

## MERRIAM CITY COUNCIL AGENDA

CITY HALL

9001 WEST 62<sup>ND</sup> STREET

October 12, 2020

7:00 P.M.

This is a virtual meeting.

The public may participate by joining the meeting at:

<https://us02web.zoom.us/j/89812726192?pwd=bjJjakV0djI0K2svZFRcjNYd2JYUT09>

1-929-205-6099

Webinar ID: 898 1272 6192

Passcode: 612345

**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**

In response to COVID-19, public comment that normally occurs during the City Council meeting has been temporarily suspended. Members of the public are still encouraged to share comments about matters that may or may not appear on the agenda. Public Comments are limited to five (5) minutes or a maximum of 850 words for written submissions.

**Please note: Public Comments will only be taken *via email* to the City Clerk at [jpinnick@merriam.org](mailto:jpinnick@merriam.org) prior to 6:00pm on the date of the meeting. *In accordance with the Governing Body Rules of Procedure, the City reserves the right to refuse Public Comments that are personal, impertinent or slanderous.***

### **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 so requests, in which case that item will be removed from the Consent Agenda and considered separate.

1. Consider approval of the minutes of the City Council meeting held September 28, 2020.
2. Consider approval of the purchase of public safety radios.

3. Consider approval of touchless upgrades to city facilities.
4. Consider approval of an agreement with American Specialty Health for Community Center membership.

**V. MAYOR'S REPORT**

1. Employee Service Awards 4<sup>th</sup> Quarter 2020.
2. Police Contacts and Legal Authority Presentation.
3. Traffic Complaints and Speed Enforcement Presentation.

**VI. COUNCIL ITEMS**

1. Consider approval of an ordinance adopting the 2020 Uniform Public Offense Code (UPOC). (Recommend waiving the first reading)
2. Community Center Update.
3. CIP Update.

**VII. STAFF ITEMS**

**VIII. EXECUTIVE SESSION**

**IX. ADJOURNMENT**

Respectfully submitted,

*Juliana Pinnick*

City Clerk

**MERRIAM CITY COUNCIL MINUTES  
MERRIAM CITY HALL  
9001 W 62<sup>ND</sup> STREET  
Monday, September 28, 2020  
7:00 P.M.**

**This was a virtual meeting via Zoom.**

**I. CALL TO ORDER**

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

**II. ROLL CALL**

The following Councilmembers were present via Zoom meeting:

Scott Diebold  
Chris Evans Hands  
Bruce Kaldahl  
Brian Knaff  
David Neal  
Bob Pape  
Jason Silvers  
Whitney Yadrich

Staff present via Zoom meeting: Chris Engel, City Administrator; Ryan Denk, City Attorney; Meredith Hauck, Assistant City Administrator; Jim MacDonald, Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Bryan Dyer, Community Development Director; Donna Oliver, Finance Director; and Juli Pinnick, City Clerk.

**III. PUBLIC ITEMS**

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S. Henderson, 5821 Mackey St. commented, I am writing in response to a public comment made by Sam Matier. I live on Mackey St. here in Merriam. When I

moved into the neighborhood 2 years ago in the spring, a litter of feral kittens were in my back yard in a window well. That year I adopted one of those, and my daughter found homes for 3, so 4 of the 5 were homed.

A neighbor who has since moved knew the process by the local animal shelters to trap and neuter ferals, thereby decreasing the future populations. Feeding them makes it easier to trap them. She was able to get neutered.

Since that time, on my own, I trapped a cat, which I think was more of a stray domestic who no longer has a home for whatever reason. I took it to two shelters and was turned away because they were full. The SPCA on Antioch told me to call Merriam Animal Control at the police department. Well that was a frustrating experience because I found out there is no animal control in Merriam, at least none that will come get feral cats and take them away. Also, I sought out a program I heard of that would come to your neighborhood and trap several cats at once for you and take them away, neuter and bring them back to release (which they say is the only humane way they will do it.) Unfortunately when they got my address as Johnson County instead of K.C. Kansas, they would not proceed to schedule it. The COVID happened and all the services for this shut down all summer.

So the only option is to trap and release, which myself and another neighbor have done for 4 cats at our own expense. Kansas City Spay and Neuter (now call Pet Resource) will spay or neuter, and gives them a rabies shot for \$35. So as a citizen, I think I and other neighbors have made the recommended attempts to decrease the feral population and its working.

Mr. Matier I have only known because he walks his dog off leash down our street and the dog Bella has run up into my yard and garage and startled me and chased my cat, which is not appreciated.

#### **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 so requests, in which case that item will be removed from the Consent Agenda and considered separate

1. Consider approval of the minutes of the City Council meeting held September 14, 2020.
2. Consider approval of an agreement to purchase tasers in 2021.

Councilmember Hands requested item 2 be pulled from the consent agenda.

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

Councilmember Hands asked what fund the tasers would be purchased from.

Police Chief Darren McLaughlin commented that the tasers will be purchased using funds from the Equipment Reserve Fund.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEM 2. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## **V. MAYOR'S REPORT**

1. Consider approval of a resolution terminating the Merriam Pointe Redevelopment Agreement.

Mayor Sissom explained that the next four items on the Agenda are all related to Tract B of the Merriam Pointe Redevelopment Project. Staff will make a presentation covering all four items and then there will be a series of motions related to these items. All items must be approved in order for the project to move forward. Once the presentation is over, Council will have the opportunity to ask questions.

Mr. Engel displayed a visual history of the development beginning in 2004 which depicted the development of the Merriam Pointe project. This TIF project has been very successful in the fact that in 2004 there was a large vacant building and vacant land which included a very large drainage ditch that was deemed undevelopable. The old vacant building was torn down and over the course of 16 years there has been four successful care dealerships opened.

To illustrate the success of the development, Mr. Engel noted that in 2019 those four dealerships have produced \$2 million in property tax revenue and \$1 million in sales tax revenue. This amount of revenue to the city's general fund is more than all residential property taxes collected in Merriam. By the city investing with the businesses in the community, it has allowed property tax mil rates to remain steady which helps all residents in Merriam.

While many of the lots in the development were built out, the Tract B parcel, remained a drainage ditch. In late 2016, the owner of Tract B, Mr. Richard Webb, approached the city with his vision to make the tract a developable site by re-channeling the water and filling in the ditch. This would be an expensive endeavor and Mr. Webb was able to secure some

investment partners to help get the site to a developable state. He approached the city to become an equity partner through TIF incentives. The City entered into a Redevelopment Agreement (RDA) with Mr. Webb for this project. The city's total investment in the project would be \$6 million. Prior to the development of the lot by Mr. Webb, the lot was assessed at \$0 and did not generate any tax revenue.

Today, the lot is a pad ready site for development of a car dealership. In 2019, the Reed family purchased the Hyundai dealership and the lot next to Hyundai and began building the Reed Dodge Chrysler Jeep Ram dealership. Once that dealership began construction, the Reed family wanted to purchase Mr. Webb's Tract B for a parking lot expansion of the new Dodge Chrysler Jeep Ram dealership. Because the city has a Redevelopment Agreement (RDA) with Mr. Webb, he is unable to sell to the Reed dealership. In order for Mr. Webb to be able to sell tract B to the Reed dealership, the city's RDA with Mr. Webb must be terminated.

Mr. Engel further explained the history and details of the Redevelopment Agreement (RDA).

In March 2011 the City executed a Redevelopment Agreement (RDA) for the Merriam Pointe project with Merriam Investors, LLC and Hendrick Automotive Group. Over the next several years, Merriam Pointe became the location of three new successful automobile dealerships. In 2016, Hendrick was released from that agreement after the successful completion of their development responsibilities leaving only the City of Merriam and Merriam Investors as participants

Beginning in early 2016, the City began additional conversations with Merriam Investors and Merriam Luxury Imports aka Richard Webb, owner of Infiniti of Kansas City, about their desire to construct a new dealership south of Infiniti over a drainage area known as "Tract B." At that time, Mr. Webb indicated the cost to develop the site would be prohibitive without the assistance of \$6 million dollars in tax increment financing (TIF), as well as the purchase of surplus city property.

By 2017, city staff had negotiated the sale of the surplus property and drafted a Second Amended and Restated Redevelopment Agreement (RDA) with Merriam Investors and Merriam Luxury Imports granting up to \$6 million in TIF funding for the construction of a new dealership. City Council approved the new RDA on July 24, 2017 and Mr. Webb had until July 24, 2020 to construct his dealership. By early 2020, Mr. Webb had completed millions of dollars of site work to transform the drainage area into a pad-ready, revenue-producing site. However, due to his difficulties in securing a final tenant the City Council voted on May 11, 2020 to approve a Third Amended and Restated Redevelopment Agreement (RDA) that extended his completion deadline until

December 31, 2021.

Shortly after, the Mayor was approached by Mr. Reed requesting the City further work with Mr. Webb to facilitate the sale of Tract B from Mr. Webb to Mr. Reed. Mr. Reed is the new owner of Reed Hyundai and Reed Chrysler Dodge Jeep Ram (currently under construction to the south of Tract B). Mr. Webb was still having difficulty securing an end-user and desired to sell to Mr. Reed. However, due to restrictions within the existing RDA, Mr. Webb is unable to sell Tract B without a newly constructed dealership and still receive TIF reimbursement for his completed drainage improvements.

It is a City Council Goal to support existing businesses. Yet, it is important to all parties, especially the City, this transaction be a true “win-win-win.” While Mr. Reed obtaining the property and Mr. Webb being reimbursed for his expenses are clear “wins” for them, it's important to understand what the City gains in this transaction. This proposed agreement: decreases the City's contribution to the deal by reducing the TIF reimbursement from \$6 million to \$5 million; increases the sales tax generated due to Mr. Reed's multiple brands vs Mr. Webb's single brand; and terminates the Merriam Pointe TIF years early returning all property taxes to the general tax rolls.

After many discussions between the principals, attorneys, and lenders, as well as several meetings with staff, including Mayor Sissom, a series of new agreements have been drafted that honor the intent of the existing RDA between the City and Mr. Webb while allowing for the sale of Tract B to Mr. Reed for the expansion of his new dealership as well as the possibility of future brand expansion.

The Termination Agreement indicates what obligations still exist and must be met for the successful termination of the existing RDA to occur. Specifically, the property must be sold to Mr. Reed, the site work completed by 12/31/21, and Mr. Webb must submit up to \$5 million in TIF-eligible expenses. Once complete, Mr. Webb will be eligible to receive up to \$5 million dollars in TIF-reimbursement from funds the City will deposit into an escrow account upon approval of the agreement. The Acknowledgement and Release and Assignment of Developer Rights releases Merriam Investors, LLC from their obligations under the existing RDA because they have been satisfied and assigns their developer rights to MLI. The Escrow Agreement outlines when and how the escrow funds will be distributed, or returned to the City for non-performance. The Termination and Release of Covenants, Easements and Reservations is signed by all property owners in Merriam Pointe and clears the property of all rights and restrictions.

Mr. Engel outlined what the Termination Agreement will accomplish:

**RDA (current agreement)**

45,000 sq. ft. dealership  
 \$6 million in TIF (\$4M increment + \$2M)  
 Payable once operational  
 Has until 12/31/21 to open  
 Only contemplates single brand  
 TIF runs until July 2023

**Termination Agreement (recommended)**

4-ac outdoor showroom + potential expansion  
 \$5 million in supplemental TIF  
 Payable at completion of construction  
 Has until 12/31/21 to complete construction  
 Chrysler, Dodge, Jeep, Ram + future use  
 TIF terms upon completion & returns to tax rolls

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE A RESOLUTION TERMINATING THE MERRIAM POINTE REDEVELOPMENT AGREEMENT AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING DOCUMENTS. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider approval of a resolution transferring funds from the I-35 TIFB CIP Fund to the I-35 TIFB District Fund.

City Administrator Chris Engel stated that this item is another piece of the termination agreement. Once the termination and escrow agreement with Mr. Webb is approved, the City will need to fund an escrow account with \$5 million from I-35 TIFB funds. Currently the City has I-35 TIFB money in the following 2 funds:

I-35 TIFB District Fund	\$2,016,715
I-35 TIFB CIP Fund	<u>\$4,465,388</u>
Total	\$6,482,103

The I-35 TIFB District Fund collects TIF funds and makes expenditures per developer agreements. At the end of the year, excess TIF funds are transferred to the CIP fund to pay for capital improvements within the TIF boundaries.

In order to fund the escrow agreement referenced in the agreement with Mr. Webb, the City will need to transfer \$3 million back from the I-35 TIFB CIP Fund to the I-35 TIFB District Fund. The resolution is necessary to authorize the Finance Director to make this \$3 million transfer.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A RESOLUTION TRANSFERRING FUNDS FROM THE I-35 TFB CIP FUND TO THE I-35 TIFB DISTRICT FUND. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## VI. PLANNING COMMISSION

1. Consider approval of a preliminary development plan for an automobile dealership located at 7020 and 7000 W. Frontage Rd.

Community Development Director Bryan Dyer presented the background for this item. This item is also connected to the Termination Agreement. 7000 W. Frontage Road is currently owned by Merriam Luxury Imports, LLC. Merriam Luxury Import's principal member is Richard Webb. Mr. Webb is also the principal member of Infiniti of Kansas City. Mr. Webb has provided a letter stating that Reed Family Properties can act as owner/agent for the property located at 7000 W. Frontage Road.

As part of the original 2004 approval of the Merriam Pointe development, 7000 W. Frontage Road was conceived to remain a drainage way. In 2017, Mr. Webb received city approval to construct a 44,998 square foot dealership on the property. Before the dealership could be constructed a significant amount of dirt work and drainage improvements needed to occur on the property. Following city approval, Mr. Webb began working on those improvements, which have recently been completed.

Reed Family Properties is now requesting approval of a final plat and preliminary development plan to combine the 7000 W. Frontage Road lot with their existing automobile dealership that is under construction immediately to the south at 7020 W. Frontage Road. The final plat (Merriam Pointe Eighth Plat – PA20-000002) for the two properties is also on this City Council agenda.

Reed Family Properties is purchasing 7000 W. Frontage Road to add needed vehicle storage and parking for the Jeep Chrysler Dodge Ram dealership they are constructing. The additional property will provide 364 parking more spaces bringing the total number of spaces for the development to 615.

Reed Family Properties has future plans to construct a new automobile dealership on the 7000 W. Frontage Road lot. The submitted preliminary development plan has been designed for the potential of another dealership. A new preliminary development plan will need to be approved prior to the construction of the new dealership.

On September 2, 2020, the Planning Commission held a public hearing and received no comments from the public. The Planning Commission then closed the public hearing and based on information supplied by the applicant, as well as the criteria outlined in the Merriam Code and Kansas law as outlined in the Planning Commission Staff Report, unanimously recommended approval of the rezoning and associated preliminary

development plan, with conditions which were outlined in the Action Form and Staff Report included in the City Council Agenda Packet.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL CONCUR WITH THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE, WITH CONDITIONS, A PRELIMINARY DEVELOPMENT PLAN FOR THE PARKING LOT EXPANSION FOR AN AUTOMOBILE DEALERSHIP LOCATED AT 7000 AND 7020 W. FRONTAGE RD. AND AUTHORIZE THE MAYOR TO SIGN THE EFFECTUATING ORDINANCE. COUNCILMEMBER SILVERS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider acceptance of the dedication of easements on Merriam Pointe Eighth Plat.

Community Development Director Bryan Dyer commented that this is the final item related to the Merriam Pointe Termination Agreement. The applicant, Reed Family Properties, represented by BHC Rhodes Engineering is requesting approval of a final plat to combine the property they currently own (7020 W. Frontage Road) with property they are in the process of purchasing from Merriam Luxury Imports (7000 W. Frontage Road). Reed Family Properties has also submitted an application requesting approval of a preliminary development plan (PUD20-000002) that combines the two properties and expands the Reed Jeep Chrysler Dodge Ram dealership (under construction) parking lot onto the property being acquired from Merriam Luxury Imports. That preliminary development plan is on this City Council agenda.

If approved, the final plat will combine Merriam Pointe Sixth Plat, Lot 1 (7000 W. Frontage Road) and Merriam Pointe Seventh Plat, Lot 1 (7020 W. Frontage Road) into one lot. The proposed final plat conforms with the submitted preliminary development plan for the subject properties.

A condition of approval is that the Merriam Pointe Eighth Plat be filed with the county prior to the issuance of an occupancy permit for the parking lot expansion.

The subject property is zoned PUD-G (Planned Unit Development - General) District and the proposed final plat will create one (1) lot (Lot 1: 363,077 sq. ft./8.3352 acres).

At their September 2, 2020 meeting, the Planning Commission unanimously approved the plat and forwarded it to the City Council for the acceptance of easements with conditions.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL ACCEPT THE DEDICATION OF EASEMENTS SHOWN ON THE MERRIAM**

**POINTE EIGHTH PLAT. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

3. Consider approval of an ordinance amending Chapter 74, Article XI-Solar Collection Systems of the Merriam Code of Ordinances.

Community Development Director Bryan Dyer provided the background for this item.

At the June 8, 2020 meeting, the City Council reviewed a staff memo concerning the city's solar collection system ordinances in Chapter 74, Article XI of the Merriam Code. After reviewing the memo, Council approved a motion directing the Planning Commission to draft, review, and consider amendments to the city's zoning ordinances related to the issuing of permits for solar collection systems. Before approving the motion, Council expressed a desire to streamline the solar collection system permitting process. Specifically, the Council requested the Planning Commission consider removing the conditional use permit and Planning Commission review requirements, allowing solar collection systems to face the right-of-way, and removing language concerning the abandonment and/or disrepair of solar collection systems.

At the August 5, 2020, Planning Commission meeting, Commissioners discussed Council's comments and concurred with their suggestions. The Commission then directed staff to draft an ordinance amending Chapter 74, Article XI – Solar Collection Systems.

Included in the Council Agenda Packet are "marked up" and "clean" versions of the draft ordinance. The ordinance removes the conditional use permit and Planning Commission review requirements, eliminates the abandonment and/or disrepair provisions, and allows solar collection systems to face the right-of-way. The installation of solar collection systems still requires the issuance of a building permit. The review of a solar collection system building permit will include determining if the installation complies with the requirements outlined in Chapter 74, Article XI. Code enforcement can pursue solar collection systems that are in disrepair through Merriam Code's nuisance provisions.

On September 2, 2020, the Planning Commission held a Public Hearing on the draft ordinance amending the Solar Collection System sections of the Merriam Code. There were no Public Comments and following the closing of the Public Hearing, the Planning Commission unanimously recommend approval of the draft ordinance.

Councilmember Hands asked when these provisions were last updated and how many solar panel collection systems have been installed.

Mr. Dyer responded that these regulations were last updated in 2011 and he estimates there have been about 15 solar collection installations. He will verify that number and report back to council.

Councilmember Yadrich asked if solar panel installations would be covered by the sustainability grants being offered in 2021.

Mr. Dyer responded yes, that solar panel installations would be covered through the sustainability grant program.

**COUNCILMEMBER YADRICH MOVED THAT THE COUNCIL CONCUR WITH THE RECOMMENDATION OF THE PLANNING COMMISSION AND APPROVE AN ORDINANCE AMENDING CHAPTER 74 OF THE MERRIAM CODE OF ORDINANCES RELATED TO INSTALLATION OF SOLAR COLLECTION SYSTEMS. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

## **VII. COUNCIL ITEMS**

### **A. Finance and Administration**

1. Consider approval of a Coronavirus Relief Fund Subrecipient Grant agreement with Johnson County.

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

The CARES Act established the Coronavirus Relief Fund (CRF) and appropriated \$150 billion in funding to state and local governments to cover costs incurred due to the COVID-19 public health emergency. In April, Johnson County received approximately \$116 million in CRF funding directly from the U.S. Treasury and subsequently received an additional \$8 million from the State for a total of approximately \$124 million. In June, the County announced its intention to divide the original allocation of \$116 million into three phases, including 45% or approximately \$50 million going to local government.

A committee of city and county representatives worked to develop a proposed method of sharing the Phase 1 funds to the various cities in Johnson County, which included immediate reimbursement of actual expenses incurred in response to the COVID-19 emergency and review and approval of potential additional expenses anticipated or desired through the remainder of 2020. Each city is eligible to receive a total allocation for both

categories that is based upon population. For Merriam, the total possible allocation is \$348,842.85. To date, the City has been reimbursed for \$67,749.57 in actual expenses and has received preliminary approval from the County for an additional \$281,093.28 in actual expenses, which will be submitted for reimbursement in the coming months.

