YTD Actual	Monthly Collections	Balance	YTD % Budget/Est.
001	General Fund	\$ 18,040,541	\$ 11,767,653	\$ 1,081,041	\$ 6,272,888	65.23%
201	Special Highway Fund	304,870	152,594	495	152,276	50.05%
202	Special Alcohol Fund	24,944	12,296	6	12,648	49.30%
203	Special Park & Rec	24,944	12,291	14	12,653	49.28%
204	Transient Guest Tax	474,150	272,847	7,459	201,303	57.54%
221	Risk Management Reserve	15,000	10,246	417	4,754	68.31%
222	Equipment Reserve Fund	745,000	502,551	60,478	242,449	67.46%
301	Capital Improvement Fund		5,240,128	644,082		
303	I-35 District CIP Fund		1,896,309	95,348		
401	Bond and Interest Fund	3,252,558	2,298,751	636,893	953,807	70.68%
403	TIFB-I35 District		4,239,155	86,213		
702	Special Law Enforcement-State/Local		437	-		
TOTAL		\$ 22,882,007	\$ 26,405,259	\$ 2,612,446	\$ 7,852,777	

Average Rate of Sales Tax Collections Should Be:	50.00%
Average Rate of Other Collections Should Be:	66.67%

August 2019 **EXPENDITURE SUMMARY BY FUND**

Fund Number	Expenditures	Budget/Est. *	YTD Actual	Monthly Expenditures	Encumbrances	Balance	YTD % Budget/Est.
001	General Fund	\$ 18,559,157	\$ 11,593,727	\$ 2,012,031	\$ 440,348	\$ 6,525,082	64.84%
201	Special Highway Fund	565,000	7,989	3,771	517,946	39,065	93.09%
202	Special Alcohol Fund	27,000	27,682	253	-	(682)	102.53%
203	Special Park & Rec	6,000	5,022	430	-	978	83.69%
204	Transient Guest Tax	610,471	335,880	41,040	6,406	268,185	56.07%
221	Risk Management Reserve	30,000	17,855	1,315	38,131	(25,986)	186.62%
222	Equipment Reserve Fund	1,590,927	1,247,354	32,894	68,113	275,460	82.69%
301	Capital Improvement Fund		9,063,303	1,981,776	2,122,544		
303	I-35 District CIP Fund		4,543,005	221,184	683,031		
401	Bond and Interest Fund	3,191,150	495,575	-	-	2,695,575	15.53%
403	TIFB-I35 District		4,217,158	86,213	-		
702	Special Law Enforcement-State/Local		1,455	-	-		
TOTAL		\$ 24,579,705	\$ 31,556,006	\$ 4,380,906	\$ 3,876,519	\$ 9,777,676	

Average Expenditure Rate Should Be:	66.67%
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* Excludes budgeted reserves and contingencies

August 2019
EXPENDITURE SUMMARY BY DEPARTMENT
GENERAL FUND - YEAR-TO-DATE

<u>Department</u>	<u>2019</u>			<u>2018</u>	<u>Actual 2019</u>
	<u>Annual</u> <u>Budget/Est.</u>	<u>Year-to-date</u> <u>Actual</u>	<u>% of Budget</u> <u>Used</u>	<u>Year-to-date</u> <u>Actual</u>	<u>Over/(Under)</u> <u>Actual 2018</u>
City Council	\$ 84,020	\$ 47,886	56.99%	\$ 44,399	\$ 3,488
Administration	1,131,434	807,671	71.38%	763,694	43,977
Municipal Court	344,967	216,558	62.78%	223,596	(7,038)
Info Services	465,072	276,011	59.35%	254,368	21,643
General Overhead					
General	296,200	205,383	69.34%	189,207	16,176
Utilities	263,728	131,893	50.01%	157,356	(25,463)
Property Maintenance	254,001	98,201	38.66%	143,966	(45,765)
Risk Management	191,275	185,719	97.10%	177,772	7,947
Legal	81,742	35,346	43.24%	53,676	(18,329)
Employee Benefits	47,225	21,680	45.91%	20,538	1,142
Interfund Transfers	4,726,349	3,192,853	67.55%	3,356,745	(163,892)
Contingency Usage *	-	7,029	0.00%	-	7,029
Police	4,028,872	2,701,704	67.06%	2,729,753	(28,049)
Fire	2,743,181	1,184,952	43.20%	1,147,830	37,122
Public Works	2,227,299	1,482,790	66.57%	1,409,843	72,947
Parks & Rec	853,768	470,628	55.12%	503,067	(32,439)
Aquatic Center	50,015	8,977	17.95%	233,911	(224,933)
Community Dev	770,009	518,445	67.33%	490,290	28,155
Total General Fund	<u>\$ 18,559,157</u>	<u>\$ 11,593,727</u>	<u>62.47%</u>	<u>\$ 11,900,010</u>	<u>\$ (306,283)</u>

