

**MERRIAM CITY COUNCIL AGENDA  
CITY HALL  
9001 WEST 62<sup>ND</sup> STREET  
SEPTEMBER 23, 2019  
7:00 P.M.**

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

**I. CALL TO ORDER - PLEDGE OF ALLEGIANCE**

**II. ROLL CALL**

**III. PUBLIC ITEMS**

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

**IV. CONSENT AGENDA**

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

1. Consider approval of the minutes of the City Council Meeting held September 9, 2019.

**V. MAYOR'S REPORT**

1. Confirm the appointment of Ryan Denk with McAnany, Van Cleave & Phillips as City Attorney.

**VI. EXECUTIVE SESSION**

2. Confirm the appointment of Jim MacDonald as Public Works Director.
3. Confirm the appointment of Darren McLaughlin as Police Chief.

4. Confirm the appointment of Donna Oliver as Finance Director.

**VII. COUNCIL ITEMS**

**A. Finance and Administration**

1. Special Sales Tax Renewal presentation.

**B. Community Development/Public Works/CIP**

1. Community Development Update.

**VIII. STAFF ITEMS**

**IX. NEW BUSINESS**

**X. ADJOURNMENT**

Respectfully submitted,

*Juliana Pinnick*

Juliana Pinnick  
City Clerk

**MERRIAM CITY COUNCIL MINUTES  
CITY HALL  
9001 WEST 62<sup>ND</sup> STREET  
September 9, 2019  
7:00 P.M.**

**I. CALL TO ORDER - PLEDGE OF ALLEGIANCE**

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

**II. ROLL CALL**

Scott Diebold  
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; Meredith Hauck, Assistant City Administrator; Bryan Dehner, Fire Chief; Jim MacDonald, Acting Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Sari Maple, Human Resource Manager; 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.***

Brian Shapley, 8904 W 49<sup>th</sup> Ter., commented that he has missed a couple of Merriam City Council meetings as he has been to other city's council meetings in Fairway and Shawnee to speak on the inclusive non-discrimination ordinances proposed by those cities. He wanted to thank the city council for approving the non-discrimination ordinance last year. Because of what Merriam did on that issue, now many more cities in the area are doing the same and looking to pass inclusive non-discrimination ordinances.

**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).

Councilmember Silvers asked that item 5 be removed from the consent agenda.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEMS 1-6; EXCLUDING ITEM 5. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Councilmember Slivers asked if there were other line items in the budget that could be adjusted to help reduce the amount needed to transfer. He specifically asked about the VIP tent and questioned who has access to the VIP tent.

Parks and Recreation Director Anna Slocum responded that the VIP tent is a way to acknowledge the sponsors of the event. That dollar amount is needed to separate out that space and is used as a thank you to the sponsors. She further commented that those costs have been adjusted as much as possible in an effort to reduce the budget. Expenses for the VIP area include the tent, soda, water and a few snacks, as well as the fencing for that area.

City Administrator Engel added that the anticipated budget transfer amount was originally \$ 5,500 and due to fundraising efforts and staff's work, savings were found.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A BUDGET ADJUSTMENT OF \$2,750 FROM TRANSIENT GUEST FUND**



**CONTINGENCY TO TRANSIENT GUEST FUND/SPECIAL EVENTS. COUNCILMEMBER FRISBY SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**V. MAYOR'S REPORT**

1. Pat Gantt 911 Save Video, Overland Park Fire Department.

Fire Chief Bryan Dehner played a video of fire Captain Pat Gantt and his story of his son, Trevor, calling 911 and essentially saving his dad's life during a cardiac event a few months ago. Captain Gantt commented that it is good to be back at the fire department after his heart attack. He has been at the Merriam fire station since working as a volunteer since 1991.

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

Acting Police Chief Todd Allen presented Master Police Officer (MPO) Matthew Hirsch with the Life Saving Award. Officer Hirsch responded to a non-breathing female call and administered CPR until the fire/medics arrived and continued CPR until she was transported to the hospital. The patient has made a full recovery.

**VI. COUNCIL ITEMS**

**A. Finance and Administration**

1. Community Center Update.

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

2. Consider approval of a property conveyance agreement between the City of Merriam and Johnson County Library Board.

Assistant City Administrator Meredith Hauck provided the background for this item.

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.

Councilmember Neal voiced some concerns over the agreement, specifically regarding control of the entire campus if the library were change their mind and wanted to put something different on the site.

Ms. Hauck responded that the city and library board had considerable discussion regarding this. Section 6 of the Memorandum of Understanding (MOU) states that both parties will work in cooperation to finalize and execute all documents and agreements necessary to complete the project. In order to access their site, they must use the city's access road and they have no parking spaces on their site, so to use it for another purpose, they would have to get access to their site and would have to acquire parking space. The MOU states that this site has to house a branch of the library that is open to the public. The city's legal team felt that this offered the city protection in that regard.

Councilmember Diebold commented that every aspect of this agreement has to be agreed to by both the city and library board, so he feels there are checks and balances to the agreement and that either party can terminate the agreement if things can't get worked out.

Mayor Sissom commented that the library board has already expended some funds for the site and are continuing to expend funds for design of the project, so it would appear that they are committed to building on this site and both parties have to work in good faith to make the project happen.

Councilmember Frisby commented that there appears to be no mediation or arbitration in the agreement and that if either party is not satisfied with something then they just sever the agreement. He feels like that is extreme and would prefer it go to mediation or something before that would occur. He asked for the City attorney's opinion on the arbitration aspect.

City Attorney Nicole Proulx Aiken commented that arbitration occurs when parties are at the point of litigation. She does not favor arbitration in general, and it is not needed in this agreement.

Councilmember Hupp commented that her experience in working with the library board is that when the cities of Shawnee and Lenexa were negotiating similar agreements that it takes a lot of patience, understanding and good faith and these same issues have been heard during both of those negotiations and it simply works out. It appears that maybe some are trying to overthink every scenario. Both legal teams have looked over these agreements and both are comfortable with the agreements as they are being presented.

Ms. Hauck commented that the library board and city have both worked very hard and have been able to come to an agreement on a variety of issues and concerns up to this point. If either party backs away from this agreement, the city is left with a piece of land that will be green, flat and could easily be incorporated into the Community Center Plaza and additional parking.

Councilmember Silvers asked if down the road the library does not maintain the facility or they decide to use the site for a book depository or a library warehouse facility, which is not the purpose it was originally agreed to be used for, what recourse would the city have.

Ms. Hauck responded that the MOU states that this site has to house a branch of the library that is open to the public. This was language specifically added by Merriam, and if they were to attempt to use it for any other use, the city would have to approve that use through the Planning Commission process.

Councilmember Neal expressed concerns regarding the construction timeline and if the library does not construct the building as outlined in the agreement and simply let it sit for a few years.

Ms. Hauck stated that under the MOU, the agreement is terminated if the library board does not submit for a building permit within 180 days of the property transfer, and if they fail to begin vertical construction within 45 days following issuance of a building permit. However, that issue has an allowance for negotiation if there are circumstances that would prevent construction. The agreement provides for such an allowance, but only if mutually agreed to by both parties.

Councilmember Neal asked about the 180 day investigation period to undertake studies and feasibility of the site. This also allows the library board to back out if the project is not feasible due to the property conditions. In his opinion this clause and language is very broad and he would prefer specific site conditions be detailed in the agreement under this allowance.

Ms. Hauck indicated that the library board has already taken this project to the Board of County Commissioners for their 2020 budget and they have already conducted and received many studies and testing on the property. They have a lot of information about the site conditions currently as the city has been sharing information that has been gathered regarding the site conditions throughout our construction project.

Councilmember Diebold commented that he feels the 180 day investigation period is reasonable as there is really no sure way to know what is below the ground so giving them allowance to investigate the site appears to be reasonable.

Ms. Hauck pointed out that this 180 day investigation period occurs before the closing date on the property. So if something is discovered that would prevent them from moving forward with their project, the city still retains ownership of the property.

Councilmember Pape asked about the closing date on the property.

Ms. Hauck explained the closing will occur in the third quarter of 2021. In the meantime, the library is moving forward with design of the building, and there are other agreements that will be finalized prior to the closing.

Billy Crook, 6633 Wedd St. spoke in favor of the agreement having a first right of refusal clause.

**COUNCILMEMBER HUPP MOVED THAT THE COUNCIL APPROVE A PROPERTY CONVEYANCE AGREEMENT BETWEEN THE CITY OF MERRIAM AND JOHNSON COUNTY LIBRARY BOARD. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS APPROVED. COUNCILMEMBER NEAL VOTED NAY.**

3. Consider approval of an ordinance adopting the 2019 Standard Traffic Ordinance (STO). (recommend waiving the first reading)

Acting Police Chief Todd Allen reviewed the changes to the 2019 Standard Traffic Ordinance (STO). It was recommended to waive the first reading of the ordinance as the changes have been in effect at the state level since July.

Councilmember Frisby made some comments about the alternate ADA signs that he has been pushing to get approved at all levels of government. While he will no longer be a councilmember after January, he asked that the council continue to support and advocate for the change of the signage.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ADOPTING THE 2019 STANDARD TRAFFIC ORDINANCE (STO). COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE AN ORDINANCE ADOPTING THE 2019 STANDARD TRAFFIC ORDINANCE (STO). COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

4. Consider approval of an ordinance adopting the 2019 Uniform Public Offense Code (UPOC). (recommend waiving the first reading)

Acting Police Chief Todd Allen reviewed the changes to the 2019 Uniform Public Offense code (UPOC). It was recommended to waive the first reading of the ordinance as the changes have been in effect at the state level since July. The City Attorney has recommended a companion ordinance be adopted along with the UPOC regarding controlled substances.

**COUNCILMEMBER DIEBOLD MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ADOPTING THE 2019 UNIFORM PUBLIC OFFENCE CODE (UPOC). COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER DIEBOLD MOVED THAT THE COUNCIL APPROVE AN ORDINANCE ADOPTING THE 2019 UNIFORM PUBLIC OFFENCE CODE (UPOC). COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

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)

**COUNCILMEMBER SILVERS MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE RELATED TO CONTROLLED SUBSTANCES. COUNCILMEMBER FRISBY SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER FRISBY MOVED THAT THE COUNCIL APPROVE AN ORDINANCE RELATED TO CONTROLLED SUBSTANCES. COUNCILMEMBER KNAFF SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

6. Appointment of City voting delegates for the Kansas League of Municipalities Annual Conference.

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 21<sup>st</sup>. 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. Councilmembers Neal and Hands will be attending the League conference this year.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPOINT COUNCILMEMBERS DAVID NEAL AND CHRISTINE HANDS AS VOTING DELEGATES TO REPRESENT THE CITY AT THE 2019 KANSAS LEAGUE OF MUNICIPALITIES CONFERENCE. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

7. Special Sales Tax renewal presentation.

City Administrator Chris Engel presented information regarding the sales tax rate in Merriam compared to other surrounding cities rates.

Merriam has a current tax rate of 9.475%. This rate is not the lowest in our area, however, many cities with lower base sales tax rates such as Prairie Village, Leawood, Overland Park Roeland Park and Lenexa have additional CID and TDD sales taxes that are added when making purchases at businesses within those taxing districts. Mr. Engel displayed a chart depicting the various rates of these cities and their additional CID and TDD sales taxes. One example showed Overland Park with a base sales tax rate of 9.100% but when making purchases



at certain retail developments within Overland Park, that sales tax rate could be as high as 10.600%.

Merriam does not have any CID or TDD taxing districts so the sales tax rate is always 9.475% no matter where goods are purchased in Merriam. This information was displayed to reveal the true sales tax rates of our surrounding cities based on the location within those cities where goods are purchased.

Staff is recommending renewing the  $\frac{1}{4}$  cent sales tax for streets, bridges and associated drainage as well as, stormwater drainage projects and debt service for only those types of improvements, if needed. Mr. Engel displayed a chart depicting what a  $\frac{1}{4}$  cent sales tax represents on a variety of purchases. A \$100 purchase results in \$0.25 of sales tax.

It is anticipated that the city will conduct a mail-in ballot in late January 2020 for renewal of the  $\frac{1}{4}$  cent sales tax. A mail-in ballot allows every registered voter in Merriam the opportunity to vote and decide if they want to renew the tax. If approved, the tax would be in effect January 1, 2021 and last for 10 years.

City staff will continue to provide information regarding the sales tax renewal at several upcoming city council meeting as well as, a plan to hold two public meeting to provide information and answer questions from residents.

#### 8. Monthly Finance Report.

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

Mayor Sissom presented Ms. Ehart with a Certificate of Appreciation for her 15 years of service to the City of Merriam. Ms. Ehart is retiring and her last day at Merriam will be September 23, 2019, she thanked the council for their support during her tenure as Finance Director.

City Administrator Chris Engel commented that the search for a new Finance Director is going well. There were 39 qualified applicants who submitted for the position. Of those 39 applicants, 24 of the applicants were either Finance Directors or Assistant Finance Directors. Once an applicant is selected, staff will bring that recommendation forward to the council for appointment.