The County has submitted a Subrecipient Grant Agreement ("Agreement"), which sets forth the terms and conditions associated with the City's acceptance of these funds. The Agreement defines the costs eligible for reimbursement as the necessary expenditures related to the City's response to COVID-19 and incurred between March 1, 2020 and December 30, 2020. Additionally, the Agreement includes provisions associated with reimbursement procedures, records retention, reporting requirements, and other standard federal contract terms. Finally, the Agreement and CARES Act may be amended as legislative changes are made or additional guidance becomes available.

Ms. Hauck displayed a chart depicting the expenses that the city has been reimbursed for to date and a list of planned expenses in the future. Planned expenses include upgrades to the city's technology operations, including a laptop pool that will allow employees to check out a laptop if they need to work from home, upgrades to the court software that will allow for texting and email of defendants. Upgrades to the city restroom facilities will include contactless doors faucets, soap and towel dispensers. There will also be air and surface sanitation equipment purchased.

**COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A SUBRECIPIENT GRANT AGREEMENT WITH JOHNSON COUNTY FOR CORONAVIRUS RELIEF FUNDS. COUNCILMEMBER SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

2. Consider approval of an ordinance establishing a Federal Grant Fund. (recommend waiving the first reading)

Assistant City Administrator Meredith Hauck commented that this item is related to the Cares Funding and in order to better track expenditures and grant reimbursements related to the CARES Funding, staff recommends creating a new Federal Grant Fund. This fund will allow both the expenditures and reimbursements to be handled within the same fund. Without its creation, these unbudgeted expenditures will be funded out of existing

department budgets within the General Fund and the Equipment Reserve Fund, which could result in individual department expenditures exceeding their budgets.

There was some discussion regarding the fund and utilizing the fund for other grants.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL WAIVE THE CUSTOMARY FIRST READING OF AN ORDINANCE ESTABLISHING A FEDERAL GRANT FUND. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE AN ORDINANCE ESTABLISHING A FEDERAL GRANT FUND. COUNCILMEMBER NEAL SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

3. Monthly Finance Report. (August – included in packet)

Finance Director Donna Oliver commented that the sales tax collections have been coming in better than anticipated.

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

1. Community Development Update.

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

Switzer Senior Villas project has only landscaping to complete and they have been issued a Certificate of Occupancy.

The Reed car dealership has received their Certificate of Occupancy and they will be moving in soon.

**VIII. STAFF ITEMS**

**IX. NEW BUSINESS**

**X. EXECUTIVE SESSION**

**XI. ADJOURNMENT**

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER PAPE MOVED TO ADJOURN AT 8:15 PM.**

**COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Respectfully submitted,

*Juliana Pinnick*

Juliana Pinnick

City Clerk

DRAFT



## AGENDA ITEM INFORMATION FORM

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**AGENDA ITEM:** Purchase Public Safety Radios for Fire, Police and Public Works

**SUBMITTED BY:** Chief Darren McLaughlin

**MEETING DATE:** 10-12-2020

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### PROJECT BACKGROUND/DESCRIPTION:

The current radios used by the Fire, Police and Public Works departments have reached end of life. The current radios are not compatible with current technology requirements for an inter-operable regional radio system. As such, the manufacturer, Motorola, no longer supports our current radios and is no longer manufacturing spare parts. This end of life was anticipated and budgeted for.

Several different types of radios were looked at, including those from other vendors by several agencies in Johnson County. It was decided to use the product that the Johnson County Sheriff decided upon after the completion of their evaluation. This was the most prudent choice since we use the Johnson County Radio system and they provide our dispatch services.

### CITY COUNCIL GOALS AND OBJECTIVES

2.1 Improve the utilization of technology to increase efficiency

### FINANCIAL IMPACT

**Amount of Request/Contract:** \$407,631.35

**Amount Budgeted:** \$417,000.00

**Funding Source/Account #:** 2020-2110-421-74-45 (Equipment Reserve Communication/Radio)

### SUPPORTING DOCUMENTS

Motorola Quote

### ACTION NEEDED/STAFF RECOMMENDATION

Approve the purchase of Radio Equipment from Motorola.



**Rev/Combined Quote  
Numbers: QUOTE-  
1297929; 1288752;  
1297909**

**MERRIAM, CITY OF Acct#1012281705**

**Billing Address:**  
MERRIAM, CITY OF  
9000 W 62ND TER  
MERRIAM KS, 66203

**Shipping Address:**  
MERRIAM, CITY OF  
9000 W 62ND TER  
MERRIAM KS, 66203

Quote Date: Rev 9-28-20  
Expiration Date: 10-30-20  
Quote Created By:  
Kris Evans  
krise@commenco.com

**Customer:**  
MERRIAM, CITY OF  
Todd Allen  
tallen@merriam.org  
913-322-5589

**POLICE DEPARTMENT**

Contract:  
21810 - JOHNSON COUNTY (KS)

Line #	Item Number	Description	Quantity	Unit Sale Price	Ext. Sale Price
	<b>APX™ 6000 Series Portable w/Partial Keypad</b>				
1	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	40	\$1,815.60	\$72,624.00
1a	QA01833AH	ADD: EXTREME 1-SIDED NOISE REDUCTION	40	\$15.00	\$600.00
1b	QA05570AA	ALT: LI-ION IMPRES 2 IP68 3400 MAH	40	\$60.00	\$2,400.00
1c	Q361AR	ADD: P25 9600 BAUD TRUNKING	40	\$180.00	\$7,200.00
1d	Q58AL	ADD: 3Y ESSENTIAL SERVICE	40	\$115.00	\$4,600.00
1e	QA09006AA	ADD: ADAPTIVE NOISE SUPPRESSION	40	\$90.00	\$3,600.00
1f	QA09001AB	ADD: WIFI CAPABILITY	40	\$180.00	\$7,200.00
1g	Q498AY	ENH: ASTRO 25 OTAR W/ MULTIKEY	40	\$444.00	\$17,760.00
1h	H38BT	ADD: SMARTZONE OPERATION	40	\$720.00	\$28,800.00
1i	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	40	\$309.00	\$12,360.00
1j	Q629AK	ENH: AES ENCRYPTION AND ADP	40	\$285.00	\$11,400.00
	<b>Standalone Items</b>				
2	PMNN4486A	BATT IMPRES 2 LIION R IP67 3400T	10	\$97.80	\$978.00
3	PMMN4099BL	AUDIO ACCESSORY-REMOTE SPEAKER MICROPHONE,IP68 REMOTE SPEAKER MICROPHONE,3.5MM,UL	40	\$79.20	\$3,168.00
4	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	40	\$99.00	\$3,960.00
5	HLN6875A	BELT CLIP 3 INCH	40	\$7.80	\$312.00
6	RLN5313BXL	1 WIRE RECEIVE ONLY SURVEILLANCE KIT WITH TRANSLUCENT TUBE, EXTRA LOUD	40	\$32.40	\$1,296.00
	<b>Trade-In (Portables)</b>				
7	Trade-In	One-For-One Trade of Portables (40 Qty); Figured @ \$297.00 Each. Expires 10-30-20	1	-\$11,880.00	-\$11,880.00

	<b>APX™ 6500 / Enh Series Mobile Radios - Remote Mount</b>				
8	M25URS9PW1BN	APX6500 7/800 MHZ MOBILE	14	\$1,642.80	\$22,999.20
8a	G806BE	ADD: ASTRO DIGITAL CAI OPERATION	14	\$309.00	\$4,326.00
8b	GA00235AA	ADD: NO GPS ANTENNA NEEDED APX	14	\$0.00	\$0.00
8c	G51AU	ENH: SMARTZONE OPERATION APX6500	14	\$720.00	\$10,080.00
8d	G78AT	ENH: 3 YEAR ESSENTIAL SVC	14	\$176.40	\$2,469.60
8e	G298AS	ENH: ASTRO 25 OTAR W/ MULTIKEY	14	\$444.00	\$6,216.00
8f	B18CR	ADD: AUXILIARY SPKR 7.5 WATT APX	14	\$36.00	\$504.00
8g	G843AH	ADD: AES ENCRYPTION AND ADP	14	\$285.00	\$3,990.00
8h	G67EG	ADD: REMOTE MOUNT E5 MID POWER	14	\$178.20	\$2,494.80
8i	G444AE	ADD: APX CONTROL HEAD SOFTWARE	14	\$0.00	\$0.00
8j	GA01670AA	ADD: APX E5 CONTROL HEAD	14	\$343.20	\$4,804.80
8k	W22BA	ADD: STD PALM MICROPHONE APX	14	\$43.20	\$604.80
8l	G361AH	ENH: P25 TRUNKING SOFTWARE APX	14	\$180.00	\$2,520.00
8m	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870	14	\$25.80	\$361.20
	<b>Trade-In (Mobiles)</b>				
9	Trade-In	One-For-One Trade of Mobiles (14 Qty); Figured at \$297.00 Each. Expires 10-30-20	1	-\$4,158.00	-\$4,158.00

**Sub Total - Police      \$223,590.40**

## FIRE DEPARTMENT

Line #	Item Number	Description	Quantity	Unit Sale Price	Ext. Sale Price
	<b>APX™ 6000 Series (XE) Portable w/Partial Keypad</b>				
1	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	17	\$1,815.60	\$30,865.20
1a	Q361AR	ADD: P25 9600 BAUD TRUNKING	17	\$180.00	\$3,060.00
1b	QA02006AA	ENH: APX6000XE RUGGED RADIO	17	\$480.00	\$8,160.00
1c	Q58AL	ADD: 3Y ESSENTIAL SERVICE	17	\$115.00	\$1,955.00
1d	QA00631AB	ADD: DVRS PSU ACTIVATION	17	\$60.00	\$1,020.00
1e	QA09006AA	ADD: ADAPTIVE NOISE SUPPRESSION	17	\$90.00	\$1,530.00
1f	QA09001AB	ADD: WIFI CAPABILITY	17	\$180.00	\$3,060.00
1g	Q498AY	ENH: ASTRO 25 OTAR W/ MULTIKEY	17	\$444.00	\$7,548.00
1h	H38BT	ADD: SMARTZONE OPERATION	17	\$720.00	\$12,240.00
1i	QA01427AB	ALT: IMPACT GREEN HOUSING	17	\$15.00	\$255.00
1j	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	17	\$309.00	\$5,253.00
1k	Q629AK	ENH: AES ENCRYPTION AND ADP	17	\$285.00	\$4,845.00
	<b>Standalone Items</b>				
2	PMNN4547A	BATT IMPRES 2 LIION TIA4950 R IP68 3100T	17	\$101.40	\$1,723.80
3	NNTN7624C	CHARGER,CHR IMP VEH EXT NA/EU KIT	6	\$283.20	\$1,699.20
4	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	3	\$99.00	\$297.00
5	PMMN4106D	AUDIO ACCESSORY-REMOTE SPEAKER MICROPHONE,AUDIO ACCESSORY-AUDIO ADAPTER,APX XE500 REMOTE SPEAKER MIC, HIGH IMPACT GREEN	17	\$369.60	\$6,283.20
6	NNTN8844A	CHARGER, MULTI-UNIT, IMPRES 2, 6-DISP, NA/LA-PLUG, ACC USB CHGR	2	\$825.00	\$1,650.00
	<b>Trade-In (Portbles)</b>				
7	Trade-In	One-For-One Trade of Portables (17 Qty); Figured at \$250.00 Each. Expires 10-30-20	1	-\$4,250.00	-\$4,250.00

	<b>APX™ 4500 Enhanced Mobile; Remote Mount</b>				
8	M22URS9PW1BN	APX4500 ENHANCED 7/800 MHZ MOBILE	4	\$1,028.40	\$4,113.60
8a	G628AD	INT: REMOTE MOUNT CABLE 17 FT APX	4	\$0.00	\$0.00
8b	G24AX	ENH: 3 YEAR ESSENTIAL SVC	4	\$137.55	\$550.20
8c	GA00235AA	ADD: NO GPS ANTENNA NEEDED APX	4	\$0.00	\$0.00
8d	G67DQ	ADD: REMOTE MOUNT O2 APXM	4	\$178.20	\$712.80
8e	QA02756AD	ADD: P25 9600 TRUNKING W/ INTEROPERABILITY	4	\$942.00	\$3,768.00
8f	G298AS	ENH: ASTRO 25 OTAR W/ MULTIKEY	4	\$444.00	\$1,776.00
8g	B18CR	ADD: AUXILIARY SPKR 7.5 WATT APX	4	\$36.00	\$144.00
8h	G843AH	ADD: AES ENCRYPTION AND ADP	4	\$285.00	\$1,140.00
8i	GA00804AA	ADD: APX O2 CH (GREY)	4	\$295.20	\$1,180.80
8j	G444AH	ADD: APX CONTROL HEAD SOFTWARE	4	\$0.00	\$0.00
8k	W22BA	ADD: STD PALM MICROPHONE APX	4	\$43.20	\$172.80
8l	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870	4	\$25.80	\$103.20
	<b>APX™ 4500 Enhanced (Control Station); Will Reuse Existing Tray/Power Supply/Antenna</b>				
9	M22URS9PW1BN	APX4500 ENHANCED 7/800 MHZ MOBILE	1	\$1,028.40	\$1,028.40
9a	G24AX	ENH: 3 YEAR ESSENTIAL SVC	1	\$137.55	\$137.55
9b	GA00235AA	ADD: NO GPS ANTENNA NEEDED APX	1	\$0.00	\$0.00
9c	G66BF	ADD: DASH MOUNT O2 APXM	1	\$75.00	\$75.00
9d	QA02756AD	ADD: P25 9600 TRUNKING W/ INTEROPERABILITY	1	\$942.00	\$942.00
9e	G142AD	ADD: NO SPEAKER APX	1	\$0.00	\$0.00
9f	G298AS	ENH: ASTRO 25 OTAR W/ MULTIKEY	1	\$444.00	\$444.00
9g	G843AH	ADD: AES ENCRYPTION AND ADP	1	\$285.00	\$285.00
9h	GA00804AA	ADD: APX O2 CH (GREY)	1	\$295.20	\$295.20
9i	G89AC	ADD: NO RF ANTENNA NEEDED	1	\$0.00	\$0.00
9j	G444AH	ADD: APX CONTROL HEAD SOFTWARE	1	\$0.00	\$0.00
9k	W22BA	ADD: STD PALM MICROPHONE APX	1	\$43.20	\$43.20
	<b>APX™ 6500 / Enhanced Series (For DVRs)</b>				
10	M25URS9PW1BN	APX6500 ENHANCED 7/800 MHZ MOBILE	1	\$1,642.80	\$1,642.80
10a	G628AD	INT: REMOTE MOUNT CABLE 17 FT APX	1	\$0.00	\$0.00
10b	GA00235AA	ADD: NO GPS ANTENNA NEEDED APX	1	\$0.00	\$0.00
10c	GA00631AA	ADD: DVRs MSU ACTIVATION	1	\$150.00	\$150.00
10d	G51AU	ENH: SMARTZONE OPERATION APX6500	1	\$720.00	\$720.00
10e	G78AT	ENH: 3 YEAR ESSENTIAL SVC	1	\$176.40	\$176.40
10f	G67DT	ADD: REMOTE MOUNT E5 APXM	1	\$178.20	\$178.20
10g	G298AS	ENH: ASTRO 25 OTAR W/ MULTIKEY	1	\$444.00	\$444.00
10h	B18CR	ADD: AUXILIARY SPKR 7.5 WATT APX	1	\$36.00	\$36.00
10i	G843AH	ADD: AES ENCRYPTION AND ADP	1	\$285.00	\$285.00
10j	G444AH	ADD: APX CONTROL HEAD SOFTWARE	1	\$0.00	\$0.00
10k	G806BL	ENH: ASTRO DIGITAL CAI OP APX	1	\$309.00	\$309.00
10l	GA01693AA	ADD : LEGACY TRUNNION SCREW KIT	1	\$6.00	\$6.00
10m	GA01670AA	ADD: APX E5 CONTROL HEAD	1	\$343.20	\$343.20
10n	W22BA	ADD: STD PALM MICROPHONE APX	1	\$43.20	\$43.20
10o	G361AH	ENH: P25 TRUNKING SOFTWARE APX	1	\$180.00	\$180.00
10p	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870	1	\$25.80	\$25.80
	<b>Trade-In (Mobiles)</b>				
11	Trade-In	One-For-One Trade of Mobiles (6 Qty); Figured at \$250.00 Each. Expires 10-30-20	1	-\$1,500.00	-\$1,500.00

	Product Services				
12	LSV00Q00202A	DEVICE PROGRAMMING - FIRE (17 Portables and 6 Mobiles). This is based on being programmed to existing Overland Pasrk Template; does not include any modifications/moving of TG's or Zones.	23	\$60.00	\$1,380.00
13	LSV00Q00202A	DEVICE PROGRAMMING - If required; this is the cost to modify the Overland Pasrk Template to the new "Enhanced" radios quoted (APX4500 Enhanced and AP6500 Enhanced radios). Does NOT include modifying Portable Template.	2	\$300.00	\$600.00
14	LSV00Q01074A	DEVICE MISCELLANEOUS SERVICES - This is to convert the DVRS to an APX6500 Mobile Radio.	1	\$800.00	\$800.00
	Other Products				
15	DDN1716A	DVR XTL TO APX CONVERSION KIT FOR PORTABLE MOUNTED UNITS	1	\$540.00	\$540.00

**Sub Total - Fire                      \$110,465.75**

## PUBLIC WORKS DEPARTMENT

Line #	Item Number	Description	Quantity	Unit Sale Price	Ext. Sale Price
	<b>APX™ 4500 Enhanced Mobile Dash Mount</b>				
1	M22URS9PW1BN	APX4500 ENHANCED 7/800 MHZ MOBILE	14	\$1,028.40	\$14,397.60
1a	G24AX	ENH: 3 YEAR ESSENTIAL SVC	14	\$137.55	\$1,925.70
1b	GA00235AA	ADD: NO GPS ANTENNA NEEDED APX	14	\$0.00	\$0.00
1c	G66BF	ADD: DASH MOUNT O2 APXM	14	\$75.00	\$1,050.00
1d	QA02756AD	ADD: P25 9600 TRUNKING W/ INTEROPERABILITY	14	\$942.00	\$13,188.00
1e	G142AD	ADD: NO SPEAKER APX	14	\$0.00	\$0.00
1f	G298AS	ENH: ASTRO 25 OTAR W/ MULTIKEY	14	\$444.00	\$6,216.00
1g	G843AH	ADD: AES ENCRYPTION AND ADP	14	\$285.00	\$3,990.00
1h	GA00804AA	ADD: APX O2 CH (GREY)	14	\$295.20	\$4,132.80
1i	G444AH	ADD: APX CONTROL HEAD SOFTWARE	14	\$0.00	\$0.00
1j	W22BA	ADD: STD PALM MICROPHONE APX	14	\$43.20	\$604.80
1k	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870	14	\$25.80	\$361.20
	<b>APX™ 4500 Enhanced Mobile Remote Mount</b>				
2	M22URS9PW1BN	APX4500 ENHANCED 7/800 MHZ MOBILE	2	\$1,028.40	\$2,056.80
2a	G628AD	INT: REMOTE MOUNT CABLE 17 FT APX	2	\$0.00	\$0.00
2b	G24AX	ENH: 3 YEAR ESSENTIAL SVC	2	\$137.55	\$275.10
2c	G67DQ	ADD: REMOTE MOUNT O2 APXM	2	\$178.20	\$356.40
2d	QA02756AD	ADD: P25 9600 TRUNKING W/ INTEROPERABILITY	2	\$942.00	\$1,884.00
2e	G142AD	ADD: NO SPEAKER APX	2	\$0.00	\$0.00
2f	GA01606AA	ADD: NO GPS/WI-FI ANTENNA NEEDED	2	\$0.00	\$0.00
2g	G298AS	ENH: ASTRO 25 OTAR W/ MULTIKEY	2	\$444.00	\$888.00
2h	G843AH	ADD: AES ENCRYPTION AND ADP	2	\$285.00	\$570.00
2i	GA00804AA	ADD: APX O2 CH (GREY)	2	\$295.20	\$590.40
2j	G444AH	ADD: APX CONTROL HEAD SOFTWARE	2	\$0.00	\$0.00
2k	W22BA	ADD: STD PALM MICROPHONE APX	2	\$43.20	\$86.40

