

## MERRIAM CITY COUNCIL AGENDA

May 11, 2020

7:00 P.M.

This is a virtual meeting.

The public may participate by joining the meeting at:

<https://us02web.zoom.us/j/86027021751?pwd=SUhwck52eURuOFVmQ1h6Mkh6TXRBZz09>

Password: 820611

Or Telephone: 1-301-715-8592 Webinar ID: 860 2702 1751 Password: 820611

iPhone one-tap: US: +13017158592,,86027021751#,1#,820611#

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

### 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. **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. Please include "Public Comments" in the subject line.**

### IV. CONSENT AGENDA

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

1. Consider approval of the minutes of the City Council meeting held April 27, 2020.

### V. MAYOR'S REPORT

1. Proclamation - Public Works Week May 17 - 23.

### VI. PUBLIC HEARING - Public Hearing regarding the City's grant application submittal for 2021 Community Development Block Grant (CDBG) funding.

Members of the public are able to make public comments regarding the 2021 CDBG funding. **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. Please include “CDBG” in the subject line.

## VII. COUNCIL ITEMS

### A. Finance and Administration

1. Consider approval of a franchise ordinance with Every Metro Inc.
2. Consider approval of an ordinance authorizing the sale, consumption and possession of alcoholic liquor during the Merriam Drive Live Special Event.
3. Consider approval to waive the caterer’s license fee for the Merriam Drive Live event.
4. Consider approval of an amendment to the Merriam Pointe Redevelopment agreement.
5. Community Center Update. (Included in packet)

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

1. CIP Update. (Included in packet)

## VIII. STAFF ITEMS

## IX. NEW BUSINESS

## X. EXECUTIVE SESSION

## XI. ADJOURNMENT

Respectfully submitted,

*Juliana Pinnick*

Juliana Pinnick  
City Clerk

**MERRIAM CITY COUNCIL MINUTES****April 27, 2020****7:00 P.M.****Virtual meeting via Zoom.****I. CALL TO ORDER**

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

**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; Anna Slocum, Parks and Recreation Director; Bryan Dyer, Community Development Director; Stephanie Thompson, HR Manager and Juli Pinnick, City Clerk.

**III. PUBLIC ITEMS- there were no public comments**

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. **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**

**IV. CONSENT AGENDA**

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

1. Consider approval of the minutes of the City Council meeting held April 13, 2020.

2. Consider approval of the purchase of security camera system for the new community center.

Item 2 was pulled from the consent agenda by Mayor Sissom.

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

Assistant City Administrator Meredith Hauck commented that item 2 was pulled from the consent agenda as the first two cameras listed on the proposal, included the incorrect model number. The council was provided an updated equipment list by email. The first two cameras listed on the scope of work, which are inside cameras, will be the newer model camera. Ms. Hauck read the correct model number for the cameras that would be installed. The different cameras do not change the scope of work or pricing.

Councilmember Yadrich asked about the licensing of the cameras and which licenses would need to be renewed. She also asked about the warranty period of the cameras.

Ms. Hauck commented that the license is purchased on the front end and then a maintenance fee is paid annually after that. The maintenance is a percentage of the licensing fee. This is typical of all the camera systems the city has. It is an on-going maintenance cost that is in the IT budget. The warranty is 5 years on the cameras.

Councilmember Yadrich clarified that the camera system was a budgeted item and the reason for council approval is it is over the threshold of what can be spent without council approval.

Ms. Hauck confirmed that the camera system is within the budgeted amount and requires council approval per the city's expenditure policy.

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

## V. MAYOR'S REPORT

## VI. COUNCIL ITEMS

### A. Finance and Administration

1. Consider approval of a franchise ordinance with Evergy Metro Inc. (first reading)

City Administrator Chris Engel provided the background for this item.

Currently Evergy Metro, Inc. (formerly KCP&L) is operating in Merriam as an electrical utility. The existing franchise agreement expired in January 2020 but remains active as long as the parties are negotiating. The City Attorney has been working with Evergy since last year and both parties have agreed to a new franchise ordinance.

The agreement with Evergy has the same terms as the KCP&L agreement. The duration is 10 years. The agreement grants Evergy the nonexclusive right to utilize and construct within the public right-of-way to provide electric energy. Evergy cannot provide additional services which require a franchise agreement without first obtaining a separate franchise agreement with the City. Evergy does have the ability to allow attachments to its facilities if such attachments are covered in a separate pole attachment agreement with the City. In return, Evergy will pay the City a monthly franchise fee of 5% of total gross receipts. This agreement generated \$853,071 in 2019 for the General Fund.

Per statute, the City published a Notice to Electors in The Legal Record on April 21<sup>st</sup>, which is 20-days prior to the May 11<sup>th</sup> City Council meeting when the Ordinance will be considered for approval.

On April 13<sup>th</sup> the City Council asked about language to promote sustainability or net metering. Research regarding the net metering was included in the Council Agenda Packet.

Councilmember Silvers asked which newspaper published the notice.

Mr. Engel stated that the city's official newspaper is the Legal Record and that is where the notice was published.

This was a first reading of the ordinance.

2. Consider approval of an ordinance authorizing the sale, consumption and possession of alcoholic liquor during the Merriam Drive Live Special Event. (first reading)

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

Merriam Drive Live debuted in 2018 as a new event in downtown Merriam. The goal of the event is to provide an opportunity to build community among residents as well as provide an example of how the land at 5701 Merriam Drive could be utilized. Although weather has been less than desirable, event organizers implemented a weather plan that has proved successful for the enthusiastic attendees.

This year, the event is scheduled for Saturday, October 3 from 11 am – 6 pm featuring the rescheduled Turkey Creek Festival 5K to start the day, a variety of musical performances, children's activities, corn hole tournament, yard games, food trucks and a Kansas licensed caterer serving beer and wine. In order for beer and wine to be sold and participants not be confined to a specific space, an ordinance is required to allow the sale, consumption and possession of alcoholic liquor on streets and sidewalks within the boundaries permitted.

The boundaries, outlined in Exhibit A, would be as follows: west edge of the Farmers' Market Pavilion; east edge of the Irene B. French Community Center; 57<sup>th</sup> Street on the north end and 58<sup>th</sup> Street on the south end. The boundaries of the area will be clearly marked by signs and a map of the area will be posted where the sale of alcohol occurs.

This was a first reading of the ordinance.

3. Monthly Finance Report.

City Administrator Chris Engel commented that the finance report included in the packet covers sales tax revenues through January. Those receipts were up 9% over 2019 revenues. In regard to sales tax right now, the city won't receive those numbers until June, so the 9% for January is a good start. Staff is anticipating a drop in sales tax due to the stay-at-home order, but will not know the impact of that for a couple of months. Regarding car sales tax, most of the large dealerships are still conducting vehicle service and parts as well as on-line sales of cars.

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

1. Community Development Update.

Community Development Director Bryan Dyer commented that the Comprehensive Plan process continues and the consultant, Confluence, is working on public engagement through on-line outlets.

Building still continues and staff is out conducting many inspections and issuing building permits.

Mr. Dyer announced that long-time employee John Hollis is retiring after 23 years. He served as the Building Official for many years and then became the City Planner a few years ago. He has seen many large commercial developments throughout the city over the past 23 years. His last day will be May 1.

The planner position vacancy has been advertised and staff has conducted some preliminary screening of applicants.

## **VIII. STAFF ITEMS**

City Administrator Chris Engel commented that staff is working on a plan to incrementally open the city back up. Staff anticipates meeting back in person by the June City Council meeting.

Staff has also been working on the 2021 budget. It has been a challenge not knowing how our revenue will be affected by the COVID -19 pandemic. There is a schedule in place to get the budget process going, which may include a couple of work sessions or special meetings. The schedule is based on when the budget numbers can get finalized and still meet the deadline for submission to the County Clerk. Typically, by this time, council is working on the CIP budget portion and by end of July, the budget process is wrapped up. This year will be different, but staff still anticipates completing the 2021 budget for submission to the County Clerk by August 24.

Mr. Engel commented that Merriam received a shout out from the Kansas Governor regarding the Merriam Police Department and the birthday parades they have been conducting. It can be viewed at the city's website and other social media outlets.

Assistant City Administrator Meredith Hauck provided a brief Community Center update.

Construction continues every day, however, some materials are experiencing shipping delays. Some of these delays are affecting critical pieces of the project. The wood for the ceiling in the lobby area has not arrived on site yet. It is holding

up completion of the lobby area as other pieces of construction cannot move forward without those materials.

The fire panel has not arrived and the manufacturer cannot provide an estimated arrival time yet. The building cannot be open to the public without the fire panel being installed. Moving into the building is not a problem without the fire panel but no public can be allowed without it.

The tile for the indoor pool also has not arrived on site yet. The manufacturer has closed due to the pandemic and we are unable to get ahold of anyone there to see where the material is. Staff looked at bringing in a different tile of the same likeness but unfortunately many suppliers are have the same issues with shipping.

As a result, the new community center opening will be delayed three weeks. June 1<sup>st</sup> was the original date of opening the center for charter members, now with the public health restrictions in place, it appears that June 22 will be a more realistic date for the opening to charter members. Staff is working on a plan to fully open the building to the public. The state and county are working on their opening sequence plan for gyms and pools, and the city has to follow those guidelines which have not been completed. Staff will continue to keep the council and public updated as these dates unfold.

Staff has extended charter membership terms, discounted summer memberships and are working to take care of the patrons who have purchased charter memberships and ensure fairness to all members.

All of these issues along with the public health restrictions will also likely mean that the Irene B. French Community Center will not reopen to the public.

City Administrator Chris Engel commented that decisions that other cities make on opening their pools could impact us. For our center, we have to fill the pools with water as part of the construction acceptance, so while our pools will be filled with water and operational, if other cities make the decision to not open or delay opening due to the public health restrictions, we could be impacted by that. If there is no other place to swim except Merriam there may be a huge influx of customers.

Staff is mindful of this scenario and are trying to plan for something like this to occur. Planning for this is difficult as we have never had a situation like this to base anything on.

Councilmember Silvers asked about the Superpass program for next year in light of the public health restrictions.

Mr. Engel commented that some of the cities participating in the 2020 Superpass program have discussed disbanding the program this year. Their concern is if one city opens their pool but another one does not, and all the Superpass patron go the one or two pools that are open, it could really overwhelm those pools.

Mayor Sissom commented that during a recent conversation he had with County Commissioner Ed Eilert, he indicated the county is working on a 4-phase re-opening plan. Each phase of the plan will occur at different increments and pools appear to be in phase 3 of that plan. At this time we do not have the dates when those phases will be implemented.

**IX. NEW BUSINESS**

**X. EXECUTIVE SESSION**

**XI. ADJOURNMENT**

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER HANDS MOVED TO ADJOURN AT 7:52 PM. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,  
*Juliana Pinnick*  
Juliana Pinnick  
City Clerk



## National Public Works Week Proclamation

May 17 – 23, 2020

“It Starts Here”

WHEREAS, public works professionals focus on infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of **Merriam, Kansas**; and,

WHEREAS, these infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers and employees at all levels of government and the private sector, who are responsible for rebuilding, improving and protecting our nation’s transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and,

WHEREAS, it is in the public interest for the citizens, civic leaders and children in **Merriam, Kansas** to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and,

WHEREAS, the year 2020 marks the 60<sup>th</sup> annual National Public Works Week sponsored by the American Public Works Association/Canadian Public Works Association be it now,

THEREFORE BE IT RESOLVED, that I, **Mayor Ken Sissom**, do hereby designate the week May 17 – 23, 2020 as National Public Works Week; I urge all citizens to join with representatives of the American Public Works Association and government agencies in activities, events and ceremonies designed to pay tribute to our public works professionals, engineers, managers and employees and to recognize the substantial contributions they make to protecting our national health, safety, and quality of life.