### **B. Community Development/Public Works/CIP**

1. CIP Update.(included in packet)



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

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER HANDS MOVED TO ADJOURN AT 8:38 PM COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

*Juliana Pinnick*

Juliana Pinnick  
City Clerk



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** Appoint Ryan Denk with McAnany, Van Cleave & Phillips as City Attorney  
**SUBMITTED BY:** Meredith Hauck, Assistant City Administrator  
**MEETING DATE:** September 23, 2019

### PROJECT BACKGROUND/DESCRIPTION:

The City of Merriam recently solicited proposals in response to a RFQ for City Attorney Services and received six proposals. After a review of proposals and an interview with the Mayor, City Administrator, and Assistant City Administrator, the Mayor is recommending the appointment of Ryan Denk with McAnany, Van Cleave & Phillips (MVP) as City Attorney. Denk also serves as City Attorney for the cities of Westwood and Gardner, Kansas.

The attached contract with MVP outlines the scope of work and specifically names Ryan Denk as the City Attorney. The fees set for services are \$205 for Shareholder (Denk), \$185 for Associate, and \$125 for Paralegal. These fees are within range with what other communities in the Metro pay for outside legal services. In anticipation of renegotiating the contract with the prior City attorney, the City increased the amount budgeted for legal services for FY20 from \$75,000 to \$100,000.

Per City Code *Section 2-61 – Appointments*, the Mayor, by and with consent of the Council, appoints the City Attorney for a term of two years, from March 1 of even-numbered years. This contract is for only the remaining portion of the current two-year term and will run through February 29, 2020. The RFQ indicated that assuming the City is satisfied with the services provided, the contract will be renewed with no change in terms on March 1, 2020 for a full two-year term.

### CITY COUNCIL GOALS AND OBJECTIVES

- 2 – Provide Exceptional Service Delivery
- 2.2 – Recruit and retain the best talent available in NE Johnson County.

### FINANCIAL IMPACT

<b>Amount of Request/Contract:</b>	-
<b>Amount Budgeted:</b>	\$75,000 in FY19 and \$100,000 in FY20
<b>Funding Source/Account #:</b>	001-1535-414-33-25 – Legal Services

### SUPPORTING DOCUMENTS

- Contract, including MVP's proposal

### ACTION NEEDED/STAFF RECOMMENDATION

Approval

## LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT (“Agreement”) is entered into this \_\_\_ day of September, 2019, by and between the City of Merriam, Kansas, a municipal corporation (“City,”) and the law firm of McAnany, Van Cleave & Phillips of 10 East Cambridge Circle Drive, Suite 300, Kansas City, Kansas 66103 (“Provider”).

**WHEREAS**, the City requires the legal services of a city attorney as outlined in Exhibit A; and

**WHEREAS**, the Provider represents that it has sufficient experience and qualified personnel to perform the legal services herein described on behalf of the City; and

**WHEREAS**, The City has determined, based upon information provided by the Provider, that Provider is qualified to provide the legal services described herein.

**WHEREAS**, the City and Provider desire to enter into this Agreement to set forth the specific terms and conditions of their relationship.

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

**SECTION 1. Engagement.** The City hereby engages Provider to perform the services described in this Agreement and Provider accepts that engagement.

### **SECTION 2. Services.**

- (a) **Scope of Services.** Provider shall perform those services (“Contract Services”) described under Scope of Work in Exhibit A, which is attached to this Agreement and incorporated herein by reference. The City may also request additional services not anticipated at the time of this Agreement. At the City’s request, the Provider shall submit a written scope of the additional work including an estimate of additional costs for the performance of the additional work. No change in scope shall be effective nor additional compensation be paid, except on the basis of the provisions of a written supplemental agreement or an amendment signed by the Parties.
- (b) **Key Personnel.** The Provider shall furnish for the performance of this Agreement Ryan Denk, (“Designated Attorney”) who will be appointed as City Attorney as set forth in Merriam Charter Ordinance No. 20 and Section 2-61 of the Merriam Code. The Provider shall also designate F. Charles Dunlay, who along with the Designated Attorney shall serve accompanied by other members of the Provider. The personnel specified above are considered to be Key Personnel and are essential to the work being performed hereunder. No permanent replacement of Key Personnel shall be made by the Provider without written consent of the City.
- (c) **Reserved.**

- (d) **Term.** Provider shall perform the Contract Services from September 24, 2019 to February 29, 2020, unless terminated sooner as provided in Section 4.
- (e) **Reserved.**
- (f) **Performance.** In performing the Contract Services, Provider agrees to take all steps necessary for the full and effective performance of those tasks.

**SECTION 3. Compensation and Expenses.** As set forth in Exhibit C, which is attached to this Agreement and incorporated herein by reference, the City shall pay the Provider for the Contract Services it performs as outlined in Section 2 of this Agreement.

**SECTION 4. Termination of Agreement.** The City may terminate this Agreement at any time and may remove the Designated Attorney as city attorney in accordance with Merriam Charter Ordinance No. 20. The provisions regarding indemnity and insurance shall survive the termination of this Agreement.

**SECTION 5. Reserved**

**SECTION 6. Compliance with Laws.** Provider shall comply with local, state, and federal rules, regulations, and laws pertaining to this Agreement that are applicable at the time the Provider conducts the Contract Services, regardless of whether such requirements are specifically referred to in this Agreement. Provider shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents against any claim or liability arising from or based on any violation of the same.

**SECTION 7. Compliance with Equal Opportunity Laws, Regulations, and Rules.**

- (a) **Discrimination Prohibited.** Provider agrees to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry, or age.
- (b) **Solicitations.** In all solicitations or advertisements for employees, Provider shall include the phrase “equal opportunity employer” or a similar phrase approved by the Kansas Human Rights Commission (Commission).
- (c) **Non-Compliance.** Provider shall be deemed to have breached this Agreement and it may be cancelled, terminated, or suspended in whole or in part by the City, if the Provider:
  1. fails to comply with the reporting requirements of K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto; or

2. is found guilty of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Commission that has become final.
- (d) **Flow Through Requirements.** Provider shall include the provisions of Section 7(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 7(a)-(d) are recommended but not enforceable against Provider if:
1. Provider employs fewer than four employees at all times during the term of this Agreement; or
  2. All of Provider's contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City pursuant to K.S.A. 44-1030(c).
- (f) **ADA Compliance.** Provider agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.
- (g) **Code Compliance.** Provider agrees to comply with Chapter 35, Article III of the Merriam Code, which prohibits discrimination in employment, housing, and public accommodations on the basis of an individual's sexual orientation or gender identity.

## **SECTION 8. Insurance.**

- (a) **General.** Provider shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed in writing) of such types and in at least such amounts as required herein. The City shall be named as an additional insured for all coverages required herein except workers' compensation coverage and professional liability coverage. All insurance procured for this Agreement by the Provider, including additional insured designations, shall be primary and noncontributory. Provider shall provide certificates of insurance on forms acceptable to the City at the time of this Agreement's execution. The Certificate shall specify the date when such insurance expires. A renewal certificate shall be furnished to the City before the expiration date of any coverage. 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.** Provider, upon receiving notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

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

(d) **Industry Ratings.** Provider agrees that its 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.** Provider agrees to secure and maintain the following insurance:

1. **Commercial General Liability.** Provider 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 limit 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.** Provider shall maintain Automobile Liability coverage including coverage for Owned, Hired and Non-owned Auto 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
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3. **Workers’ Compensation and Employer’s Liability.** Provider shall maintain Workers’ Compensation coverage for all claims made under applicable state workers’

compensation laws. Provider shall also maintain Employer's Liability coverage for claims made for injury, disease, or death of an employee that, for any reason, may not fall within the provisions of a workers' compensation law. The following minimum limits shall apply:

Workers' Compensation	Statutory Limits
Employers' Liability	\$500,000 each accident
	\$500,000 disease – policy limit
	\$500,000 disease – each employee

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

**Section 9. Indemnification.** Without in any way limiting indemnification obligations that may be set forth elsewhere in this Agreement, Provider shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents, from all claims, damages, losses, liabilities, costs, and expenses, including attorneys' fees, arising out of or resulting from the performance of Provider's services, provided that any such claim, damage, loss, liability, cost, or expense is caused in whole or in part by a negligent and/or intentional act, error, or omission of the Provider, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Provider's services. Provider shall give the City immediate written notice of any claim, suit, or demand that may be subject to this provision.

**Section 10. Disputes.** The City and Provider agree that disputes relative to the Contract Services of this Agreement should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis of the dispute shall be free to take such steps as it deems necessary to protect its interest; provided, however, that notwithstanding any such dispute, the Provider shall proceed with its services under this Agreement as though no dispute exists; and provided further, that no arbitration proceedings shall be initiated by Provider without the prior written consent of the City.

**Section 11. Reserved.**

**Section 12. Reserved.**

**Section 13. Reserved.**

**Section 14. Notices.** Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if the notice is in writing and personally delivered or sent by First Class mail, postage prepaid, to the party to whom said notice is to be given. Notices delivered in person

shall be deemed to be served effective as of the date the notice is delivered. Notices sent by First Class Mail shall be deemed to be served 72 hours after the date the notice is postmarked to the addressee, postage prepaid.

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

City of Merriam, Kansas  
9001 W. 62nd Street  
Merriam, KS 66202  
Attn: Chris Engel

**Section 15. Independent Contractor.** In no event, while performing under this Agreement, shall Provider or its Key Personnel be deemed to be acting as employees of the City; rather, Provider and Key Personnel shall be deemed to be independent contractors. Provider shall be responsible for and pay all taxes and withholdings required by law upon the compensation paid under this Agreement, and shall defend, indemnify, and hold harmless the City from liability in connection therewith. Nothing expressed herein or implied herein shall be construed as creating between Provider and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

**Section 16. Compliance with Kansas Cash Basis Law.** The right of the City to enter into this Agreement 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 Agreement 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 this Agreement at any time if it determines the Agreement may be deemed to violate the terms of any laws of the State of Kansas.

**Section 17. Legal Action.** The parties agree that the appropriate venues for any legal actions arising out of this Agreement are the District Court of Johnson County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.

**Section 18. Governing Law.** This Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

**Section 19. Phraseology.** In this Agreement, the singular includes the plural, the plural includes the singular and any gender includes the other gender.



**Section 20. Descriptive Headings and Capitalization.** The descriptive headings of the provisions of this Agreement are formulated and used only for convenience and shall not be deemed to affect the meaning and construction of any such provision. Some terms are capitalized throughout the Agreement, but use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**Section 21. Invalidity.** If any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

**Section 22. Waiver.** The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

**Section 23. Merger.** This Agreement and the documents incorporated by reference constitute the entire agreement between the parties with respect to the professional services set forth herein. There are no verbal understandings, agreements, representations or warranties between the parties that are not expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.

**Section 24. Verbal Statements Not Binding.** It is understood and agreed that the written terms and provisions of this Agreement supersede all verbal statements of any and every official or other representative of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, this written Agreement.

**Section 25. Amendments.** This Agreement may not be amended unless such amendment is in writing and signed by both parties.

**Section 26. Survivorship.** Notwithstanding the termination of this Agreement, Provider's obligations with respect to Insurance (Section 8) and Indemnification (Section 9), and any other terms and conditions that by their nature should survive termination, shall survive the termination of this Agreement.

**Section 27. Exhibits.** The following Exhibits are attached to and made a part of this Agreement, including Exhibit A: Request for Qualifications (RFQ) for City Attorney, Exhibit B: MVP RFQ Response, and Exhibit C: Compensation.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement the day and year first above written.

**CITY OF MERRIAM, KANSAS**

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

Title: City Administrator \_\_\_\_\_

**CONTRACTOR**

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

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

**EXHIBIT A: Request for Qualifications (RFQ) for City Attorney**



## REQUEST FOR QUALIFICATIONS (RFQ) for City Attorney

### **Overview**

The City of Merriam, Kansas is seeking proposals from qualified individuals, firms and corporations capable of providing city attorney services with specific experience in Kansas municipal law.

The City Attorney is an appointed officer of the City and is appointed by the mayor, by and with consent of the City Council. Per City Code, appointed officers hold office for a term of two years, from March 1 of even-number years. The initial term of this contract will be for the balance of the unexpired term, with an anticipated renewal for a full first term in March 2020.

### **City of Merriam Profile**

Merriam is one of 20 incorporated cities in Johnson County. The City has a residential population of approximately 11,200 within 4 ½ square mile city limits. The City operates under a Mayor-Council form of government with an appointed professional City Administrator. The City is divided into four wards with two councilpersons elected from each ward to serve staggered four-year terms.

Merriam has within its structure five functional departments which are: Administration, Public Works/CIP, Police Department, Community Development and Parks and Recreation. The City Administrator serves as the Chief Executive Officer. The remaining programs are led by a Department Head who reports to the City Administrator or Assistant City Administrator. The City has 110 total employees of which 83 are regular full-time employees, and a 2019 total adopted budget of \$33 million.