2l	G174AD	ADD: ANT 3DB LOW-PROFILE 762-870	2	\$25.80	\$51.60
	<b>Trade-In (Mobiles)</b>				
3	Trade-In	One-For-One Trade of Mobiles (16 Qty); Figured at \$250.00 Each. Expires 10-30-20	1	-\$4,000.00	-\$4,000.00
	<b>APX™ 6000 Series Portable w/Partial Keypad</b>				
4	H98UCF9PW6BN	APX6000 700/800 MODEL 2.5 PORTABLE	6	\$1,815.60	\$10,893.60
4a	QA01833AH	ADD: EXTREME 1-SIDED NOISE REDUCTION	6	\$15.00	\$90.00
4b	QA05570AA	ALT: LI-ION IMPRES 2 IP68 3400 MAH	6	\$60.00	\$360.00
4c	Q361AR	ADD: P25 9600 BAUD TRUNKING	6	\$180.00	\$1,080.00
4d	Q58AL	ADD: 3Y ESSENTIAL SERVICE	6	\$115.00	\$690.00
4e	QA09006AA	ADD: ADAPTIVE NOISE SUPPRESSION	6	\$90.00	\$540.00
4f	QA09001AB	ADD: WIFI CAPABILITY	6	\$180.00	\$1,080.00
4g	Q498AY	ENH: ASTRO 25 OTAR W/ MULTIKEY	6	\$444.00	\$2,664.00
4h	H38BT	ADD: SMARTZONE OPERATION	6	\$720.00	\$4,320.00
4i	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	6	\$309.00	\$1,854.00
4j	Q629AK	ENH: AES ENCRYPTION AND ADP	6	\$285.00	\$1,710.00
	<b>Standalone Items</b>				
5	HLN6875A	BELT CLIP 3 INCH	6	\$7.80	\$46.80
6	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	3	\$99.00	\$297.00
7	NNTN8844A	CHARGER, MULTI-UNIT, IMPRES 2, 6-DISP, NA/LA-PLUG, ACC USB CHGR	1	\$825.00	\$825.00
	<b>Trade-In (Portables)</b>				
8	Trade-In	One-For-One Trade of Portables (6 Qty); Figured at \$250.00 Each. Expires 10-30-20	1	-\$1,500.00	-\$1,500.00
<b>Sub Total - Pub Works</b>				<b>\$73,575.20</b>	

<b>PRICE SUMMARY:</b>		
<b>POLICE DEPARTMENT - SUB TOTAL</b>		<b>\$223,590.40</b>
<b>FIRE DEPARTMENT - SUB TOTAL</b>		<b>\$110,465.75</b>
<b>PUBLIC WORKS DEPT - SUB TOTAL</b>		<b>\$73,575.20</b>
<b>Net Total</b>		<b>\$407,631.35</b>
<b>Estimated Tax</b>	\$	-
<b>Estimated Freight</b>	\$	-
<b>GRAND TOTAL</b>		<b>\$407,631.35</b>

**Trade-In Notes:**

- Trade-In pricing quoted expires 10/30/20; Purchase Order Must Be Received By Motorola prior to this date.
- All Trade-In pricing quoted is based on a one-for-basis.
- The trade-in will actually be a "destruction" of the radios.
- Customer will be responsible for the destruction of these radios and a picture of the destroyed radios along with a copy/report of the serial numbers of the radios being destroyed is to be provided to Motorola within 30 days of installation.

**PURCHASE ORDER INSTRUCTIONS ON NEXT PAGE**

**Purchase Order Instructions:**

- A purchase order resulting from this proposal is to be made out to:
  - Motorola Solutions, Inc.
  - 500 W. Monroe Street
  - Chicago, IL 60661
- Purchase Order Must Be Signed
- Purchase Order to show the following:
  - Bill To Address
  - Account Payable Contact Name and Email
  - Ship To Address
  - Ultimate Reside Address (Can be same as ship to)
- Payment Terms: Net 30 Days
- Please send completed Purchase Order to Kris Evans, Manufacturers Representative for Motorola.  
(Kris will submit to Motorola via Motorola Ordering System).



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** City Facility Touchless Upgrades  
**SUBMITTED BY:** Meredith Hauck, Assistant City Administrator  
**MEETING DATE:** October 12, 2020

### PROJECT BACKGROUND/DESCRIPTION:

At the September 28, 2020 City Council meeting, staff shared a plan with City Council to expend the \$348,842.85 in funding the City was allocated from the CARES funding through Johnson County. This grant funding is available to reimburse COVID-related expenses.

As part of the City's plan to expend this funding, approximately \$79,500 was allocated to do touchless upgrades to City facility doors and restroom facilities. Utilizing the existing contracts the City has for maintenance and engineering on these items, the total for this project is \$74,021:

- \$39,836.00 for Touchless Faucets and Toilets in City Facilities
- \$34,185.00 for Automatic Door Upgrades at City Hall, the Police Department, and the Public Works Facility

Per the grant requirements for this funding source, these upgrades will be completed before 12/30/2020.

### CITY COUNCIL GOALS AND OBJECTIVES

N/A

### FINANCIAL IMPACT

<b>Amount of Request/Contract:</b>	\$74,021
<b>Amount Budgeted:</b>	\$348,842.85
<b>Funding Source/Account #:</b>	Grant Fund

### SUPPORTING DOCUMENTS

- US Engineering Quote
- Automatic Door Systems Quotes – City Hall, Police Department, Public Works

### ACTION NEEDED/STAFF RECOMMENDATION

Motion to approve the expenditure of funds for these items.



**U.S. ENGINEERING  
SERVICE**

3433 Roanoke Road  
Kansas City, MO 64111  
P 816.753.6969  
24-HOUR SERVICE 816.753.6980  
usengineering.com

October 1, 2020

City of Merriam  
Attn: Caleb Hunt  
9001 West 62<sup>nd</sup> Street  
Merriam, KS 66202

**Subject: Flush Valves**

Dear Caleb:

U.S. Engineering Service, LLC. is pleased to submit the following proposal of **Thirty-Nine Thousand Eight Hundred Thirty-Six Dollars (\$39,836.00)** to install multiple sensor fixtures on the faucets and toilets.

**Scope of Work:**

- Demo the existing 17 faucets on the sinks and replace with 17 new touchless sensor faucets
- Demo the existing 4 faucets on the bay sink and replace with 4 new touchless sensor faucets
- Demo the existing 10 flush valves on the toilets and install 10 new touchless sensor flush valves
- Demo the existing 2 urinal flush valves and install 2 new touchless sensor flush valves

**Conditions and Clarifications:**

- Sales tax **is not** included
- Overtime **is not** included
- The brand of the new faucets will be Toto. The new faucets will have eco-batteries that charge themselves. Battery replacement will not be required.
- 1-year warranty on parts and labor

If you have any questions or wish to discuss this matter in greater detail, please feel free to contact me at 816.564.6826 or email at [david.walberg@usengineering.com](mailto:david.walberg@usengineering.com).

Sincerely,

U.S Engineering Service, LLC.

David Walberg  
Project Manager

# Automatic Door Systems

9001 Lenexa Dr Phone 913-384-3667  
Overland Park, KS 66215 Fax 913-384-3668  
website: www.autodoorsusa.com Cell 913-601-1963  
[Chris.Thorman@IntegratedOpenings.com](mailto:Chris.Thorman@IntegratedOpenings.com)



## PROPOSAL

Date: 08/27/20	Page: 1 of 1
Customer: City of Merriam	Job Site Name: City Hall
9001 W. 62nd St.	9001 W 62nd St.
Merriam, KS 66202	Merriam, KS 66202
Attn: Caleb Hunt	Attn:
Phone: 913-980-3625	Phone:
email: <a href="mailto:chunt@merriam.org">chunt@merriam.org</a>	SHIP DATE:

Qty.	Description	Each	Extended
	<b>City Hall Tochless Solution</b>	TOTAL =	\$15,630.00
1	8310SCS28 Mag Lock		
1	AH1028 Armature Holder		
1	SP-0328 Spacer		
1	WRI400 Wireless reader Interface		
1	MT11 Narrow Reader		
1	9600630 Electric Strike		
1	99NL Trim for 99 panic		
2	30S 3.5X15 US26 Push Plate		
2	Duel Auto Operator HO 75" Pair 4100 CLR LHR-RHR COMPLETE		
4	Touchless switch CM-330-41W SW Wireless Wave Sensor		
2	Receiver CM-RX90V2 Wireless Receiver		
4	Wall Box CM-43CBLA		
4	Super Scan BEA 10SSTI48 SuperScan I 36"		
4	TDM MSS TDM Time Delay Module		
4	RBSN ALT RBSN Relay Module		
1	Installation Labor		

**North Exterior Double Doors: (No Access Control)** Remove existing single opener and install a dual opener with anti close sensors and two wave switches.

**North Interior Double Doors: (Access control on one leaf)** Remove existing singel opener and install a dual opener with anti close sensors and one wave switch. A second mag lock will need to be added to the leaf without.

- (1) All quotes are subject to adjustments of errors in extensions or footage.
- (2) All quotes are good for 45 days.
- (3) All sales are subject to prior credit approval.
- (4) All materials are furnish only unless noted.
- (5) No glass unless noted.

Sub Total:	\$ 15,630.00
Tax Rate:	0.000%
Tax:	
Misc.:	
<b>TOTAL:</b>	<b>\$ 15,630.00</b>

Change Order #:	Purchase Order #: 0	Credit Card #:	Check #:
Approved By:	* Note: No material will be shipped unless signed and returned		
Title:	Written By: Chris Thorman		

# Automatic Door Systems

9001 Lenexa Dr Phone 913-384-3667  
Overland Park, KS 66215 Fax 913-384-3668  
website: www.autodoorsusa.com Cell 913-601-1963

Chris.Thorman@IntegratedOpenings.com



## PROPOSAL

<b>Date:</b> 08/27/20	<b>Page: 1 of 1</b>
<b>Customer:</b> City of Merriam	<b>Job Site Name:</b> Police Station
9001 W. 62nd St.	9001 W. 62nd St.
Merriam, KS 66202	Merriam, KS 66202
<b>Attn:</b> Caleb Hunt	<b>Attn:</b>
<b>Phone:</b> 913-980-3625	<b>Phone:</b>
<b>email:</b> <a href="mailto:chunt@merriam.org">chunt@merriam.org</a>	<b>SHIP DATE:</b>
	<b>ORDER ( )</b>

Qty.	Description	Each	Extended
	<b>Polic Station - Touchless Solution</b>	TOTAL =	\$11,915.00
1	WRI400 Wireless reader Interface		
1	MT11 Narrow Reader		
1	9600630 Electric Strike		
1	99NL Trim for 99 panic		
2	30S 3.5X15 US26 Push Plate		
3	Single Auto Operato HO 4100-204R1 4100 CLEAR COMPLETE		
6	Touchless switch CM-330-41W SW Wireless Wave Sensor		
3	Receiver CM-RX90V2 Wireless Receiver		
6	Wall Box CM-43CBLA		
3	Super Scan BEA 10SSTI48 SuperScan I 36"		
3	TDM MSS TDM Time Delay Module		
3	RBSN ALT RBSN Relay Module		
1	Installation Labor		
	<b>South Exterior Single Door: (No Access Control)</b> Install an opener with anti close sensors and two wave switches.		
	<b>South Interior Single Door: (Has Door mounted Access control)</b> Install opener with anti close sensor and one wave switch. Reader on door will be converted to a jamb reader and an electric strike. A standard trim will be installed with cover plates to hide holes in door.		
	<b>South Exterior Single Door: (Wall Mounted Access Control)</b> Install opener with anti close sensor and one wave switch tied into the access control.		

- (1) All quotes are subject to adjustments of errors in extensions or footage.
- (2) All quotes are good for 45 days.
- (3) All sales are subject to prior credit approval.
- (4) All materials are furnish only unless noted.
- (5) No glass unless noted.

Sub Total:	\$ 11,915.00
Tax Rate:	0.000%
Tax:	
Misc.:	
<b>TOTAL:</b>	<b>\$ 11,915.00</b>

Change Order #:	Purchase Order #: 0	Credit Card #:	Check #:
<b>Approved By:</b>		<b>* Note: No material will be shipped unless signed and returned</b>	
<b>Title:</b>		<b>Written By: Chris Thorman</b>	

[Chris.Thorman@IntegratedOpenings.com](mailto:Chris.Thorman@IntegratedOpenings.com)



Change Order #:	Purchase Order #:	0	Credit Card #:	Check #:
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<b>Title:</b>		<b>Written By:</b> Chris Thorman		



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** American Specialty Health Fitness, Inc. Fitness Center Services Agreement

**SUBMITTED BY:** Anna Slocum, Director Parks and Recreation

**MEETING DATE:** October 12, 2020

### PROJECT BACKGROUND/DESCRIPTION:

Staff is seeking approval to join the American Specialty Health Fitness, Inc. (ASH) network to provide Silver and Fit® and Active and Fit®. ASH provides the opportunity for fitness centers to participate in fitness club network programs reaching millions of members across the county through participating health plans and employer groups. Silver and Fit® is for participants 65+ who participate in Medicare Advantage Part C. Active and Fit® is designed for adults participating in health plans and employer groups.

After confirmation of proper health insurance, participants will receive a membership card to track visits. Participants of both programs gain access to the facility at no additional cost. The member will swipe this card to gain entry each visit. At the end of each month, staff will produce a reimbursement report. The report will be generated in the existing recreation software utilized for all registrations and memberships. Reimbursement for visits will be paid within thirty (30) days of receipt of billing report for services provided to members based on the following structure:

Silver and Fit®	\$3.00/visit	Max \$30/month/member
Active and Fit®	\$3.00/visit	Max \$30/month/member

This program expands the opportunity for patron participation. Individuals with this benefit will seek facilities that are participating in this program as there is no additional money out of pocket.

The program will begin at Merriam Community Center upon completion of program registration procedures.

### CITY COUNCIL GOALS AND OBJECTIVES

Enhance Community Identity and Connections

Provide Exceptional Service Delivery

### FINANCIAL IMPACT

**Amount of Request/Contract:** NA

**Amount Budgeted:** NA

**Funding Source/Account #:** NA

### SUPPORTING DOCUMENTS

American Specialty Health Fitness, Inc. Fitness Center Services Agreement

### ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends approval of the agreement with American Specialty Health Fitness, Inc. and requests authorization for staff to execute the agreement.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.**

**FITNESS CENTER SERVICES AGREEMENT**

**THE CITY OF MERRIAM COMMUNITY CENTER- MERRIAM PARKS AND RECREATION**

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

THIS FITNESS CENTER SERVICES AGREEMENT, (“this Agreement”) is entered into between American Specialty Health Fitness, Inc., a Delaware corporation (“ASH Fitness”), and the fitness center whose name and other identifying information appear on the signature page herein (“Fitness Center”). This Agreement will not become effective until both Fitness Center and ASH Fitness have signed it, as further outlined in Article 28. After Fitness Center and ASH Fitness have both signed this Agreement, Fitness Center will automatically become a Contracted Facility as of the Effective Date specified in Article 28 of this Agreement. Please read this Agreement carefully. This Agreement requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions.

This Agreement supersedes and replaces any prior Fitness Center Services Agreements entered into between ASH Fitness and Fitness Center.

**RECITALS**

WHEREAS, insurers, trust funds, health care service plans, health maintenance organizations, employer groups and other groups (collectively referred to as “ASH Clients” and further defined below) have entered into arrangements with ASH Fitness for the provision of Services to their Members (as defined below in Section 1.10);

WHEREAS, ASH Fitness wishes to arrange for and facilitate the provision of Services to Members;

WHEREAS, Fitness Center has all necessary licenses and authorizations to operate in its location(s) in the State(s) in which it operates and wishes to contract with ASH Fitness for the provision of Services to Members;

NOW, THEREFORE, ASH Fitness and Fitness Center agree as follows:

**ARTICLE 1     DEFINITIONS.**

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

**1.01     Agreement.** Agreement is this Fitness Center Services Agreement between Fitness Center and ASH Fitness, the attachments and exhibits listed below, the Program Manual and any amendments to such documents.

Attachment A: Silver&Fit® Basic Attachment  
Attachment B: Intentionally Left Blank  
Exhibit 1: Intentionally Left Blank  
Attachment C: Intentionally Left Blank  
Exhibit 1: Intentionally Left Blank  
Attachment D: Active&Fit® Attachment  
Attachment E: Intentionally Left Blank  
Attachment F: Intentionally Left Blank  
Attachment G: ASH Client List  
Attachment H: Intentionally Left Blank  
Exhibit 1: Intentionally Left Blank  
Attachment I: Health and Safety Guidelines and Code of Conduct  
Attachment J: Medicare Addendum  
Attachment K: Guidelines for Trademark Use by Third Parties  
Attachment L: Program Compensation Attachment

The attachments and exhibits listed above and the Program Manual are hereby incorporated by reference. However, Fitness Center’s obligations will be dependent upon its agreement to participate in the programs described in Attachment A through Attachment F and Attachment H as indicated on the signatory page of this Agreement.

- 1.02 **[Intentionally Left Blank].**
- 1.03 **ASH Client.** ASH Client is a health care service plan, health maintenance organization, insurer, employer group, trust fund, third party administrator, or other person or entity who contracts with ASH Fitness or an ASH Fitness' affiliate to arrange for the provision of Services. ASH Clients will be listed on the ASH Client List which is provided to Fitness Center by ASH Fitness. A sample of the ASH Client List is attached to this Agreement as Attachment G.
- 1.04 **ASHLink.** The ASHLink® system is a proprietary software system developed by an ASH Fitness affiliate and utilized by ASH Fitness to support the secure and confidential electronic distribution of information with Fitness Center via the Internet. ASHLink provides Fitness Center and its staff the ability to verify Member eligibility for an applicable program, submit billing reports and to verify status of reimbursements of submitted billing reports. Additionally, Fitness Center or its staff shall utilize ASHLink to access information relevant to this Agreement (i.e. Program Manual, renewal/termination reports, and Client Lists).
- 1.05 **Benefit Year.** Benefit Year is the twelve (12) month period specified in Attachment G.
- 1.06 **Contracted Center.** Contracted Center is a fitness center that has contracted with ASH Fitness.
- 1.07 **Effective Date.** The Effective Date is the date this Agreement becomes operative, as specified in Article 28 of this Agreement.
- 1.08 **Fitness Center Fitness Advisor.** The Fitness Center Fitness Advisor is an individual employed or contracted by Fitness Center that will support Services, as that term is defined in Section 1.18, by acting as the primary contact on behalf of the Fitness Center that Member will contact at the Fitness Center Participating Location and fulfills the requirements detailed in Section 3.09.3.
- 1.09 **Fitness Center Participating Location.** A Fitness Center Participating Location is the Fitness Center location where Services will actually be performed. For ease of reference, Fitness Center and Fitness Center Participating Location shall be used interchangeably for a Fitness Center with only one participating location.
- 1.10 **Member(s).** Member(s) is/are individual(s) who is/are eligible to receive Services by meeting all the eligibility requirements for participation in a program.
- 1.11 **Member Eligibility/Benefits.** Member Eligibility/Benefits is information maintained by ASH Fitness or one of its affiliates pertaining to each Member regarding his or her eligibility, including initial date of eligibility, term of membership and benefits.
- 1.12 **Member Payments.** Member Payments are charges which are the direct financial responsibility of the Member and are paid directly to Fitness Center for any service which is a Non-Covered Service under this Agreement.
- 1.13 **[Intentionally Left Blank].**
- 1.14 **Member Termination Report.** Member Termination Report is a report compiled by ASH Fitness and posted on ASHLink which lists Members who have terminated their Membership at the Fitness Center and/or are no longer eligible for participation under the program. Terminated Members shall be listed on the Member Termination Report for at least thirty (30) days from their termination date.
- 1.15 **Non-Covered Services.** Non-Covered Services are all services other than a Standard Fitness Center Membership and any other program components as clearly laid out in each attachment and as applicable to the Member's benefit. All Non-Covered Services are ineligible for compensation by ASH Fitness and are the direct responsibility of the Member.
- 1.16 **Party(ies).** Party(ies) is/are the individual(s) or entity(ies) that execute this Agreement.