Proclaimed this 11<sup>th</sup> day of May, 2020.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk



## AGENDA ITEM INFORMATION FORM

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**AGENDA ITEM:** Conduct a Public Hearing regarding the City's grant application submittal for 2021 Community Development Block Grant (CDBG) funding

**SUBMITTED BY:** Bryan P. Dyer, Community Development Director

**MEETING DATE:** May 11, 2020

### PROJECT BACKGROUND/DESCRIPTION:

This is the Public Hearing for the city's application to Johnson County for 2021 CDBG funds. The purpose of the Public Hearing is to receive comments on the City's CDBG application.

The City of Merriam's 2021 CDBG application is for \$70,000 for the removal of 20 KCPL "cobra head" streetlights and the installation of 31 City of Merriam standard LED streetlights in the Milburn West neighborhood bounded by W. 70<sup>th</sup> Street, Kessler Street, W. 69<sup>th</sup> Street, and Antioch Road. The project will complete the installation of city street lights in the Antioch Hills and Milburn West neighborhoods.

The "cobra head" streetlights are spaced far apart and do not provide a large amount of illumination at ground level. The CDBG funds will be used to replace the "cobra head" lights with streetlights that are much more appealing, energy efficient, and owned by the city. The streetlights that are installed by the city are aesthetically pleasing, shorter, and provide better lighting at ground level. This increased lighting encourages pedestrian activity and neighbor interaction. This increase in activity discourages crime in neighborhoods.

This project will complete the installation of city standard streetlight from W. 73<sup>rd</sup> Street to W. 69<sup>th</sup> Street between E. Frontage Road and Antioch Road. The completion of the street light system will provide residents with a lighted, pedestrian connection to Quail Creek Park, E. Frontage Road, and Antioch Road. The project will serve approximately 469 residents.

The purpose of this Public Hearing is to receive feedback on the application that is included in the Council's information packet. After conducting the Public Hearing, if appropriate, the Council can authorize the Mayor to sign the application.

Total project cost    \$188,164

Funding -

CDBG	\$70,000
CIP	\$79,960
Public works labor	\$38,204

## **CITY COUNCIL GOALS AND OBJECTIVES**

3.2 Sustain capital improvement efforts

A. Continue to submit for federal and county grants to leverage the use of City funds

3.4 Improve safety for all modes of travel throughout the community

A. Create and maintain a well-connected transportation network that includes efforts related to walkability and bikeability

## **FINANCIAL IMPACT**

**Amount of Request/Contract:**

**Amount Budgeted:**

**Funding Source/Account #:**

## **SUPPORTING DOCUMENTS**

- City of Merriam 2021 CDBG Grant application

## **ACTION NEEDED/STAFF RECOMMENDATION**

Conduct a Public Hearing regarding the City's grant application submittal for 2021 Community Development Block Grant (CDBG) funding. Following the Public Hearing authorize the Mayor to sign the City's 2021 CDBG application.



**JOHNSON COUNTY/CITY OF OLATHE  
2021 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
APPLICATION**

**PUBLIC FACILITIES**

**DUE: 12:00 p.m., May 21, 2020 to Johnson County; OR**

**DUE: 4:00 p.m., May 15, 2020 to City of Olathe**

**FOR CDBG STAFF USE ONLY:**

Date Received:

Amount Requested:

Matrix Code:

National Objective Code:      Code Citation: 24 CFR 570.208

Environmental Status:      Code Citation: 24 CFR 58.

Applicants are expected to review the 2021 CDBG Application Handbook and 2021 Application Instructions provided prior to completing this application. These documents include important submission requirements and are located at: <https://jocogov.org/dept/community-development/community-development-block-grant-cdbg>

**PART 1: APPLICANT INFORMATION & PROJECT SUMMARY**

*1. Applicant Information*

- a. Applicant Legal Name:
- b. Mailing Address:
- c. Phone:
- d. Website:
- e. DUNS Number (9-Digit Number):

*2. Applicant Contact Information (responsible for ALL application communication)*

- a. First and Last Name:
- b. Mailing Address:
- c. Email:
- d. Phone:





3. Title of Proposed CDBG Project: (100 characters)

4. Amount of CDBG Funds Requested: (100 characters)

5. Type and amount of funds the applicant is committing to the proposed project (leveraged funds): (200 characters)

6. Please list the address/location of the proposed project. If the project will be carried out at more than one location, provide all addresses below. Applicants must also include a colored map(s) of the program location as a required attachment: (300 characters)

7. In two sentences, provide a concise description of the proposed CDBG project: (600 characters)

8. Project Beneficiaries

a. How many low to moderate income people will benefit from the CDBG funds requested in this application? (300 characters)

b. If the project benefits an AREA, please provide each Census Tract & Block Group for the entire service benefit area and the rational for the service area. Applicant must also include a map with the service area circled and all census tract/block groups labeled. (300 characters)





c. Percentage of low to moderate income persons in the service AREA and data used for determining the percentage. *Note: If you are using more than one census tract & block group to determine eligibility you must divide the total population by the total LMI population. Do NOT add the percent LMI and divide by number of census tract block groups listed. (500 characters)*

9. Fair Housing activities are required to be addressed by all CDBG applicants. What actions will be taken to further fair housing? (600 characters)

10. Does the project address any of Johnson County's strategic priorities? Please explain. The current board approved strategic priorities are available in the Application Handbook: (700 characters)

11. How will you measure success of this project? (800 characters)





## PART 2: PROJECT NARRATIVE AND PERFORMANCE

1. What specific eligible CDBG activities will be funded through this project? For HUD guidance on eligible CDBG activities visit: <https://www.hudexchange.info/programs/cdbg-entitlement/cdbg-entitlement-program-eligibility-requirements/> (1000 characters)

2. Need for CDBG Project:

- a. Explain the specific local need this project will address: (600 characters)

- b. Provide current County/City specific local data that substantiates the need: (1000 characters)





c. Describe the major local factors that contribute to the problem: (800 characters)

3. Project Performance Measures: Using the logic model below, state the goals, inputs, activities, outputs and outcomes of the project (see Application Guidance for additional information on completing the logic model) Example:

<b>A Public Facilities/Improvement Project</b>	
<b>GOALS</b>	- Improve secondary roads to current city standards
<b>INPUTS</b>	- \$500,000 budget, city project manager, City Park staff
<b>ACTIVITIES</b>	- Engineering bid, construction bid, Davis-Bacon oversight,
<b>OUTPUTS</b>	- 1,850 linear feet of new asphalt, curb, gutter and sidewalk on one side of street, 20 trees planted for beautification
<b>OUTCOMES</b>	- At completion of project, improved road rideability, vehicle and pedestrian safety and improved drainage
<b>OUTCOME MEASUREMENT</b>	- rideability as measured by such devices as Mays Meter;





## 2021 CDBG Project Performance Measures Logic Model

(500 characters per box)

<b>GOAL(S)</b> of the 2021 Project
<b>INPUT</b> (those things used in the project to implement it)
<b>ACTIVITIES</b> (to achieve program goals)
<b>OUTPUTS</b> (products of the project)
<b>OUTCOMES</b> (anticipated results)
<b>ACTUAL RESULTS</b> (will be reported at the end of 2021 grant year)





### PART 3: CDBG PERFORMANCE HISTORY

1. If requesting funding for a previously funded CDBG project, clearly state how your most recent year's objectives were met and attach the completed logic model from that application: (1000 characters)

2. Complete the table below with information (if applicable) from the 2018 and 2019 CDBG program years. Complete the chart for Johnson County if you received funding directly from Johnson County and complete the chart for Olathe if you received funding directly through Olathe. Actual persons served should agree to the final Project Beneficiary Form submitted to Community Development and reported in the annual CAPER to HUD. Please attach logic models from the 2018 and 2019 CDBG program years.

Johnson County CAPER Reports: <https://jocogov.org/dept/community-development/reports>

Johnson County Program Year	Goals listed in application	Actual Persons Served	Variance
2018			
2019			

Variance Explanation: (400 characters)

Olathe Program Year	Goals listed in application	Actual Persons Served	Variance
2018			
2019			

Variance Explanation: (400 characters)





## PART 4: CDBG FINANCIAL HISTORY, PROJECT BUDGET, AND TIMELINESS

1. If your organization has received CDBG funding from Johnson County and/or the City of Olathe in the past, please complete the chart(s) below. Note there is one chart for Johnson County and one chart for Olathe sub-recipients.

### *Johnson County CDBG Program Participation*

CDBG Program Year	2018	2019	2020
<b>Awarded Amount</b>			
<b>Expended in Initial Award Year</b>			
<b>Balance Remaining</b>			

a. Please provide responses to the following questions if there are any balances remaining listed above or from previous years. Address **each program year** with remaining balances.

**Total funds unexpended from all years (include amount and year):**

**Grantee comments (may attach additional sheet):**

**Estimated project(s) close out date(s), include all years listed above:**

### *Olathe CDBG Program Participation*

CDBG Program Year	2018	2019	2020
<b>Awarded Amount</b>			
<b>Expended in Initial Award Year</b>			
<b>Balance Remaining</b>			

a. Please provide responses to the following questions if there are any balances remaining listed above or from previous years. Address **each program year** with remaining balances.

**Total funds unexpended from all years (include amount and year):**

**Grantee comments (may attach additional sheet):**

**Estimated project(s) close out date(s), include all years listed above:**





2. The budget information to be provided below pertains only to the proposed project for which you are requesting CDBG funds in this application. Please note when completing the Revenues and Expenses Charts, revenues should equal expenses:

### 2021 Proposed CDBG Project Budget

**REVENUES:** must directly support and be essential to the implementation of the CDBG project

LIST ALL REVENUE SOURCES	AMOUNT
<i>Funds Requested from:</i>	
Johnson County CDBG	
Olathe CDBG:	
Shawnee CDBG:	
Lenexa CDBG:	
<i>Other Project Revenue:</i>	
Other Federal Funds:	
State/Local Funds:	
Private Funds:	
Other:	
Total Project Revenue:	

**EXPENSES:** must be eligible CDBG activities

SOURCE	AMOUNT
Personnel (excluding general administration costs):	
Equipment:	
Supplies:	
Space Rent/Utilities:	
Direct Financial Assistance:	
Other:	
Total Project Expenses:	

### 3. Cost/Benefit Analysis

a. Total Project Expenses:

b. Divided by Number of Persons Projected to Benefit:

c. Equals Cost Per Person for Project:





4. Explain how you calculated the amount of CDBG funds requested in the application. (500 characters)

5. List other funding sources researched, applied for or received for this project. (500 characters)

6. HUD imposes a timeliness requirement for the expenditure of CDBG funds, will this project be ready to proceed January 1, 2021? (400 characters)

7. If it will not be ready to proceed January 1, 2021, when will the project be ready to proceed and when will the project be completed? (400 characters)

8. If the project will involve installation, will it be done by a contractor or staff? (400 characters)

9. Describe any circumstances that might prevent the project from being completed by December 31, 2021. (400 characters)





## PART 5: CITIZEN PARTICIPATION

No response is required for Part 5, but applicant must attach documentation of Citizen Participation as indicated by applicant type below. All CDBG applications received by Johnson County Community Development are automatically included in Johnson County's public hearing process. Additional information on citizen participation is available in the 2021 Application Handbook provided. <https://jocogov.org/dept/community-development/community-development-block-grant-cdbg>

1. Citizen Participation Required for City Applicants: Cities must include documentation of holding a public hearing to receive comments on the proposed project(s) with evidence of at least 14-day notice to the public to participate in the hearing. Applicant should include any comments received.
2. Citizen Participation Required for Johnson County Departments: A County application is automatically part of the Johnson County public hearing process; no further citizen participation is required.
3. Citizen Participation Required for Non-Profit/Faith-Based Agencies: Agencies must include a copy of their 501(C)3 IRS letter and must provide documentation of formal board action endorsing the submission of this CDBG application. A Non-Profit/Faith-Based application is automatically part of the Johnson County public hearing process; no further citizen participation is required.