### **Qualifications**

The successful candidate will be an attorney or firm with a minimum of five (5) years of specific municipal law experience, licensed to practice law in the State of Kansas, and a member of the Kansas Bar in good standing. Such candidate should be a member, either as an employee or owner, of a law firm that has experience in the areas of land use/development law, personnel law, contract law, public works law, open records/open meetings law, and municipal law in general. The candidate shall have substantial knowledge of local, state, and federal laws and court decisions affecting municipalities, as well as knowledge of the organizations, functions, and activities of municipal government.

### **Scope of Work**

- Serve as legal advisor to and counsel for the Mayor, City Council, Boards/Commissions, Special Committees, Department Heads and the City employees engaged in City business when authorized by the Mayor or City Administrator.
- Attend City Council meetings on the second and fourth Mondays of the month at 7 p.m., and attend other meetings as assigned by the Mayor or City Administrator. Additional attendance at occasional work sessions and special meetings may be required.
- Report to the Mayor, City Council, and City Administrator on the status of the City's legal matters.

- Draft, review or present agreements, bonds, contracts, ordinances, resolutions, staff reports and other written instruments pertinent to City functions or that will be considered by the City Council or City Administrator, and provide a legal opinion to the consequence of such documents.
- Serve as an advisor on matters related to economic development, planning and zoning, and personnel matters.
- Be familiar with State Statutes, Merriam Code of Ordinances and Roberts Rules of Order, and be prepared to advise the City Council and City staff on any matters relating to compliance with the same.
- Conduct, or advise insurance counsel, on all civil suits, actions and proceedings on behalf of the City.
- Prepare correspondence and other legal documents on behalf of the City as directed.
- Provide legal updates and trainings to City staff and elected officials as needed.

### **Submittal Instructions**

Submit five (5) bound hard copies and one (1) PDF electronic version (flash drive) of a response providing the following information:

- **Section 1: Letter of Interest.**
- **Section 2: Firm Overview.** Provide a general profile of the firm and identify the primary office serving the City of Merriam.
- **Section 3: Team Overview.** Identify the professional staff assigned to work with the City, specifically indicating the lead attorney, and attach relevant experience for each assigned staff member.
- **Section 4: Qualifications.** Provide a statement of qualifications confirming the attorney's or firm's ability to perform the outlined Scope of Work. Outline experience providing city attorney services, including demonstrating your experience working with communities that have comparable characteristics to the City of Merriam.
- **Section 5: References.** Provide contact information for three (3) references. Please provide a short summary of the general nature of the work performed for each reference.

In addition, provide one (1) copy of the following in a separate, sealed envelope:

- Fee schedule to provide professional services outlined in the Scope of Work. Overhead and ancillary charges should be incorporated into hourly rates.

The submittal deadline is **12 p.m. on Friday, September 6, 2019**. Incomplete or late submissions will not be accepted.

Submit all materials to:

Juli Pinnick, City Clerk  
 Merriam City Hall  
 9001 W. 62<sup>nd</sup> Street  
 Merriam, KS 66202

### **City Contracting Requirements**

Once a consultant is selected, the following documents will be required:

- Fully executed contract ([View Merriam's Standard Professional Services Contract](#))
- Completed W-9 Form
- Proof of insurance per contract with the City named as additional insured
- City Occupational License (fee waived)
- Kansas Tax Clearance Letter

### **Questions**

Meredith Hauck, Assistant City Administrator

913-322-5515

[mhauck@merriam.org](mailto:mhauck@merriam.org)

**EXHIBIT B: MVP RFQ Response**



**City of Merriam**  
**Request for Qualifications for City Attorney**  
**Due: September 6, 2019; 12:00pm**

**MVP Contact:**

**Ryan B. Denk**

[rdenk@mvplaw.com](mailto:rdenk@mvplaw.com)

913.573.3310

McAnany, Van Cleave & Phillips  
10 East Cambridge Circle Drive  
Suite 300

Kansas City, Kansas 66103

[www.mvplaw.com](http://www.mvplaw.com) • Ph 913.371.3838 • Fax 913.371.4722





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September 4, 2019

City of Merriam  
Attention: Juli Pinnick, City Clerk  
Merriam City Hall  
9001 W. 62<sup>nd</sup> Street  
Merriam, KS 66215

Dear Ms. Pinnick,

In response to your Request for Proposal for legal services, McAnany, Van Cleave & Phillips (MVP) submits the enclosed proposal for your consideration. Our firm is very interested in representing the City of Merriam as City Attorney.

As set forth in greater detail in our Proposal for Legal Services, our firm has been successfully involved in representing public sector clients in all types of legal matters for over 118 years. Firm attorneys have extensive knowledge and experience in employment law as identified in your Request for Proposal and are excited about the prospect of bringing that knowledge and expertise to bear on behalf of the City of Merriam.

MVP is uniquely suited to meet the City of Merriam's (the City) legal needs. We possess experienced and outstanding government and municipal law, employment law, and litigation practice groups. Our firm understands the services to be performed, including advising the Mayor, City Council, Boards/Commissioners, Special Committees, and Department heads regarding legal matters, advising on relevant personnel matters on municipal specific law, attendance at the Council meetings and special meetings, preparing and reviewing agreements, contracts, ordinances, resolutions, deeds, and assisting the City on personnel matters such as employee grievances, personnel actions, unemployment hearings and all other personnel matters, and represent the City in litigation, arbitration and/or other legal/administrative proceedings and appearances.

Excelling in defending our clients' interests and responding to issues, our firm delivers innovative, proactive and preventative legal services to limit unanticipated claims and unnecessary legal expenses. As a law firm focused upon public sector labor and employment law, our representation as City Attorney for the City of Merriam will both ensure legal compliance and furnish the City with counsel to specifically address the City's distinct goals and needs. Our firm's experience with the public sector will offer significant value to the City. MVP's resources ensure the constant and consistent



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10 East Cambridge Circle Drive, Suite 300, Kansas City, Kansas 66103  
www.mvplaw.com Ph 913.371.3838 Fax 913.371.4722

KANSAS MISSOURI ILLINOIS ARKANSAS OKLAHOMA NEBRASKA IOWA

September 4, 2019

Page 2

availability of experienced counsel to ensure responsiveness to the City's business needs.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BA Bowles, Jr.', with a long, sweeping horizontal flourish extending to the right.

Byron A. Bowles, Jr.  
bbowles@mvplaw.com  
913.371.3838  
President and CEO



## **Firm Overview**

MVP has provided legal services and advice to the public sector for over 100 years. Many of our long-standing client relationships are with municipal and county governments, school districts, non-profits and utilities. As a result, we have come to understand the specific challenges faced by the public sector, including public accountability and ethical integrity, multiple funding systems, and complex governance structures.

MVP's Kansas City headquarters will serve as the primary office serving the City of Merriam. Our office is located at 10 East Cambridge Circle Drive, Suite 300, Kansas City, KS 66103.

Our success in representing the public sector is the result of our fundamental belief that we are not only responsible to the governing body of the public entity but to the citizens of the community they serve.

MVP attorneys would review of contracts, ordinances, and resolutions for the City of Merriam. They would serve as an advisor on matters related to economic development, planning and zoning and personnel matters. Our attorneys will conduct, or advise insurance counsel, on all civil suits, actions and proceedings on behalf of the City. Our team for the City of Merriam will be familiar with State Statutes, Merriam Code of Ordinances and Roberts Rules of Order, and be prepared to advise the City Council and City staff on any matters relating to compliance with the same. Our firm will provide legal updates and trainings to City staff and elected officials as needed. For the past three years, our firm has provided a free seminar focusing on our public sector clients and addressing common problems for municipalities.

### **Land Use/Development Law**

Our Attorneys represent municipalities in matters regarding changes in zoning and planning, rezoning matters, down-zoning, zoning variances, nonconforming uses, accessory uses, development of planned districts, special use permits, subdivisions and platting.

In addition, we have represented municipalities in federal and state trial courts regarding land use litigation appeals. Our experience also includes a significant amount of land use litigation in eminent domain proceedings on behalf of condemning authorities and property development work including industrial, commercial, entertainment, gaming, residential, agricultural, rural, rural residential and historic properties. We have effectively petitioned and received approval for different government-supported funding mechanisms including tax increment financing, industrial revenue bonds and housing tax credits.

### **Personnel Law**

We have substantial experience in public employment law, providing counsel in matters of employment relation, including client counseling, administrative standards compliance,



labor negotiations, mediation, arbitration, and employment litigation. We defend both public and private employers against claims of discrimination based on race, gender, age and disability in claims brought under Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Fair Labor Standards Act, Section 1983, retaliation / whistleblower claims, class action and state employment law statutes.

We serve as the lead negotiator in multiple union contracts for municipalities and local governments in collective bargaining agreements, grievance-arbitration proceedings, and prohibited labor practice charges.

### **Contract Law**

We are involved in a wide array of contractual and transactional matters, as well as representing those entities before various administrative bodies, including taxing authorities and state and federal employment commissions. MVP attorneys represent municipalities with contracts/agreements, real estate matters, environmental issues, asbestos removal, collective bargaining, finance, employee benefits, training and drafting guidelines, policies and procedures.

### **Public Works Law**

Our attorneys understand the various issues that can arise when managing public works. Our attorneys assist and advise clients in creating policies, handling potential utility issues, and issues that may arise in the course and scope of maintenance of parks, buildings, streets, streetlights and drainage.

### **Open Records/Open Meetings Law**

MVP attorneys are familiar with open meeting, open record and other requirements imposed upon public entities. MVP attorneys regularly draft and review policies, legislation, regulations and contracts of all types including inter-governmental agreements. MVP attorneys also appear and testify before state legislative bodies and agencies on behalf of clients. In addition, MVP is proficient at making statements to the press and other members of the public. MVP strives to be proactive in its representation by providing information and training as developments in the law occur. MVP is well versed in all areas of the law and capable of responding quickly and appropriately to the day to day needs of its clients.

### **Municipal Law**

Our experience in municipal law encompasses proceedings involving discipline, demotion, discharge, retaliation, conduct, contract interpretation, unit certification and decertification, work schedules and hours, job bidding, overtime, on call and call out pay, arbitrability, assignment of work, bargaining unit work, holiday and holiday pay, vacation, compensatory time, sick leave, job classification, management rights, past practices, promotions, rate of pay, residency, off duty employment, drug and alcohol testing and policies, seniority, shift hours, transfer, work week changes, schedule changes and work performance. We also represent our clients in labor arbitrations and administrative actions before the Public Employer Retirement Board.



## **Team Overview**

Ryan Denk will serve as the lead of the City of Merriam team. Mr. Denk is a Senior Shareholder with MVP and is a member of the Firm's Board of Directors. Mr. Denk serves as the City Attorney for the City of Westwood, KS, he has held this position since 2008. He also serves as the City Attorney for the City of Gardner, he has held this position since 2014. Mr. Denk has been practicing Municipal Law for over 20 years.

### ***Ryan Denk***

Mr. Denk has a strong focus in all aspects of municipal law including planning and zoning, development, economic development incentives, public sector employment, liability under the Kansas Tort Claims Act, legal obligations under the Kansas Open Records and Kansas Open Meetings Acts, Kansas Home Rule authority, local structures of government, annexation and eminent domain. He is a member of the City Attorneys Association of Kansas, as well as a member in the International Municipal Lawyers Association. He is licensed to practice in Kansas, Missouri, the U.S. District Court, District of Kansas, U.S. District Court, Western District of Missouri and the U.S. Court of Appeals, Tenth Circuit.

### **Litigated cases:**

- Over 100 litigated cases on behalf of municipalities. Examples of issues involved in these litigated cases include: employment discrimination, Police and Sheriff misconduct, general tort, land use litigation, eminent domain, civil rights litigation, mass tort, class action.

### **Municipal Finance**

- Handles legal inquiries during the annual budget process as well as other finance and revenue issues throughout any given calendar year

### **Kansas Open Records and Open Meetings Act**

- Handles all legal opinions relating to KOMA and KORA requests on behalf of represented municipalities.

### **Planning and Zoning and Subdivision regulation**

- As City Attorney for the Cities of Westwood and Gardner, Mr. Denk has handled all aspects of planning and zoning including advising the Cities' respective planning commissions and governing bodies as to all legal matters associated with consideration and action upon the planning and zoning applications coming before the bodies. Such advice includes all aspects of the land use planning process from comprehensive plans, area plans, form based codes, and drafting of provisions within land development codes. Such advice includes such bodies' consideration of the applications coming before them including rezoning, special use permit, conditional use permit, plat, site plan, planned use development, and site deviations.



- In addition to advice provided on planning and zoning applications, Mr. Denk has advised boards of zoning appeals on requests for site variances and appeals of staff interpretations of land development codes.
- Finally, Mr. Denk has experience in land use litigation in representing the interests of municipalities associated land use actions.