- 1.17 **Program Compensation Rate.** The Program Compensation Rate is the amount ASH Fitness will pay Fitness Center for the Standard Fitness Center Membership and Services for each Member who has signed a membership agreement with Fitness Center. The Program Compensation Rate is set forth in Attachment L for each program that applies to this Agreement.
- 1.18 **Services.** Services are those collective services which fall under this Agreement and its Attachments A through Attachment F and Attachment H.
- 1.19 **Standard Fitness Center Membership.** A Standard Fitness Center Membership provides Member with at least the following services: access to a Fitness Center Participating Location during normal facility hours of operation for the use of cardiovascular exercise equipment (e.g. treadmills, exercise bicycles, “elliptical machines”, etc.), strength or resistance training equipment (e.g. selectorized equipment, free weights, etc.), and use of locker room and shower facilities. It also includes instructor-led classes (such as group fitness classes, Pilates, group cycling, yoga, etc.) which do not require a separate fee to be paid to Fitness Center for an individual class or set of classes, but are routinely included for the general membership as part of the general monthly fee. The Standard Fitness Center Membership does not include instructor-led classes, personal training and other amenities for which the Fitness Center routinely charges a separate fee.
- 1.20 **Quality Management Program.** The Quality Management Program, as set forth in the program manual, is the set of policies, processes, procedures and standards established, determined and utilized by ASH Fitness under this Agreement to evaluate and determine whether a Contracted Facility has satisfied all ASH Fitness’ Health and Safety Guidelines and Code of Conduct requirements, available on ASHLink, adopted by ASH Fitness and to approve a Contracted Facility’s participation in ASH Fitness and/or ASH Client’s networks.
- 1.21 **Visit.** Unless otherwise specified in a program attachment, a Visit is where a Member utilizes the Fitness Center Participating Location for exercise.

## ARTICLE 2 ASH FITNESS’ RESPONSIBILITIES.

- 2.01 **Prepare and Maintain Program Manual.** ASH Fitness shall prepare and maintain a program manual setting forth ASH Fitness’ policies, processes, standards and procedures regarding Fitness Center’s participation in any ASH Fitness’ fitness network (“Program Manual”).
- 2.02 **Distribution of Revised Agreement, Attachments, Amendments, and Program Manual.** ASH Fitness shall prepare and distribute any updated Agreements, attachments and exhibits, Member Termination Reports, ASH Client Lists, amendments and/or Program Manual, which may be revised by ASH Fitness in accordance with Article 25 of this Agreement. ASH Fitness may distribute all materials directly to Fitness Center and to each Fitness Center Participating Location, where such information pertains to the Fitness Center Participating Location.
- 2.03 **Records Management.** ASH Fitness and its affiliates shall develop, update and maintain policies and procedures that comply with applicable statutory and regulatory requirements for the secure and confidential storage, retention, retrieval and destruction of all records pertaining to its business operations, whether these records are in paper or electronic form.
- 2.04 **Maintain Eligibility.** ASH Fitness or its affiliates shall provide Fitness Center with services related to Member Eligibility verification for Services to be provided by Fitness Center. ASH Fitness makes no representation or guarantees concerning the number of Members, if any, that will access Fitness Center under this Agreement.
- 2.05 **Communication Regarding Participation of Fitness Center.** ASH Fitness and its affiliates shall communicate the participation of Fitness Center in ASH Fitness or its affiliates’ programs to existing and prospective ASH Clients in various forms, including but not limited to ASH Client proposals, ASH Fitness or ASH Client network directories and the applicable websites accessed by Members. Such communication may include information such as Fitness Center’s name and logo, address, telephone number, and available services. ASH Fitness shall assist Members to select a Contracted Facility under the Member’s program. In addition, ASH Fitness shall, within sixty (60) days of the effective date of a location, notify ASH Clients of

the addition of a Fitness Center Participating Location where that location may perform Services for ASH Client.

**2.06 Deletion of Fitness Center Participating Location from Network Directories.** ASH Fitness will notify all ASH Clients, no later than thirty (30) days after the effective date of Fitness Center Participating Location's resignation or termination of this Agreement, or of the need to delete the location's information from network directories and/or other such sources of Fitness Center information.

**2.07 ASH Fitness' Payment to Fitness Center.** ASH Fitness shall compensate Fitness Center in accordance with the Program Compensation Rates specified in Attachment L under which Fitness Center is participating within thirty (30) days of receipt of a billing report for Services provided to Members.

Fitness Center and ASH Fitness agree that a program of equal to best pricing and equal to best reimbursement model supports fair and competitive pricing and that fair and competitive pricing fosters program competition, enhancement and innovation, and reduces costs. The parties agree that Fitness Center will offer to ASH Fitness Equal To Or Best Pricing and an Equal To Or Best Reimbursement model for Subsidized Fitness Programs. For the purposes of this Agreement and any Attachments, Subsidized Fitness Benefit Programs means any of programs by which an eligible individual receives membership with and/or access to Fitness Center in connection with Silver&Fit, Active&Fit and FitnessCoach (collectively "Fitness Benefit Programs"). Any ASH Fitness consumer-direct purchase program is not included in this definition. "Equal To Or Best Pricing" means that Fitness Center agrees that for each contract it enters with any third party(s) offering Subsidized Fitness Benefit Programs, the rates that Fitness Center will charge such third party(s) will not be less than the rate that Fitness Center charges ASH Fitness under this contract. Equal To Or Best Reimbursement Model means that Fitness Center will not utilize any reimbursement model that permits a third party offering Subsidized Fitness Benefit Programs to reimburse Fitness Center for fitness services at a lower rate than the rate that Fitness Center is charging ASH Fitness under this contract, regardless of the reimbursement model.

Nothing herein shall prevent Fitness Center and a third party offering Subsidized Fitness Benefit Programs from agreeing to a rate lower than the rate Fitness Center charges ASH Fitness pursuant to this contract at the time of the agreement, or from agreeing to a reimbursement model that permits the third party to reimburse Fitness Center for fitness services at a rate lower than the rate Fitness Center is charging ASH Fitness under this contract at the time of the agreement, regardless of reimbursement model. If Fitness Center contracts with a third party to offer lower pricing or a better reimbursement model than which it has with ASH Fitness, Fitness Center will provide notice to ASH Fitness in advance of the effective date of such third party agreement and, upon ASH Fitness' written notice stating that ASH Fitness wishes to have the rates that Fitness Center charges ASH Fitness reduced to reflect the better pricing/reimbursement model offered to the third party ("Pricing Notice"), Fitness Center shall automatically provide the same lower pricing and/or the better reimbursement model to ASH Fitness as of the effective date of the third party contract. Upon ASH Fitness' delivery to Fitness Center of the Pricing Notice, this agreement will be deemed automatically amended to incorporate the lower rates and/or better reimbursement model with all other contract terms remaining unchanged. The parties agree that the existence of Equal To Or Best Pricing and Reimbursement Models will be subject to audits by an independent third party agreed upon by ASH Fitness and Fitness Center. If Fitness Center does not provide the advance notice required by this paragraph, ASH Fitness shall have the right to recover the difference between the lower price and/or reimbursement model and ASH Fitness' current pricing and reimbursement model as of the effective date of the lower price and/or reimbursement model by offsetting future payments to Fitness Center until such time the recovery is complete. Such remedy does not exclude ASH Fitness from seeking other remedies to which it may be entitled.

### **ARTICLE 3 FITNESS CENTER'S RESPONSIBILITIES.**

**3.01 Business License(s) and Comply with Federal and State Law.** Fitness Center shall maintain and demonstrate upon request by ASH Fitness that Fitness Center has appropriate business licenses for its operations at each of the Fitness Center Participating Locations and meets all federal and state regulations applicable to such operations.

- 3.02 **Comply with Program Manual.** Fitness Center shall comply fully with the Program Manual as described in Section 2.01.
- 3.03 **Comply with Quality Management Program.** Fitness Center shall comply with the Quality Management Program and shall cooperate with ASH Fitness in ASH Fitness' administration of its grievance procedures, which can be found in the Program Manual, including procedures to resolve complaints or grievances filed by Members with ASH Fitness as they pertain to Fitness Center and its responsibilities under this Agreement.
- 3.04 **Compliance with Medicare and/or Medicaid Requirements.** Where Fitness Center is providing Services to Members enrolled in an ASH Client's Medicare Advantage plan and/or Medicaid Managed Care plans, Fitness Center shall comply with the provisions outlined in Attachment J to this Agreement.
- 3.05 **Immediate Notification by Fitness Center of Certain Occurrences.** Fitness Center shall notify ASH Fitness in writing by overnight mail service, email, facsimile or other means of notification made available to Fitness Center by ASH Fitness within forty-eight (48) hours of the occurrence of: i) the commencement of any voluntary or involuntary bankruptcy proceedings by or against Fitness Center or any similar proceedings; ii) any lapse of general and/or professional liability insurance maintained by Fitness Center; iii) the filing of criminal charges against Fitness Center's owners, directors, management or staff that directly interact with Members (this includes personal trainers contracted or employed with Fitness Center if the Fitness Center is participating in the Personal trainer Benefit as set forth in Attachment H) that Fitness Center's owner(s) or manager(s) know(s), or reasonably should have known; iv) a change in Fitness Center's ownership and/or management; (v) any change to, including but not limited to the loss or potential loss of, its business license; and (vi) any potential non-compliance or suspected non-compliance with applicable federal or state law or regulation relevant to this Agreement.
- 3.06 **Notification of Change in Any Information.** Fitness Center shall notify ASH Fitness at least sixty (60) days prior to any change in Fitness Center or Fitness Center Participating Location's physical address, Fitness Center or Fitness Center Participating Location's mailing address, telephone number, email address, office hours, taxpayer identification number, or any other information listed in the Network Application. Where sixty (60) days prior notice is not possible, Fitness Center shall notify ASH Fitness as soon as possible of such changes.
- 3.07 **Non-Interference with Property and Contract Rights.** During the term of this Agreement and for one (1) year following the date of its termination, Fitness Center agrees that Fitness Center shall not interfere with ASH Fitness or an ASH Fitness affiliate's property or contract rights with any ASH Client or Member. This includes, but is not limited to, advising any Member to dis-enroll from any Services, advising any party who has contracted with ASH Fitness or an ASH Fitness Affiliate to terminate, cancel or decline renewal of its contract, and/or solicit any Member to enroll for the provision of similar services offered by any other firm administering fitness benefit programs, health care service plan, health maintenance organization, health insurer, preferred provider organization or any other similar organization.

If Fitness Center violates this Section, Fitness Center acknowledges that it will be responsible for paying any and all actual damages incurred by ASH Fitness or any ASH Client as a result of that violation and may be liable for other costs, expenses, damages, claims or liabilities; and, if money damages are insufficient to compensate ASH Fitness or ASH Client for the violation of this Section, Fitness Center may be subject to an injunction prohibiting the activity which constitutes a violation of this Section and/or other equitable relief. Nothing in this Section shall affect any of ASH Fitness' other rights under this Agreement, at law or in equity. Nothing in this Section shall prohibit Fitness Center from maintaining a direct relationship with Member that is no longer enrolled in a program with ASH Fitness or its affiliates due to Member dis-enrollment or termination of this Agreement.

- 3.08 **Election to Participate in all Product Offerings.** Fitness Center may elect to participate in any program specified in Attachment A through Attachment F and Attachment H and indicates in Article 28 which programs it wishes to participate in. Fitness Center is not obligated to participate in all programs but must participate in at least one program at all times while this Agreement is in effect. Where there is no clear indication of participation, ASH Fitness will deem Fitness Center as participating in all programs. Any time

after the Effective Date of the Agreement Fitness Center may choose to expand the programs it participates in. However, after the Effective Date Fitness Center may only terminate participation in a specific program, pursuant to Article 6.

**3.09 Provision of Member Services.** Fitness Center responsibilities for the provision of Member Services are outlined in this Section 3.09.

**3.09.1 Standard Fitness Center Membership.** Fitness Center shall provide Members with a Standard Fitness Center Membership and any other services as required by the applicable program attachments. The Standard Fitness Center Membership shall include, at no cost to the Member, an orientation session to familiarize Members with the Fitness Center and its equipment.

**3.09.2 Conversion of Pre-Established Membership.** Fitness Center agrees to assist any Member that has a previously established membership with Fitness Center and the Member becomes eligible for a program under this Agreement. Fitness Center will freeze the Member's previously established Fitness Center membership, or terminate the membership without any penalty to the member and accept the Program Compensation rate as payment in full for the Standard Fitness Center Membership on behalf of the Member while they are eligible for ASH Program Services. Where a Member is no longer eligible for ASH Program Services and the membership was frozen, Fitness Center shall re-activate the Member's frozen membership subject to the original terms and conditions of the previously established membership. Fitness Center shall not charge Member any activation fees or penalties for the re-activation and such membership shall be reinstated for the period of time that was remaining on the membership at the time it was frozen.

**3.09.3 Fitness Center Fitness Advisor.** Fitness Center agrees to support Services by training one or more Fitness Center employee(s) as a Fitness Center Advisor available to Members during normal business hours to support Member questions and enrollment into the applicable Services as described in this Agreement and its Attachments.

**3.09.4 Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services.** Fitness Center may upgrade or sell Members additional products or services not covered under this Agreement or any applicable program attachment but only if Fitness Center informs Members in advance and in writing that such products and services are Non-Covered Services, are the Member's financial responsibility, and are completely voluntary on the part of the Member. Fitness Center shall collect appropriate Member Payments as that term is defined in Section 1.12, at the time of service and shall bill Members according to the procedures described in the Program Manual. Where a Member upgrades their Standard Fitness Center Membership, Fitness Center agrees that the upgraded membership will be equal to or less than the pricing offered to the general public ("Upgraded Membership Price") and the cost to the Member shall be the Upgraded Membership Price minus the Fitness Center's standard fee for a basic membership (this is not the Program Compensation Rate but the standard fee charged by the Fitness Center). Fitness Center agrees to refund any amounts paid by a Member that the Fitness Center collects in a manner not consistent with this Section.

**3.09.5 Member Billing.** Nothing in this Agreement shall preclude Fitness Center from charging Member for Services rendered, where Member is determined to not be eligible, including retroactive determinations, for a program under this Agreement and where Fitness Center complied with Section 3.10. Any such charges shall be consistent with Fitness Center's lowest standard membership dues. In addition, as Section 3.09.4 details, Fitness Center may charge a Member for Non-Covered Services where Member has been informed, in writing, prior to the provision of the Non-Covered Services.

**3.09.6 Non Discrimination.** Fitness Center shall not illegally discriminate against Member for any reason, including but not limited to race, ethnicity, national origin, religion, gender, age, mental or physical disability, health status, payment experience, medical history, genetic information, gender identity, veteran status, evidence of insurability or geographic location within the service area or source or amount of compensation. Fitness Center shall offer Services to a Member covered by ASH Fitness

or one of its affiliates in the same manner, in accordance with the same standards, and within the same time availability as services offered to members who are not covered by ASH Fitness or its affiliates.

- 3.10 Verification of Member Eligibility and Services.** Unless otherwise specified in a program attachment, Fitness Center shall verify Member Eligibility and applicable Services with ASH Fitness at the time of a Member's first attempt to utilize Fitness Center Participating Location within a Benefit Year. Fitness Center shall verify that Member's health plan is on the ASH Client list as participating in the applicable program as well as verify Member Eligibility in the applicable Services by requesting Member to show their current fitness card/welcome letter if applicable, and by verifying the Member's eligibility with ASH Fitness. Fitness Center may contact ASH Fitness via ASHLink or call customer service to verify eligibility. Member's current fitness card/welcome letter is not a guarantee of current eligibility and Fitness Center must verify the Member's eligibility with ASH Fitness upon the Member's first visit to the Fitness Center Participating Location.
- 3.11 [Intentionally Left Blank].**
- 3.12 Program Compensation.** Fitness Center shall accept Program Compensation Rates, as specified in Attachment L as payment in full for the Services provided pursuant to this Agreement. Fitness Center shall not charge the Member an initiation fee, enrollment fees, processing fee, monthly membership fees and/or any other administrative fees for the Standard Fitness Center Membership. Fitness Center shall be responsible for any and all sales, use or other taxes which may be imposed on the compensation paid to Fitness Center by ASH Fitness or any fees, for Non-Covered Services, collected from a Member.
- 3.13 Billing Report Submission.** Unless otherwise specified in a program attachment, Fitness Center will submit a billing report each month and shall provide supporting information to ASH Fitness that identifies each Visit at a Fitness Center Participating Location, the Member name, Member's Fitness Identification number program abbreviation, Member month and day of birth and the dates of the Visit. Such information should be submitted electronically via ASHLink or email. Any reports not received via ASHLink or emailed with the required format will not be accepted for payment. ASH Fitness will reject any reports that are not submitted in the required format and/or do not include the required fields listed in this section.
- Billing reports received over ninety (90) days after the date of service will not be approved for payment due to late submission. Fitness Center shall waive all charges against Member, ASH Fitness and/or ASH Client related to a billing report received by ASH Fitness more than ninety (90) days after the date of service.
- 3.14 Reimbursement Adjustments.** ASH Fitness may be required to make an adjustment to a reimbursement previously paid by ASH Fitness in order to correct an over or under payment as a result of (1) corrected information received by ASH Fitness, or (2) incorrect determination of benefit or (3) an incorrect calculation of payment amounts. The process for any reimbursement adjustment shall be set forth in the Program Manual.
- 3.15 Fitness Center's Participating Locations.** Where Fitness Center has more than one location operating under the terms of this Agreement, Fitness Center shall have additional obligations, including but not limited to: Agreement notification, informing participating locations, and members' use of multiple locations. These additional obligations shall be described in the Program Manual. Fitness Center shall require each Fitness Center Participating Location to comply with the requirements of this Agreement and any applicable state or federal law or regulations, including but not limited to, the federal False Claims Act (31 U.S.C. §§ 3729–3733). Any incidents of non-compliance should be reported immediately to ASH Fitness upon discovery.
- 3.16 Liability Insurance Limits.** Fitness Center shall maintain professional liability insurance, comprehensive general liability insurance and/or any other insurance policies, including but not limited to Workers' Compensation, in accordance with ASH Fitness' liability insurance requirements in this Agreement. Fitness Center shall notify ASH Fitness within five (5) days of any material change to any or all insurance policies, which shall include, but not be limited to, a reduction in a policy amount or cancellation or non-renewal of a policy. This insurance requirement will be required for each of the Fitness Center Participating Locations. Fitness Center shall maintain general and/or professional liability insurance in the amount of one million

dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate per year for each Fitness Center Participating Location. Fitness Center will name ASH Fitness as an additional insured on its general and/or professional liability insurance policies.

- 3.17 **Fitness Center Removal from Provision of Program Services to Members by ASH Clients.** Fitness Center acknowledges that an ASH Client may, in its sole discretion, request ASH Fitness to remove or restrict Fitness Center from providing Member Services to ASH Client's Members and if necessary impose sanctions on Fitness Center.

#### ARTICLE 4 CORRECTIVE ACTION PLANS

**Corrective Action Plans.** ASH Fitness shall have the ability to evaluate Fitness Center's participation and performance in accordance with the terms of this Agreement and fitness industry business practices. If ASH Fitness finds that Fitness Center is not performing in accordance with the terms of this agreement, ASH Fitness may issue a Corrective Action Plan (CAP) to Fitness Center. ASH Fitness will deliver all CAPs in writing to Fitness Center. Fitness Center agrees to comply with ASH Fitness' CAPs within the timelines specified and to respond to the CAP in writing or as otherwise requested. Fitness Center may submit information to ASH Fitness in response to the CAP which explains Fitness Center's position including, but not limited to, any information demonstrating that Fitness Center is in compliance with the Agreement or Program Manual. Fitness Center acknowledges that a frequent or repeated lack of compliance with a program requirement may be considered a pattern of performance that is unacceptable to ASH Fitness and may consider this a material breach of the Agreement giving rise to the right to terminate the Agreement for cause pursuant to Section 6.02.