Average Expenditure Rate Should Be:	66.67%
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* Excludes budgeted reserves and contingencies

A large, stylized letter 'Z' composed of geometric shapes. The top and bottom bars of the 'Z' are light yellow. The middle bar is blue and contains the text 'INVESTMENT REPORT'. The bottom bar of the 'Z' is composed of a series of triangles in shades of yellow and orange.

INVESTMENT REPORT

**Investment Listing by Maturity Date
8/31/2019**

Fund	Type	Location	Purchase Date	Par Amount	Maturity Date	Yield	Monthly Subtotal
303/901	NOW	Bank of BV *	12/20/06	5,662,184	N/A	1.250%	\$ 5,662,184
301/901	Treasury MMA	TD Ameritrade	09/01/16	2,589,835	N/A	0.010%	\$ 2,589,835
901	MUNICIPAL BOND	TD Ameritrade	09/15/17	140,000	09/01/19	1.500%	
901	TBILL	TD Ameritrade	06/06/19	850,000	09/05/19	2.326%	
301	AGENCY-FHLMC	TD Ameritrade	07/13/17	1,000,000	09/20/19	1.535%	
301	AGENCY-FHLB	TD Ameritrade	04/30/19	3,750,000	09/23/19	2.475%	
222	AGENCY-FFCB	Country Club	10/06/17	300,000	09/26/19	1.489%	
303	AGENCY-FHLMC	TD Ameritrade	07/13/17	500,000	09/27/19	1.499%	
901	AGENCY-FNMA	TD Ameritrade	09/30/16	250,000	09/30/19	1.250%	
301/303/901	TBILL	TD Ameritrade	02/07/19	1,000,000	09/30/19	2.500%	\$ 7,790,000
301	AGENCY-FHLMC	Country Club	04/18/18	300,000	10/28/19	2.369%	
303	AGENCY-FHLMC	TD Ameritrade	10/30/17	750,000	10/30/19	1.650%	
301	AGENCY-FHLB	TD Ameritrade	04/30/19	2,750,000	10/31/19	2.453%	
303	AGNECY-FHLB	TD Ameritrade	04/30/19	1,000,000	10/31/19	2.453%	\$ 4,800,000
301	TBILL	TD Ameritrade	05/09/19	895,000	11/07/19	2.422%	
301	AGENCY-FNMA	TD Ameritrade	06/26/19	500,000	11/25/19	2.201%	
301	AGENCY-FNMA	TD Ameritrade	07/25/19	2,028,000	11/26/19	2.089%	\$ 3,423,000
301	TBILL	TD Ameritrade	06/06/19	850,000	12/05/19	2.300%	
222/303	AGENCY-FFCB	Country Club	07/28/17	700,000	12/26/19	1.450%	
301	AGENCY-FHLMC	TD Ameritrade	06/30/16	500,000	12/30/19	1.100%	\$ 2,050,000
901	AGENCY-FHLB	TD Ameritrade	09/07/18	570,000	01/23/20	2.613%	
221	AGENCY-FFCB	Country Club	05/25/18	350,000	01/30/20	2.430%	\$ 920,000
301	TBILL	Country Club	08/15/18	242,500	02/15/20	1.250%	
303	TBILL	Country Club	08/15/18	242,500	02/15/20	1.250%	\$ 485,000
221	AGENCY-FHLB	Country Club	03/09/18	350,000	03/06/20	2.268%	
301	AGENCY-FHLB	Country Club	03/13/18	520,000	03/13/20	2.312%	
901	AGENCY-FHLB	TD Ameritrade	11/08/16	300,000	03/13/20	1.409%	
	AGENCY-FHLB	TD Ameritrade	03/28/19	500,000	03/18/20	2.431%	
301/303	AGENCY-FHLMC	TD Ameritrade	07/23/19	800,000	03/20/20	2.044%	\$ 2,470,000
301	AGENCY-FFCB	TD Ameritrade	10/03/17	500,000	04/03/20	1.680%	
301/222	AGENCY-FFCB	Country Club	01/25/19	650,000	04/24/20	2.560%	
303	AGENCY-FHLB	TD Ameritrade	10/30/17	500,000	04/30/20	1.750%	\$ 1,650,000
301	AGENCY-FHLMC	TD Ameritrade	05/17/18	500,000	05/15/20	2.661%	\$ 500,000
301	AGENCY-FFCB	TD Ameritrade	06/06/19	770,000	06/05/20	2.400%	
301	AGENCY-FHLB	TD Ameritrade	11/08/18	500,000	06/12/20	2.910%	
301	AGENCY-FFCB	TD Ameritrade	06/19/19	1,200,000	06/19/20	2.300%	\$ 2,470,000
303	AGENCY-FHLB	TD Ameritrade	07/13/17	1,000,000	07/13/20	1.750%	
301	AGENCY-FFCB	TD Ameritrade	12/28/17	550,000	07/27/20	2.081%	\$ 1,550,000
301	MUNICIPAL BOND	TD Ameritrade	10/10/17	100,000	08/01/20	1.870%	
301/303	AGENCY-FHLB	TD Ameritrade	08/05/19	700,000	08/05/20	2.100%	
301/901	AGENCY-FHLB	TD Ameritrade	08/21/19	700,000	08/21/20	2.000%	\$ 1,500,000