### **Personnel/Employment Issues**

- Handled over 200 Grievance/Arbitrations on employment issues
- Acted as lead negotiator on Union Contracts on behalf of Municipalities on more than 25 occasions. Labor Unions include: AFSCME #1294; Teamster's Local # 955; IBEW Water Pollution Control; PSEU 1290E, Laborer's International; IAFF local #64; Construction & General Laborers Local #1290; Plumbers Local Union # 8; Painters Dist. Council # 3; FOP #4 and FOP #40
- Litigated Employment Claims
- Regularly investigate and respond to administrative charges such as: EEOC and KHRC Complaints

### **Environmental**

- Rewrote the City of Westwood's National Pollutant Discharge Elimination System Code to comport with Recent Changes by the EPA

### **Construction**

- Represents Cities of Westwood and Gardner with respect to all associated transactions including funding, coordination with bond counsel, RFP and bid processes, contracting and post-construction activities of numerous road improvement projects.

### **Economic Development**

- Mr. Denk has provided advice to municipalities on economic development projects including advice related to economic development incentives including tax increment financing, tax abatements, community improvement districts, industrial revenue bonds, neighborhood revitalization act programs.





### **F. Charles Dunlay**

In addition to Mr. Denk, MVP proposes F. Charles Dunlay as a member of the proposed City of Merriam attorney team. Mr. Dunlay represents the interest of municipalities and employers in labor and employment law, civil rights, and municipal liability. Mr. Dunlay, a Shareholder with MVP, has practiced law as a litigator for twenty-five years. For the last twenty years, he has focused his practice on employment and labor law, civil rights litigation, and municipal liability.

Prior to joining MVP, Mr. Dunlay worked in the Johnson County Legal Department, the Unified Government of Wyandotte County/Kansas City, Kansas, and in private practice. With twenty years of experience in representing local governmental entities, Mr. Dunlay is well versed in defending public sector clients. He is a member of the Kansas Bar Association, Missouri Bar Association, American Bar Association, International Municipal Lawyers Association, City Attorney's Association of Kansas, Johnson County Bar Association, Kansas City Metropolitan Bar Association, and Wyandotte County Bar Association. He is licensed to practice in Kansas, Missouri, the U.S. District Court, District of Kansas, District of Western Missouri, District of Nebraska, and the U.S. Court of Appeals, Tenth Circuit.

### **Litigation**

- Litigated more than 380 cases and administrative actions
- Tried more than one hundred cases – more than eighty as lead counsel
- Defended municipalities in employment discrimination, FLSA, FMLA, ADA, law enforcement liability, Kansas Open Records Act, Kansas Open Meetings, Mandamus, tax and civil rights actions – including takings claims, First Amendment claims, equal protection and due process claims

### **Personnel/Employment Issues**

- Drafted or revised employee handbooks and human resources policies for numerous employers, municipalities, and local governmental agencies
- Serves as Special Counsel to multiple municipalities and local governmental entities
- Drafted the *Johnson County Human Resource Policies and Procedures* – a complete revision of County human resources policies and municipal corporate governance structure
- Drafted the human resource policies for consolidation of the City of Kansas City, Kansas and Wyandotte County
- Reviewed employee benefits claims, health and wellness programs, and provided legal counsel regarding compensation and employee benefits
- Served as principal legal counsel for the human resources departments of Johnson County, the Unified Government, and Wyandotte County
- Led the successful development and implementation of voluntary retirement incentive programs and restructuring avoiding the need for layoffs





- Developed preventing harassment and discrimination training programs and investigation processes which significantly reduced both external claims and liability
- Conducted numerous internal investigations on behalf of his clients preventing or greatly limiting potential liability
- Served as legal counsel to the Johnson County Employee Appeal Panel and conducted scores of appeal hearings
- Guided employers and municipalities through administrative wage and hour, taxation, grant, discrimination, and privacy investigations and audits from the DOL, EEOC, IRS, and DHHS and their state counterparts

### **Municipal Law**

- Represented the City of Spring Hill, Board of County Commissioners of Johnson County, Kansas, City of Gardner, City of Westwood, Northwest Consolidated Fire District, Johnson County Parks & Recreation District, Wyandotte County Parks & Recreation, and Unified Government of Wyandotte County/Kansas City, Kansas
- Worked as Assistant County Counselor for Johnson County, Senior Attorney for the Unified Government, and Assistant County Counselor for Wyandotte County
- Provided legal counsel, policy revision and litigation defense to numerous fire protection, law enforcement and emergency response services agencies
- Served as lead counsel to the Johnson County Department of Human Resources, Treasurer & Financial Management – Payroll and Benefits, Sheriff's Office, Corrections, and Med-Act; and the Unified Government Human Services Standing Committee, Public Works and Public Safety Standing Committee; Wyandotte County Detention Center Population Control Committee, Police Advisory Board, Compensation and Classification Study Committee, and Wyandotte County District Court
- Drafted and revised National Pollutant Discharge Elimination System and Storm Water Management Code
- Revised municipal and zoning codes to comply with Kansas Wireless Siting Act and FCC regulations
- Drafted and negotiated franchise agreements, land use, master license agreements, and telecommunications and wireless communication facilities agreements for Kansas municipalities
- Represented multiple municipalities regarding franchise agreements, planning and zoning, and Open Records Act and Open Meetings Act matters
- Established Johnson County Government Independent Contractor Review Process and drafted all contracts approved under new program with less than seven-day turnaround
- Created and implemented Johnson County's electronic discovery retention plan and process and assisted municipalities in developing electronic retention plans
- Implemented a highly successful digital litigation tracking system
- Drafted contracts, proposed legislation, interlocal agreements, leases, briefing sheets, departmental policies, ordinances, and resolutions



## Training

- Taught, trained, or presented for the City Attorney's Association, the League of Municipalities, the City Attorney's Association of Kansas, Public Risk Management Association, International Public Manager's Association, the Kansas Government Finance Officers Association, the Risk Management Society, the County Counselor's Association of Kansas, National Business Institute, NAAHR, Lorman® Education Services, the Johnson/Wyandotte County Municipal Attorneys, the Wyandotte County Bar Association, numerous municipalities, and law enforcement agencies and academies
- Conducted harassment prevention training; executive, board member, and elected official training regarding municipal liability and final policymaking authority; the ADA, FMLA, and FLSA; and the requirements under KORA
- Presented law enforcement training regarding use of force, arrest, false arrest, open records act, ADA requirements and civil rights actions
- Completed leadership development programs and frequently presented leadership training regarding leadership philosophy and public service

## Kansas Open Records and Open Meetings Acts

- Provided legal opinions and successfully litigated claims regarding both KORA and KOMA
- Developed effective and efficient processes for handling open records requests on behalf of municipalities

## Planning and Zoning:

- Defended takings and declaratory judgment actions against municipal clients successfully concerning a variety of development projects and advised clients with regard to projects
- Represented planning and zoning boards, analyzed development plans, and drafted and revised land development, zoning and regulatory ordinances

## Publications

- Published articles and presented on an assortment of topics, including:
  - *Discipline and Discharge of Municipal Employees: Due Process, First Amendment and Kansas Common Law Implications*
  - *Preventing Workplace Harassment*
  - *Interplay Between the Americans with Disabilities Act, Family Medical Leave Act and Workers' Compensation Laws*
  - *EEOC Enforcement Trends*
  - *Employer Wellness Programming*
  - *Fair Labor Standards Act Exemptions and Application*
  - *Sexual Orientation and Gender Discrimination*
  - *Police Liability: Defending Fourth Amendment Claims*
  - *Retaliatory Discharge Claims under Kansas Law*
  - *Municipal Liability under 42 U.S.C. §1983*
  - *Fourth Amendment Excessive Force Claims & Use of Deadly Force*
  - *Attorney's Fee Awards under 42 U.S.C. §1988*
  - *Preventing Discrimination & Harassment in the Workplace*



# Ryan B. Denk

rdenk@mvplaw.com  
913.573.3310



10 East Cambridge Circle Drive • Suite 300 • Kansas City, Kansas 66103  
www.mvplaw.com • Ph 913.371.3838 • Fax 913.371.4722

Ryan Denk has substantial and significant experience in numerous areas of municipal law primarily in the capacity of representing local governments in litigated, administrative and transactional matters. Mr. Denk's experience in municipal law includes: general municipal law, public labor law, public employment law, police and sheriff misconduct, civil rights, and planning and zoning / land use.

Mr. Denk serves as City Attorney for two Kansas Municipalities, City of Westwood and City of Gardner.

## General Municipal Law

Mr. Denk regularly handles a wide variety of general legal issues and matters which arise in the context of his representation of municipalities. Examples of such general municipal law matters include contract, procurement, franchise, public works, environmental, interlocal cooperation, general litigation and a variety of other matters. Presently Mr. Denk acts as the City Attorney for a medium sized municipality in Kansas and handles or manages all legal matters on behalf of the City. General litigated municipal matters include a wide variety of tort claims. Through his defense of such numerous municipal tort claims, Mr. Denk is adept in defending such claims under the defenses provided within the Kansas Tort Claims Act and the attendant notice of claim requirements.

## Public Labor Law

Mr. Denk represents municipalities in all aspects of their relations with organized labor unions. Such experience includes lead negotiation in collective bargaining agreements with several public employer bargaining units, defense of public employers in grievance-arbitration proceedings, and defense of public employers relating to prohibited labor practice charges. Mr. Denk's defense of public employers and experience in labor law includes proceedings involving discipline, demotion, discharge, retaliation, conduct, contract interpretation, unit certification and decertification, work schedules and hours, job bidding, overtime, on call and call out pay, arbitrability, assignment of work, bargaining unit work, holiday and holiday pay, vacation, compensatory time, sick leave, job classification, management rights, past practices, promotions, rate of pay, residency, off duty employment, drug and alcohol testing and policies, seniority, shift hours, transfer, work week changes, schedule changes and work performance.

### Education

J.D., University of Kansas School of Law, 1998  
B.A., University of Kansas, 1995

### Bar Admissions

Kansas, 1998  
Missouri, 1999  
U.S. District Court  
District of Kansas  
Western District of Missouri  
U.S. Court of Appeals  
Tenth Circuit

### Professional Affiliations

Kansas Bar Association  
The Missouri Bar  
American Bar Association  
Kansas City Metropolitan Bar Association  
Johnson County Bar Association  
Wyandotte County Bar Association

### Practice Areas

Employment Law  
Municipal Law

### Office

Kansas City



## Ryan B. Denk

rdenk@mvplaw.com

913.573.3310

### **Public Employment Law**

Mr. Denk has successfully defended both public and private employers against claims of discrimination based on race, gender, age and disability. Such defense includes claims brought under Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Fair Labor Standards Act, Section 1983, retaliation / whistleblower claims, class action and state employment law statutes.

### **Police and Sheriff Liability**

Throughout Mr. Denk's career he has represented police and sheriff's departments in a wide variety of legal matters including litigation, administrative matters, and legal and policy consultation. Litigated police and sheriff liability matters which Mr. Denk has handled include wrongful death, excessive use of force, search and seizure, abuse of process, malicious prosecution, false arrest and imprisonment, failure to render assistance / provide protection, failure to provide requested medical assistance, custodial neglect, sexual harassment / exploitation, failure to train, inadequate supervision / discipline, and negligent hiring.

### **Civil Rights Litigation**

Through his defense of municipalities, Mr. Denk has handled a wide range of civil rights related claims primarily brought under Section 1983. The nature of such civil rights claims has included claims brought under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments. Through his defense of such claims Mr. Denk is adept in handling the issues and defenses unique to Section 1983 claims including individual, supervisory and municipal liability, absolute and qualified immunity, color of law, standing, and subject matter jurisdiction.

### **Planning and Zoning / Land Use**

Mr. Denk's planning and zoning / land use experience includes representation of both municipalities as well as property owners and developers before municipal planning commissions, city councils and county commissions regarding changes in zoning and planning, and he has been responsible for handling rezoning matters, down-zoning, zoning variances, nonconforming uses, accessory uses, development of planned districts, special use permits, subdivisions and platting. Mr. Denk has represented municipalities in land use litigation including zoning and planning appeals to federal and state trial courts. Mr. Denk's land use litigation includes significant experience in eminent domain proceedings on behalf of condemning authorities. Mr. Denk's property development work includes industrial, commercial, entertainment, gaming, residential, agricultural, rural, rural residential and historic. Mr. Denk has effectively petitioned and received approval for different government-supported funding mechanisms including tax increment financing, community improvement districts, industrial revenue bonds and housing tax credits.