#### ARTICLE 5 TERM.

The initial term of this Agreement shall be from the Effective Date specified in Article 28 of this Agreement through and including December 31<sup>st</sup> of the current year subject to the termination provisions set forth in Article 6. After the initial term, this Agreement shall automatically renew for one (1) year on each successive January 1<sup>st</sup>, unless a) either Party provides the other Party with written notice at least one hundred twenty (120) days prior to the renewal date of its intention not to renew this Agreement, or b) prior to such renewal, the Agreement is terminated pursuant to Article 6.

#### ARTICLE 6 TERMINATION.

- 6.01 **Termination of This Agreement with Cause with Notice.** Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement with cause for the other Party's breach of any material term, covenant or condition and subsequent failure to cure such breach. The Party asserting cause for termination of this Agreement ("Terminating Party") shall provide written notice of termination to the other Party ("Receiving Party"). The notice of termination shall specify the breach or deficiency underlying the cause for termination. Receiving Party shall have thirty (30) calendar days from the receipt of such notice to cure the breach or deficiency to the satisfaction of the Terminating Party. If Receiving Party fails to cure the breach or deficiency, this Agreement shall terminate upon written notice from the Terminating Party. The termination date shall be the date the Receiving Party receives such notice or such other date as may be specified in the notice.

- 6.02 **ASH Fitness Immediate Termination of This Agreement for Cause with Notice.** ASH Fitness may terminate this Agreement, or a Fitness Center Participating Location(s) participation, immediately upon written notice by ASH Fitness to Fitness Center upon any of the following occurrences:

- a) A determination that services rendered to a Member by Fitness Center in conjunction with this Agreement do not meet the recognized fitness industry standards adopted by ASH Fitness and/or potentially place a Member at risk;
- b) Any material misrepresentation, falsification or failure to provide accurate information to ASH Fitness, ASH Client, or a Member by Fitness Center or Fitness Center's staff, agent or representative in connection with this Agreement;
- c) The filing and/or conviction of any criminal charges against Fitness Center's directors, officers, owners or employees;

- d) The termination of any contractual relationship other than this Agreement between Fitness Center and ASH Fitness, or an ASH Fitness' affiliate;
- e) Fitness Center is not participating in at least one program pursuant to this Agreement;
- f) Fitness Center has no Fitness Center Participating Locations; or
- g) Any occurrence or condition which materially impairs the ability of Fitness Center or a Fitness Center Participating Location to perform responsibilities under this Agreement.

- 6.03 Fitness Center Program Participation Termination.** Fitness Center may terminate participation in a program by providing at least one hundred twenty (120) days' notice prior to the expiration of the current term. Such termination of participation will be effective on January 1st immediately preceding the notice.
- 6.04 Fitness Center Appeal of Termination.** Fitness Center may appeal ASH Fitness' termination for cause by providing a written request to ASH Fitness within thirty (30) days from the date of the termination notice by ASH Fitness. Such appeal rights may occur before and/or after the effective date of termination. If a termination appeal results in a reinstatement, ASH Fitness may provide Fitness Center with a new Effective Date for this Agreement
- 6.05 Effect of Termination.** Except as otherwise provided herein, this Agreement shall be of no further force or effect following the date of termination, except that each Party shall remain liable for any obligations or liabilities arising from the activities carried on by it hereunder prior to the date of termination.
- 6.06 Survival of Certain Contractual Provisions after Termination.** Notwithstanding any other provision of this Agreement, the following provisions of this Agreement shall survive any termination of this Agreement: Sections 2.02, 2.04, 3.01, 3.07, 3.09.2, 6.05, 6.06, and 6.07, in addition to, Article 7, Article 8, Article 9, Article 10, Article 15, Article 16, Article 18, Article 19, and Article 20.
- 6.07 Fitness Center Responsibility during Termination Notice Period.** Where Fitness Center or ASH Fitness provides notice of non-renewal pursuant to Article 5 or termination pursuant to Section 6.01 Fitness Center shall continue to provide Services pursuant to this Agreement up to and including the effective date of termination or non-renewal.
- 6.08 Fitness Center Responsibilities after Termination of Program, Location or Agreement.** Fitness Center understands that materials such as network directories provided to Members by ASH Fitness or ASH Clients may continue to reflect that a location is participating in the ASH Fitness and/or ASH Client's network for some period of time following the termination of a location's participation. Therefore, to avoid Member confusion regarding the location's status with ASH Fitness, regardless of which Party terminates this Agreement or a location's participation, Fitness Center shall inform any Member who seeks Services that the location is no longer contracted with ASH Fitness. If a Member wishes to continue to receive services from Fitness Center the process for continuing their membership is set forth in the Program Manual.

## **ARTICLE 7 HOLD HARMLESS.**

To the extent not covered by insurance, Fitness Center shall be solely responsible for and shall hold ASH Fitness free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of Fitness Center, Fitness Center's agents, partners, associates, employees or representatives in providing or failing to provide Services in conjunction with this Agreement to Members or arising from or relating to any act or responsibility of Fitness Club. To the extent not covered by insurance, ASH Fitness shall be solely responsible for and shall hold Fitness Center free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of ASH Fitness, its agents, employees or representatives in connection with ASH Fitness' responsibilities under this Agreement.

## **ARTICLE 8 COMMUNICATION OF RELATIONSHIP WITH ASH FITNESS AND ASH CLIENTS.**

Fitness Center shall not initiate any written communication, solicitation or advertisement of any type referencing the relationship with ASH Fitness and/or ASH Client without the prior written approval of the communication by ASH Fitness. This includes, but is not limited to, Internet web pages, social networking, newspapers, yellow pages,

billboards, mass mailings, telemarketing, location posters or business cards. Only where ASH Fitness reviews and gives prior written approval may Fitness Center display and/or distribute materials to promote programs associated with this Agreement.

## **ARTICLE 9 RECORDS AND DATA COLLECTION.**

**9.01 Maintenance of Records.** Fitness Center shall maintain and provide ASH Fitness, and upon the request of ASH Clients, U.S. Department of Health and Human Services, U.S. Department of Justice, Office of Inspector General, Center for Medicare and Medicaid Services and/or other federal and state agencies, with all records relating to Services provided to each Member by Fitness Center, in such form and containing such information as is required by applicable federal and state law, and such other information as ASH Fitness, ASH Clients, or other such agencies may require. For Members enrolled in an ASH Client's Medicare Advantage plan, records shall be retained in accordance with Section 8 of Attachment J. For all other Members, such records shall be retained by Fitness Center the greater of seven years or in accordance with applicable state laws.

**9.02 Access to Facility and Records.** Fitness Center shall provide access to ASH Fitness, at reasonable times upon request by ASH Fitness ASH Client, and/or regulatory agencies with oversight of ASH Fitness or ASH Client operations, to monitor program compliance and inspect Fitness Center's facilities, equipment, books, papers, and records relating to Fitness Center's performance under this Agreement.

**9.03 Confidential Member Information.**

**9.03.1** ASH Fitness and its affiliates shall protect access to, and distribution of, information and/or records that are subject to regulatory requirements for protection of member information and privacy including, but not limited to protection for non-public personal health information. Therefore, ASH Fitness and Fitness Center shall abide by all Federal and State laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996, regarding privacy, security and disclosure of Member personal information. Fitness Center agrees to maintain records and other information with respect to Members in an accurate and timely manner, to provide timely access by Members to the records and information that pertain to them and to safeguard the privacy of any non-public information that can be used to identify a particular Member. Fitness Center shall limit uses and disclosures of personal information obtained in connection with this Agreement (including any information received from ASH Fitness or through ASHLink) solely for payment and related operational purposes permitted or required by this Agreement or as required by law. Fitness Center shall use such personal information only to the extent minimally necessary to satisfy those obligations. Any other use of personal information obtained in connection with this Agreement is strictly prohibited unless required by law or as otherwise permitted in writing by ASH Fitness. This specifically includes using Member's personal information obtained or created in fulfillment of obligations under this Agreement for marketing and fundraising purposes. Fitness Center shall not directly or indirectly receive remuneration in exchange for any personal information of a Member obtained or created pursuant to fulfillment of obligations under this Agreement.

**9.03.2** Upon discovering an incident where the personal information of a Member could have been acquired, used or disclosed in a manner not permitted under this Agreement, including situations where such personal information could have been viewed by persons other than Fitness Center employees authorized by the Fitness Center to perform duties under this Agreement, Fitness Center shall immediately, but in no case later than one business day, report the incident to ASH Fitness' Privacy Office. Fitness Center will expediently supply all information reasonably requested by ASH Fitness regarding the investigation of suspected privacy incidents referenced above.

**9.03.3** Fitness Center shall advise members of its workforce of their obligations to protect and safeguard Members' personal information obtained or created in the fulfillment of Fitness Center's obligations under this Agreement. Fitness Center will develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with Social Security Act §1173(d), 45 C.F.R. §164.530(c)(1) and any other implementing regulations issued by the U.S. Department of

Health and Human Services, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Member's personal information.

- 9.03.4** Fitness Center shall notify ASH Fitness Privacy Office immediately of any requests for restrictions on uses and disclosure of personal information by a Member.
- 9.03.5** ASH Fitness is the exclusive owner of information, including personal information, generated or used by Fitness Center for fulfillment of its obligations under the terms of this Agreement.
- 9.03.6** Fitness Center will indemnify and hold harmless ASH Fitness, its officers, directors, employees or agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and costs and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Members' personal information by Fitness Center or any subcontractor, agent, person or entity under Fitness Center's control.
- 9.03.7** Upon termination, cancellation, expiration or other conclusion of the services provided by Fitness Center, Fitness Center will if feasible, return to ASH Fitness or destroy all Confidential Member Information in whatever form or medium including any electronic medium under Fitness Center's custody or control that Fitness Center created or received for or from ASH Fitness. Fitness Center will complete such return or destruction as promptly as possible, but no later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the services provided by Fitness Center. If return or destruction of Confidential Member Information is infeasible, Fitness Center will extend the protections of this Article 9 to such information and limit its further use or disclosure to those purposes that make return or destruction of Confidential Member Information infeasible.
- 9.03.8** Notices to the ASH Fitness Privacy Office may be sent by overnight mail, first class mail, fax, email or hand delivery to:

American Specialty Health Fitness, Inc.  
Attn: Privacy Officer  
10221 Wateridge Circle  
San Diego, CA 92121  
E-mail: HIPAA@ashn.com  
Tel: (800) 848-3555  
Fax: (858) 237-3839

## **ARTICLE 10 PROPRIETARY INFORMATION.**

All information, documents, software and other materials of any sort furnished to Fitness Center by ASH Fitness including, without limitation, this Agreement and any rates included in this Agreement, the Program Manual, any Client Lists, and any copyrighted or trademarked materials, shall be the property of ASH Fitness and shall be treated as confidential. Such proprietary information shall not be disclosed to anyone who does not have a need to know such information and is only to be used by Fitness Center in connection with the performance of Fitness Center's obligations under this Agreement and only in the manner provided for in this Agreement. Fitness Center shall not disclose or use any proprietary information or trade secrets for Fitness Center's own benefit during the term of this Agreement or after termination of this Agreement, except as authorized in writing by ASH Fitness. Fitness Center shall have no ownership rights in said proprietary information including, but not limited to, copying, use or distribution of said proprietary information. ASH Fitness acknowledges that Fitness Center is subject to the requirements of the Kansas Open Meetings and Open Records Act and that some information which ASH Fitness deems confidential may be disclosed under these Acts. In the event that any such proprietary information of ASH Fitness is required to be disclosed by Fitness Center by law or valid order of a court or other governmental authority, Fitness Center shall, to the extent legally permitted, give notice to ASH Fitness. ASH Fitness shall be responsible for objecting to such disclosure or for obtaining a protective order requiring that the propriety information so disclosed be used only for the purposes for which the order was issued.

Upon termination of this Agreement, Fitness Center shall return to ASH Fitness all proprietary information in Fitness Center's possession, if requested, and in a manner to be specified by ASH Fitness. Fitness Center shall cooperate with ASH Fitness in maintaining the confidentiality of such proprietary information at all times during and after termination of this Agreement.

Fitness Center acknowledges that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm to ASH Fitness, and as such, ASH Fitness shall be entitled to seek any monetary and equitable relief allowed by law. Notwithstanding the foregoing, in the event a breach of confidentiality involves any rates set forth in this Agreement, ASH Fitness may, in its discretion, immediately reduce the compensation rates paid to Fitness Center.

## ARTICLE 11 TRADEMARKS

**11.01 Use of Names and Marks.** This Agreement does not grant Fitness Center a license or sublicense, except as provided in this Article 11, to use the names, trademarks, service marks, corporate names, trade names, domain names, or logos owned by ASH Fitness or its parent company American Specialty Health Incorporated ("ASH Marks"). During the term of this Agreement Fitness Center may use ASH Fitness' name or ASH Marks solely in connection with identifying the relationship as contemplated in this Agreement or as specified in Section 11.02 below. Any other use of ASH Marks is subject to the prior review and written approval of ASH Fitness.

**11.02 Identification of Marks and Form of Use.** Subject to the terms of this section, ASH Fitness grants Fitness Center a non-exclusive, non-transferable, royalty-free license to use the trademarks Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit®, FitnessCoach™ and/or ExerciseRewards™ on its web sites and print media for the promotion of Fitness Center's participation in the applicable programs for which Fitness Center is a Contracted Facility<sup>1</sup>. Fitness Center shall be allowed to use the ASH Marks as described above, as long as such use complies with this Article and the "Guidelines for Trademark Use by Third Parties" issued by ASH Fitness from time to time, a current version of which is attached hereto as Attachment K. In addition, Fitness Center shall mark the ASH Marks with the symbol "™" or "®" as appropriate, and include the following trademark attribution in reasonably close proximity to the first use of the ASH Marks in any document or on a screen display, or in a location to which users are directed for statements concerning the Fitness Center's ownership of intellectual property rights.

"Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit® and/or ExerciseRewards™ are trademarks of American Specialty Health Incorporated and are licensed by Fitness Center for use herein."

Fitness Center shall not alter the ASH Marks in any way, including but not limited to, skewing, changing the color, rotating, separating logo elements or changing the typeface.

**11.03 Approval for Use of Marks.** Approval in Section 11.02 above shall be deemed automatically withdrawn upon the effective date of expiration or termination of this Agreement, unless sooner withdrawn by written notice from ASH Fitness.

**11.04 Injunctive Relief.** The Parties agree that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, ASH Fitness is entitled to seek injunctive relief to restrain or enjoin the breach, without any requirement of bond or security.

## ARTICLE 12 ASSIGNMENT AND CHANGE OF OWNERSHIP.

ASH Fitness may, in its discretion, assign all or a portion of its rights or responsibilities under this Agreement to any party at any time without approval of Fitness Center. All provisions of this Agreement and obligations arising

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<sup>1</sup> Silver&Fit, Silver&Fit Signature Series Classes, Active&Fit, FitnessCoach and ASHLink are registered trademarks of American Specialty Health, Incorporated. All rights are hereby reserved.

hereunder shall extend to and be binding upon the Parties hereto and their respective successors and assignees and shall inure to the benefit, and be enforceable by the Parties hereto and their respective legal representatives, successors and assignees.

#### **ARTICLE 13 SUBCONTRACTS**

Fitness Center shall not subcontract any of its obligations under this Agreement to any third party without the prior written approval of ASH Fitness, which may be withheld or withdrawn in its sole discretion. Where ASH Fitness allows Fitness Center to subcontract any of its obligations to another party, Fitness Center shall remain ultimately responsible to ASH Fitness for the Services performed hereunder.

#### **ARTICLE 14 FORCE MAJEURE.**

In the event that Fitness Center's operations are substantially interrupted by acts of war, fire, insurrection, labor disputes, riots, earthquakes or any other acts of nature, Fitness Center shall be relieved of Fitness Center's obligations as to those affected operations for the duration of such interruption. In the event that Fitness Center's ability to render Services is substantially interrupted because of an event described above, ASH Fitness shall have the right to terminate this Agreement in accordance with Article 6 of this Agreement. Such notice of termination may be withdrawn if ASH Fitness determines that Services can be performed despite the event or because the interruption has ended.

#### **ARTICLE 15 INDEPENDENT CONTRACTORS.**

- 15.01** None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the Parties, other than that of independent parties contracting solely for the purpose of effectuating this Agreement.
- 15.02** Fitness Center shall be responsible solely to eligible Members for Services. Fitness Center is an independent contractor and ASH Fitness shall have no dominion or control over Fitness Center, Fitness Center-Member relationship, Fitness Center's personnel or Fitness Center's services. Fitness Center and Fitness Center's employees and agents shall not have any claim, under this Agreement or otherwise, against ASH Fitness for vacation pay, sick leave or retirement or other benefits of any kind. During the term of this Agreement or any renewals hereof, Fitness Center shall be fully responsible and liable for all state and federal income taxes or other taxes to which payments made by ASH Fitness to Fitness Center may become subject. Fitness Center is responsible to maintain all necessary insurance policies, such as workers' compensation, errors and omissions, and general business liability insurance in amounts necessary to provide adequate coverage for all liabilities and in accordance with Section 3.16 of this Agreement. Where Fitness Center has independent contractors, Fitness Center will require its independent contractors to carry the required insurance amounts specified in Section 3.16 if not covered under Fitness Center's insurance.

#### **ARTICLE 16 GOVERNING LAW.**

This Agreement shall be interpreted and governed by the laws of the State in which the Fitness Center is located, except to the extent that law is contrary to or preempted by federal law. Any provisions required to be in this Agreement by any law shall bind the Parties hereto, whether or not expressly provided in this Agreement.

#### **ARTICLE 17 SEVERABILITY.**

In the event any provision of this Agreement is rendered invalid or unenforceable by state or federal law or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect unless otherwise specified in this Agreement. In the event that a provision of this Agreement is rendered invalid or unenforceable or declared null and void as provided herein, and its removal has the effect of materially altering the obligations of either Party in such manner as, in the judgment of the Party affected, will cause serious financial hardship to such Party or will cause such Party to act in violation of its corporate articles or bylaws, the Party so affected shall have the right to terminate this Agreement by providing the other Party with at least fifteen (15) days prior written notice.

## **ARTICLE 18    DISPUTES BETWEEN FITNESS CENTER AND MEMBERS.**

Where ASH Fitness and/or an ASH Client determine that a dispute between Fitness Center and Member is subject to the provisions of this Agreement and ASH Fitness and/or ASH Client's appeals and grievance processes, policies, procedures and standards, Fitness Center agrees to assist ASH Fitness and provide any information necessary, at no cost to ASH Fitness, for ASH Fitness to review and evaluate a Member grievance or appeal presented for resolution. ASH Fitness' grievance and appeal process is described in the Program Manual. This section does not preclude Fitness Center and Member from seeking any appropriate legal action to resolve any controversy, dispute or claim which is not governed by the terms of this Agreement.

## **ARTICLE 19    DISPUTES BETWEEN FITNESS CENTER AND ASH FITNESS.**

In the event of any dispute between Fitness Center and ASH Fitness (or their respective affiliates, owners, employees, agents, predecessors, or successors) arising out of or relating to this Agreement, Fitness Center and ASH Fitness shall first attempt in good faith to resolve the dispute mutually between themselves. If Fitness Center and ASH Fitness are unable to resolve the dispute by mutual agreement then all matters in controversy shall be submitted, upon the motion of either party, to binding arbitration pursuant to the requirements of the Federal Arbitration Act, 9 U.S.C. §§ 1-16. Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA. The arbitrator shall be bound by applicable state and federal law, subject to Article 16, and shall issue a written opinion setting forth findings of fact and conclusions of law. Fitness Center and ASH Fitness agree to share equally the AAA administrative fee as well as the arbitrator's fees and expenses, if any, unless otherwise assessed by the arbitrator. The administrative fees shall be advanced by the initiating Party, subject to final apportionment by the arbitrator.

Fitness Center and ASH Fitness agree that the arbitrator's award may be enforced in any court having jurisdiction thereof by the filing of a petition to enforce said award. Costs of filing to have an award enforced may be recovered by the Party which brings such action.

Any arbitration proceedings shall occur in the state in which Fitness Center is providing Services to Members pursuant to this Agreement.