**Investment Listing by Maturity Date
8/31/2019**

Fund	Type	Location	Purchase Date	Par Amount	Maturity Date	Yield	Monthly Subtotal
301	AGENCY-FHLB	TD Ameritrade	09/28/17	750,000	09/28/20	1.889%	\$ 750,000
301	AGENCY-FFCB	Country Club	03/08/19	400,000	10/26/20	2.490%	
301	AGENCY-FHLB	TD Ameritrade	02/01/17	100,000	10/30/20	1.800%	\$ 500,000
901	AGENCY-FHLB	TD Ameritrade	11/28/17	500,000	01/19/21	1.956%	\$ 500,000
901	AGENCY-FHLMC	TD Ameritrade	03/14/17	500,000	02/26/21	1.356%	
301	AGENCY-FHLMC	TD Ameritrade	11/16/17	515,000	02/26/21	2.000%	\$ 1,015,000
901	AGENCY-FHLB	TD Ameritrade	11/30/17	500,000	04/28/21	1.820%	\$ 500,000
901	AGENCY-FHLB	TD Ameritrade	03/14/18	250,000	06/14/21	2.509%	\$ 250,000
301	AGENCY-FHLMC	Country Club	07/02/19	400,000	07/02/21	2.250%	\$ 400,000
301	AGENCY-FNMA	Country Club	07/29/19	500,000	08/17/21	1.797%	
301	AGENCY-FHLMC	TD Ameritrade	04/05/19	250,000	08/25/21	2.453%	\$ 750,000
301	AGENCY-FNMA	Country Club	07/29/19	500,000	09/08/21	1.862%	\$ 500,000
Weighted Yield						1.726%	<u><u>\$ 43,025,019</u></u>

* Morrill & Janes Bank has merged with Bank of Blue Valley.



INTEROFFICE MEMORANDUM

TO: MAYOR AND CITY COUNCIL
FROM: JIM MACDONALD, PUBLIC WORKS SUPERINTENDENT
SUBJECT: SEPTEMBER CIP UPDATE
DATE: SEPTEMBER 9, 2019

HIGHLIGHTS

2019 Sidewalk In-Fill

Our Pre-Construction meeting was on Wednesday August 14th, and our second Public Meeting was on August 21st. Construction is expected to begin September 9th or September 16th, with the completion date to be mid-November. The current schedule is to start on the Carter/Merriam Dr. SMP exit ramp, moving to 66th Ter./Burnham St., then to 56th Ter. both sides of Goodman St, and ending on 56th St./56th Ter. at Farley St.