# Ryan B. Denk

rdenk@mvplaw.com

913.573.3310

## Recent Negotiations

### **Construction & General Laborers Local #1290**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **Plumbers Local Union # 8**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **Painters District Council 3**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **AFSCME, Local No. 3475 of Missouri/Kansas State council No. 72**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **Teamster's Local # 955**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **IBEW Water Pollution Control, Local 53**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **PSEU 1290E, Laborer's**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **UFCW, Local No. 2**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **FOP, Lodge No. 4**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **FOP, Lodge No. 40**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **SEIU, Local #1 (Service Employees International Union)**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present

### **United Brotherhood of Carpenters and Joinders of America, St. Louis – Kansas City Carpenters Regional Council**

Description: Contract negotiations labor union for 2014 - Present

Result: Successfully reached agreements for 2014 - Present





## Ryan B. Denk

rdenk@mvplaw.com

913.573.3310

### Recent Jury Trials

#### **Karrick v. Board of Public Utilities, May 2019**

**Type of Claim:** Employment discrimination, sex, gender and age, and retaliation.

Plaintiff, female age 52, worked for Defendant for 30 years. She was terminated on July 25, 2016. Plaintiff had been the Superintendent of Fleet Maintenance with the Board of Public Utilities (BPU) from 2007. Plaintiff complained she was not being compensated similarly to male counterparts at the BPU among other instances of differential treatment. Plaintiff claimed she was terminated in retaliation for her complaints, Defendant maintained Plaintiff's compensation was based on market value. Defendant stated some BPU Superintendents made the same amount, some made more and some made less. Defendant claimed Plaintiff was terminated for taking a car battery (from stock at the fleet center) for her own use without prepayment.

**Damages Alleged:** \$99,998.65 past lost wages; \$81,254.48 net to present loss to pension; approximately \$40,000 in sick leave and vacation buybacks; \$30,000 lost compensation due to discrimination in pay; and compensatory damages for emotional distress.

**Demand Before Trial:** Reinstatement of job, buy backs, past lost wages and attorney's fees not to exceed \$100,000.

**Offer Before Trial:** None.

**Verdict:** For Defendant on all claims.

#### **Anderson v. Par Electrical Contractors Inc., January 2019**

**Type of Claim:** Retaliatory discharge.

Plaintiff, male age 34, had worked on and off as a lineman for Defendant from 2010.

On August 18, 2014 Plaintiff was switching electrical lines from old poles to new line poles when he was shocked by 7,600 volts with 12,400 volts in 3 line phases. Plaintiff was severely shocked, went on workers' compensation and never returned to work. On August 19th Defendant conducted a preliminary investigation in which it found Plaintiff should be fired for violating safety rules (employees were required to wear protective gloves and sleeves when working within 5 feet of an energized source). On August 21st the investigation was completed and Plaintiff was formally terminated August 27th. Plaintiff brought suit for retaliatory discharge claiming he was fired before the investigation had been completed. Plaintiff also denied he had knowingly violated the safety rule. Plaintiff admitted not wearing safety gear but didn't think he was within 5 feet of an energized source. Defendant claimed Plaintiff was fired for violating a safety rule.

**Damages Alleged:** Emotional distress (\$8,000 per month lost income from August 18, 2014 to the present).

**Plaintiffs Experts:** None presented.

**Defendant's Experts:** None presented.

**Demand Before Trial:** \$300,000.

**Offer Before Trial:** \$25,000.

**Verdict:** For Defendant.



## Ryan B. Denk

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### **Callahan v. Unified Government of Wvandotte County/Kansas City, KS; Armstrong and Lawson May, 2016**

**Type of Claim:** Unlawful detention, assault, and 4th Amendment Section 1983 claims. This trial was the first of seven actions concerning members of the Kansas City, KS Police SWAT team.

In the summer of 2010, in response to three complaints of theft following events in which the SWAT team was present, the FBI and Kansas City, KS Police jointly conducted a sting operation on January 4, 2011. Seven acts of theft occurred during that sting. Three policemen were indicted and convicted of conspiracy to violate civil rights. A number of SWAT team members were taken to police headquarters where they were detained and held for 12 hours. Plaintiff Callahan, a 30 plus year policeman (now retired), brought suit for unlawful detention against Defendant Armstrong (the Kansas City, KS Chief of Police) and Defendant Lawson (the Commander of Internal Affairs). Plaintiff also brought a claim for assault against Armstrong and Lawson when rifles were pointed at Plaintiff and other detainees by various commanders. Defendants denied Plaintiffs claims. Defendants denied the Plaintiff was unlawfully arrested or detained and/or that Plaintiffs detention was otherwise permitted under the 4th Amendment.

**Damages Alleged:** \$2,375,000 compensatory damages; wife's loss of consortium; and punitive damages.

**Demand Before Trial:** \$300,000.

**Offer Before Trial:** \$225,000 offer of judgment.

**Verdict:** For Defendants.

### **Gambrill v. Unified Government of Wyandotte County/Kansas City, KS; Armstrong, Lawson, Nicholson and York, May, 2016**

**Type of Claim:** Unlawful detention, assault, battery, and 4th Amendment Section 1983 claims. This trial was the second of seven actions concerning members of the Kansas City, KS Police SWAT team. In the summer of 2010, in response to three complaints of theft following events in which the SWAT team was present, the FBI and Kansas City, KS Police jointly conducted a sting operation on January 4, 2011. Seven acts of theft occurred during that sting. Three policemen were indicted and convicted of conspiracy to violate civil rights. A number of SWAT team members were taken to police headquarters where they were detained and held for 12 hours. Plaintiff Gambrill, a 30 year veteran of the police department, brought suit for unlawful detention against Defendant Armstrong (the Kansas City, KS Chief of Police), Defendant Lawson (the Commander of Internal Affairs), and Defendants Nicholson and York (SWAT team commanders). Plaintiff also brought a claim for assault against Armstrong, Nicholson and York when rifles were pointed at Plaintiff and other detainees by various commanders. Lastly, Plaintiff brought a battery claim against Defendants Armstrong and Lawson alleging unlawful search of his person. Defendants denied Plaintiffs claims. Defendants denied the Plaintiff was unlawfully arrested or detained and/or that Plaintiffs detention was otherwise permitted under the 4th Amendment.



## Ryan B. Denk

rdenk@mvplaw.com

913.573.3310

**Damages Alleged:** \$3,625,000 compensatory damages; and punitive damages.

**Demand Before Trial:** \$300,000.

**Offer Before Trial:** \$225,000 offer of judgment.

**Verdict:** For Defendants.

### **Hammons v. Unified Government of Wyandotte County/Kansas City, KS; and Armstrong,** **May, 2016**

**Type of Claim:** Unlawful detention, assault and 4th Amendment Section 1983 claims. This trial was the fourth of seven actions concerning members of the Kansas City, KS Police SWAT team. In the summer of 2010, in response to three complaints of theft following events in which the SWAT team was present, the FBI and Kansas City, KS Police jointly conducted a sting operation on January 4, 2011. Seven acts of theft occurred during that sting. Three policemen were indicted and convicted of conspiracy to violate civil rights. A number of SWAT team members were taken to police headquarters where they were detained and held for 72 hours. Plaintiff Hammons, a 13 year veteran of the police department, brought suit for unlawful detention against Defendant Armstrong, the Kansas City, KS Chief of Police, and against the Unified Government. Plaintiff also brought a claim for assault against Armstrong and the Unified Government when rifles were pointed at Plaintiff and other detainees by various commanders. Defendants denied Plaintiffs claims. Defendants denied that Plaintiff was unlawfully detained or assaulted and/or that Plaintiffs detention was otherwise permitted under the 4th Amendment.

**Damages Alleged:** \$1,000,000 compensatory damages, and punitive damages.

**Demand Before Trial:** \$200,000.

**Offer Before Trial:** None.

**Verdict:** For Defendants.





# Ryan B. Denk

rdenk@mvplaw.com

913.573.3310

## Recent Arbitrations

FMCS Case No. 141025-50551-7	Grievance denied - Contract dispute – Job Bid	4/21/14
FMCS Case No. 141025-50553-7	Grievance denied - Contract dispute – Job Bid	3/18/14
FMCS Case No. 140801-57987-7	Grievance denied - Contract dispute – failure to pay for attendance at grievance hearing	2/17/15
FMCS Case No. 160902-57688-7	Grievance denied – Contract dispute – outsourcing position/duties	3/8/17
FMCS Case No. 170223-53293-7	Grievance denied – Contract dispute – failure to fill temporary vacancy	12/18/17
FMCS Case No. 170627-02271	Grievance denied - Contract dispute – Job Bid	12/29/17
FMCS Case No. 170627-02270	Grievance denied - Contract dispute – failure to award position	3/16/18
FMCS Case No. 181023-00748	Successfully sustained termination	5/18/18
FMCS Case No. 108314-02513	Successfully sustained termination	9/10/18
FMCS Case No. 180910-08192	Successfully sustained termination	5/23/19
FMCS Case No. 190121-03426	Successfully sustained termination	7/15/19
FMCS Case No. 191025-00857	Successfully sustained termination	7/23/19
FMCS Case No. 180605-05300	Grievance denied - Contract dispute – Job Bid	8/15/19



# F. Charles Dunlay

fcdunlay@mvplaw.com  
913.573.3388



10 East Cambridge Circle Drive • Suite 300 • Kansas City, Kansas 66103  
www.mvplaw.com • Ph 913.371.3838 • Fax 913.371.4722

F. Charles Dunlay represents the interest of municipalities and employers in labor and employment law, civil rights, and municipal liability. Mr. Dunlay has tried scores of cases for over two decades. He has litigated many civil rights and employment disputes serving as lead counsel in Fair Labor Standards Act collective action, retaliatory discharge, employment discrimination and harassment claims, constitutional cases, Americans with Disability Act cases, and Family Medical Leave Act claims at both the trial and appellate level.

Prior to joining McAnany, Van Cleave, and Phillips, Mr. Dunlay worked in the Johnson County Legal Department, the Unified Government of Wyandotte County/Kansas City, Kansas, and in private practice. With twenty years of experience in representing local governmental entities, Mr. Dunlay is well versed in defending public sector clients. He has developed and presented preventing discrimination and harassment workplace training programs, drafted human resource policies and procedures, negotiated contracts, leases, and collective bargaining agreements, and drafted legislation, contracts, leases, ordinances, and resolutions. Adept in the rules of civil procedure and requirements of electronic data retention, Mr. Dunlay has developed and implemented electronic discovery retention plans and processes.

Mr. Dunlay has published articles and presented on an assortment of topics, including *Discipline and Discharge of Municipal Employees: Due Process, First Amendment and Kansas Common Law Implications*; *Preventing Workplace Harassment*; *Police Liability: Defending Fourth Amendment Claims*; *Retaliatory Discharge Claims under Kansas Law*; *Municipal Liability Under 42 U.S.C. §1983*; *Fourth Amendment Excessive Force Claims & Use of Deadly Force*; *Attorney's Fee Awards Under 42 U.S.C. §1988*; and *Preventing Discrimination & Harassment in the Workplace*.

Mr. Dunlay is an engaging trainer and has taught, trained, or presented for the City Attorney's Association, the League of Municipalities, the Kansas Government Finance Officers Association, Lorman® Education Services, and law enforcement academies. Mr. Dunlay has conducted harassment prevention training for numerous employers, municipalities, and local government entities. He has conducted focused executive, board member, and elected official training with regard to municipal liability and final policymaking authority, employment discrimination and harassment prevention, the Americans with Disabilities Act, and the Family Medical Leave Act. Mr. Dunlay has completed leadership development programs and repeatedly presented leadership training regarding leadership philosophy and public service.

Mr. Dunlay is active in the community has coached or coaches in the Blue Valley Recreation District Youth baseball, basketball and softball programs, the Blue Valley Football & Cheerleading Club Youth Football program, and C.Y.O. Basketball teams. He is a former member of the Board of Directors, Sudden Infant Death Syndrome, Kansas City, and served as the Coordinator of Student Mediation Program for Lincoln Preparatory High School. Mr. Dunlay and his wife, Haley, are active supporters of numerous community and charitable organizations and multiple parent teacher and booster clubs. Mr. Dunlay played rugby for London Welsh Rugby Football Club, London, England, served as Legislative Assistant to Member of British Parliament, and financed his college education working as roustabout on an off-shore oil rig. When not practicing law, Mr. Dunlay enjoys coaching youth sports, engaging in community activities, and spending time with his wife and four children.

### Education

J.D., University of Kansas School of Law, 1991  
B.A., Texas Christian University & London School of Economics, 1988

### Bar Admissions

Kansas, 1991  
Missouri, 1992  
U.S. District Court, District of Kansas  
U.S. District Court, Western District of Missouri  
U.S. District Court, District of Nebraska  
U.S. Court of Appeals, Tenth Circuit

### Professional Affiliations

Kansas Bar Association  
American Bar Association  
International Municipal Lawyers

### Practice Areas

Employment Law  
Civil Rights Litigation  
Municipal Liability Litigation

### Office

Kansas City



## **Qualifications (Scope of Service)**

As City Attorney, firm attorneys attend regular board and administrative cabinet meetings and provide advice, opinions and guidance daily on all types of legal matters. Firm attorneys serving as City Attorney make themselves available at all hours and it is not uncommon for an attorney to respond to a legal issue during the evening or on weekends as the public entity cannot control when a legal issue requiring advice may arise.

Because MVP attorneys serve as general counsel for many public sector clients, MVP is intimately familiar with the Kansas open meeting and open records requirements and has represented board members in litigation alleging violations of such requirements. We regularly draft and review policies, legislation and all types of contracts including inter-governmental agreements.