## PART 6: ENVIRONMENTAL REVIEW

HUD requires that an Environmental Review be performed on any project supported by CDBG funds. In order to determine the level of Environmental Review necessary for this proposed project, please answer the following questions:

1. Is the facility/improvement in place and will it be retained in the same use without change in size or capacity of more than 20 percent? (100 characters)

2. Is the project located in a flood zone or wetland area? (100 characters)

3. Is the location in a primarily residential area? (100 characters)

4. Does the project involve ground disturbing activities? (100 characters)



## PART 7: APPLICATION CERTIFICATIONS

The CDBG Applicant Certifies:

- a. It possesses legal authority to make a grant submission and to execute a community development and housing program.
- b. Its governing body has in an official meeting open to the public duly adopted or passed as an official act, a resolution, motion or similar action authorizing the person identified as the official representative of the subrecipient to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the subrecipient to act in connection with the submission of the final statement and to provide such additional information as may be required.
- c. The grant will be conducted and administered in compliance with (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. Subsection 2000 et seq.); (2) The Fair Housing Act (42 U.S.C. 3601-20).
- d. It will affirmatively further fair housing.
- e. It has developed its proposed activity to give maximum feasible priority to activities that benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The proposed use of funds may also include activities which the subrecipient certifies are designed to meet other community development needs having an urgency because existing condition pose a serious and immediate threat to the health or welfare of the community, where other financial resources are not available to meet such needs.
- f. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under section 106 of the Act or with amounts resulting from a guarantee under section 108 of the Act by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (1) funds received under section 106 of the Act are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than Title 1 the Act; or (2) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under section 106 of the Act to comply with the requirements of subparagraph (1).
- g. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1990 as required under Section 570.606(a) and Federal implementing regulations; the requirements in Section 570.606(b) governing the residential anti-displacement and relocation assistance plan under section 104(d)





of the Act (including a certification that a subrecipient is following such a plan); the relocation requirements of Section 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of Section 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

h. To the best of my knowledge and belief that: (1) no Federal appropriated funds have paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, it will complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and (3) It will require that the language of paragraph (h) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

i. It will comply with the other provisions of the Act and with other applicable laws.

## **PART 8: APPLICATION AUTHORIZATION**

Applications and attachments which require signature must be authorized by the Mayor, Director of a County Department, or by the Chairperson of the Board of a non-profit or faith-based agency.

I certify that this application was completed after reading the Application Instructions and Application Handbook provided, that all information provided in this application is true and accurate to the best of my knowledge, and that the City/Department/Agency has read and will comply with all certifications listed in Part 7 of this application and 24 CFR Part 570.

Printed Name:

Title:

Date:

Signature:



Attachment A - Project Addresses

<b>Street Address</b>	<b>City, State, Zip</b>
7024 ANTIOCH RD	Merriam, KS 66204
7020 ANTIOCH RD	Merriam, KS 66204
8801 W 70TH ST	Merriam, KS 66204
8809 W 70TH ST	Merriam, KS 66204
8815 W 70TH ST	Merriam, KS 66204
8821 W 70TH ST	Merriam, KS 66204
8901 W 70TH ST	Merriam, KS 66204
8907 W 70TH ST	Merriam, KS 66204
8915 W 70TH ST	Merriam, KS 66204
8921 W 70TH ST	Merriam, KS 66204
9001 W 70TH ST	Merriam, KS 66204
9005 W 70TH ST	Merriam, KS 66204
9007 W 70TH ST	Merriam, KS 66204
9015 W 70TH ST	Merriam, KS 66204
7016 ANTIOCH RD	Merriam, KS 66204
8707 W 70TH ST	Merriam, KS 66204
8711 W 70TH ST	Merriam, KS 66204
8713 W 70TH ST	Merriam, KS 66204
8715 W 70TH ST	Merriam, KS 66204
8717 W 70TH ST	Merriam, KS 66204
8721 W 70TH ST	Merriam, KS 66204
8719 W 70TH ST	Merriam, KS 66204
8727 W 70TH ST	Merriam, KS 66204
8735 W 70TH ST	Merriam, KS 66204
8721 W 69TH ST	Merriam, KS 66204
8723 W 69TH ST	Merriam, KS 66204
8729 W 69TH ST	Merriam, KS 66204
8731 W 69TH ST	Merriam, KS 66204
6940 ANTIOCH RD	Merriam, KS 66204
6942 ANTIOCH RD	Merriam, KS 66204
6944 ANTIOCH RD	Merriam, KS 66204
6948 ANTIOCH RD	Merriam, KS 66204
6946 ANTIOCH RD	Merriam, KS 66204
8710 W 70TH ST	Merriam, KS 66204
8712 W 70TH ST	Merriam, KS 66204
8714 W 70TH ST	Merriam, KS 66204
8716 W 70TH ST	Merriam, KS 66204
8708 W 70TH ST	Merriam, KS 66204
8720 W 70TH ST	Merriam, KS 66204
8726 W 70TH ST	Merriam, KS 66204
8724 W 70TH ST	Merriam, KS 66204
8722 W 70TH ST	Merriam, KS 66204
8730 W 70TH ST	Merriam, KS 66204
8736 W 70TH ST	Merriam, KS 66204
8734 W 70TH ST	Merriam, KS 66204
8732 W 70TH ST	Merriam, KS 66204

Attachment A - Project Addresses

<b>Street Address</b>	<b>City, State, Zip</b>
6941 SLATER ST	Merriam, KS 66204
6933 SLATER ST	Merriam, KS 66204
6925 SLATER ST	Merriam, KS 66204
6917 SLATER ST	Merriam, KS 66204
6909 SLATER ST	Merriam, KS 66204
6901 SLATER ST	Merriam, KS 66204
6901 BENSON ST	Merriam, KS 66204
6911 BENSON ST	Merriam, KS 66204
6915 BENSON ST	Merriam, KS 66204
6921 BENSON ST	Merriam, KS 66204
6927 BENSON ST	Merriam, KS 66204
6931 BENSON ST	Merriam, KS 66204
6930 SLATER ST	Merriam, KS 66204
6926 SLATER ST	Merriam, KS 66204
6920 SLATER ST	Merriam, KS 66204
6916 SLATER ST	Merriam, KS 66204
6910 SLATER ST	Merriam, KS 66204
6900 SLATER ST	Merriam, KS 66204
6901 EBY AVE	Merriam, KS 66204
6911 EBY AVE	Merriam, KS 66204
6915 EBY AVE	Merriam, KS 66204
6923 EBY AVE	Merriam, KS 66204
6927 EBY AVE	Merriam, KS 66204
6931 EBY AVE	Merriam, KS 66204
6930 BENSON ST	Merriam, KS 66204
6926 BENSON ST	Merriam, KS 66204
6920 BENSON ST	Merriam, KS 66204
6916 BENSON ST	Merriam, KS 66204
6912 BENSON ST	Merriam, KS 66204
6900 BENSON ST	Merriam, KS 66204
6901 GRANDVIEW ST	Merriam, KS 66204
6911 GRANDVIEW ST	Merriam, KS 66204
6915 GRANDVIEW ST	Merriam, KS 66204
6921 GRANDVIEW ST	Merriam, KS 66204
6927 GRANDVIEW ST	Merriam, KS 66204
6937 GRANDVIEW ST	Merriam, KS 66204
9010 W 70TH ST	Merriam, KS 66204
6930 EBY AVE	Merriam, KS 66204
6926 EBY AVE	Merriam, KS 66204
6920 EBY AVE	Merriam, KS 66204
6916 EBY AVE	Merriam, KS 66204
6910 EBY AVE	Merriam, KS 66204
6900 EBY AVE	Merriam, KS 66204
9200 W 69TH ST	Merriam, KS 66204
9124 W 69TH ST	Merriam, KS 66204
9120 W 69TH ST	Merriam, KS 66204

Attachment A - Project Addresses

<b>Street Address</b>	<b>City, State, Zip</b>
9116 W 69TH ST	Merriam, KS 66204
9112 W 69TH ST	Merriam, KS 66204
9108 W 69TH ST	Merriam, KS 66204
9104 W 69TH ST	Merriam, KS 66204
9102 W 69TH ST	Merriam, KS 66204
9018 W 69TH ST	Merriam, KS 66204
9014 W 69TH ST	Merriam, KS 66204
9006 W 69TH ST	Merriam, KS 66204
9000 W 69TH ST	Merriam, KS 66204
8924 W 69TH ST	Merriam, KS 66204
8920 W 69TH ST	Merriam, KS 66204
8914 W 69TH ST	Merriam, KS 66204
8908 W 69TH ST	Merriam, KS 66204
8900 W 69TH ST	Merriam, KS 66204
8824 W 69TH ST	Merriam, KS 66204
8818 W 69TH ST	Merriam, KS 66204
8812 W 69TH ST	Merriam, KS 66204
8806 W 69TH ST	Merriam, KS 66204
8748 W 69TH ST	Merriam, KS 66204
8740 W 69TH ST	Merriam, KS 66204
8730 W 69TH ST	Merriam, KS 66204
8732 W 69TH ST	Merriam, KS 66204
8722 W 69TH ST	Merriam, KS 66204
8724 W 69TH ST	Merriam, KS 66204
9125 W 69TH ST	Merriam, KS 66204
9121 W 69TH ST	Merriam, KS 66204
9117 W 69TH ST	Merriam, KS 66204
9113 W 69TH ST	Merriam, KS 66204
9107 W 69TH ST	Merriam, KS 66204
9103 W 69TH ST	Merriam, KS 66204
9104 W 69TH TER	Merriam, KS 66204
9108 W 69TH TER	Merriam, KS 66204
9112 W 69TH TER	Merriam, KS 66204
9116 W 69TH TER	Merriam, KS 66204
9120 W 69TH TER	Merriam, KS 66204
9124 W 69TH TER	Merriam, KS 66204
9129 W 69TH TER	Merriam, KS 66204
9121 W 69TH TER	Merriam, KS 66204
9117 W 69TH TER	Merriam, KS 66204
9113 W 69TH TER	Merriam, KS 66204
9103 W 69TH TER	Merriam, KS 66204
6900 KESSLER ST	Merriam, KS 66204
6910 KESSLER ST	Merriam, KS 66204
6916 KESSLER ST	Merriam, KS 66204
6920 KESSLER ST	Merriam, KS 66204
6924 KESSLER ST	Merriam, KS 66204