Unless forbidden by applicable law, Fitness Center and ASH Fitness agree that if they become involved in a claim or dispute under the arbitration process outlined herein, neither Party will disclose to any other person not directly involved in the arbitration process: (i) the substance of, or basis for, the claim; (ii) the content of any testimony or other evidence presented at the arbitration hearing or obtained through discovery; or (iii) the terms or amount of any agreement reached pursuant to arbitration.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim without affecting other contracted Fitness Facilities. THE CONTRACTED FITNESS CENTER AND ASH FITNESS AGREE THAT THEY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless all parties agree otherwise, the arbitrator may not consolidate more than one contracted Fitness Center's claims, and may not otherwise preside over any form of a class, representative, or private attorney general proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

## **ARTICLE 20    DISPUTES BETWEEN FITNESS CENTER AND ASH CLIENT.**

In the event of any dispute between Fitness Center and an ASH Client (or their respective affiliates, owners, employees, agents, predecessors, or successors) arising out of or relating to this Agreement, at the request of ASH Fitness, Fitness Center shall first attempt in good faith to resolve the dispute mutually with the ASH Client through ASH Fitness, including but not limited to, utilizing all available levels of ASH Fitness' grievance and appeals processes, unless otherwise prohibited by state law. Fitness Center may seek ASH Fitness' assistance with regard to any dispute by contacting ASH Fitness in writing or by telephone at the address and telephone referenced in Article 21.

## **ARTICLE 21 NOTICES.**

Any notice required or permitted to be given under this Agreement to ASH Fitness or Fitness Center, shall be in writing and shall be (a) delivered by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) , (b) delivered in person, (c) sent by certified, registered mail, or “overnight express” by the United States Postal Service with return receipt requested and postage prepaid, or (d) sent “express mail,” “two day delivery,” “3-5 day ground” or any similar service offered by private, prepaid courier such as Federal Express, United Parcel Service or any similar organization. ASH Fitness shall send all notices to Fitness Center’s ASHLink account, email, facsimile number or mailing address on file with ASH Fitness. Fitness Center shall provide at least thirty (30) day notice to any change in its email, facsimile number or mailing address to ASH Fitness via ASHLink, or to the email, or address provided below.

### **NOTICES TO ASH FITNESS:**

American Specialty Health Fitness, Inc.  
P.O. Box 509117  
San Diego, CA 92150-9117

For specific email addresses, call ASH Fitness at (877) 329-2746. The appropriate email address will be provided depending on the nature of the Notice.

Notice shall be effective on the earlier of the date received or the date deemed received.

- Notices given by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) shall be deemed received one (1) business day after being sent.
- Notices delivered personally shall be deemed received upon actual receipt.
- Notices given by certified or registered mail shall be deemed received two (2) United States Postal Service business days after the date mailed.
- Notices given by “3-5 day ground” will be deemed received five (5) business days after the date delivered to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.
- Notices sent for delivery by any other means specified in this first paragraph of this Article shall be deemed received two (2) business days after delivery to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.

## **ARTICLE 22 ATTORNEYS' FEES; COSTS.**

In the event that either Party brings legal action relating to this Agreement, including an arbitration or court action brought pursuant to Article 18, Article 19 or Article 20 herein, the prevailing Party shall be entitled to payment by the other of all reasonable attorneys' fees, costs and expenses incurred in such action.

## **ARTICLE 23 CAPTIONS.**

Captions in this Agreement are descriptive only and shall not affect the intent or interpretation of this Agreement.

## **ARTICLE 24 NO THIRD PARTY BENEFICIARIES.**

Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall create or be deemed to create any rights or remedies in any third party, including but not limited to a Member or a Fitness Center other than Fitness Center, subject only to Article 26.

## **ARTICLE 25 AMENDMENTS.**

Any amendments to this Agreement, including but not limited to revised or newly issued attachments, ASH Client Lists or revisions to the Program Manual shall be issued by ASH Fitness and shall be automatically effective and incorporated into this Agreement on the date received or deemed received pursuant to Article 21 of this Agreement, unless otherwise specified in such notice or required by applicable state law.

**ARTICLE 26 INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS CENTER, MEMBERS, AND ASH CLIENTS.**

ASH Fitness and Fitness Center each expressly agrees to the inclusion of this Article in this Agreement to provide a means to protect the interests of Fitness Center, Members, and ASH Clients in the event of the insolvency of ASH Fitness. This Article shall apply only in the event of the insolvency of ASH Fitness and only if, as a result of the insolvency, ASH Fitness is unable to discharge its duties under this Agreement. This Article shall not apply in any other circumstances.

For purposes of this Article, the insolvency of ASH Fitness means the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 7 of the Bankruptcy Code (Liquidation), and the date of the insolvency shall be the date on which any such petition is filed. The insolvency of ASH Fitness shall not include the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 11 of the Bankruptcy Code (Reorganization). Notwithstanding anything in this Article, this Article shall not apply to the extent its application would violate any provision of the Bankruptcy Code or any other applicable federal or state statute or regulation, any automatic or other stay issued pursuant to the Bankruptcy Code, any order issued by the court with jurisdiction over the bankruptcy proceeding, or any other court order.

If, within sixty (60) days after the date of the insolvency of ASH Fitness, an ASH Client provides written notice to Fitness Center stating that, with regard to any Member who is a beneficiary, employee, member, or insured of that ASH Client, (a) ASH Client shall pay Fitness Center, in accordance with the provisions of this Agreement, for any billing reports submitted for Services rendered by Fitness Center to any such Member on or after the date of the insolvency, to the extent ASH Fitness has not paid such reimbursements, and (b) ASH Client otherwise shall use its best efforts to discharge the duties of ASH Fitness under this Agreement, or to cause ASH Fitness to discharge those duties, with regard to any such Member, then Fitness Center shall continue to be available to render Services to those Members and shall continue to render Services to those Members in accordance with the provisions of this Agreement for up to six (6) months after the date of the insolvency, as specified by ASH Client.

To the extent this Article grants any rights to any ASH Client, Fitness Center hereby expressly agrees and acknowledges that ASH Client is a third-party beneficiary of the provisions of this Article and shall have all rights granted under law by a third-party beneficiary to enforce the provisions of this Article.

**ARTICLE 27 ENTIRE AGREEMENT.**

This Agreement includes all attachments, the Program Manual, and all amendments thereto. Each Party acknowledges that no representation, inducement, promise or agreement, orally or otherwise, has been made by any Party or anyone acting on behalf of any Party, which is not embodied herein. In the event of an inconsistency between this Agreement and any ASH Client Summary or this Agreement and attachments, the ASH Client List or attachments, respectively, shall control the rights and duties of the Parties. In the event of any inconsistency between the Program Manual and this Agreement, this Agreement, together with any attachments, exhibits and amendments, including any current ASH Client List, shall control the rights and duties of the Parties.

**ARTICLE 28 EFFECTIVE DATE OF AGREEMENT.**

ASH Fitness will provide Fitness Center with notice of the Effective Date after Fitness Center returns one original copy of this Agreement to ASH Fitness, and all pre-contractual requirements are fulfilled based upon a determination by ASH Fitness. Fitness Center agrees to be bound by this Agreement as of the Effective Date as determined by ASH Fitness and indicated immediately below.

The Effective Date of this Agreement is \_\_\_\_\_.  
[To be completed by ASH Fitness Only]

Fitness Center agrees to participate in the following attachments, as indicated with a check in the attachment(s) box:

- ☐ Attachment A: Silver&Fit Basic Attachment
- ☐ Attachment B: INTENTIONALLY LEFT BLANK
- ☐ Attachment C: INTENTIONALLY LEFT BLANK
- ☐ Attachment D: Active&Fit Attachment
- ☐ Attachment E: INTENTIONALLY LEFT BLANK
- ☐ Attachment F: INTENTIONALLY LEFT BLANK
- ☐ Attachment H: INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

FITNESS CENTER  
(type or print clearly)

AMERICAN SPECIALTY HEALTH FITNESS, INC.  
(To be filled out by ASH Fitness only)

\_\_\_\_\_  
Fitness Center Legal Name

\_\_\_\_\_  
Name Signed

\_\_\_\_\_  
d/b/a (if applicable)

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Name Signed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Signature

Mailing Address:

Mailing Address:  
American Specialty Health Fitness, Inc.  
P.O. Box 509117  
San Diego, CA 92150-9001

\_\_\_\_\_  
Office Name

Office Address:  
American Specialty Health Fitness, Inc.  
10221 Wateridge Circle  
San Diego, CA 92121

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT A - SILVER&FIT® BASIC ATTACHMENT**

**1.0**     DEFINITIONS.

For purposes of this attachment and in addition to the terms defined in the Agreement, the following terms shall have the meanings indicated:

- 1.01**     Silver&Fit Program. The Silver&Fit Program is an exercise and healthy aging program offered to Members that are health plan enrollees eligible for Medicare coverage or are group retirees.
- 1.02**     Silver&Fit Basic Fitness Center. As a Silver&Fit Basic Fitness Center shall provide Members the Standard Fitness Center Membership as set forth in Section 3.09.1 of the Agreement.

**2.0**     FITNESS CENTER OBLIGATIONS

In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

- 2.01**     Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.
- 2.02**     Fitness Center Listing Information. Fitness Center must maintain current and accurate listing information with ASH Fitness. Fitness Center shall notify ASH Fitness with a change to listing information in accordance with Section 3.06 of the Agreement.

**3.0**     PROGRAM COMPENSATION.

Fitness Center hereby agrees to participate in the Silver&Fit Program as a Silver&Fit Basic Facility, subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those visits. Silver&Fit services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CLUB SERVICES AGREEMENT**

**ATTACHMENT B - INTENTIONALLY LEFT BLANK**

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FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT B – EXHIBIT 1 - INTENTIONALLY LEFT BLANK**

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FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT D - ACTIVE&FIT® ATTACHMENT**

**1.0**     DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

- 1.01**     Active&Fit Program. The Active&Fit Program is a fitness program whereby ASH Fitness or its affiliates arrange for the provision of Services to Members. This program provides Member with a Standard Fitness Center Membership.

**2.0**     **FITNESS CENTER OBLIGATIONS**

- 2.01**     Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.

**3.0**     PROGRAM COMPENSATION.

Fitness Center hereby agrees to participate in the Active&Fit Program subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those visits. Active&Fit services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT E - INTENTIONALLY LEFT BLANK**

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FITNESS CENTER SERVICES AGREEMENT**

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT  
ATTACHMENT G - ASH CLIENT LIST**

Client offers national access unless otherwise specified.							
The following ASH Fitness Clients are currently eligible as noted below:							
	<b>Client Name</b>	<b>Effective Date</b>	<b>S&amp;F</b>	<b>A&amp;F</b>	<b>ERN</b>	<b>FitnessCoach</b>	
1							
2							
3							
4							
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10							

SAMPLE

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FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT H - INTENTIONALLY LEFT BLANK**

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FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT H – EXHIBIT 1 - INTENTIONALLY LEFT BLANK**

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT I - HEALTH AND SAFETY GUIDELINES AND CODE OF CONDUCT**

Fitness Center warrants and represents that each Fitness Center Participating Location, subject to this Agreement, shall maintain and abide by the ASH Code of Conduct & Ethics Program posted on ASHLink. In addition Fitness Center warrants and represents that each Fitness Center Participation Location, subject to this Agreement, shall maintain and abide by ASH Fitness' Health & Safety Guidelines and Code of Conduct, as follows:

- Fitness Center is able to respond in a timely manner to any reasonably foreseeable emergency event that threatens the health and safety of Fitness Center users. Toward this end the Fitness Center has an appropriate emergency plan that can be executed by qualified personnel in a timely manner.
- Fitness Center offers each adult Member a pre-activity screening that is appropriate to the physical activities to be performed by the Member. Based on pre-activity screening, the Fitness Center may, at its discretion, offer to provide supervisory oversight, or an aide to the Member.
- Each person who has supervisory responsibility for a physical activity program or area at Fitness Center has demonstrable professional competence in that physical activity program or area upon hire and on-going thereafter.
- Fitness Center posts appropriate signage alerting users to the risks involved in their use of those areas of Fitness Center that present potential increased risk(s).
- If Fitness Center offers youth services or programs, it provides appropriate supervision.
- Fitness Center shall not discriminate against Members for any reason, including but not limited to age, sex, marital status, religion, ethnic background, national origin, political affiliation, ancestry, race, color, sexual orientation, veteran status, gender identity, health disability status or source or amount of compensation.
- Fitness Center shall abide by all local, state, or federal consumer protection legislation and all other applicable laws.
- Fitness Center responds to and endeavors to resolve, within sixty (60) days, any consumer complaints made to the Better Business Bureau or state or local consumer protection agencies (or other such agencies).
- Fitness Center will not sell a prepaid, lifetime membership to a Member during the term of this Agreement.

ASH Fitness' Health & Safety Guidelines and Code of Conduct has been adapted from the following sources:

- Peterson, James A, and Tharrett, Stephen J, editors 2<sup>nd</sup> ed. *ACSM's Health/Fitness Facility Standards and Guidelines*, second edition. Champaign, IL: Human Kinetics, 1997.
- International Health, Racquet and Sportsclub Association, 2005.  
[http://download.ihrsa.org/pubs/club\\_membership\\_conduct.pdf](http://download.ihrsa.org/pubs/club_membership_conduct.pdf)

**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT J – MEDICARE ADVANTAGE AND MEDICAID ADDENDUM**

This exhibit is entered into by American Specialty Health Fitness, Inc. (“ASH Fitness”) and the Fitness Center listed on the signature page of the Agreement (“Fitness Center”) and is intended to add certain provisions to the Agreement in order to comply with requirements of the Centers for Medicare and Medicaid Services (“CMS”). If any provision in the Agreement is inconsistent with the terms of this attachment, the provisions of this attachment shall be controlling and supersede the provisions of the Agreement for Medicare Advantage and Medicaid Members.

WHEREAS, ASH Fitness has entered into contracts with ASH Clients who offer fitness benefits as part of its Medicare Advantage and/or Medicaid Managed Care plans which require ASH Fitness to include specific contract language in its contract with Fitness Center;

WHEREAS, Fitness Center will be providing Services on behalf of ASH Fitness for certain Medicare Advantage and/or Medicaid members of ASH Clients;

NOW, THEREFORE, the Parties agree to add the following provisions to the Agreement with respect to Medicare Advantage and/or Medicaid members of ASH Clients:

- 1 Member Non-Liability.** Fitness Center shall in no event, including insolvency of ASH Fitness, hold any member liable for payment of any fees that are the legal obligation of ASH Fitness. This provision does not prohibit Fitness Center from charging the member for services not covered under this Agreement, provided the member was informed in advance and in writing of the fees to be charged. This provision shall survive termination of the Agreement. [42 C.F.R. 422.504(g)(1)(i) and 42 C.F.R. 422.504(i)(3)(i)]
- 2 Excluded Individuals.** Fitness Center represents and warrants that Fitness Center or any person who owns more than five percent (5%) of Fitness Center are not excluded from participation in a federal or state healthcare program, including but not limited to, Medicare and Medicaid. Also, Fitness Center represents that it does not now employ or contract with, and shall not in the future employ or contract with any individual excluded from participation in such federal or state programs to provide Services to Members. Fitness Center shall check key employees and persons employed, contracted or otherwise affiliated with Fitness Center and any person owning more than five percent (5%) of Fitness Center against the appropriate lists upon hire or contract and monthly thereafter to determine if the persons have been excluded from participation in a federal or state program or has been terminated for cause or default on public transactions and public programs as well as non-reinstatement. Such lists (commonly referred to as Exclusion Lists) include, but are not limited to, the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities, the General Service Administration Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, and state published Medicaid exclusion lists). For the purpose of this agreement the term “key employee” refers to all employees/contractors who are (i) involved with the receipt of funds from Members or submit claims/bills to ASH concerning services provided to Members, and (ii) individuals who lead/teach exercise classes that are specifically tailored to Members. Fitness Center shall maintain records relating to its checks of these lists in accordance with Section 8 of this addendum. Fitness Center agrees to indemnify ASH Fitness or ASH Clients, as applicable, for any civil monetary penalties levied against an ASH Client or ASH Fitness as a result of (a) Fitness Center’s failure to properly screen all employed, affiliated or contracted persons who provide Services to Members and/or hold or held more than a five percent (5%) interest in Fitness Center against the Exclusions Lists or (b) Fitness Center’s permitting an individual or entity found on the Exclusions Lists to provide Services to any Medicare Advantage Members, or otherwise be affiliated with those services, under this Agreement. Payments received by Fitness Center in circumstances where (a) or (b) above apply are also subject to recoupment by ASH Fitness upon request and Fitness Center agrees to comply with any such requests. [42 C.F.R. 422.752(a)(8)]
- 3 Compliance with Federal and State Law.** Fitness Center acknowledges that payments for Services hereunder are, in whole or in part, derived from federal funds and receipt of such payment is subject to all laws and regulations applicable to recipients of such funds. Therefore, Fitness Center shall comply with all laws and regulations applicable

to individuals and entities receiving federal funds and all other applicable federal and state laws and regulations, including, but not limited to, those laws and regulation governing participating in the Medicare Advantage or Special Needs Plan Programs, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, as well as their implementing regulations. [42 C.F.R. 422.504(h)]

- 4 **Quality Review and Improvement.** Fitness Center shall cooperate with all independent quality review and improvement activities relating to Services being provided by Fitness Center required by ASH Fitness and/or ASH Client's or CMS pertaining to the provision of Services. [42.C.F.R. 422.204(b)(4)]
- 5 **Member Appeals and Grievances.** Fitness Center shall cooperate and comply with all ASH Fitness, ASH Clients, and CMS requirements regarding appeals of members, including the obligation to provide information to ASH Fitness within the timeframe reasonably requested for such purpose. [42 C.F.R. 422.562(a)]
- 6 **Collection of Data.** When requested by ASH Fitness, Fitness Center shall participate in the collection and submission of data to CMS. Where applicable, Fitness Center shall certify the accuracy of the data collected and submitted under this section. [42 C.F.R. 422.504(c)]
- 7 **Member Records.** In addition to the requirements set forth in Section 9.03 of the Agreement, to the extent any ASH Client member records or other health and enrollment information is maintained by Fitness Center, Fitness Center shall: 1) safeguard the privacy of any information that identifies a particular member and abide by all federal and state laws and regulations regarding confidentiality and disclosure of all protected health information; 2) maintain member records and information in an accurate and timely manner; and 3) ensure timely access by members to their own records and information in accordance with federal and State laws and regulations. Information from or copies of records may be released only in accordance with federal and state laws and regulations governing such records and the information contained therein. [42 C.F.R. 422.118]
- 8 **Records and Inspections.**
  - (a) ASH Fitness and Fitness Center recognize and agree that the United States Department of Health and Human Services (DHHS), the Comptroller General, or their designees may audit, evaluate or inspect any books, contracts, and other records of ASH Fitness and Fitness Center that pertain to any aspect of services performed under this Agreement for purposes of a Medicare product, or as the Secretary of DHHS may deem necessary. ASH Fitness and Fitness Center shall retain all records related to the provision Services for a period of ten (10) years after the final date of the contract period and shall make available their premises, physical facilities and equipment, records related to the provision of Services or any additional relevant information that DHHS may require. [42 C.F.R. 422.504(e)(3)]
  - (b) CMS, the Comptroller General, or their designees have the right to inspect, evaluate and audit ASH Fitness and Fitness Center for a period of ten (10) years after the final date of the contract period or the completion of an audit, whichever is later, unless: (a) CMS determines that there is a special need to retain a particular record or group of records for a longer period and notifies ASH Fitness or Fitness Center at least thirty (30) days before the normal disposition date; (b) there has been a termination, dispute or fraud or similar fault by ASH Fitness or Fitness Center in which case retention may be extended to ten (10) years from the date of any final resolution of the termination or fraud or similar fault; or (c) CMS determines that there is a reasonable possibility of fraud, in which case it may inspect, evaluate and audit ASH Fitness and Fitness Center at any time. [42 C.F.R. 422.504(e)(4)]
9. **ASH Client Accountability.** Notwithstanding anything set forth in the Agreement, Fitness Center and ASH Fitness acknowledge and agree that, with respect to Services furnished under this Agreement for ASH Client's, ASH Clients oversee and are ultimately accountable to CMS for any functions and responsibilities performed by Fitness Center. Fitness Center shall comply with ASH Fitness's policies and procedures as set forth in the Fitness Center Program Manual. Such policies and procedures have been reviewed and approved by ASH Clients. Fitness Center shall

furnish Services to members consistent with the requirements of CMS and, including but not limited to, ASH Fitness's contractual obligations to ASH Clients. [42 C.F.R. 422.504(i)(4)(iii) and 42 C.F.R. 422.112]

- 10. Compliance Training.** Fitness Center will provide its employees and any contractors directly involved in providing Services under this Agreement the CMS Medicare Parts C & D Fraud, Waste, and Abuse Training and General Compliance Training module posted on ASHLink within ninety (90) days of hire or contracting and annually thereafter and allow ASH Fitness access to Fitness Center's records upon request to ensure Fitness Center is providing the required trainings. [42 C.F.R. 422.504(h)(1)]
- 11. Amendment and Severability of Contracts.** Notwithstanding any provision in the Agreement, this Exhibit may be amended upon request or mandate by CMS to comply with all relevant federal and State laws and regulations and government pronouncements. Additionally, this Exhibit shall be amended to exclude any Medicare product or State-licensed entity specified by CMS. A separate agreement for any such excluded product or entity will be deemed to be in place when such request is made. [42 C.F.R. 422.504(k)(1) and (2)]

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT K –GUIDELINES FOR TRADEMARK USE BY THIRD PARTIES**

American Specialty Health Incorporated (“ASH”) counts among its most valuable assets the company’s trademarks and the goodwill they represent. Protection of these marks is a priority for ASH. These guidelines on the proper use of ASH trademarks have been developed for Licensees and other third parties. The status of ASH trademarks is continually changing, and it may be necessary to revise these guidelines from time to time. These guidelines are designed to ensure proper legal usage of ASH trademarks, and to prevent consumer confusion that can result from improper or illegal usage.