When serving as City Attorney, we are proactive in our representation by providing information and training to our clients as developments in the law occur. We are well versed in broad areas of the law and capable of responding quickly and appropriately to the day to day needs of our clients.

The key to MVP's expertise lies in the ability of its attorneys to develop long-term relationships with clients and adapting to and anticipating their needs. Many clients, including governmental entities, have used MVP attorneys as general counsel for many years. MVP attorneys are timely, responsive and they follow-through.

MVP performed Legal Services for the following Government Clients in the past 5 years:

- City of Westwood
- City of Gardner
- Unified Government of Wyandotte County/Kansas City, KS
- Johnson County, KS
- City of Olathe
- City of Topeka
- City of Shawnee
- City of Spring Hill
- Kansas Attorney General's Office
- City of Overland Park
- KCATA
- Board of Public Utilities – Kansas City, KS
- Shawnee County, KS
- Kansas Eastern Region Insurance Trust
- Missouri Department of Transportation
- City of Wichita
- City of Lawrence
- Northwest Consolidated Fire Department
- City of Independence, MO



Firm attorneys presently serve as general counsel for numerous public sector clients, including:

- City of Westwood, KS
- City of Gardner
- Unified School District No. 500, Wyandotte County, KS
- Turner Unified School District No. 202, Wyandotte County, KS
- Spring Hill Unified School District No. 230, Johnson/Miami County, KS
- Piper Unified School District No. 203, Wyandotte County, KS
- Bonner Springs Unified School District No. 204, Wyandotte County, KS
- Basehor Linwood Unified School District No. 458, Leavenworth County, Kansas
- SE KS Education Service Center Interlocal No. 609, Crawford County, KS
- Wyandotte County Special Education Cooperative
- Kansas City Kansas Community College
- Wyandot Center for Community Behavioral Healthcare, Inc.
- Turner Recreation Commission
- Highland Community College
- Basehor Community Library

The firm works with numerous clients who have in-house general counsel and handles matters for these clients similar to those identified in the RFP for City Attorney.

### **Relevant Experience**

- MVP is a Martindale Hubbell AV Rated Firm
- MVP has represented the Unified Government of Wyandotte County, Kansas City, KS including successfully negotiating labor contracts during 2015 and 2016 for 12 of the 13 labor unions including:
  - Construction & General Laborers Local #1290
  - Plumbers Local Union # 8
  - Painters District Council 3
  - AFSCME, Local No. 3475 of Missouri/Kansas State council No. 72
  - Teamster's Local # 955
  - IBEW Water Pollution Control, Local 53
  - PSEU 1290E, Laborer's International
  - UFCW, Local No. 2
  - FOP, Lodge No. 4
  - FOP, Lodge No. 40
  - SEIU, Local #1 (Service Employees International Union)
  - United Brotherhood of Carpenters and Joinders of America, St. Louis – Kansas City Carpenters Regional Council
- MVP Attorneys worked on a \$39 million bond issue approved in Spring Hill, KS by school district patrons to help address additional classroom capacity for the growing student population, technology upgrades, and needed maintenance on facilities



- MVP represented an area community college on acquisition of three different tracts of ground over 24 months for expansion of the college, including bond financing. We also represented the college on the construction of improvements for classroom facilities on the acquired ground.
- MVP represented a local school district on the construction of three different grade schools, and on acquisition of land for use as a public library, and construction of the library.
- Represented the Unified Government in negotiating and implementing a development agreement to include property and sales tax funding in excess of \$40,000,000 for a large regional shopping center.



## **References:**

### **City of Gardner**

Mayor Steve Shute  
120 East Main Street  
Gardner, KS 66030  
(913) 856-0940  
sshute@gardnerkansas.gov

### **Unified Government of Kansas City Kansas**

Doug Bach, City Administrator  
701 North 7<sup>th</sup> Street  
Kansas City, KS 66101  
(913) 573-5027  
dbach@wycokck.org

### **City of Westwood**

Mayor John Ye  
Westwood City Hall  
4700 Rainbow Blvd.  
Westwood, Kansas 66205  
(913) 362-1550  
(913) 362-3308  
westwoodmayor@sbcglobal.net

## EXHIBIT C: Compensation

The Provider will provide the services identified in the Scope of Work for the following fee schedule:

### Hourly Rates

- MVP Shareholder \$205
- MVP Associate \$185
- MVP Paralegal \$125

Bills will be submitted on a monthly basis, describing the tasks performed, the number of hours each task took to perform, the identity of the timekeeper performing each task and the date on which the task is performed. The tasks are billed in one-tenth of an hour increments.

### Expenses:

- Out of town travel, meals & mileage: billed at costs; mileage is billed at the IRS allowable rate.
- Any expenses, such as outside document reproduction costs, expert witness fees, court reporter fees, etc., that are not paid directly by the City will be itemized and billed at actual cost.
- No charges will be applied for long distance telephone, route postage, in-house photocopying.

Generally, non-billable time or services will not be reflected in the statements or will be specifically identified as such.

## PROFESSIONAL SUMMARY

Responsible Superintendent that excels in work planning, organizing, directing and supervision of the Public Works Department. Highly proficient in providing quality services to the citizens of Merriam. Twenty-seven years of increased responsibility and dedicated service with a drive for excellence.

## EXPERIENCE

### Superintendent, City of Merriam, KS - September 1992-present

- Planning, organizing, and supervising the Public Works Department, including snow removal, traffic management, streetlighting, park and facility maintenance, forestry, streets and stormwater maintenance and other Public Works projects and programs.
- Creates departmental goals; creates and implements policies and procedures.
- Provides information, cooperation and assistance to help resolve complaints and departmental situations.
- Trains employees in construction methods, operation of equipment, safety procedures, or company policies and evaluate their performance.
- Prepare annual budget including equipment replacement and forecasting. Prepare/process all purchase orders for multiple departments, determine if inventory quantities are sufficient for needs.
- Oversee facility maintenance for five City departments, along with manage several contracts for HVAC, cleaning, plumbing, pest control and turf management.
- Member Operation Greenlight Steering Committee

### Meat Cutter, Milgram Kansas City, MO – August 1990-September 1992

- Estimate requirement's and order/requisition meat supplies to maintain inventories.
- Receive, inspect and store meat upon delivery, to ensure quality. Cut, trim, bone, tie and grind meats such as beef, pork, poultry, lamb and fish, to prepare meat in cooking form.
- Provide exceptional customer service along with recommendations for selection of product.

## EDUCATION

Automotive Technology diploma May 1988  
Kansas City Area Vocational Technical School - Kansas City, KS

High School Diploma in General Studies May 1987  
Shawnee Mission West High School - Overland Park, KS

## CERTIFICATIONS

Kansas Certified Arborist  
Certificate of Public Works Management from APWA  
Certified Playground Safety Inspector  
Certified Aquatic Facility Operator  
IMSA Certifications in Signs and Markings, Traffic Signal Tech, Roadway Lighting  
Training at FEMA center for domestic preparedness in incident command and CBRNE incidents



# DARREN MCLAUGHLIN

darrenm@merriam.org

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## EXPERIENCE

**JULY 1989 – JANUARY 1998**

### **POLICE OFFICER**

Worked in patrol enforcing laws of the State of Kansas and City of Merriam.

**JANUARY 1998 – JANUARY 2003**

### **CORPORAL**

Worked as a patrol officer and assistant shift supervisor. I assisted the Patrol Sergeant with supervising the officers in the field activities and any administrative duties as required.

**JANUARY 2003 – SEPTEMBER 2006**

### **SERGEANT**

Worked as a shift supervisor, relief supervisor and as a criminal interdiction officer during this time.

**SEPTEMBER 2006 – APRIL 2015**

### **LIEUTENANT**

Worked as a commander in charge of patrol, records and investigation. Worked closely with the Chief of Police on budgets, 5-year plans, hiring and several other departmental assignments.

**APRIL 2015 – PRESENT**

### **MAJOR**

Worked as a commander in charge of patrol, records and investigation. Worked closely with the Chief of Police on budgets, 5-year plans, hiring and several other departmental assignments.

## EDUCATION

**APRIL 2015**

### **BA CRIMINAL JUSTICE, GRANTHAM UNIVERSITY**

Graduated Summa Cum Laude with a GPA of 3.94

## **PROFESSIONAL EDUCATION**

- Graduate of Northwestern University School of Police Staff and Command Class
- Central States Law Enforcement Executive Development Seminar
- Kansas Police Administrators Seminar
- Graduate of Leadership Northeast
- Graduate of DEA Drug Investigation School
- Graduate of Metro Squad Training
- Graduate of Johnson County Police Academy

## **PROFESSIONAL EXPERIENCE**

- Use of force trainer
  - Baton
  - OC Pepper Spray
- Firearms Instructor
- Police Training Officer
- Criminal Interdiction Officer
- Member of the Metro Squad
- Detective
- Training Coordinator
- IT Coordinator

## **PROFESSIONAL ACCOMPLISHMENTS**

- Wrote and received several grants for equipment for the police department.
- Managed the Asset Forfeiture fund.
- Implemented the Lexipol Policy Manual
- Wrote several Annual Reports
- Won Officer of the Year twice.
- Implemented a new RMS system
- Implemented License Plate Reader system
- Implemented in-car and body camera systems
- Developed IKEA grand opening plan.
- Participated in the planning and monitoring of the Police Department remodel.

## **COMMUNITY INVOLVEMENT**

- Member of the Johnson County Suicide Prevention Coalition since 2013
- Board Member of the Johnson County Suicide Prevention Coalition from 2013 to 2017
- Participated in several Special Olympic Fund Raiser events.

# Donna Oliver

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## Date

Mr. Chris Engel  
City of Merriam, KS  
9001 W. 62<sup>nd</sup> Street  
Merriam, KS 66202

## Dear Mr. Chris Engel:

As a finance director, my priority is to ensure the most accurate financial information while leading efforts to constantly improve operations and maximize efficiency. My strengths include setting strategy, creating processes, building strong teams, and removing obstacles to get projects off the drawing board. I have had the opportunity to work with extraordinary department managers and enjoy a culture of collaboration where I can contribute across many areas of the organization. Results have been significant:

- ❖ Financial leadership in development and major economic growth projects
- ❖ Reorganization of core accounting and business functions
- ❖ Management of budgeting process impacting all departments
- ❖ Coordination of operating plans for financial, capital and organization development

My management style is direct and decisive, yet flexible in responding to the constantly changing requirements of my staff and management team. Most significant is my ability to work with diverse groups.

Never satisfied with the "status quo", I earned a reputation for not only the strength of my financial expertise, but for my ability to communicate and coordinate cooperative efforts throughout the organization.

I look forward to a personal interview to discuss my qualification and explore your financial needs and operating objectives. Thank you.

Sincerely,



**Donna Oliver**

# —DONNA K. OLIVER

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## PROVEN STRATEGIES

- ✓ Actionable Financial Analysis
- ✓ Investment Decisions
- ✓ Budget & Forecasting
- ✓ Risk Management
- ✓ Process Improvements
- ✓ Audit Review & Compliance
- ✓ Contract Negotiations
- ✓ Human Resource Benefit Negotiations
- ✓ Proposal Costing
- ✓ Expense Review & Control
- ✓ Federal Compliance
- ✓ Variance Analysis
- ✓ Accounting Process
- ✓ Financial Statements
- ✓ Records/System Automation
- ✓ Organizational Guidance
- ✓ Conflict Resolution

## FINANCIAL EXECUTIVE

*Accounting Specialist* ▪ *Financial Analyst*

Trusted accounting professional offering years of achievements in accounting and tax increment financing (TIF), accurately analyzing financial performance, and building sustainable relationships with clients. Improve processes, cut costs, and direct financial operations to sustain growth and earnings. Reputation for replacing stagnant operations, uncovering hidden solutions, and providing accurate data to stakeholders.

- **DETAILED-ORIENTED PROFESSIONAL** with 12 years of experience in accounting, bid preparation, and financial administration.
- **CONSENSUS BUILDER** able to engage cross-functional teams to introduce effective internal controls and ensure organizational compliance and efficiency.
- **TECHNOLOGY PROFICIENT** with expertise in TylerIncode Financials, Executime, Mangrove Payroll System, and Microsoft Office.

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## EXPERIENCE

CITY OF RIVERSIDE, Riverside, MO

2006-Present

**FINANCE DIRECTOR**, General Fund Budget \$11M; City Budget \$22M; Capital Assets \$125M

Direct a team of 3 providing effective leadership in the administration and operations of the Finance Department. Protect the financial capital assets and monetary cash. Oversee financial planning, treasury, cash management, accounting, payroll, budgeting, auditing, property management, and management information systems. Coordinate assigned activities with other city departments and outside agencies, providing highly responsible and complex administrative support to the City Administrator.

- ➔ Rectified control deficiencies associated with financial management, capital assets, and purchase order process.
- ➔ Instrumental in bringing structure and accountability to the department by facilitating a 5-year capital improvement plan and a 20-year forecast and implementing fixed asset management system.
- ➔ Prepared unique economic financial structures that was instrumental in the growth of the industrial park generating \$6M in tax increment financing revenue with a potential of \$10M, neighborhood improvement districts, and issuance of Chapter 100 Bonds.
- ➔ Significant in receiving Certificate of Achievement in Excellence in Financial Reporting for the city's comprehensive annual financial report (1<sup>st</sup> in city history).