Attachment A - Project Addresses

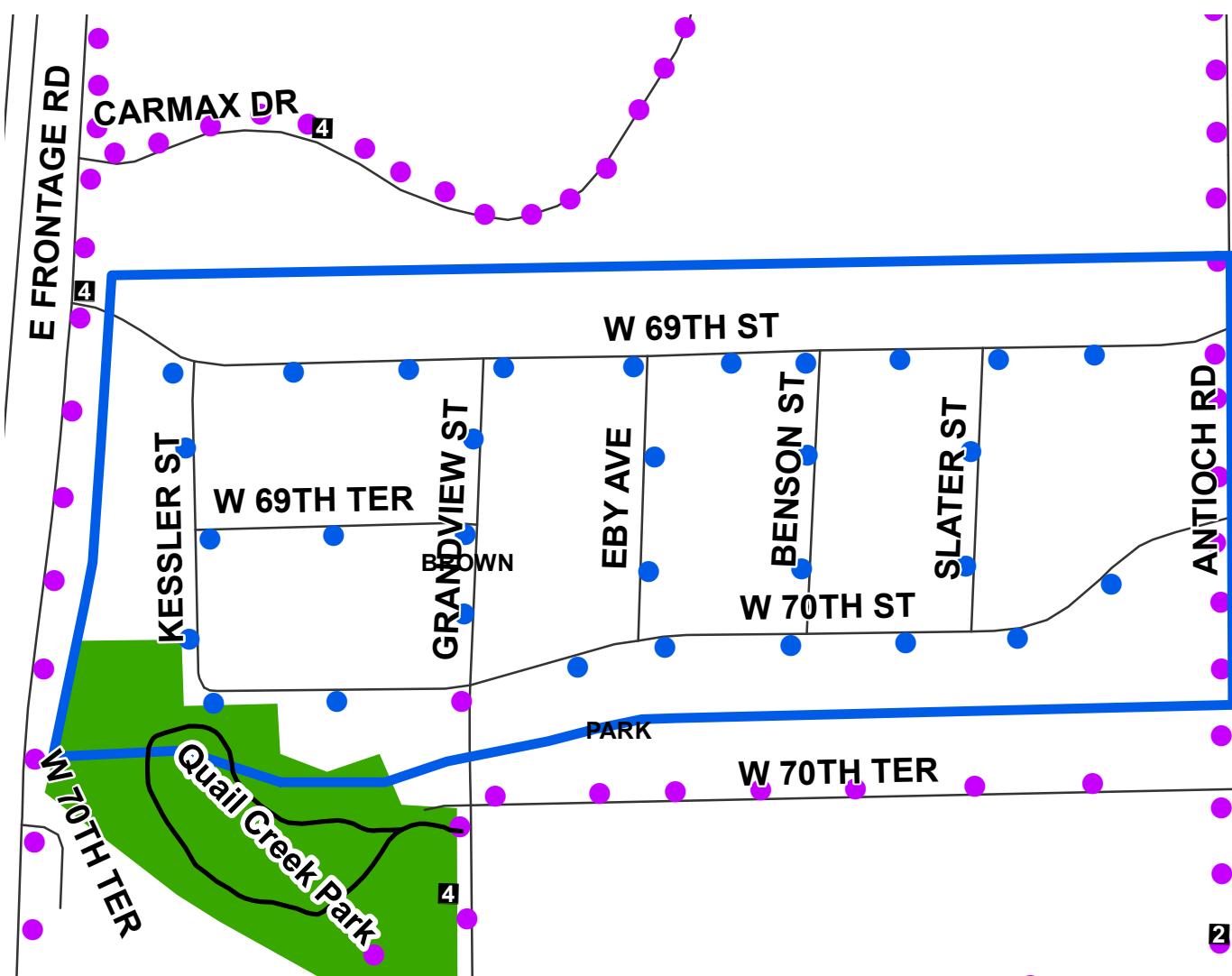
<b>Street Address</b>	<b>City, State, Zip</b>
6928 KESSLER ST	Merriam, KS 66204
6929 KESSLER ST	Merriam, KS 66204
9118 W 70TH ST	Merriam, KS 66204
9112 W 70TH ST	Merriam, KS 66204
9106 W 70TH ST	Merriam, KS 66204
9100 W 70TH ST	Merriam, KS 66204
9101 W 70TH ST	Merriam, KS 66204
9107 W 70TH ST	Merriam, KS 66204
9113 W 70TH ST	Merriam, KS 66204
6930 KESSLER ST	Merriam, KS 66204

Attachment B  
Boundary of Service Area  
Merriam 2021 CDBG



**Legend**

- 2021 CDBG Boundary
- 2021 CDBG streetlights
- Existing Decorative Lights



## Attachment C



just right.

## Merriam CDBG Proposed Service Area

CDBG 2021 Application

## Legend

-  Tract 52001 Block Group 1 - 53% Mod to Low Income
  -  Tract 52004 Block Group 1 - 45% Mod to Low Income
  -  Tract 52101 Block Group 1 - 43% Mod to Low Income
  -  Tract 52201 Block Group 1 - 61% Mod to Low Income
  -  Tract 52201 Block Group 2 - 47% Mod to Low Income
  -  Tract 52201 Block Group 3 - 45% Mod to Low Income

Income data estimated by HUD Office of Community Planning and Development utilizing Census American Community Survey data.  
Exception is 42.75% and above is CDBG eligible.

**Attachment D – Excerpt from May 11,2020 City Council Minutes**

## Attachment E

### The Legal Record

1701 E. Cedar St., Ste. 111  
Olathe, KS 66062-1775  
(913) 780-5790

CITY OF MERRIAM  
9001 W 62ND ST  
MERRIAM KS 66202-2883

## Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;  
Pam Kruse, of lawful age, being first duly sworn,  
deposes and says that she is Legal Notices Billing  
Clerk for The Legal Record which is a newspaper  
printed in the State of Kansas, published in and of  
general paid circulation on a weekly, monthly or  
yearly basis in Johnson County, Kansas, is not a  
trade, religious or fraternal publication, is published  
at least weekly fifty (50) times a year, has been so  
published continuously and uninterrupted in said  
County and State for a period of more than one  
year prior to the first publication of the notice  
attached, and has been entered at the post office  
as Periodicals Class mail matter. That a notice was  
published in all editions of the regular and entire  
issue for the following subject matter (also  
identified by the following case number, if any) for  
1 consecutive week(s), as follows:

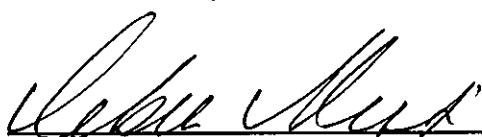
HEARING - CDBG  
4/14/20



Pam Kruse, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

April 14, 2020



Notary Public

DEBRA VALENTI Notary Public-State of Kansas My Appt. Expires Aug. 21, 2023
----------------------------------------------------------------------------------

First published in The Legal Record, Tuesday April 14, 2020.

#### **PUBLIC HEARING NOTICE**

Notice is hereby given to all interested agencies, groups, and residents that the Governing Body of the City of Merriam, Kansas will hold a Public Hearing to receive input from the public on the possible use of local Community Development Block Grant (CDBG) funds and the city's CDBG application.

The Public Hearing will be held on Monday, May 11, 2020, at 7:00 p.m. Due to the COVID-19 pandemic, please visit [www.merriam.org](http://www.merriam.org) for information on the Council meeting logistics and how to participate in the Public Hearing. The purpose of this Public Hearing is to receive input from the public regarding the city's CDBG application.

All CDBG projects must address one of the three national objectives: (1) provide maximum feasible benefit to low- and moderate-income persons, (2) aid in the prevention or elimination of slums or blight, or (3) meet an urgent need. Funds must be used for resolving local community development and/or housing needs.

At this time, the City is considering an application for public improvements to install residential street lights. Those interested in community development and housing needs in Merriam should participate in the meeting and make their ideas known. Written comments should be sent to the City Clerk's Office, Merriam City Hall, 9001 W. 62nd Street, Merriam, Kansas 66202 or via email at [jpinick@merriam.org](mailto:jpinick@merriam.org). Comments must be received by 6:00 P.M. 4/14 May 11, 2020.

L85555

Publication Fees: \$19.90



# PROCLAMATION

WHEREAS, April 14, 2020, marks the 52nd anniversary of the passage of the Civil Rights Act of 1968 (known as the Federal Fair Housing Act), and the Fair Housing Amendments of 1988 prohibit discrimination in the sale, rental, leasing, and financing of housing or land to be used for construction of housing or in the provision of brokerage services on the basis of race, color, religion, sex, disability, familial status or national origin; and

WHEREAS, the City of Merriam, Kansas is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all, and today, many realty companies and associations support fair housing laws; and

WHEREAS, the Fair Housing groups and the U.S. Department of Housing and Urban Development have, over the years, received thousands of complaints of alleged illegal housing discrimination and found too many that have proved upon investigation to be violations of the fair housing laws; and

WHEREAS, equal housing opportunity is a condition of life in our City that can and should be achieved,

NOW, THEREFORE, I, Ken Sissom, by the virtue of the authority vested in me as the Mayor of Merriam, Kansas, do hereby proclaim April 2020, as

## ***"Fair Housing Month in the City of Merriam"***

and do hereby urge all citizens to become aware of and support Fair Housing Law.

Proclaimed this 3rd day of April, 2020.



Ken Sissom, Mayor

Juliana Pinnick, City Clerk

ATTEST



## FY 2019 Income Limits

Effective June 28, 2019

Valid until HUD notifies of changes in 2020

Persons	30% Very Low Income	50% Low Income	80% Moderate Income
1	\$17,400	\$28,950	\$46,350
2	\$19,850	\$33,100	\$52,950
3	\$22,350	\$37,250	\$59,550
4	\$24,800	\$41,350	\$66,150
5	\$26,800	\$44,700	\$71,450
6	\$28,800	\$48,000	\$76,750
7	\$30,800	\$51,300	\$82,050
8	\$32,750	\$54,600	\$87,350