2019 CARS 67th Street Improvements

The contractor is nearing the completion of placing curbs, sidewalks, and driveways north side of 67th St. from West City Limits to the BNSF tracks. They have started removing & replacing curbs, sections of sidewalk, and some driveways on the south side of 67th St. from the BNSF tracks to West City Limits. Last week they started placing the pedestrian bridge footings. Gunter anticipates placing the pedestrian bridge the week of October 21st. Gunter is aware of the work and inspections being done by WaterOne east of the BNSF tracks. WaterOne and staff have been in contact with Gunter to coordinate their schedule with WaterOne. At this time, we do not expect any delays with this project caused by the WaterOne issues.

Switzer Mill and Overlay

The contractor has started milling operations on Switzer Rd. from 75th St. to 69th St., and is scheduled to begin placing asphalt surface later this week. Construction is scheduled to start on Switzer Rd. from 47th St. to 55th St. the week of September 9th.

SMP Bridge over Tukey Creek Repairs

The contractor continues removing and replacing delaminated areas of concrete under Shawnee Mission Parkway.

2020 CARS Johnson Drive

Affinis surveyors have been out collecting survey data on sections of Johnson Dr., and have started the process of designing the project.

Capital Improvement Active Project List

Last Updated 9/3/2019

[illegible]

CITY OF MERRIAM PARK AND RECREATION
ADVISORY BOARD MEETING MINUTES
Tuesday, August 27th, 2019
6:00PM

Roll Call

The August meeting of the Merriam Parks & Recreation Advisory Board was called to order at 6:00 pm, by Chairperson Billy Crook. Board members in attendance included: Kathy Stull, LaVera Howard, Christopher Leitch, Kyle Cooper, Thelma Fowler and Grant Getzlow. Staff members in attendance included: Anna Slocum, Director; Dave Smothers, Assistant Director; Renee Nagle, Recreation Supervisor, and Ingrid Berg, Assistant Program Coordinator.

Public Comments

There was no one present for public comments.

Approval of Meeting Minutes

Billy Crook stated that in the July meeting minutes the motion for the motion made recommending membership fees for the Merriam Community Center was noted incorrectly. The motion passed four to two not five to one. In addition, he noted a few typographical errors. Christopher Leitch made a motion to accept the minutes with corrections and LaVera Howard seconded the motion; motion was approved unanimously.

Staff Reports

Director's Report

Park Board Member Appointment Update

Members welcomed newest member Kyle Cooper from Ward 1.

Community Center Update

Staff thanked members that attended the site visit on Monday, August 19th. Current work includes setting steel. Once the steel is in place in the natatorium walls the next milestone will be excavating the pools. The last piece of structural steel will be celebrated as a "Topping Out" ceremony scheduled for Wednesday, September 18th at 11:00 am on the new community center site. Currently, the project is on time and on budget. In preparing for opening the new facility, staff is anticipating not planning for classes to begin at the new location until September 2020.

Turkey Creek Car and Motorcycle Show Update

Included in the packet was a flyer used to promote the event. Board members were provided the 2019 dash plaques that will be part of the "swag" for car show entries. As of today there are 100 entries for the event on September 14 which is more than average compared to past years. There have been \$6,200 in monetary sponsorships and \$1,300 in kind donations. The goal with sponsorships is to cover the \$4,000 grand prize and \$500 Young Guns award. The financial goal of this event is to for registrations and sponsorships to cover the direct costs.

New Staff Update

A new Aquatics Supervisor, Recreation Coordinator and Maintenance 1 worker have been hired. Staff has scheduled second interviews with two applicants for the Facilities Operations Supervisor position and are still reviewing applications/resumes for a Fitness Coordinator.

Assistant Director's Report

Reports

Farmers' Market Monthly Update

There were 640 shoppers at the market last weekend (8/24) which beat the same weekend last year. This is high season for the market, as harvests usually start to drop off about this time. There was a question about whether the lighting problems on the "Planting the Seed" sculpture has been fixed. Staff stated that there were two issues: one being that water tripped the circuit and the other that the daylight savings time impacted the timer schedule.

Upcoming Events

Tim Murphy Art Gallery

The opening reception for "To See...Photographic Perspective" is scheduled for Thursday, September 5th from 7 - 8:30 pm. This show features artists Roger Cissner and Steve Hauck. The third artist stepped down due to family health reasons. Staff is thinking of a possible art "Hall of Fame" show to kick off the gallery at the new community center.