CITY OF OVERLAND PARK, Overland Park, KS

1994-2006

**SENIOR ACCOUNTANT**, General Fund Budget \$10M - City Budget \$266M

**ACCOUNTANT II (1998-2003)**

**ACCOUNTANT I (1994-1998)**

Performed a variety of accounting activities involving compilation, consolidation, and analysis of financial data. Prepared financial statements and operating performance reports. Maintained and updated records of fixed asset purchases, perform physical inventories and inspections of fixed assets. Assisted in preparation of annual budget and maintained 5-year forecast. Prepared biannual trend analysis and cost recovery study.

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## EDUCATION & PROFESSIONAL TRAINING

**CERTIFIED PUBLIC FINANCE OFFICER**

**BACHELOR OF SCIENCE IN ACCOUNTING**

Southwest Missouri State University

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## BOARD MEMBERSHIP

Board Member	Riverside Quindaro Bend Levee District	2017-Present
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Board Member	Kansas & Missouri Women in Finance	2016-2017
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## COMMUNITY AFFILIATIONS

NKC High School Robotics Team, Mentor 2013-2016

MOCSA, Hospital Advocate 2014-2015

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## PROFESSIONAL AFFILIATIONS

Missouri Government Finance Officers Association

Women in Public Finance

Northland Regional Chamber of Commerce

# Street & Stormwater Sales Tax Renewal

City Council Meeting  
September 23, 2019



# Staff Recommendation

- Staff recommends renewal
- Exact same language as 2010 w/ same restrictions
- 1/4-cent sales tax
- 10-year; effective January 1, 2021
- Mail Ballot Election on January 28, 2020

# Street & Stormwater Tax – Current Language

Shall the City of Merriam, Kansas be authorized to levy a special purpose city retailers' sales tax in the amount of **one-fourth of one percent (.25%)** and to use revenue from such tax to pay the cost of improving certain **City streets, bridges and associated drainage**, which improvements may include grading, curbs, gutters, pavement and other surfacing, driveway entrances and structures, drainage work incidental thereto, service connections from utility mains, conduits or pipes necessarily lying within curb lines, streetlights, street lighting systems, storm water drains, retaining walls and area walls on public ways or land abutting thereon, sidewalks, street trees and landscaping, **stormwater drainage projects**, and all related improvements ("Improvements") and all things necessary and related to such Improvements, and be **authorized to pledge such sales tax for the payment of the principal and interest on general obligation bonds** issued to pay the cost of such Improvements, provided that such retailers' sales tax shall expire ten (10) years from the date it is first collected (expiration date of December 31, 2020), all pursuant to K.S.A. 12-187 et seq. and other applicable state statutory provisions?



# Street & Stormwater Tax – Current Details

- Term - January 1, 2011 – December 31, 2020
- Voter approved by mail-in ballot in January 2010
- Can only be used for infrastructure improvements
- Generated \$14.2 million to-date; \$17.3 million total (projected)
- Sales tax is subject to pull-factor

# Street & Stormwater Tax – Current Financials

	thru 6/30/2019	Projected Revenue/Exp	Projected Final
<b>Funding Sources</b>			
1/4 cent City Sales tax	\$ 14,231,294	\$ 3,079,923	\$ 17,311,217
Interest	152,158	74,863	227,021
Merriam General CIP support		1,437,542	1,437,542
TIF (75th Street over I-35)	626,361		626,361
SMAC Grants	5,366,358		5,366,358
CARS Grants	3,494,657	5,740,989	9,235,646
BR/ST Grants	3,387,763		3,387,763
Subtotal Funding Sources	\$ 27,258,591	\$ 10,333,317	\$ 37,591,908

# Street & Stormwater Tax – Current Project List

54th St/54th Terr Drainage Improvements	\$ 214,035	Residential Street Group V	\$ 1,297,522
55th St Drainage Improvement	\$ 490,552	Shawnee Creek Drainage - East (Farley to Knox)	\$ 1,343,007
70th Terrace Drainage Box	\$ 1,647,001	Shawnee Creek Drainage - West (Switzer to Farley)	\$ 1,610,719
75th St - Antioch to Frontage Rd	\$ 312,595	Shawnee Mission Parkway Bridge over BNSF Rail	\$ 3,039,940
75th St - E. Frontage Rd to Switzer	\$ 2,580,429	Shawnee Mission Pkwy/Antioch Intersection	\$ 71,624
Antioch Overlay (67th to 75th)	\$ 488,392	Sherwood Forest Drainage Outlet Repair	\$ 65,835
Antioch Rd Mill/Overlay/Curb/Gutter (47th - 54th)	\$ 510,553	Antioch Park Creek Drainage	\$ 149,154
Antioch Rd Reconstruction (Johnson Dr. to 67th)	\$ 1,915,890	67th St Reconstruction (west limit to Antioch Rd)*	\$ 2,270,344
Antioch Rd Streetlights (67th to 75th)	\$ 165,231	Johnson Dr - Kessler to Mackey*	\$ 2,237,981
Comprehensive Engineering Study/PES	\$ 134,639	Merriam Dr - 55th St to Antioch*	\$ 1,667,426
Farley Avenue Reconstruction	\$ 1,917,068	Merriam Dr - Jo Dr to 55th St*	\$ 2,606,799
Ground Penetrating Radar Street Evaluation	\$ 36,729	55th St - Merriam Dr to W. City Limit*	\$ 1,831,781
Johnson Dr Bridge over Turkey Creek	\$ 1,942,634	49th St - Antioch to Switzer*	\$ 2,332,241
Johnson Dr Reconstruction (Kessler Ln to west limit)	\$ 1,532,172	SM Pkwy / Turkey Creek Bridge Study/Rehab*	\$ 248,878
Meyer Creek Drainage	\$ 2,896,238	67th/E. Frontage Rd Intersection Study*	\$ 34,500