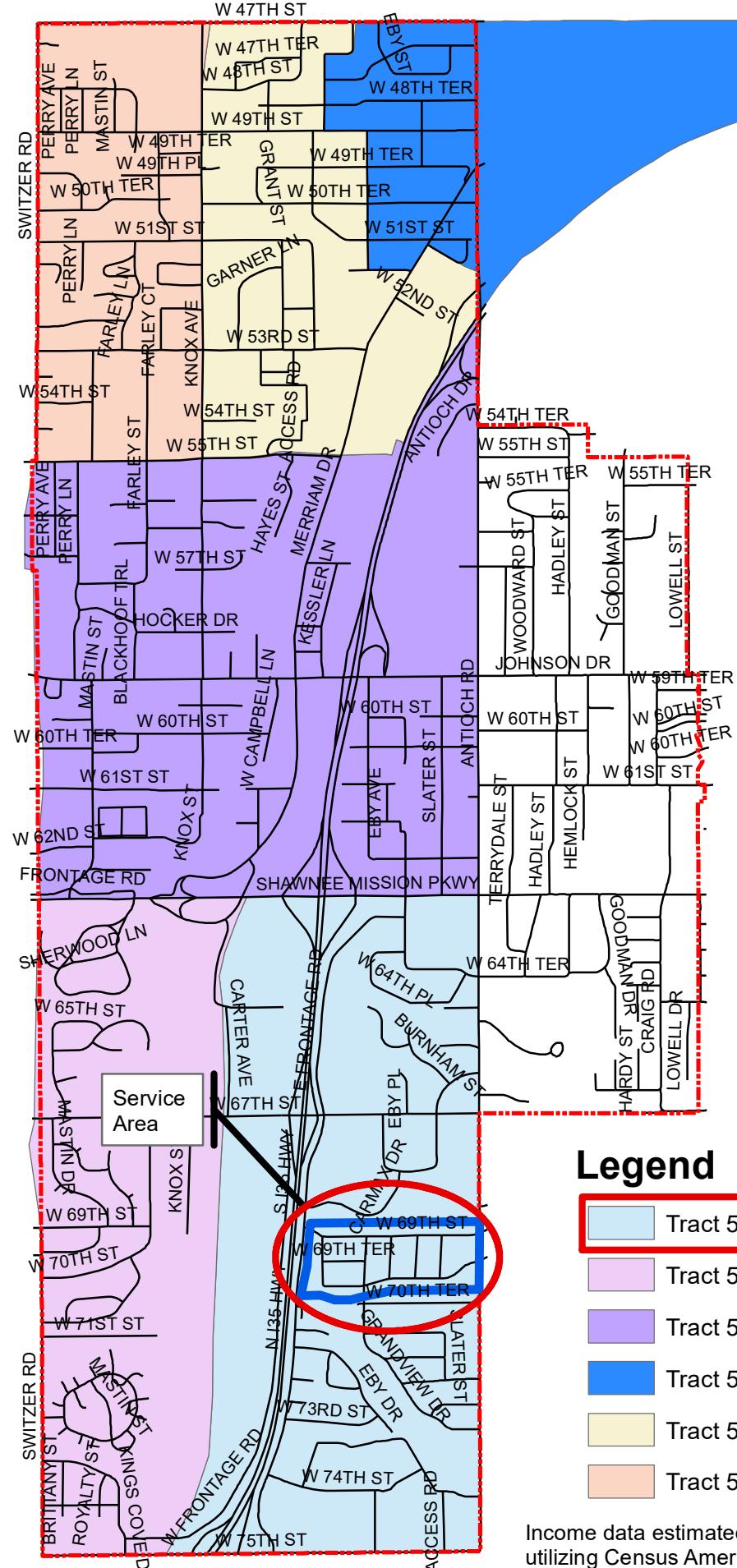


<https://www.hudexchange.info/resource/5334/cdbg-income-limits/>



### Merriam CDBG Proposed Service Area

### CDBG 2021 Application



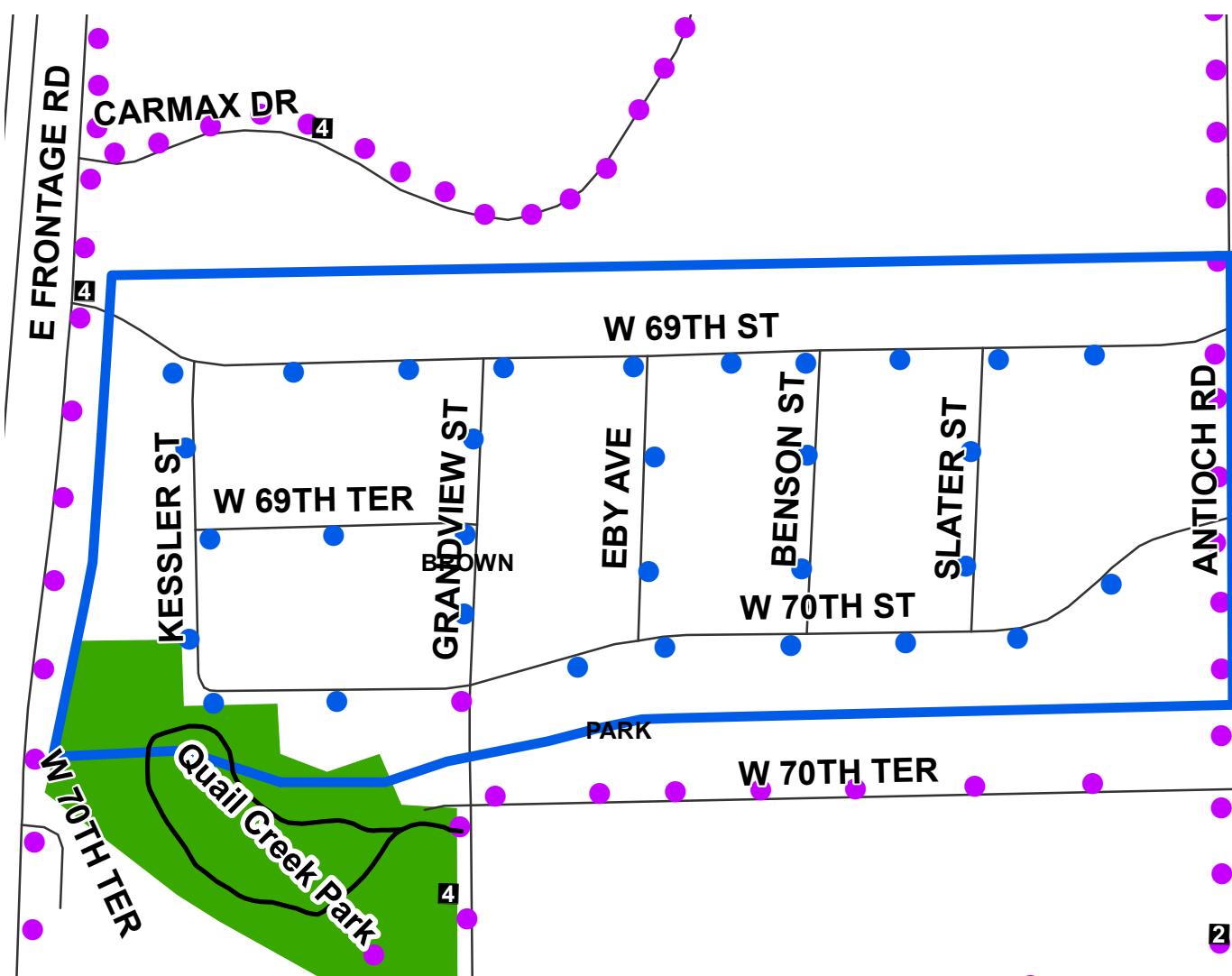
Income data estimated by HUD Office of Community Planning and Development utilizing Census American Community Survey data.  
Exception is 42.75% and above is CDBG eligible.

Attachment B  
Boundary of Service Area  
Merriam 2021 CDBG



**Legend**

- 2021 CDBG Boundary
- 2021 CDBG streetlights
- Existing Decorative Lights





2. The budget information to be provided below pertains only to the proposed project for which you are requesting CDBG funds in this application. Please note when completing the Revenues and Expenses Charts, revenues should equal expenses:

### **2021 Proposed CDBG Project Budget**

**REVENUES:** must directly support and be essential to the implementation of the CDBG project

LIST ALL REVENUE SOURCES	AMOUNT
<i>Funds Requested from:</i>	
Johnson County CDBG	
Olathe CDBG:	
Shawnee CDBG:	
Lenexa CDBG:	
<i>Other Project Revenue:</i>	
Other Federal Funds:	
State/Local Funds:	
Private Funds:	
Other:	
Total Project Revenue:	

**EXPENSES:** must be eligible CDBG activities

SOURCE	AMOUNT
Personnel (excluding general administration costs):	
Equipment:	
Supplies:	
Space Rent/Utilities:	
Direct Financial Assistance:	
Other:	
Total Project Expenses:	

### 3. Cost/Benefit Analysis

a. Total Project Expenses:

b. Divided by Number of Persons Projected to Benefit:

c. Equals Cost Per Person for Project:



# Existing Cobra Street Lights



# New Residential Street Lights





## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** Consider Approval of an Ordinance Granting a Franchise Agreement with Evergy Metro, Inc.

**SUBMITTED BY:** Chris Engel, City Administrator

**MEETING DATE:** May 11, 2020

### PROJECT BACKGROUND/DESCRIPTION:

Currently Evergy Metro, Inc. (formerly KCP&L) is operating in Merriam as an electrical utility. The existing franchise agreement expired in January 2020 but remains active as long as the parties are negotiating. The City Attorney has been working with Evergy since last year and both parties have agreed to an updated franchise ordinance.

The agreement with Evergy has the same terms as the existing agreement. The duration of the agreement is 10 years. The agreement grants Evergy the nonexclusive right to utilize and construct within the public rights-of-way to provide electric energy. Evergy cannot provide additional services which require a franchise agreement without first obtaining a separate franchise agreement with the City. Evergy does have the ability to allow attachments to its facilities if such attachments are covered in a separate pole attachment agreement with the City. In return, Evergy will pay the City a monthly franchise fee of 5% of total gross receipts. Evergy defines franchise fee as "the 'rent' that we pay a city to use the right-of-ways for our lines, poles, etc." In 2019, this agreement generated \$853,071 for the General Fund. Approximately 70% of that revenue was generated by commercial properties.

The City does provide a Franchise Fee Rebate Program for certain low-to-moderate income residents. Over the last three years that program has refunded \$9,345 to 199 applicants.

Per statute, the City published a Notice to Electors in The Legal Record on April 21<sup>st</sup>, which is 20-days prior to the May 11<sup>th</sup> City Council meeting.

There was a first hearing of this Ordinance at the April 27<sup>th</sup> City Council meeting.

### CITY COUNCIL GOALS AND OBJECTIVES

4.1 Provide support to existing businesses; 2.0 Provide Exceptional Service Delivery

### FINANCIAL IMPACT

**Amount of Request/Contract:** n/a

**Amount Budgeted:** \$925,000 is projected to be generated in 2020

**Funding Source/Account #:** n/a

### SUPPORTING DOCUMENTS

- Evergy Franchise Renewal Process prepared by City Attorney
- Municipal Franchise Fee Rates (courtesy of CERI)
- Draft Ordinance

### ACTION NEEDED/STAFF RECOMMENDATION

Recommend City Council approve an Ordinance granting a Franchise Agreement with Evergy Metro, Inc.

## **Evergy Franchise Renewal Process**

Proposed franchise renewal documents presented to City include Notice to Electors, Franchise Renewal Document, Certificate of Vote, Acceptance, Letter to KCC. All publications in newspapers will be paid for by Evergy and should be invoiced to Evergy.

- 1) Notice to Electors, which City must publish in local newspaper of record to notify citizens discussions are commencing
  - a. Publish one time in a newspaper of general circulation in the City—20 days prior to public meeting
  - b. Must be a “display” ad surrounded by a border
  - c. May be more than one column wide
  - d. Location – classified section near “legal notices”
  - e. Publish after franchise is presented to City
  - f. Obtain *Affidavit of Publication-Notice of Electors* which is a document generated by newspaper

Authority: KCC Orders, Docket No. 134,095-U, issued July 20, 1983, p. 13, September 6, 1983, p. 3 March 18, 1988, p. 20.

- 2) Franchise renewal document which Evergy presents to the City for review. If City desires changes, those should be redlined for Evergy review. Evergy will then send reviewed document back to the City with redline changes if made.
- 3) Certificate of Vote, which Evergy prepares, for the City Clerk to document the vote on the ordinance during City Council/Board of Alderman public meeting, as well as the individual votes yea or nay on the franchise renewal ordinance. Meeting minutes certified by the City Clerk may also work in lieu of this certificate, but Evergy prepares the certificate anyway.
- 4) Acceptance, which Evergy prepares. Once vote has taken place, Evergy receives signed franchise renewal documents from City and Evergy makes final signatures and acknowledgements and send the Acceptance back to the City for final acknowledgement. *The Effective Date of the franchise agreement then is the first day of the following month which is outlined in the body of the franchise agreement.*
- 5) Final Publication, which requires the City Clerk to publish the approved franchise document once in the official City newspaper. Evergy pays for this publication. Send the invoice back to your company POC. The publisher shall print a line preceding the number of the ordinance: Published month, day, year. The manner of publication and effective date of codifications shall be as herein after provided. (*Below is a description of an option for the City to publish a summary of the ordinance, but it is the City's responsibility to either publish the full ordinance or a summary*)

- a. In lieu of a full publication of an ordinance, a city may opt to publish a summary of the ordinance so long as:
  - i. The publication is identified as a “summary” and contains notice that the complete text of the ordinance may be obtained or viewed free of charge at the office of the city clerk
  - ii. The city attorney certifies the summary of the ordinance prior to publication to ensure that the summary is legally accurate and sufficient; and
  - iii. The publication contains the city’s official website address where a reproduction of the original ordinance is available for a minimum of one week following the summary publication in the newspaper.
- 6) Letter to KCC. The City provides an Affidavit of Publication to Evergy as soon as possible after publication. Evergy then sends Letter to KCC including final approved franchise document, Certification of Vote, Acceptance and Affidavit of Publication to the KCC for notice that the franchise has been renewed. KCC then sends a letter acknowledging receipt.

**Municipal Franchise Fee Rates**  
**(Johnson, Miami and Wyandotte Counties)**

	Cable	Telephone	Electricity	Gas
<b>Johnson County, KS</b>				
Bonner Springs	5.0%	6.24%	Westar: 5.0% KCP&L: 3.0%	3.0%
De Soto	5.0%	5.0%	5.0%	5.0%
Edgerton	3.0%	5.0%	5.0%	5.0%
Fairway	5.0%	\$2.00/Mo/Line	5.0%	5.0%
Gardner	5.0%	5.0%	5.0%	3.0%
Leawood	5.0%	5.0%	5.0%	5.0%
Lenexa	5.0%	5.0%	5.0%	5.0%
Merriam	5.0%	5.0%	5.0%	5.0%
Mission	5.0%	5.0%	5.0%	5.0%
Mission Hills	3.0%	3.0%	5.0%	5.0%
Olathe	5.0%	5.0%	5.0%	5.0%
Overland Park	5.0%	3.0%	3.0%	2.5%
Prairie Village	5.0%	5.0%	5.0%	5.0%
Roeland Park	5.0%	\$1.20/mo. per res. line \$2.00/mo. per comm. line	5.0%	5.0%
Shawnee	5.0%	5.0%	5% (Com. & Ind.)	Western Resources: 5% (Com. & Ind.) KGS OneOK: 3% (Com. & Ind.)
Spring Hill	3.0%	5.0%	KCP&L: 5.0% Westar: 3.0%	3.0%
Westwood	3.0%	SWB/AT&T: 0.12%	0.5%	0.5%
<b>Miami County, KS</b>				
Louisburg	5.0%	5.0%	5.0%	0.0%
Osawatomie	4.0%	5.0%	0.0%	3.0%
Paola	5.0%	9% per access line	5.0%	5.0%
Spring Hill	3.0%	5.0%	KCP&L: 5.0% Westar: 3.0%	3.0%
<b>Wyandotte County, KS</b>				
Bonner Springs	5.0%	6.24%	Westar: 5.0% KCP&L: 3.0%	3.0%
Edwardsville	5.0%	3.0%	5.0%	3.0%
Kansas City	5.0%	5.0%	7.9%	5.0% (Res. & Comm.) 3.0% (Industrial)

Source: CERI Survey

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

AN ORDINANCE GRANTING EVERGY METRO, INC., AN ELECTRIC FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE ALL FACILITIES NECESSARY OR PROPER FOR SUPPLYING CONSUMERS WITH ELECTRIC ENERGY, GRANTING THE RIGHT TO USE THE RIGHT-OF-WAY FOR SAID PURPOSE, AND PRESCRIBING THE TERMS OF AND RELATING TO SUCH FRANCHISE.