Recreation Supervisor's Report

Reports

Party in YOUR Park Report-Campbell Park

There were 115 people in attendance at this event which is low and most likely due to the heat. The band, Nick Nave was a hit as were the food, inflatable, yard games and face painting.

National Night Out/Party in YOUR Park-Waterfall Park

There were 256 people in attendance at this event. In addition to MPRD and the Merriam police department being on site, there was Girls on the Run, Natural Grocers, artist-Blessing Hancock, Madman's ice cream, Sister Act Face painting and musician Erica McKenzie. There was a dedication for the art piece "Hmmm" and Home Depot donated a Ring doorbell for the giveaway drawing. There was a question about whether MPRD owns or rents the stage. It was explained that it is rented from Marquee Rentals for each event. Due to the size and weight of the pieces it would be too difficult to move and store. Kathy Stull shared the process the Art Committee uses in selecting new art pieces.

Upcoming Events

MDL

This event is scheduled for Saturday, October 5th from 11 am-6 pm. Embrace the Grape will be on site for beer and wine. Musical entertainment throughout the day will be from: Four Fried Chickens and a Coke, Red Guitar, The Stolen Winnebagos, Fast Times and Noe Palmer. Kids activities, a Cornhole Tournament, food trucks and a beer garden round out the event.

New Business

SuperPass Participation Discussion

The SuperPass allows members from six cities, Merriam, Roeland Park, Mission, Fairway, Prairie Village and Leawood, to utilize each other's outdoor pools. This is for outdoor pools only which puts Merriam in a unique situation at the new facility. Staff shared data regarding the Superpass program. In 2017, 37 superpasses were purchased, of which 29 were purchased by Merriam Residents. In addition, visits to Merriam from other cities garnered an additional 1,901 visits from the other five cities. Since other cities have completed renovations recently, staff provided insight to how their superpass visits were impacted the first years after project completion. Mission has seen their participation almost double from 2,676 to 4,371 and 4,329 the first two years after completion. Fairway experienced a 150% increase the first year from 3,263 visits to 8,031 visits! The second year experienced an additional the increase of 21%. Their

superpass visit count has remained over 10,000 in subsequent years. Fairway accounts for approximately 40% of all superpass visits. Discussion from Park Board members included:

- It may be a good way to draw people to the new center.
- There was concern about keeping track of where they are going once in the door. It was suggested to try an arm band indicating access was only allowed to the outdoor pool use only.
- Concern was expressed that if Merriam did not participate in Superpass, residents that are already unhappy about the size of the new outdoor pool now do not have an option to participate in a true outdoor pool experience without having to purchase a non-resident pass at different pool. This would then make them ineligible to purchase a superpass for an additional year due to the restrictions of the pass.
- Considering the foot traffic the first year of people wanting to check out the facility, the uncertainty of grand-opening coupled the nuances of a new facility, it might be better to skip one summer to allow staff time to do more research and evaluate how this program could work moving forward.

Kathy Stull made a motion to not participate in the SuperPass program for summer 2020. and Kyle Cooper seconded; motion passed four (yes) to two (no).

Boards and Commissions Membership Fee Discussion

Currently, there is a city code that states members of Boards and Commissions are eligible to receive a free membership for their household to the Irene B. French Community Center and Merriam Aquatic Center as service to their community. As with all items associated with the fees and existing facilities, evaluation of program fees is required. Staff estimates there are approximately 30 people serving in various roles eligible for this benefit. If all participate in a free household membership based on recommended fees the cost of the benefit would be \$19,800. Discussion included:

- Should there be “buy-in” into the department similar to what other boards and organizations ask of their members?
- Serving is a civic duty, volunteers should not look for a benefit or appreciation for time served.
- There is an expectation that board members regularly use facilities, talk to patrons, this benefit eliminates the barriers to making recommendations.
- Would it be possible to “donate” the benefit as part of the scholarship program if not used?
- Is this really a recommendation that Park Board should be making to City Council? This feels as it is more a Council benefit and mandate.

LaVera Howard moved to leave this benefit as is and Christopher Leitch seconded; motion passed five (yes) to one (no).