1. Never vary the spelling, add or delete hyphens (even for normal hyphenation at the end of a line of text), make one word two, or use a possessive or plural form of the trademark. ASH trademarks are always used as adjectives followed by a generic term (such as “HMO”) and never as nouns or verbs.
2. When using an ASH trademark on any materials that will be distributed or presented to the public, use the registered symbol ® on the most prominent (or if none is prominent, the first) appearance of a trademark registered with the U.S. Patent and Trademark Office. For any ASH trademark that is not registered, the ™ symbol should be used in place of the registered trademark symbol. Once marked, it is not normally necessary to mark subsequent appearances of the trademark in the same publication.
3. Every appearance of ASH logos and product names in stylized form should always appear with the appropriate ® or ™ symbol, and may be used only under license with ASH. Unauthorized use is strictly prohibited.
4. A logo is a graphical design that may include text and other design elements. ASH product signatures are logos created to identify products that are licensed or owned by ASH. Stylized trademarks or “logotypes” are those that appear in word form in a particular style of type by ASH. An example includes the following:



ASH logos, product signatures, or trademarks in stylized form may be used only if you have obtained a prior written license from ASH and your use complies with the terms and conditions of the license. Under no circumstance may you modify, distort or add to ASH logos, product signatures, or stylized trademarks.

The term “American Specialty Health”, when used to refer to products, is a trademark, and its use is governed by the guidelines above. However, when “American Specialty Health Incorporated” is used only to refer to ASH as a corporate name, no trademark marking or attribution is necessary. Therefore, do not use the ® or ™ symbols.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.  
FITNESS CENTER SERVICES AGREEMENT**

**ATTACHMENT L – PROGRAM COMPENSATION**

**SILVER&FIT BASIC FITNESS CENTER:**

The following compensation rate is for a Silver&Fit Basic Fitness Center in the Silver&Fit Program:

<b>Benefit Program</b>	<b>Standard Compensation Rate</b>	<b>Maximum Number of Visits Compensated Per Month</b>	<b>Monthly Compensation Maximum</b>
<b>Silver&amp;Fit Basic</b>	TBD	10	TBD

**SILVER&FIT FULL FITNESS CENTER:**

The following compensation rate is for a Silver&Fit Full Fitness Center in the Silver&Fit Program:

<b>Benefit Program</b>	<b>Standard Compensation Rate</b>	<b>Maximum Number of Visits Compensated Per Month</b>	<b>Monthly Compensation Maximum</b>
<b>Silver&amp;Fit Full</b>	TBD	12	TBD

**FITNESSCOACH FITNESS CENTER:**

The following compensation rate is for the FitnessCoach Program:

<b>Benefit Program</b>	<b>Standard Compensation Rate</b>	<b>Maximum Number of Visits Compensated Per Month</b>	<b>Monthly Compensation Maximum</b>
<b>FitnessCoach</b>	TBD	10	TBD

**ACTIVE&FIT FITNESS CENTER:**

The following compensation rate is for the Active&Fit Program:

<b>Benefit Program</b>	<b>Standard Compensation Rate</b>	<b>Maximum Number of Visits Compensated Per Month</b>	<b>Monthly Compensation Maximum</b>
<b>Active&amp;Fit</b>	TBD	10	TBD

**PERSONAL TRAINER PROGRAM:**

The following compensation rate is for the Personal Trainer Program:

<b>Benefit Program</b>	<b>Description</b>	<b>Compensation</b>
<b>Personal Trainer Program</b>	1 session of Personal Trainer Services (Limited to 1 session per day)	TBD (Includes Co-Payment)

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## **Employee Service Awards 4<sup>th</sup> Quarter 2020**

### **5 Years of Service**

**Tony Adamson, Community Development**

**Jared Ruby, Police Department**

### **20 Years of Service**

**David Easley, Community Development**

# Types of Police Contacts and Legal Authority

# 4<sup>th</sup> Amendment

- ▶ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

# Consent

- ▶ Officers may talk to any citizen. A lot of our police contacts are done on a consent basis. Officers do not make demands to any person to stop and talk to them. We do not demand ID. Citizens are free to engage in conversation, answer questions or refuse to talk and walk away. This is not considered a seizure under the 4<sup>th</sup> amendment.

# Reasonable Suspicion

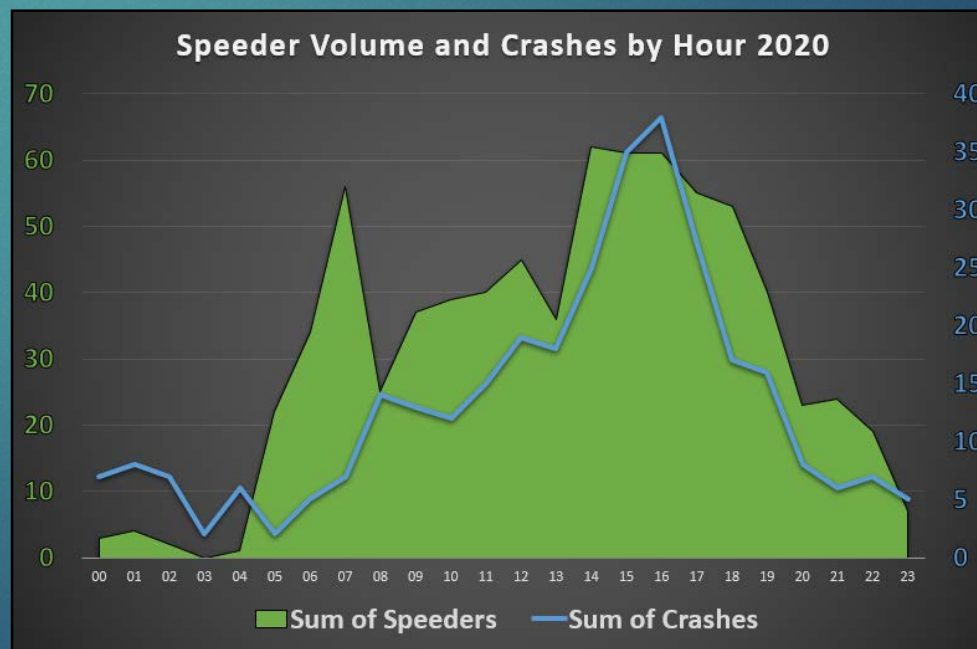
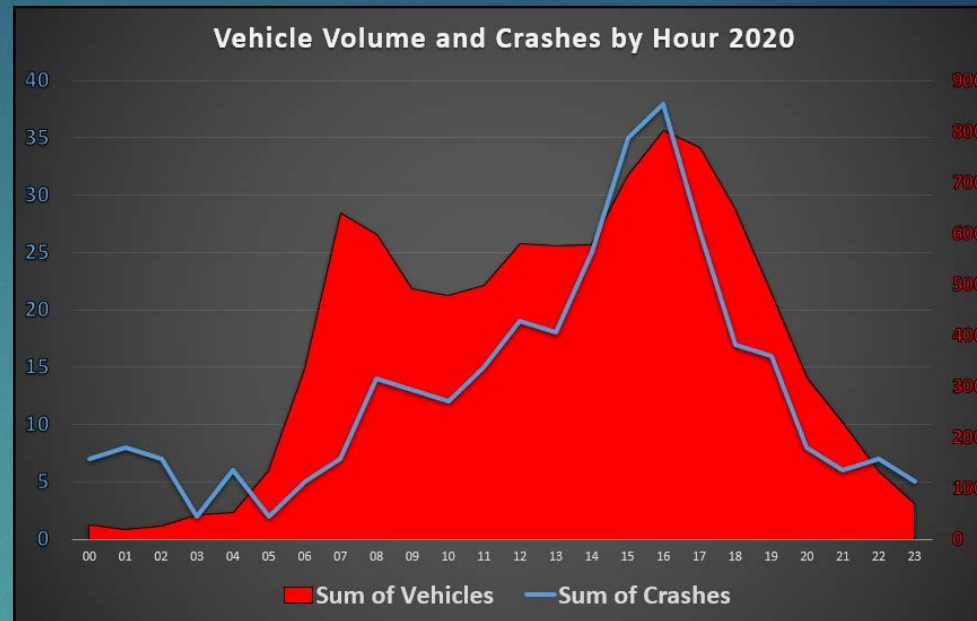
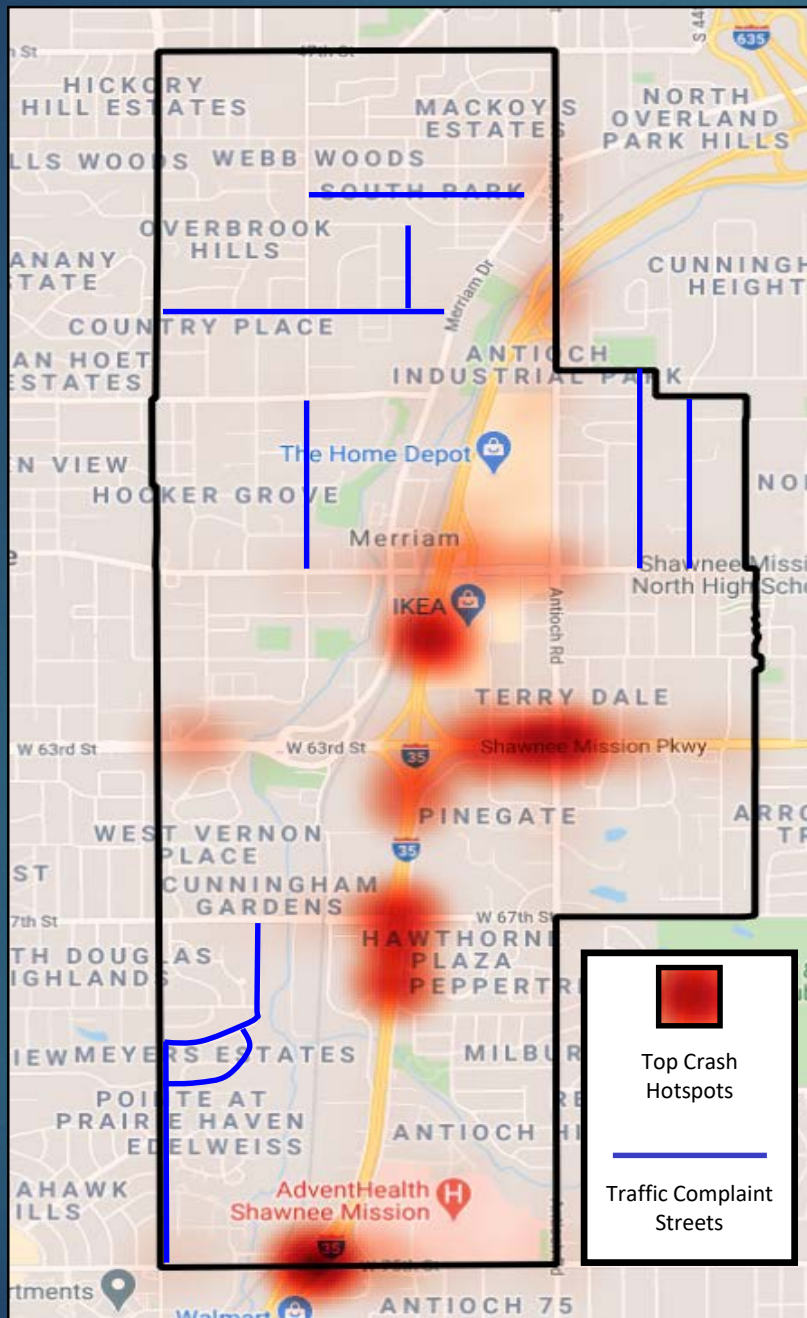
- ▶ Supreme Court defined Reasonable Suspicion in 1968 with the case Terry v. Ohio. Sometimes referred as a Terry Stop.
- ▶ An officer may forcibly stop a person if based on the officers' training and experience, there is reason to believe the person is engaging in criminal activity. The facts presented are looked at in the perspective of would a reasonable officer believe criminal activity is possible based on the same set of facts.
- ▶ This is a temporary detention. The officer is allowed to ask questions and further investigate. The time is not indefinite. If the officer cannot establish probable cause to arrest, the officer must release the person.
- ▶ Must have facts greater than a hunch. If 100% equals no doubt a person is guilty, think of reasonable suspicion as 25% certain the person committed a crime.

# Probable Cause

- ▶ Officer has knowledge of facts that would lead a reasonable person to believe a person has committed, is committing, or is about to commit a crime. Notice the difference in terms from reasonable suspicion. The facts to detain are in the perspective of a reasonable officer. The facts to arrest are in the perspective of a reasonable person.
- ▶ Probable Cause can be thought of there is a 51% chance or greater the person committed the crime.

# How Merriam Addresses Speeding Complaints

- A complaint is received from a citizen. It is documented and sent to the patrol commander.
- We first put out traffic counting devices to measure the flow of traffic and speeds. These are radar sign boards or mechanical devices laid across the roadway.
- Data is collected for 1 to 2 week period depending on method used.
- Data is analyzed to see how many cars are speeding and times of day the majority of cars are speeding.
- PD then uses two methods to reduce speeding.
  - The first is education with the use of sign boards or interactive speed limit signs that flash when cars exceed the posted speed limit
  - The second is enforcement action. Officers are directed to the area to run enforcement actions.
- There are several things that affect our ability to enforce any complaint area for a consistent period of time.
  - First, Merriam currently has 8 traffic complaint areas we monitor.
  - Second, the peak time of violators are during morning and evening rush hour.
  - Our accident peak times are also occur during these peak hours, but in different areas of the city.



\*Volume of vehicles and speeders based on multiple weeks of data collected on Knox and is in line with the same data from all traffic complaint areas.



## AGENDA ITEM INFORMATION FORM

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**AGENDA ITEM:** Adoption of the 2020 UPOC

**SUBMITTED BY:** Chief Darren McLaughlin

**MEETING DATE:** 10-12-2020

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### PROJECT BACKGROUND/DESCRIPTION:

Each year the Kansas League of Municipalities publishes an updated version of the Uniform Public Offense Code (UPOC) for Kansas Cities. The 2020 edition is available and should be “incorporated by reference”. Passing and publishing this ordinance will bring our ordinances into compliance with any changes made by the latest Kansas Legislative session.

#### **The following changes were made to the 2020 UPOC**

**1.1** Added a definition for explosives

**5.7** Changed the age of a person prohibited from purchasing tobacco from 18 to 21.

**10.29** - Violating a County Health Order. *(NEW ADDITION)*

#### **Deleting the following Sections from the UPOC:**

**Section 6.21** Taking of wildlife without permission on Land Posted.

**Section 6.22** Criminal Hunting

**Section 9.9.1** Unlawful Possession of Marijuana. *We are not going to adopt this section as it is included in Merriam Code 44-242.1.*

**Section 9.9.2** Possession of Drug Paraphernalia. *We are not going to adopt this section because it is covered in Merriam Code 44-242.3.*

**Section 9.9.3** Unlawful Distribution of Controlled Substances. *We are not going to adopt this section because it is covered in Merriam Code 44-242.*

**Section 9.9.4** Unlawful Possession of Controlled Substances. *We are not going to adopt this section because it is covered in Merriam Code 44-242.1.*

**Section 9.9.5** Unlawful Possession of a Simulated Substance. *We are not adopting this section because it is covered in Merriam Code 44-242.5.*

**Section 9.9.6** Distribution of a Non Controlled Substance. *We are not adopting this section because it is covered in Merriam Code 44-242.6.*

**10.5 Section (B)(3)** *This section provided an exception to the unlawful discharge of a firearm in the corporate limits of a city if the firearm was discharged to lawfully take wildlife during hunting season.*

#### **The following sections were removed from the UPOC by the Kansas League of Municipalities due to a conflict with K.S.A. 12-16,124.**

**10.1** sections (a) 4 through 10.

**10.2** Possession of a Firearm by an Intoxicated Person.

**10.3** Criminal Distribution of a firearm to a Felon.

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**The following sections are to be repealed in the City Code:**

**City Code 44-1** as such section that existed prior to the above amendment(s).

**City Code 44-2.1** Additional Amendment to adopted code: Furnishing, Selling or Giving Tobacco to a person under 21 years old.

**The following sections are to be added to the City Code:**

**44-57** Criminal Hunting

#### **CITY COUNCIL GOALS AND OBJECTIVES**

**Provide Exceptional Service Delivery**

#### **FINANCIAL IMPACT**

**Amount of Request/Contract:** NA

**Amount Budgeted:** NA

**Funding Source/Account #:** NA

#### **SUPPORTING DOCUMENTS**

- *Memo*
- *Ordinance 1815*
- *2020 UPOC*

#### **ACTION NEEDED/STAFF RECOMMENDATION**

*Waive the first reading.*

*Approve the 2020 Uniform Public Offense for Kansas Cities.*

*Approve the amendments to Chapter 44 of the City Code.*

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**FROM THE OFFICE OF CHIEF OF POLICE  
MERRIAM, KANSAS**

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**DATE: 10-30-2020**  
**TO: CITY ADMINISTRATOR CHRIS ENGEL**  
**CC:**  
**FROM: CHIEF DARREN MCLAUGHLIN**  
**RE: LIST OF CHANGES IN THE 36<sup>TH</sup> EDITION OF THE UPOC AND  
CITY CODE BY PASSING ORDINANCE 1815**

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The following is a list of changes, additions, deletions, repeal(s) and explanations for the 36<sup>th</sup> addition of the UPOC and to our City Codes that will take happen by passing Ordinance 1815.

**Section 1.1.** Added the following definition:

“Explosives. Any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes, but is not limited to, dynamite, and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters. (K.S.A. 21-6312(e)).