WHEREAS, pursuant to K.S.A. 12-2001 et seq., Evergy Metro, Inc., desires the right, privilege and franchise for the purpose of construction, maintenance and operation of facilities for supplying consumers with electric energy service pursuant to the provisions of the laws of the State of Kansas; and

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

SECTION I. Definitions. For purposes of this Ordinance, the following words and phrases shall have the meanings given herein:

- (a) "City" shall mean the City of Merriam, Kansas.
- (b) "Electric Energy Service" shall mean the one-way transmission to consumers of electric energy.
- (c) "Facilities" shall mean power lines, conduits, wires, guys, anchors, cables, pipes, poles, vaults, lamp posts, street lights, transformers and appliances, and buildings, machinery and attachments in connection therewith and appurtenant thereto, either above or underground.
- (d) "Franchise" shall mean this Ordinance granting the right, privilege and franchise to Grantee to provide Electric Energy Service within the City.
- (e) "Grantee" shall mean Evergy and, as appropriate, its successors and permitted assigns.
- (f) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitation, streets, alleys, sidewalks, sewers, water, drainage, stormwater facilities, right-of-way improvements and public projects.
- (g) "Public project" shall mean any project planned or undertaken by the City or any governmental entity at public expense for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.
- (h) "Right-of-way" shall mean only the area of real property in which City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the City's present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.

**SECTION II. Grant.** There is hereby granted to Grantee the nonexclusive right, privilege and franchise to construct, maintain and operate its Facilities in, through and along the Right-of-Way for the purpose of supplying Electric Energy Service to the City and the inhabitants thereof as well as customers outside the City limits; subject, however, to the terms and conditions herein set forth. Grantee may allow attachment to its facilities only if its facilities are covered by a separate pole attachment agreement with the City. This Franchise shall not:

- (a) Permit the use of the Franchise or the Right-of-way by Grantee or other parties for any other purpose, and a separate franchise shall be required therefore.
- (b) Convey equitable or legal title in the Right-of-way.
- (c) Grant authority to construct, maintain or operate any Facilities or related appurtenance on property owned or controlled by the City outside of the Right-of-way, specifically including, but not limited to, city parks, city hall property, police or fire property or public works facility property.

As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC, or the Kansas Corporation Commission (KCC), and shall comply with all applicable laws, statutes and/or regulations. In the case of a City permit, the City shall not unreasonably withhold or delay the issuance of such permit.

Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise agreement from the City. Grantee shall not knowingly allow the use its Facilities by any third party in violation of federal, state, or local law. Grantee shall hold harmless and indemnify the City for any use of its Facilities that violates federal, state, or local law.

**SECTION III. Use of Right-of-Way.**

- (a) Subject to the provisions of this Franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Right-of-Way. Such Facilities shall be constructed and maintained so as to interfere with and obstruct as little as reasonably possible the ordinary use and safety of the streets, alleys, lanes and highways of said city and the legal use of the Right-of-way by other utilities. Grantee's use of the Right-of-way shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to public health, safety and welfare, and to the construction and use of the Right-of-Way, including but not limited to, the City's Ordinance for the Use and Occupancy of the Public Right-of-Way (codified as Article IX of Chapter 24 of the Merriam Code, as may be amended), the City's Ordinance for Underground Wiring (codified as Article VII of Chapter 24 of the Merriam Code, as may be amended), and the City's Plan Requirements and Standards for Utility Structures (codified as Part 5 of Article 3 of the Merriam Zoning Regulations, as may be amended). Provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of Grantee to oppose, challenge, or seek judicial review of, in such manner as in now or may hereafter

be provided by law, any such rules, regulations, policies, resolutions or ordinances proposed, adopted or promulgated by the City; and provided further that, in the event of a conflict between any rule, regulation, policy, resolution or ordinance adopted by the City and any tariff on file with the Kansas Corporation Commission (KCC), the KCC tariff shall control.

- (b) Grantee's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way. Grantee and the City shall coordinate the installation of Grantee's Facilities in the Right-of-Way in a manner that minimizes the adverse impact on Public Improvements, as reasonably determined by the City.
- (c) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-way damaged or removed by the company (or of any agent, affiliate, employee, or subcontractor of Company occupying, installing, repairing or maintaining the Facilities in furtherance of Company's activities under this -Franchise) shall be fully repaired or replaced promptly by the Company without cost to the City, however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be shared as agreed to in writing among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto.
- (d) Grantee shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within the Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents, or authorized contractors. Grantee shall designate and maintain an agent, familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in the Right- of-Way during and for the design of Public Improvements. At the request of Grantee, the City may include design for Facilities in the design of Public Projects. Also at the request of Grantee, the City and/or its contractor(s) or agent(s) shall provide accurate and timely field locations of proposed Public Projects in the event Grantee is required to install new and/or relocate its Facilities. The Company shall participate in the Kansas One Call utility location program at all times while this Franchise is in effect.
- (e) Grantee shall promptly locate, remove, relocate, or adjust any Facilities located in the Right-of-Way if reasonably necessary and requested by the City for a Public Project. Such location, removal, relocation, or adjustment for a particular Public Project shall be performed by Grantee without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such. If additional location, removal, relocation, or adjustment is the result of the inaccurate or mistaken information of Grantee, Grantee shall be responsible for costs associated with such without expense to the City. Likewise, if additional location, removal, relocations or adjustment is the result of inaccurate or mistaken information of the City, the City

shall reimburse Grantee for any additional expense necessarily incurred by Grantee directly due to such inaccurate or mistaken information.

- (f) In the event a relocation of Grantee's Facilities from the Right-of-Way is needed as set forth in subsection (e), above, the City shall advise Grantee at the first available opportunity and not less than one hundred eighty (180) days prior to the expected date of construction commencement where possible. In all cases where City requests or requires Grantee to relocate Grantee's Facilities from the Right-of-Way pursuant to this Agreement, City shall use its best efforts to provide and make available adequate and suitable replacement Right-of-Way equivalent in type and size before Grantee shall be required to relocate. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.
- (g) It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Right-of-Way from reasonably foreseeable harm or damage. If Grantee fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures and exercise due caution when working near Grantee's Facilities.
- (h) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state, and City laws and regulations, including but not limited to the most recent standards of the Kansas Corporation Commission and U.S. Department of Transportation. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Franchise may be additional to or stricter than such minimum standards.
- (i) The City encourages the conservation of the Right-of-way by the sharing of space by all utilities. To the extent required by federal or state law, Grantee will permit any other franchised entity by an appropriate grant, or a contract, or agreement negotiated by the parties, to use any and all Facilities constructed or erected by Grantee.
- (j) Within sixty (60) days after the completion of initial or any additional construction, Grantee shall provide a complete set of plans with accurate and complete information to the AIMS system showing and describing the exact locations, both horizontal and vertical, of all Facilities constructed and existing within the right of way and within private easements; such mapping and identification shall be at the sole expense of Grantee.
- (k) Grantee is granted permission to prune or trim vegetation growing upon or overhanging the Right-of-way and public utility easements when necessary in Grantee's reasonable discretion to correct or avoid interference with Grantee's Facilities. Grantee shall notify the City prior to performing such work, including

anticipated annual schedule and location of such work and the identity of Grantee's contractor(s) approved to perform such work. Moreover, Grantee shall perform such line clearance work in accordance with regulations established under OSHA 29 CFS 1910.269. All pruning operations shall be performed by personnel qualified to perform the work and in accordance with the latest versions of ANSI Z133.1 (Safety Requirements for Pruning, Repairing, Maintaining and Removing Trees and Cutting Brush) and ANSI 300 (Part 1) (Standard Practice for Tree, Shrub, and Other Woody Plant Maintenance.) For routine trimming operations, customers shall be contacted at least one (1) week in advance by either personal contact or. in writing by informational door hanger, letter or other written notification.

**SECTION IV. Grant of Easements.** As partial consideration for this Franchise, and to the extent Grantee is able to do so, Grantee agrees to grant to the City for public projects without additional cost, such easements as Grantee may have in property within the City.

**SECTION V. Indemnity and Hold Harmless.** Grantee shall indemnify and hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, lawsuits, judgments, liens, losses, damages, expenses, liability, fees and costs (including attorney fees and court costs), of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery is sought, to the extent occasioned in any manner by Grantee's occupancy of the Right-of-Way, including but not limited to the related actions by Grantee's agents, officers, employees, directors, representatives, affiliates or subcontractors. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of Grantee, then upon notice by the City to Grantee, Grantee will assume liability and responsibility for the defense of such actions at the cost of Grantee, subject to the option of the City to appear and defend at its own cost. The City does not waive any governmental immunity available to it under Kansas law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity. Grantee and the City shall promptly advise each other in writing of any known claim or demand against Grantee or the City related to or arising in any way out of Grantee's activities in the Right-of-Way.

**SECTION VI. Insurance Requirement and Performance Bond.**

- (a) During the term of this Franchise, Grantee shall procure and maintain insurance coverage at its sole expense, from an insurance company qualified to do business in the State of Kansas with a rating of A- or higher. Grantee shall provide insurance in the following amounts:
  - (i) Workers' compensation as provided under any workers' compensation or similar law in the State of Kansas, with an employers' liability limit equal to the amount required by law; and
  - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not claims made basis, with a limit of not less than two million dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included

- as an additional insured with respect to liability arising from Grantee's operations under this Franchise; and
- (iii) Employer's liability limit with a limit of one million dollars (\$1,000,000.00) for each accident/disease/incident/occurrence.
- (b) As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in aggregate, to protect the City from and against all claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.
- (c) Grantee shall, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- (d) Grantee shall, prior to the commencement of any work or renewal thereof, deliver to the City a performance bond in an amount consistent with the requirements of the City's Ordinance for the Use and Occupancy of the Public Right-of-Way (referenced in Section III above), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Right-of-way. The required bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION VII. Payments and Charges.** The payments herein provided shall be in addition to all other licenses, taxes, charges, or fees, except that the usual general property taxes and special ad valorem property taxes, sales and excise taxes, permits and fees including charges for pavement cuts and other charges based on restoring premises, costs and damages provided for herein and charges outside the scope of this Franchise will be imposed on Grantee, and are not covered by the payments herein. The franchise fee is compensation to the City for use of the Right-of-Way and shall in no way be deemed a tax of any kind.

**SECTION VIII. Compensation to City.**

- (a) In consideration of the premises, Grantee agrees to pay to the City, and the City agrees to accept as adequate compensation and consideration for the Franchise hereby granted and in lieu of occupation, license, privilege and all other taxes and fees not otherwise excepted hereinabove, a franchise fee of five percent (5%) of the total gross receipts charged and collected from the sale or distribution of Electric Energy Service to all consumers located in the present or future corporate boundaries of the City during the term of this Franchise.