Rental Fees

The proposed room rental rate is included in the packet. In preparing the recommendation, staff reviewed and evaluated the current fee structure and processes as well as researched neighboring cities of Mission, Overland Park and Shawnee as comparison. The comparison was based on banquet seating occupancy. The discussion of proposed rates focused on the difference between small, medium and large room rental rates. The small room at \$35 with a medium room at \$60 does not carry the same differentiation to the large room at \$95. Based on the difference between small and medium, the large room rate is too high. Yet when the large room is compared to the neighboring cities that is the market rate. Although occupancy doubles between the spaces, adding the third room with occupancy of 224 people, is going to be a higher profile event and the additional 112 people will place more strain on resources and staffing. The proposed discount for larger events is for one-time events, not recurring rentals. Since we have groups that like to rent the gymnasium for weekly practices, this discount would not apply in those cases. There was a question regarding the rate associated to the whole gymnasium versus half. It is staff's intent that the whole gym would only be available after hours thus adding staff fees into the rate. At this time, staff feels it is imperative that there always be one court

available for open court times. Pool rentals would also only occur after hours. There will be a schedule associated to the pool for lap swimming, open swimming and program time. Kathy Stull moved to accept proposed room rental fees as listed and LaVera Howard seconded; motion passed unanimously.

Corporate Membership Discussion

As a continuation of the Revenue Guideline discussed in previous meetings, staff researched various corporate membership programs. There were numerous types of programs but the general theme included three basic types: a discount to the corporation based on the number memberships sold, a buy in program that required the corporation to pay a fee with employees then provided a discount membership, or employees of resident businesses treated as residents. While reviewing the programs it became evident that administration of a program needed to remain easy which immediately eliminated the first type of program. The second program, it was difficult to determine the corporate buy in rate based on the number of employees. Since Merriam has a variety of small businesses, there was no clear formulate to determine tiers. The last option, of allowing Merriam business to sign an agreement to promote the opportunity to their employees to purchase a membership at the resident rate allowed for the easiest to administer eliminating the concern that someone would be paying less than a Merriam resident. In order to be eligible, the business would sign an agreement with the city, recognizing the benefits of promoting health and wellness with their employees. Once the agreement is signed, employees would need to provide proof of employment through a paystub or letter from the company representative on letterhead. This opportunity also provides for a partnership between the city and businesses and opens the door for other opportunities such as sponsorship. If the business chose to take the benefit further internally by assisting to pay for a portion would be between them and their employee. Through this discuss it was also recommended that staff investigate Pure Fit and Silver Sneakers for the new community center. This will be a task assigned to the new Fitness Coordinator once hired. Christopher moved to accept the above corporate membership policy and Kyle Cooper seconded; motion passed five (yes) and one (abstained).

Other Business

September Meeting Conflict

Anna will be at the NRPA conference for the September, 24th meeting. It was asked if board members would like to go ahead with the meeting as scheduled with Dave Smothers serving in Anna's absence or if they would prefer to reschedule to the week prior. Thelma Fowler made a motion to keep the September Park Advisory Board meeting on Tuesday the 24th and LaVera Howard seconded; motion passed unanimously.

Adjournment

Kathy Stull moved to adjourn the meeting at 8:15 pm and LaVera Howard seconded; motion was approved unanimously.

CITY COUNCIL SUGGESTED MOTIONS FOR YOUR CONSIDERATION

CONSENT AGENDA

1. Move that the council approve Consent Agenda items 1-6.

MAYOR'S REPORT

1. No motion.
2. No motion.

FINANCE AND ADMINISTRATION

1. No motion.
2. Move that the council approve a property conveyance agreement between the City of Merriam and Johnson County Library Board.
3. Move that the council waive the customary reading of an ordinance adopting the 2019 Standard Traffic Ordinance (STO).

3a. Move that the council approve an ordinance adopting the 2019 Standard Traffic Ordinance (STO).
4. Move that the council waive the customary reading of an ordinance adopting the 2019 Uniform Public Offense Code (UPOC).

4a. Move that the council approve an ordinance adopting the 2019 Uniform Public Offense Code (UPOC).
5. Move that the council waive the customary reading of an ordinance amending Chapter 44 of the Merriam Code of Ordinances related to controlled substances.

5a. Move that the council approve an ordinance amending Chapter 44 of the Merriam Code of Ordinances related to controlled substances.
6. Move that the council appoint councilmembers _____ and _____ as voting delegates to represent the city at the 2019 Kansas League of Municipalities Conference

7. No motion.

8. No motion.

COMMUNITY DEVELOPMENT/PUBLIC WORKS

1. No motion.