\* Planned/Under Construction



# 55<sup>th</sup> Street Drainage Improvements



Images from Google Street View



# 54<sup>th</sup> Terrace Drainage Improvements



Images from Google Street View



# 54<sup>th</sup> Street Drainage Improvements



Images from Google Street View



# 70<sup>th</sup> Terrace Drainage Improvements



Flood-prone home purchased and removed

Images from Google Street View



# Shawnee Creek West

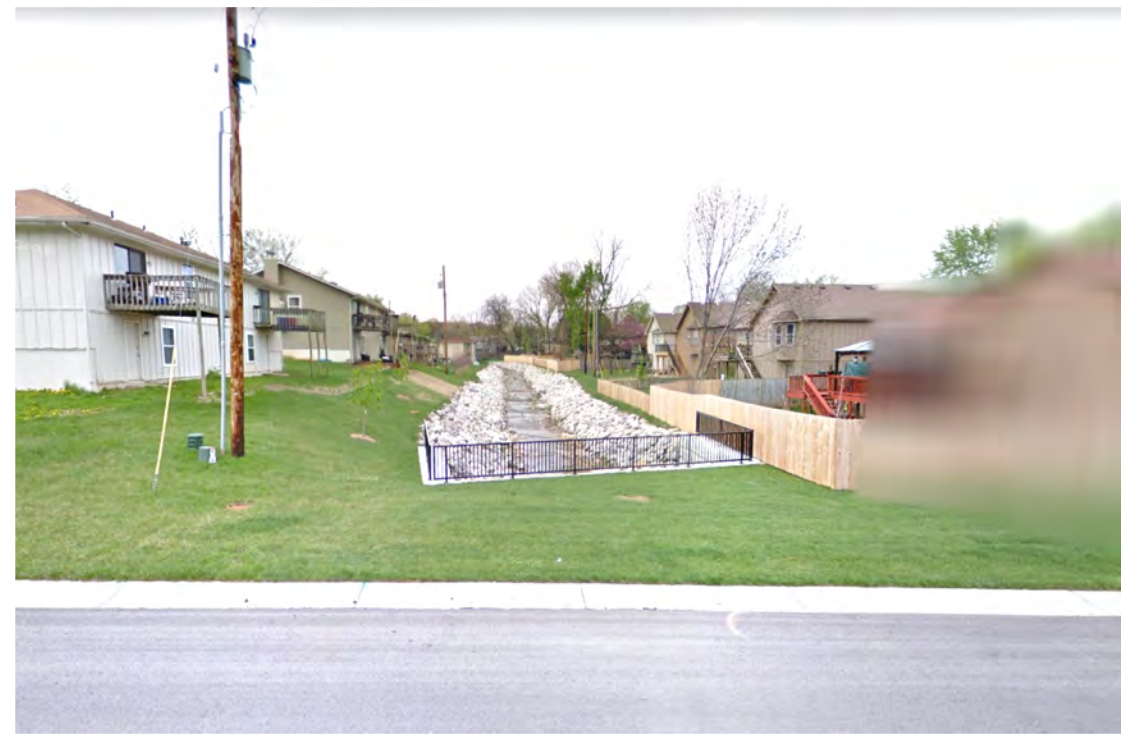


Images from Google Street View





# Shawnee Creek East



Images from Google Street View



# Meyer Creek Drainage





# 75<sup>th</sup> St. – Antioch to E. Frontage



Images from Google Street View

# Johnson Drive Bridge over Turkey Creek



Image from Google Street View



# Various Drainage Projects

## Corrugated Metal Pipe Deterioration





# Sherwood Forest Drainage Repairs



Images from Google Street View



# Johnson Drive Reconstruction





# Residential Street Group V





# Antioch Road



Images from Google Street View



# Shawnee Mission Pkwy & Antioch Intersection



Images from Google Street View



# Shawnee Mission Parkway over BNSF Bridge



Images from Google Street View

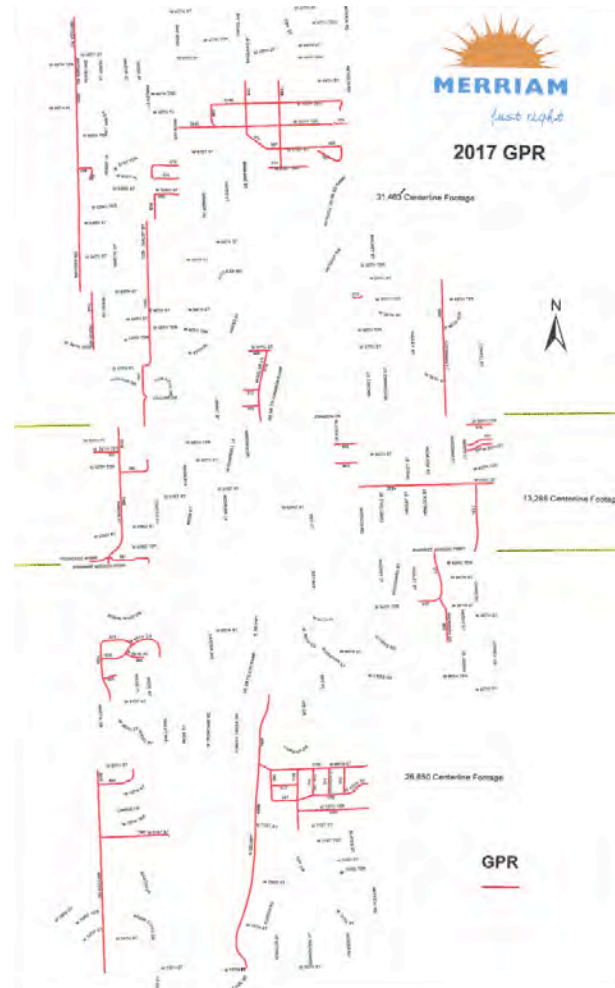
# Farley Avenue Reconstruction



Images from Google Street View



# Ground Penetrating Radar Street Evaluation



# Turkey Creek Bridge under SM Pkwy

## Current Project





# 67<sup>th</sup> Street Reconstruction and Ped Bridge

## Current Project





# Johnson Drive – Kessler to Mackey: 2020



Images from Google Street View



# Merriam Drive – Johnson to Antioch: 2021/22



Images from Google Street View



# 55<sup>th</sup> Street – Merriam Dr to Switzer: 2023



Images from Google Street View



# 49<sup>th</sup> Street – Antioch to Switzer: 2024



Images from Google Street View



# 67<sup>th</sup> St. / E. Frontage Road Intersection Study



Images from Google Street View

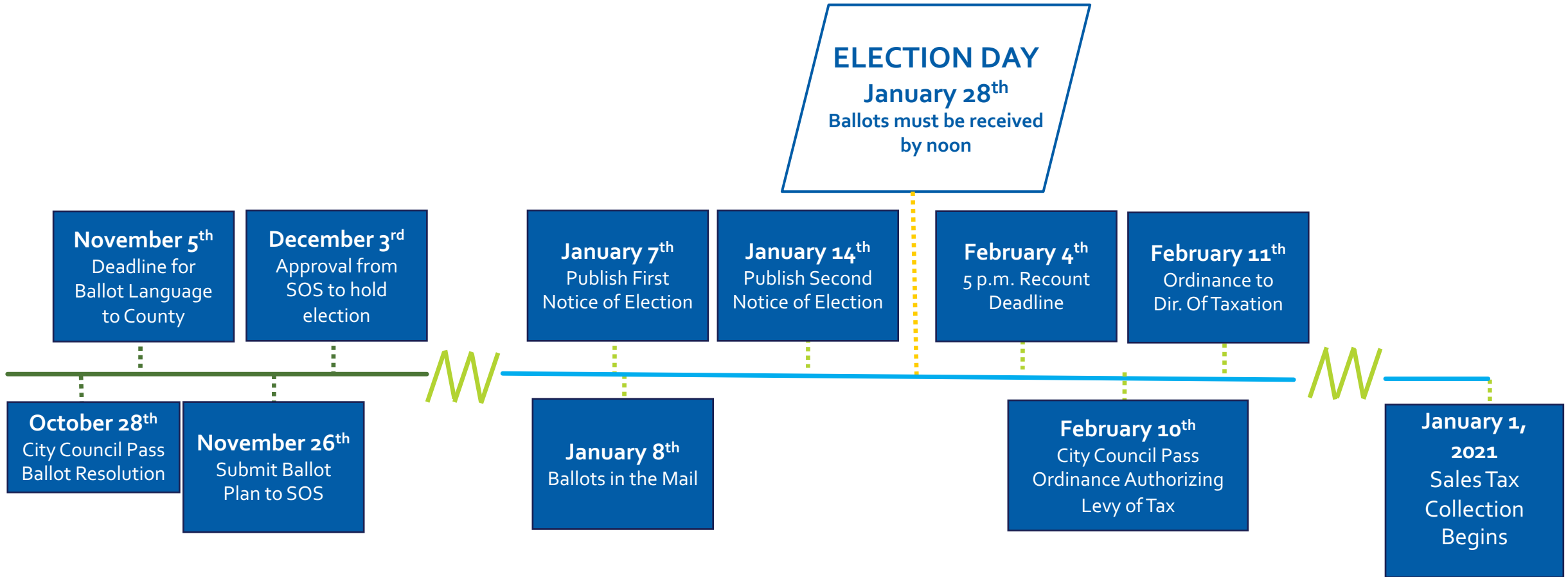
# How much is a ¼-cent sales tax?

- \$10 = \$0.025
- \$50 = \$0.125
- \$100 = \$0.25
- \$250 = \$0.625
- \$500 = \$1.25
- \$1,000 = \$2.50

# Staff Recommendation

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

# Election Timeline



# Questions/Next Steps





## **CITY COUNCIL SUGGESTED MOTIONS FOR YOUR CONSIDERATION**

### **CONSENT AGENDA**

1. Move that the council approve Consent Agenda item 1.

### **MAYOR'S REPORT**

1. Move that the council confirm the appointment of Ryan Denk with McAnany, Van Cleave & Phillips as City Attorney.

### **EXECUTIVE SESSION**

1. "Move that the council recess into Executive Session to discuss possible Department Head appointments as justified by K.S.A. 75-4319(b)(1), which allows the city council to recess into executive session to discuss personnel matters of nonelected personnel. Present will be the City Administrator, Assistant City Administrator, City Attorney and Governing Body. The open meeting will resume in the council chambers at \_\_\_\_\_."
2. Move that the council accept the recommendation of the Mayor and City Administrator and confirm the appointment of Jim MacDonald as Public Works Director.
3. Move that the council accept the recommendation of the Mayor and City Administrator and confirm the appointment of Darren McLaughlin as Police Chief.
4. Move that the council accept the recommendation of the Mayor and City Administrator and confirm the appointment of Donna Oliver as Finance Director.

### **FINANCE AND ADMINISTRATION**

1. No motion.

### **COMMUNITY DEVELOPMENT/PUBLIC WORKS**

1. No motion.

### **STAFF ITEMS**

**REGULAR PLANNING COMMISSION MEETING  
CITY OF MERRIAM, KANSAS  
9001 W. 62<sup>nd</sup> St.  
COUNCIL CHAMBERS  
MINUTES**

**September 4, 2019  
7:00 P.M.**

The Regular Planning Commission meeting for the City of Merriam, Kansas was called to order at 7:00 p.m. by Chair Brian Dailey on Wednesday, September 4, 2019 in the Council Chambers with the Chair inviting everyone present to participate in the Pledge of Allegiance to the Flag.

**I. ROLL CALL**

Members Present: Bill Bailey, Secretary  
Bill Carter  
Reuben Cozmyer  
Brian Dailey, Chair  
Judy Devereay  
Mitchell Fowler  
Russ Harmon  
Leah Ann McCormick, Vice Chair-arrived 7:05 p.m.  
Cole Stephens

Members Absent:

Also Present: Bryan Dyer, Community Development Director, and Nancy Yoakum, Recording Secretary.

**II. APPROVAL OF MINUTES OF JULY 3, 2019**

Chair Brian Dailey stated that the Planning Commission members had received a copy of the July 3, 2019 meeting minutes and asked if there were any corrections or additions.

Hearing no comments, Chair Brian Dailey entertained a motion.

**MITCHELL FOWLER MOVED THAT THE MINUTES OF THE PLANNING COMMISSION MEETING OF JULY 3, 2019 BE APPROVED. REUBEN COZMYER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.**

**III. ITEMS OF BUSINESS**

- 1. SDP19-000002 Site Development Plan for an office building located at 5519 Merriam Dr. located in a I-1 (Light Industrial) District and C-2 (Retail Business) District.**

Chair Brian Dailey presented to the Planning Commission application SDP19-000002 a request for an office business located at 5519 Merriam Dr.

Community Development Director Bryan Dyer stated the applicant is requesting a site development plan for an addition to an office building for DS bus lines. Mr. Dyer stated the property is located at 5519 Merriam Dr. Mr. Dyer reviewed the surrounding zoning and land uses.

Mr. Dyer stated that on February 6, 2019 DS Bus Lines came before the Planning Commission for a similar application for a site development plan and plat for the purpose of expanding their existing office building from 2,400 to 4,200 sq. ft. Mr. Dyer stated at that time they mentioned they may be coming forward to the Planning Commission for rezoning and additional site development.

Mr. Dyer stated that on February 25, 2019 DS Bus Lines received approval for a final plat and building expansion but construction has not commenced. Mr. Dyer stated that after consideration DS Bus Lines decided they would like to expand the building an additional 860 sq. ft. which would bring the total square footage to approximately 7,500 sq. ft.

Mr. Dyer stated that staff does have the ability to administratively approve building expansions up to five (5) percent, but this building expansion is over five (5) percent, and needs Planning Commission review and approval.

Mr. Dyer reviewed the expansion and stated they have more than enough parking spaces to meet the code requirements. Mr. Dyer stated that the expansion will match the existing metal building, EIFS façade and stone veneer facing Merriam Dr.

Mr. Dyer stated that the owner does acknowledge they are light on landscaping and when the development comes before the Planning Commission for rezoning and development plan, the development plan will include landscaping that will meet city requirements.

Mr. Dyer stated that staff does recommend approval and would answer questions from the Planning Commission, and stated the applicant's representative is present.

Chair Brian Dailey inquired if any of the Planning Commissioners had questions for Mr. Dyer. Hearing none, Chair Brian Dailey invited the applicant to address the Planning Commission.

Kimball Hales, 7007 College Blvd., Ste. 415, Overland Park, KS from Finkle Williams Architecture introduced himself to the Planning Commission. Mr. Hales stated he did not have any additional information to add to Mr. Dyer's presentation, but stated he would answer any questions from the Planning Commission.

Chair Brian Daily inquired if there were any questions for Mr. Hales. Hearing none, he entertained a motion.

**RUSS HARMON MOVED THAT THE PLANNING COMMISSION APPROVE APPLICATION SDP19-000002 SITE DEVELOPMENT PLAN FOR AN OFFICE BUILDING LOCATED AT 5519 MERRIAM DR. WITH THE CONDITIONS LISTED IN THE STAFF REPORT. BILL BAILEY SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.**

## **2. Adoption of the 2020 Planning and Zoning Schedule.**

Community Development Director Bryan Dyer stated that the schedule for 2020 has a few items to note. Mr. Dyer stated there would be two (2) City Council meetings that will be cancelled due to the holidays. Mr. Dyer stated May 25 due to Memorial Day and December 28 due to Christmas.

Mr. Dyer stated that the PC items for those months would be heard in June and January.

Mr. Dyer stated if there is a January Planning Commission meeting, it will be held on Thursday, January 2<sup>nd</sup> due to the New Year holiday.

Mr. Dyer stated he would answer any questions of the Planning Commissioners.

Chair Brian Dailey inquired if there were any questions. Hearing none, he entertained a motion.

**BILL BAILEY MOVED THAT THE PLANNING COMMISSION ADOPT THE 2020 PLANNING AND ZONING SCHEDULE. COLE STEPHENS SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.**

**3. Consider finding the City of Merriam 2020-2024 Capital Improvement Program to be in conformance with the Merriam, Kansas Comprehensive Plan.**

Commissioner Judy Deverej asked to be recused from this discussion because she is a CIP employee.

Chair Brian Dailey asked Community Development Director Bryan Dyer to discuss the program.

Mr. Dyer stated that each year the City of Merriam adopts a five (5) year Capital Improvements Plan to guide the city in decisions related to city improvements. Included in the packet is the 2020-2024 Capital Improvements Plan, which has been adopted by City Council. Mr. Dyer stated as required by state statutes and city ordinances the Planning Commission is required to review the plan and find if it complies or does not comply with the city's adopted comprehensive plan.

Mr. Dyer reviewed some of the highlights of the Capital Improvement Program and stated that one of the central tenants of the CIP plan is the reconstruction of Johnson Dr. from Kessler to Mackey St. Mr. Dyer stated the city will continue with the sidewalk in-fill program along with stormwater facility improvements. Mr. Dyer stated that the new community center will continue to be a focus through the CIP program.

Mr. Dyer stated that staff recommends finding the Capital Improvement Program in conformance with the city's adoptive comprehensive plan.

Chair Brian Dailey inquired if there were any questions or comments.

Commission Bill Bailey inquired if there will be a Slater St. overlay after the Community Center project has been completed.

Mr. Dyer stated he would contact the CIP staff and respond to the Planning Commission as a whole with a response.

Commissioner Bill Bailey inquired if the brushed aluminum street light poles would be replaced with the black pole with hanging flower baskets on Slater St. and IKEA Way leading to the new Community Center.

Mr. Dyer stated he would contact the CIP staff and respond to the Planning Commission as a whole with a response.

Commissioner Bill Carter inquired if the city is in contact with Kansas Department of Transportation (KDOT) in regards to the proposed project at 75<sup>th</sup> Street and I-35.

Mr. Dyer stated the project will be coordinated through the County Assistance Road System Program (CARS), but city staff is in communications with the county and KDOT.

Chair Brian Dailey inquired if there were any additional questions. Hearing none, he entertained a motion.

**BILL BAILEY MOVED THAT THE PLANNING COMMISSION FIND THAT THE CITY OF MERRIAM 2020-2024 CAPITAL IMPROVEMENT PROGRAM IS IN CONFORMANCE WITH THE MERRIAM, KANSAS COMPREHENSIVE PLAN. LEAH ANN MCCORMICK SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.**

**IV. BUSINESS FROM THE FLOOR**

- Mr. Dyer stated there are two openings on the Board of Structural Appeals (BSA) and discussed the board's purpose. Mr. Dyer inquired if there are two volunteers to be appointed to the BSA board. Chair Brian Dailey and Commissioner Reuben Cozmyer volunteered for the openings. Mr. Dyer stated the appointments will occur at the next City Council meeting on September 23<sup>rd</sup>.
- Audi car dealership is open.
- The Advent medical office building shell is complete and tenant finishes are under construction.
- The Advent parking garage is complete and open and the access road is near completion.
- Reed Automotive has submitted a building permit for construction.
- Switzer Senior Villas have submitted building permit plans.
- No updates on the K-mart property, except for the progress of Freddy's Frozen Custard and Steak Burgers.
- The first Comprehensive Plan Advisory Committee meeting has taken place and went very well. The next meeting will be October 16<sup>th</sup> at 6:30p.m. in the training room.
- There is a link for the comprehensive plan [www.merriam2040.org](http://www.merriam2040.org) which will also be integrated on the city website.
- There have been no applications submitted for the old Hen House building.

**V. UNFINISHED BUSINESS**

None

**VI. OLD BUSINESS**

None

**VII. ADJOURNMENT**

With no further business for discussion, Chair Brian Dailey asked for a motion for adjournment.

**LEAH ANN MCCORMICK MOVED FOR ADJOURNMENT.** The meeting was adjourned 7:41 p.m.

**Respectfully Submitted,**

**Nancy B. Yoakum**



**Recording Secretary**

Approved:

DRAFT