- (b) Grantee will ensure the accuracy of its records and of the determination of the amount of Gross Receipts subject to the fee provided for herein. In the event and to the extent the accounting rendered to the City by the Company is found to be incorrect, then payment shall be made in the correct amount.
- (c) It is the intent of the City to charge franchise fees for sales of Electric Energy Service within the City on a non-discriminatory basis. Therefore, if during the term of this Franchise the law of the State of Kansas is changed to permit competition between retail electric suppliers in any territory certified as a single certified service territory pursuant to K.S.A 66-1 , 170, et seq., including but not limited to the allowance of 'Wheeling" or other transport and distribution of Electric Energy Service for other retail electric suppliers, then the City and Grantee agree to enter into good faith negotiations for the purpose of revising this Franchise to address said change and the collection of franchise fees. Should the City and Grantee fail to agree upon such revisions, then the City and Grantee shall each have the right to terminate this Franchise upon 120 days' written notice.
- (d) Any consideration hereunder shall be reported and paid to the City by Grantee on a monthly basis on or before the last day of each month of each year in which this Franchise remains in effect, reflecting the gross receipts charged and collected from the sale of such Electric Energy Service for the preceding month. The term "gross receipts" as used in this Section shall not include the amounts paid to the City pursuant to this Section.
- (e) The percentage of gross receipts charged and collected from the sale of Electric Energy Service hereunder may be adjusted by the City upon 180 days' prior written notice to Grantee.
- (f) Payments by Grantee shall be made without invoice or reminder from the City, and shall be mailed or delivered to the City c/o Finance Director, City Hall, 9001 West 62<sup>nd</sup> Street, Merriam, Kansas 66202.
- (g) No acceptance by the City of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. To facilitate the auditing of amounts paid under this Franchise, Grantee shall provide current rates and charges, as from time to time amended, and such documents and information concerning sales as may be reasonably requested by the City, provided however that in the event information is sought that is specific to an individual customer and identifies that customer, the consent of the customer will be required to release the information. Further, in accordance with K.S.A. 12-2001 (as may be amended), the City shall further have the right to examine all books, receipts, files, records and documents necessary to verify the correctness of the franchise fee paid by Grantee.
- (h) Fees imposed under this Agreement shall not become effective within an area that is annexed by the City and becomes subject to this Agreement until thirty (30) days after the City provides Grantee with a certified copy of the annexation

ordinance, proof of publication of the ordinance as required by law, and a map of the City detailing the annexed area.

**SECTION IX. Attachment to Facilities.** Except as otherwise provided herein, nothing in this Franchise shall be construed to require or permit either party to utilize or attach to the Facilities of the other without a separate written agreement.

**SECTION X. Forfeiture of Grant and Privilege.** In case of failure by Grantee to comply with any of the provisions of this Franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, Grantee shall forfeit all rights and privileges granted by this Franchise and all rights hereunder shall terminate, provided that said termination shall not take effect until the City shall carry out the following proceedings. Before the City proceeds to cancel this Franchise, it shall first serve a written notice upon Grantee setting forth in detail in such notice the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions of this Franchise. If at the end of such period the City deems that the conditions have not been complied with and that this Franchise is subject to repeal by reason thereof, the City shall enact a repealing ordinance setting out the grounds upon which said grant and privilege is to be cancelled or terminated. If within thirty (30) days after the effective date of said repealing ordinance Grantee shall not have instituted an action, either in the District Court of Johnson County, Kansas, or some other court of competent jurisdiction, to determine whether or not Grantee has violated the terms of this Franchise, this Franchise shall be cancelled. If within such thirty (30) day period Grantee does institute an action as above provided to determine whether or not Grantee has violated the terms of this Franchise and prosecutes such action to final judgment with due diligence then, in that event, in case the court finds that this Franchise is subject to cancellation by reason of the violation of its terms, this Franchise shall terminate thirty (30) days after such final judgment is rendered. Provided, nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

**SECTION XI. Rights and Duties of Grantee Upon Expiration of Franchise.** Upon expiration of this Franchise, whether by lapse of time, by agreement between Grantee and the City, by Grantee's voluntary abandonment of the Right-of-way with approval of the City, or by forfeiture thereof, Grantee shall have the right to remove from public property any and all of its Facilities used in its said business within a reasonable time after such expiration, but in such event, it shall be the duty of Grantee immediately upon and during such removal, to restore the right-of-way from which said Facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

**SECTION XII. Term and Reopeners.**

- (a) This Franchise shall be and remain in full force and effect for a period of ten (10) years from the effective date hereof, unless sooner terminated as herein provided. Provided, In the event the parties are actively negotiating in good faith a new franchise or an amendment to this Franchise upon the termination date, the parties by written mutual agreement may extend the Franchise's termination date to allow for further negotiations. Such extension period shall be deemed a continuation of this Franchise and not as a new franchise or amendment.
- (b) Upon written request of either the City or Grantee, the Franchise shall be reopened and renegotiated at any time upon any of the following events:

- (i) Change in federal, state or local law, regulation, or order that materially affects any rights or obligations of either party, including but not limited to, the scope of the grant to Grantee or the compensation received by the City; or
  - (ii) Change in the structure or operation of the electrical energy service industry that materially affects any rights or obligations of either the City or Grantee, including but not limited to, the scope of the grant to Grantee or the compensation received by the City; or
  - (iii) Any other material and unintended change or shift in the economic benefit to the City or a change Grantee did not anticipate upon accepting the grant of this Franchise.
- (c) Amendments under subsections (b), if any, shall be made by ordinance as prescribed by Statute. This Franchise shall remain in effect according to its terms pending completion of any review or renegotiations pursuant to this Section.

**SECTION XIII. Point of Contact and Notices.** Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered upon actual receipt or refusal of delivery. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Merriam, Kansas  
 9001 W. 62nd Street  
 Merriam, Kansas 66202  
 Attn: City Clerk  
 (913) 322-5505 fax

Grantee:

Evergy  
 Attn: Rebecca Galati  
 P.O. Box 418679  
 Kansas City, MO 64141-9679  
 (913) 894-3013; (913) 894-3086 fax  
 Rebecca.Galati@evergy.com  
 or to replacement addresses that may be  
 later designed in writing.

**SECTION XIV. Benefit/Assignment.** The rights granted by this Franchise are exclusive to Grantee and shall inure to the benefit of Grantee and any parent, subsidiary, affiliate or successor entity now or hereafter existing. No other party may use Grantee's rights granted herein (by retail "wheeling" or otherwise to consumers within the City) and the rights herein shall not be assignable without the express written consent of the Governing Body of the City, except Grantee may assign its rights under this Franchise to a parent, subsidiary, affiliate or successor

entity without such consent. Provided, that no assignment shall be effective until the assignee assumes all of the obligations contained herein as of the effective date of the assignment, including, but not limited to, the obligations with regard to indemnity, insurance and bond (with the intent being that there shall be no lapse in any coverage as a result of the assignment). Any required consent is to be evidenced by an ordinance or resolution of the Governing Body of the City that fully recites the terms and conditions, if any, upon which consent is given. In the event of any assignment Grantee shall timely notify the City of the assignee, provide a point of contact for the assignee, and advise the City of the effective date of the assignment.

SECTION XV. Reservation of Rights. This non-exclusive franchise is granted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. The City does not in any manner waive its regulatory or other rights and powers under the laws of the State of Kansas, its Constitutional Home Rule powers, or by virtue of present or future city ordinances. Neither party waives any applicable present or future legal rights, positions or claims before any administrative agency or court, but each party expressly reserves all rights, remedies and arguments at law or equity without limitation.

SECTION XVI. Failure to Enforce. The failure of either the City or Grantee to insist in any one or more instances upon the strict performance of any one or more terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing.

SECTION XVII. Invalidity of Franchise. If any clause, sentence, or section of this Franchise, or any portion thereof, shall be held to be invalid, it shall not affect the remaining provisions of this Franchise; provided, however, the City or Grantee may elect to declare the entire Franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Franchise. In such event, if Grantee is required by law to enter into a franchise with the City, the parties agree to act in good faith in promptly negotiating a new franchise.

SECTION XVIII. Repeal. Grantee's prior franchise ordinance, City Ordinance No. 1627, is hereby repealed. Provided, the repeal of said franchise ordinance shall not affect any rights of either party regarding any unpaid consideration thereunder, if any, and said franchise ordinance repealed is hereby continued in force and effect after the passage, approval, publication and acceptance of this Ordinance for the sole purpose of preserving such rights.

SECTION XIX. Effectiveness and Acceptance of Franchise. This Franchise is made under and in conformity with the laws of the State of Kansas, shall take effect and be in force on the first day of the first month after its passage and approval by the City, publication and written acceptance by Grantee, and shall constitute a non-exclusive contract between the City and Grantee subject to the provisions of the laws of the State of Kansas.

SECTION XX. Payment of Costs. Grantee shall be responsible for all costs and expenses of publishing this Franchise and any amendments thereof, as outlined in K.S.A. 12-2001(6) and K.S.A. 12-3007.

PASSED by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM

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\_\_\_\_\_  
City Clerk

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\_\_\_\_\_  
Counsel

(Seal)



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** Consider approval of an ordinance authorizing the sale, consumption and possession of alcoholic liquor during the Merriam Drive Live Event according to K.S.A. 41-719 and amendments thereto.

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

**MEETING DATE:** May 11, 2020

### **PROJECT BACKGROUND/DESCRIPTION:**

Merriam Drive Live debuted in 2018 as a new event in downtown Merriam. The goal of the event is to provide an opportunity to build community among residents as well as provide an example of how the land at 5701 Merriam Drive could be utilized. Although weather has been less than desirable, event organizers implemented a weather plan that has proved successful for the enthusiastic attendees. This year, the event is scheduled for Saturday, October 3 from 11 am – 6 pm featuring the rescheduled Turkey Creek Festival 5K to start the day, a variety of musical performances, children's activities, cornhole tournament, yard games, food trucks and a Kansas licensed caterer serving beer and wine. In order for beer and wine to be sold and participants not be confined to a specific space, an ordinance is required to allow the sale, consumption and possession of alcoholic liquor on streets and sidewalks within the boundaries permitted. The boundaries, outlined in Exhibit A, would be as follows: west edge of the Farmers' Market Pavilion; east edge of the Irene B. French Community Center; 57<sup>th</sup> Street on the north end and 58<sup>th</sup> Street on the south end. The boundaries of the area will be clearly marked by signs and a map of the area will be posted where the sale of alcohol occurs.

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

Enhance Community Identity and Connections

### **FINANCIAL IMPACT**

**Amount of Request/Contract:** NA

**Amount Budgeted:** \$10,500

**Funding Source/Account #:** Transient Guest - 204.5010.450.85.50

### **SUPPORTING DOCUMENTS**

Merriam Drive Live Event Ordinance

Exhibit A – Boundary Map

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

Staff recommends approval of an ordinance authorizing the sale, consumption and possession of alcoholic liquor during the Merriam Drive Live Event according to K.S.A. 41-719 and amendments thereto.

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

**AN ORDINANCE AUTHORIZING THE SALE, CONSUMPTION, AND POSSESSION OF ALCOHOLIC LIQUOR DURING THE MERRIAM DRIVE LIVE EVENT.**

**WHEREAS**, K.S.A. 41-719 and amendments thereto requires the governing body of the City of Merriam, Kansas (“Governing Body”) to approve the consumption of alcoholic liquor at an event held on public streets and sidewalks.

**WHEREAS**, the City of Merriam, Kansas is sponsoring such an event, Merriam Drive Live, on October 3, 2020, from 11 am to 7 pm in which a caterer, pursuant to K.S.A. 41-719 and amendments thereto and the Merriam City Code, intends to offer for sale, sell, and serve alcoholic liquor for consumption at the event.

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

**SECTION 1:** In accordance with K.S.A. 41-719 and amendments thereto, the Governing Body hereby approves the consumption of alcoholic liquor on the street and sidewalks within the boundaries of the permitted area designated on the attached Exhibit A, during the Merriam Drive Live event from 11 am to 7 pm on Saturday, October 3, 2020.