**Section 5.7** Changed the prohibited age tobacco products could be furnished, sold or given from under 18 to under 21 years of age. (The State Law is now the same as our City Code Ordinance 44-2.1)

**Section 6.24** Corrected a typo. In the previous version, they listed the section as 6.2 instead of 6.24.

**We are deleting the following sections from the UPOC due to conflict with our City Code:**

**Section 6.21:** Taking of Wildlife without permission on Posted Land: *Being deleted with the passage of the Criminal Hunting 44-5 in City Code.*

**Section 6.22** Criminal Hunting. *No longer needed due to passage of Criminal Hunting 44-57 in City Code.*

**Section 9.9.1** Unlawful Possession of Marijuana: *We are not going to adopt this section as it is included in Merriam Code 44-242.1.*

**Section 9.9.2** Possession of Drug Paraphernalia. *We are not going to adopt this section because it is covered in Merriam Code 44-242.3.*

**Section 9.9.3** Unlawful Distribution of Controlled Substances. *We are not going to adopt this section because it is covered in Merriam Code 44-242.*

**Section 9.9.4** Unlawful Possession of Controlled Substances. *We are not going to adopt this section because it is covered in Merriam Code 44-242.1.*

**Section 9.9.5** Unlawful Possession of a Simulated Substance. *We are not adopting this section because it is covered in Merriam Code 44-242.5.*

**Section 9.9.6** Distribution of a Non Controlled Substance. *We are not adopting this section because it is covered in Merriam Code 44-242.6.*

**Section 10.5(b)(3)** *This UPOC section is Unlawful Discharge of a Firearm. Section (b)(3) refers to an exception to violating this law when a person discharges a firearm when legally taking wildlife during hunting season, except when prohibited by the governing body of a city. Passage of City Code 44-57 Criminal Hunting will prohibit hunting in the city limits even during hunting season, making this section unnecessary.*

The Kansas League of Municipalities deleted the following sections from the UPOC. These particular sections regulate the possession or distribution of firearms. However, the League felt passing these ordinances in the UPOC violates K.S.A. 12-16.124 which prohibits Cities from passing laws enforcing or regulating the governing the requirement of fees, license or permits, for the commerce in or the sale, purchase, transfer, ownership, storage, carrying, transporting or taxation of firearms or ammunition or any component or combination thereof. This does not mean we lose the ability to enforce the statutes being removed from the UPOC. These violations will be enforced through District Court.

**Section 10.1** Removed the following sections from 10.1:

**From Section A, they deleted parts 4 through 10.**

(4) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

(5) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(6) Selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

(7) Possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(8) Possessing any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified 107 school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

(9) Refusing to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(10) Possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age.

**Section 10.2 Possession of a Firearm while Intoxicated.**

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

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

(c) This section shall not apply to:

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

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

(d) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person's

blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.111

(e) (1) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse;

(C) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or

(D) a phlebotomist.

(2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (d).

(3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable 112

in any action alleging lack of consent or lack of informed consent.

(4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to

jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (d).

(7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse; or

(C) a law enforcement officer of the same sex as the person being tested. The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the 113

weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in paragraphs (2) and (3) shall apply to the collection of a urine sample.

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

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

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

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

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

(h) In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:<sup>114</sup>

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

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

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

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

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

(K.S.A. 21-6332)

### **Section 10.3 Criminal Distribution of Firearms to a Felon.**

(a) Criminal distribution of firearms to a felon is knowingly:

(1) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in the subsection (b), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the felony;

(2) Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the felony, or has been <sup>115</sup>

released from imprisonment for such a felony, and has not had the conviction of such felony expunged or been pardoned for such felony; or

(3) Selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the felony.

(b) Subsection (a)(2) shall apply to a felony under K.S.A. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of 21-5413, subsection (a) or (b) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, and subsection (b) of 21-5807, and amendments thereto, K.S.A. 21-5705 or 21-5706, and amendments thereto, or K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b or 65-4160 through 65-4165, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) It is not a defense that the distributor did not know or have reason to know:

(1) The precise felony the recipient committed;

(2) That the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; or

(3) That the convictions for such felony have not been expunged or pardoned.

(d) Criminal distribution of firearms to a felon is a Class A violation. (K.S.A. 21-6303)

The following sections were added and are new to the UPOC.

**Section 10.29** Violation of a Public Health Order was added.

(a) It shall be unlawful for any person to violate, refuse or fail to comply with a written order of the County Health Officer, Board of Health, or Director of Health issued under their respective authority.

(b) A violation of this section is a Class C violation.

**The following will be deleted from City Code due to conflicts with the UPOC:**

**Repeal City Ordinance 44-2.1** Additional Amendment to Adopted Code:

**Selling, Furnishing or Giving Tobacco Products to persons under 21 years of Age**

This ordinance was passed by Council to limit the sale, furnishing or giving of tobacco products to persons under 21 years of age. The state law has changed the age from 18 to 21 and the new section 5.7 of the UPOC has incorporated these changes. Therefore, our city ordinance is a duplicate and should be repealed.

**The following section will be added to the City Code:**

We discovered a loophole in our City Code and UPOC involving hunting. We received an inquiry from a citizen asking if they could squirrel hunt in the city limits during the state authorized hunting season and with a hunting license. Our current laws did not prohibit such activity. Merriam is too densely populated to allow hunting with firearms within its boundaries. Therefore passing the following ordinance is necessary for public safety reasons.

**Criminal Hunting 44-57:**

(a) It shall be unlawful for any person to shoot, hunt, trap or pursue any bird or animal within the City of Merriam.

(b) Exceptions. Nothing in this section shall:

1. Be deemed to prohibit any action taken by a law enforcement officer, community service or animal control officer pursuant to the interests of public health and safety; or
2. Be interpreted as prohibiting any act done in self-defense or done to defend another person.
3. This section shall not apply to lawful fishing or frogging.
4. This section shall not prohibit the trapping of animals deemed to be a public nuisance as defined in Chapter 8, Section 8-80 of the Code of Ordinances.

(c) Criminal hunting is a Class C Public Offense.

*Chief Darren McLaughlin*

## 2019 Kansas Statutes

### **12-16,124. Firearms and ammunition; regulation by city or county, limitations.**

(a) No city or county shall adopt or enforce any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the requirement of fees, licenses or permits for, the commerce in or the sale, purchase, transfer, ownership, storage, carrying, transporting or taxation of firearms or ammunition, or any component or combination thereof.

(b) Any ordinance, resolution or regulation prohibited by subsection (a) that was adopted prior to July 1, 2015, shall be null and void.

(c) Nothing in this section shall:

(1) Prohibit a city or county from adopting and enforcing any ordinance, resolution or regulation relating to the personnel policies of such city or county and the carrying of firearms by employees of such city or county, except that any such ordinance, resolution or regulation shall comply with the provisions of K.S.A. 75-7c01 et seq., and amendments thereto;

(2) prohibit a city or county from adopting any ordinance, resolution or regulation pursuant to K.S.A. 75-7c20, and amendments thereto;

(3) prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer's duties; or

(4) prohibit a city or county from levying and collecting any retailers' sales tax on the sale of firearms, ammunition or any component or combination thereof as authorized by K.S.A. 12-189, and amendments thereto.

**History:** L. 2005, ch. 141, § 10; L. 2007, ch. 166, § 1; L. 2013, ch. 36, § 1; L. 2014, ch. 97, § 7; L. 2015, ch. 93, § 1; July 1.

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

**AN ORDINANCE AMENDING SECTION 44-1 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS REGULATING PUBLIC OFFENSES; INCORPORATING BY REFERENCE THE “2020 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES,” 36TH EDITION, WITH AMENDMENTS AND DELETIONS THERETO; REPEALING SECTION 44-2.1 OF THE MERRIAM CITY CODE, CONCERNING SELLING, GIVING OR FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO A MINOR; ENACTING A NEW SECTION 44-57 OF THE MERRIAM CITY CODE CONCERNING CRIMINAL HUNTING; AND REPEALING SECTION 44-1 HEREBY AMENDED.**

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

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

“Sec. 44-1. Incorporating Uniform Public Offense Code. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Merriam, Kansas, that certain code known as the “2020 Uniform Public Offense Code for Kansas Cities,” 36th edition, (“UPOC”) prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified, or changed by this Ordinance or by Chapter 44 of the Code of Ordinances, City of Merriam, Kansas. At least one copy of the UPOC shall be marked or stamped “Official Copy as Incorporated by Ordinance No. \_\_\_\_\_” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this Ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

SECTION 2. Deletion. Section 6.21 of the UPOC relating to Taking Wildlife Without Permission on Land Posted “By Written Permission Only” is hereby omitted and deleted.

SECTION 3. Deletion. Section 6.22 of the UPOC relating to Criminal Hunting is hereby omitted and deleted.

SECTION 4. Deletion. Section 9.9.1 of the UPOC relating to Unlawful Possession of Marijuana and Tetrahydrocannabinols is hereby omitted and deleted.

SECTION 5. Deletion. Section 9.9.2 of the UPOC relating to Possession of Drug Paraphernalia and Certain Drug Precursors is hereby omitted and deleted.

SECTION 6. Deletion. Section 9.9.3 of the UPOC relating to Unlawful Distribution of Controlled Substances is hereby omitted and deleted.

SECTION 7. Deletion. Section 9.9.4 of the UPOC relating to Unlawful Possession of Controlled Substances is hereby omitted and deleted.

SECTION 8. Deletion. Section 9.9.5 of the UPOC relating to Unlawful Possession of a Simulated Substance is hereby omitted and deleted.

SECTION 9. Deletion. Section 9.9.6 of the UPOC relating to Distribution of a Non-controlled Substance is hereby omitted and deleted.

SECTION 10. Deletion. Subsection (b)(3) of Section 10.5 providing for an exception to the unlawful discharge of a firearm within or into the corporate limits of any city if “(3) The firearm is discharged to lawfully take wildlife unless prohibited by the department of wildlife, parks and tourism or the governing body of the city;” is hereby omitted and deleted.

SECTION 11. Repeal. That section 44-1 of the Code of Ordinances, City of Merriam, Kansas, as such section existed prior to the above amendment, is hereby repealed.

SECTION 12. Repeal. That section 44-2.1 of the Code of Ordinances, City of Merriam, Kansas, concerning selling, giving or furnishing cigarettes or tobacco products to a minor in adopted code is hereby repealed.

SECTION 13. New Enactment. That section 44-57 of the Code of Ordinances, City of Merriam, Kansas, is hereby enacted to provide as follows:

Sec. 44-57 – Criminal Hunting.

- (a) It shall be unlawful for any person to shoot, hunt, trap or pursue any bird or animal within the City of Merriam.
- (b) **Exceptions.** Nothing in this section shall:
  - 1. Be deemed to prohibit any action taken by a law enforcement officer, community service or animal control officer pursuant to the interests of public health and safety; or
  - 2. Be interpreted as prohibiting any act done in self-defense or done to defend another person.
  - 3. This section shall not apply to lawful fishing or frogging.
  - 4. This section shall not prohibit the trapping of animals deemed to be a public nuisance as defined in Chapter 8, Section 8-80 of the Code of Ordinances.
- (c) Criminal hunting is a Class C Public Offense.

SECTION 14. Existing Sections. Those sections of Chapter 44 of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed shall remain in full force and effect.

SECTION 15. Severability. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 16. Savings Clause. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, nor the repeal of Ordinance No. 1804, shall in any manner affect the prosecution for violation of this Ordinance or a violation of Ordinance No. 1804, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either ordinance, nor be construed as affecting any of the provisions of these ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder shall continue in full force and effect.

SECTION 17. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication in the official City newspaper, all as provided by law.

PASSED by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

APPROVED AND SIGNED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Ken Sissom, Mayor

ATTEST:

\_\_\_\_\_  
Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan B. Denk, City Attorney



## INTEROFFICE MEMORANDUM

**TO:** MAYOR AND CITY COUNCIL  
**FROM:** JIM MACDONALD, PUBLIC WORKS DIRECTOR  
**SUBJECT:** OCTOBER UPDATE  
**DATE:** October 12, 2020

### HIGHLIGHTS

#### **2020 Street & Storm Drainage - Johnson Dr. (BNSF to East City Limits) Mastin St. Improvements (Johnson Drive to Shawnee Mission Parkway)**

- Mastin Street is substantially complete, Sod was completed the week of October 5<sup>th</sup>, the contractor is working on punch list items.
- Johnson Drive is substantially complete, the contractor is finishing up the sod work and island planting, they are currently working on punch list items.
- We are waiting on Evergy to energize the street light controller, once that is done the existing old-style streetlights will be removed.

#### **East Frontage Road- 67<sup>th</sup> to 75<sup>th</sup>**

- Affinis Engineering has started field surveying East Frontage Road.

## Capital Improvement Active Project List

Last Updated 10/6/2020

[illegible]



# CIP

Capital Improvement Program

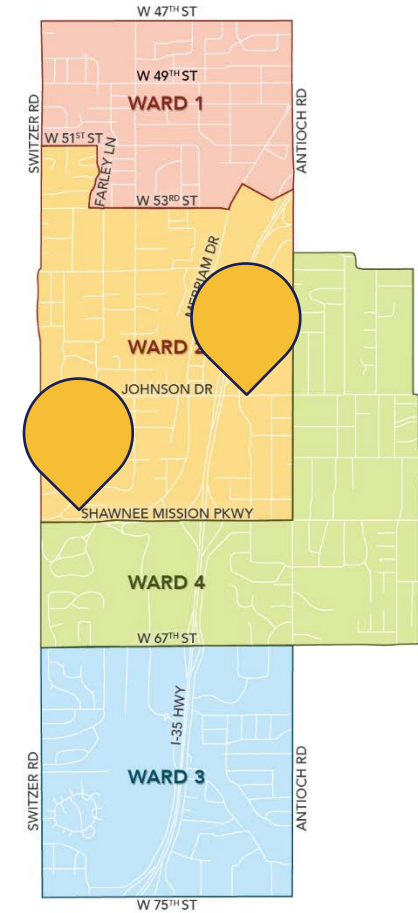


# 2020 CARS Johnson Drive/Mastin St.

## TIMELINE 2020

# UPDATES

- ▶ Mastin St. is substantially complete.
  - ▶ Sod was completed last week.
  - ▶ Contractor working on punch list items.
- ▶ Johnson Drive is substantially complete.
  - ▶ Contractor finishing sod work and island planting; working on punch list items.
- ▶ Waiting on Evergy to energize the street light controller, then will remove existing old-style streetlights.



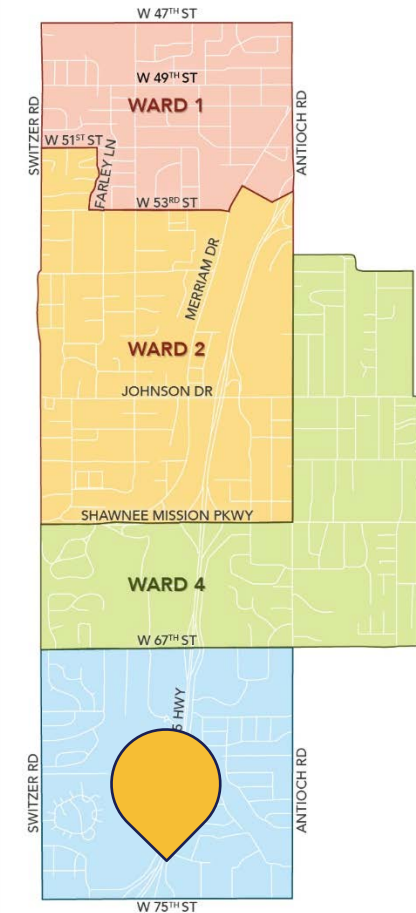
# East Frontage Road Improvements

## TIMELINE 2020

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### UPDATES

- ▶ Affinis engineers started field surveying on East Frontage Road between 67<sup>th</sup> and 75<sup>th</sup> streets.



# Questions?

## Staff Contact:

**Jim MacDonald**

**913-322-5571**

**[jmacdonald@merriam.org](mailto:jmacdonald@merriam.org)**



**CITY OF MERRIAM PARK AND RECREATION**  
**ADVISORY BOARD MEETING MINUTES**  
**Tuesday, September 22, 2020**  
**6:00PM**

**Roll Call**

The September meeting of the Merriam Parks & Recreation Advisory Board was called to order at 6:00 pm, by Chairperson Christopher Leitch. Board members in attendance included: LaVera Howard, Katie Leary, Billy Croan, Kathy Stull, Staci Chivetta and Evan Quinley. Staff members in attendance included: Anna Slocum, Director; and Nicole Ritter, Customer Service Representative. Due to COVID-19 gathering restrictions, other staff did not attend.

**Public Comments**

There was no one present for public comments.

**Approval of Meeting Minutes**

LaVera Howard made a motion to approve the August minutes. Katie Leary seconded the motion, which passed unanimously.

**Staff Reports**

**Director's Report**

**COMMUNITY CENTER UPDATE**

- Since the last meeting the following has occurred: banquet chairs and monitor arms have been delivered; there has been a completion of various furniture punch list items; and furniture in aquatics as well as the courtyard has been installed. A Plexiglas sneeze guard has been installed at the Welcome Desk using Velcro. This will allow for it to be removed or installed again if needed without causing damage to the desk. Site work changes include: sod in the location of what will be the future home of the Johnson County Library and artificial turf has been installed in the courtyard and next to the outdoor pool deck. Work will begin next week on the south end of the outdoor pool for terraced seating. Any dead plant will be replaced. In addition, all plants have a one-year warranty. Hermes continues to work through the site planting with a goal to be complete by the end of the month. The art work in the courtyard is anticipated to ship the end of September.
- Staff is preparing for the indoor pool to be available for a soft opening allowing staff to evaluate COVID-19 protocols. Reservations will be required for swimming laps and water walking. During open swim, capacity will be 75. The remaining issues to finalize opening are safety related. Monitoring social media engagement, video response is significantly higher than pictures. Staff will begin to incorporate more videos in posts.
- The building is in the punch list stage of construction. Crews are fixing items that did not quite meet expectation. The walking track will be closed Thursday, September 24 – Friday, September 25 and Monday, September 28 – Thursday, October 1 to install more lighting along the perimeter. This section of lighting was added when, on a cloudy day, the track was dark. In addition, more paint and graphics will be installed in the gymnasium, walking track and locker rooms in the coming weeks.

**MONTHLY COMMUNITY CENTER MEMBERSHIP REPORT**

- Membership sales have increased by one hundred compared to August. Staff is anticipating sales to increase once an announcement of when the indoor pool will open. To assist with membership sales, a corporate membership policy was created during the establishment of operations in 2019. This will allow Merriam businesses to provide an incentive for their employees to purchase memberships at the resident rate. Once the business signs the agreement, employees only need to show proof of employment either by a paystub or identification badge to be eligible for resident rates. Currently, three businesses have completed the process. Staff is creating a full educational / marketing campaign for this opportunity. A news story will be included in

Highlights, a letter will be inserted in business license renewals and digital signage is being created. Once complete, staff will share with Park Board. Staff has re-engaged Advent Health in determining if there is the opportunity to partner for various programs.

- The September visit report is included in this packet. Visits have been slightly up from this time last month. The center tours have declined since last August. There has been an increase in Silver Sneakers memberships as well as Renew Active. Staff continues to work on acquiring one additional insurance based membership and has contacted PeerFit.

#### **FARMERS' MARKET MONTHLY REPORT**

- There is one weekend left of the 2020 Farmers' Market season. Vendor numbers are down this year compared to last year due to COVID-19 restrictions. The number of shoppers is relatively the same as last year even with all entertainment being cancelled. Ingrid Berg and the Farmers' Market supervisors were all new to their positions. They did a great job establishing COVID-19 protocols and ensuring they were implemented and followed.

#### **Tim Murphy Art Gallery Schedule**

- There will be no reception for the upcoming show "Two Men and a Brush". This exhibit runs from October 1 - 31 and features two local artists. The artists for next year have been selected and staff is working to finalize the schedule.

#### **New Business**

##### **Youth Member Appointment**

- The youth member position has filled with the Mayor appointing Evan Quinley.

#### **Other Business**

##### **Ward 1 Vacancy**

- The candidate for this position has passed on the opportunity, so staff is promoting the vacancy of Ward One. For those who have terms expiring at the end of 2020, please remember to inform the Mayor of your intent to serve for another two-year term.

#### **Meeting**

- The October packet will be available one week early; approximately by October 15<sup>th</sup>, due to staff vacation. Upcoming agenda items will include a review of fees, Farmers' Market schedule and annual election. There will not be meeting in December.

#### **Adjournment**

Evan Quinley called for a motion to adjourn. LaVera Howard seconded. The meeting adjourned at 6:43 p.m.

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

### **CONSENT AGENDA**

1. Move that the council approve Consent Agenda Items 1-4.

### **MAYOR'S REPORT**

1. No motion.
2. No motion.
3. No motion.

### **COUNCIL ITEMS**

1. Move that the council waive the customary first reading of an ordinance adopting the 2020 Uniform Public Offense Code (UPOC).
2. Move that the council approve an ordinance adopting the 2020 Uniform Public Offense Code (UPOC).
3. No motion.
4. No motion.

### **STAFF ITEMS**