**SECTION 2:** During said periods when consumption of alcoholic liquor is hereby authorized, the areas of the public street designated within the boundaries of the permitted area designated on the attached Exhibit A shall be and are hereby directed to be closed to vehicular traffic.

**SECTION 3:** During said periods when consumption of alcoholic liquor is hereby authorized, the boundaries of the permitted area designated on the attached Exhibit A shall be clearly marked by signs, a posted map, or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such event.

**SECTION 4:** 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.

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Ken Sissom, Mayor

ATTEST:

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Juliana Pinnick, City Clerk

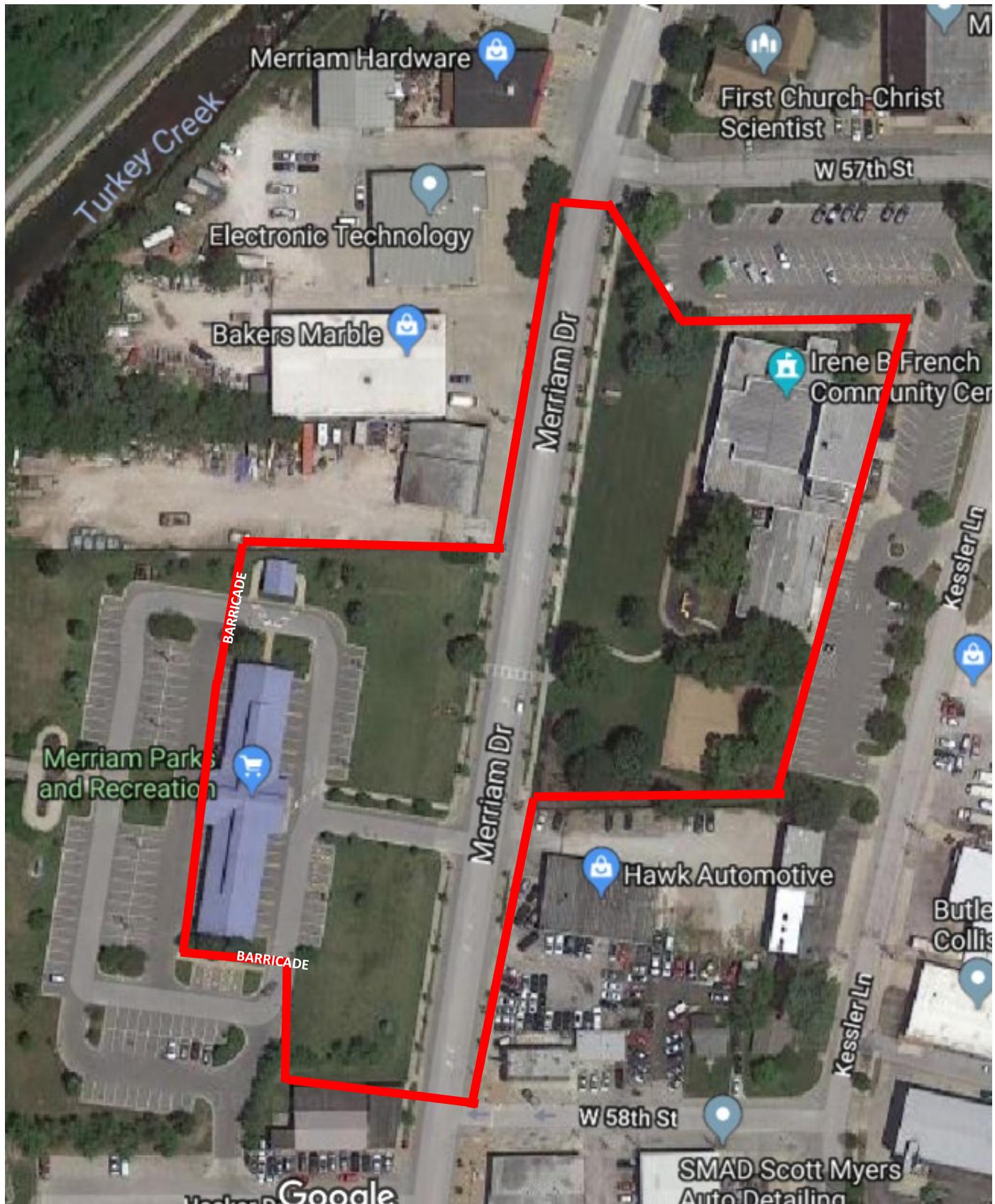
APPROVED AS TO FORM:

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Ryan Denk, City Attorney



# EXHIBIT A BOUNDARY MAP



**SATURDAY, OCTOBER 3, 2020**



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** Consider waiving caterer's license fee for Merriam Drive Live

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

**MEETING DATE:** May 11, 2020

### PROJECT BACKGROUND/DESCRIPTION:

In January 2016, staff sought direction on investigating the possibility of allowing the sale of alcoholic beverages at the Merriam Marketplace during select Parks and Recreation events. In March 2016, City Council approved an ordinance amending Chapter 5 – 191 and 192 to allow the local license tax of \$500 every two years to be waived when used solely for a City Council approved event sponsored and funded by the City of Merriam. The caterers license is limited and noted on the face. If the caterer desires to operate within Merriam for other catering purposes, they are required to pay the license tax and receive an unrestricted caterer's license.

Staff is seeking approval to waive the license tax as allowed per ordinance for Merriam Drive Live scheduled for October 3, 2020 from 11 am – 6 pm.

### CITY COUNCIL GOALS AND OBJECTIVES

Enhance Community Identity and Connections

### FINANCIAL IMPACT

**Amount of Request/Contract:** NA

**Amount Budgeted:** \$10,500

**Funding Source/Account #:** Transient Guest - 204.5010.450.85.50

### SUPPORTING DOCUMENTS

### ACTION NEEDED/STAFF RECOMMENDATION

Staff recommends waiving license fee in accordance with Chapter 5 – 191 and 192 (Caterers Issuance of License) of the Merriam Code of Ordinances, waiving the license tax associated with the application of a caterer's license for Merriam Drive Live, a City sponsored and funded event.



## AGENDA ITEM INFORMATION FORM

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**AGENDA ITEM:** Consider approval of the Third Amended and Restated Redevelopment Agreement for the Merriam Pointe Redevelopment Project with Merriam Investors, LLC and Merriam Luxury Imports, LLC.

**SUBMITTED BY:** Chris Engel, City Administrator

**MEETING DATE:** May 11, 2020

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### **PROJECT BACKGROUND/DESCRIPTION:**

This item relates to a request by Richard Webb (Merriam Luxury Imports aka MLI), the owner of Infiniti of Kansas City and also co-developer of the vacant lot south of Infiniti to change the operational date of a new dealership currently outlined in the existing Redevelopment Agreement from July 24, 2020 to December 31, 2021. All other terms of the existing agreement remain the same.

### **BACKGROUND**

In March 2011 the City executed a Redevelopment Agreement 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 Automotive Group was released from that agreement after the successful completion of their development responsibilities leaving only the City of Merriam and Merriam Investors, LLC as participants.

Beginning in early 2016, the City began additional conversations with Merriam Investors and Richard Webb 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 make the site pad-ready would be prohibitive without the assistance of tax increment financing (TIF), as well as the purchase of surplus city property located adjacent to the drainage parcel.

Over the following year city staff worked to negotiate the sale of the surplus property to Mr. Webb and draft an updated Second Amended and Restated Redevelopment Agreement with Merriam Investors and Merriam Luxury Imports granting up to \$6 million in TIF funding for the construction of a \$22 million automotive dealership. The City Council approved the updated agreement on July 24, 2017. The agreement documents the legal obligations of the developer and the City throughout the development of the project and the life of the incentive revenue streams. Highlights of the Redevelopment Agreement include:

- The completed project will be an automobile dealership for the sale of new automobiles by a flagship brand that is not currently sold in the City.
- Project Plan Term (TIF term) is not being extended and will terminate on July 28, 2023.
- The City will receive an annual Administrative Fee of \$15,000 over the life of the agreement to cover the costs related to the administration of the project.
- Lead Developer (Merriam Investors) cannot assign rights, duties and obligations to the Co-Developer (Merriam Luxury Imports aka MLI) until the project is sufficiently pad-ready to the degree that vertical construction could begin.
- The total amount of public funds available for the Tract B Project is capped at \$6,000,000. This Maximum Reimbursement Amount will include a blended amount of two available revenue

- sources - Up to \$4 million will be available from Incremental Real Property Taxes and \$2 million from the unallocated fund balance within the I-35 District Tax Increment Financing Project Fund.
- The \$2 million will be paid as follows: \$1 million once the dealership becomes operational; \$1 million after the dealership has been in operation for one year.
  - The Maximum Reimbursable Amount will be reduced to \$0.00 (zero) if (a) the new dealership is not operational by July 24, 2020, (b) the Developers fail to address any violation of applicable local, state, or Federal law within 90 days, or (c) the new dealership becomes operational and then closes for more than three months notwithstanding conditions outside the Developers control, i.e. natural disasters, fires, performance failures by subcontractors, etc.

To date all of those obligations have been and continue to be met by all parties. Most importantly, Mr. Webb has completed millions of dollars of site work to transform the drainage area into a pad-ready, revenue producing site. However, due to delays in negotiating a final tenant, the site has not begun vertical construction and a new dealership will not be completed by July 24, 2020.

At this time the developer is requesting a change in the operational date from July 24, 2020 to December 31, 2021 to accommodate additional negotiations. All other terms of the agreement remain the same.

This change could have been memorialized as a simple amendment to the existing agreement but staff determined it more useful to have a single controlling document. However, this creates a large document because of the numerous attachments that are part of the agreement. The attachments memorialize the history and technical aspects (forms, maps, etc.) of the project. For the changes currently proposed, the substantive portion of the agreement proceeds those attachments.

The document has been prepared by Joe Serrano, Bond Counsel at Kutak Rock and reviewed by the City Attorney.

#### CITY COUNCIL GOALS AND OBJECTIVES

4.1 – Provide Support to Existing Businesses; 4.2 – Expand the Commercial Tax Base

#### FINANCIAL IMPACT

Amount of Request/Contract: n/a

Amount Budgeted: n/a

Funding Source/Account #: n/a

#### SUPPORTING DOCUMENTS

- Third Amended and Restated Merriam Pointe Redevelopment Agreement (redline and clean versions)

#### ACTION NEEDED/STAFF RECOMMENDATION

Move the City Council approve the Third Amended and Restated Merriam Pointe Redevelopment Agreement and authorize the Mayor to sign the agreement.

**SECONDTHIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT  
FOR THE  
MERRIAM POINTE  
REDEVELOPMENT PROJECT**

THIS ~~SECOND~~THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of ~~July 24, 2017,~~, 2020, by and between the CITY OF MERRIAM, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (“City”), MERRIAM INVESTORS LLC, a Kansas limited liability company (the “Lead Developer” and assignee of the Original Developer as herein defined), and ~~MERRIAM LUXURY IMPORTS, LLC, MLI, Inc., a Kansas corporation (“Co-Developer”)~~ (as assignee of Merriam Luxury Imports, LLC, a Kansas limited liability company), ~~a Kansas limited liability company (“Co-Developer”)~~, and amends and restates in its entirety the Redevelopment Agreement dated as of September 15, 2004, as amended by a First Amendment to the Redevelopment Agreement dated as of September 11, 2009, as further amended and restated by an Amended and Restated Redevelopment Agreement dated as of March 28, ~~2011~~, 2014, as further amended and restated by a Second Amended and Restated Redevelopment Agreement dated as of July 24, 2017 (collectively, the “Original Agreement”), between the City, Hendrick Automotive Group, a New York general partnership (the “Original Co-Developer”), and Merriam Pointe, LLC, a Kansas limited liability company (the “Original Developer”) (the Lead Developer and the Co-Developer are referred to herein collectively as the “Developers” and each individually as a “Developer”).

**RECITALS**

A. Pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “TIF Act”), and to provide certain tax increment financing to assist with redevelopment, the City has established a redevelopment district known as the I-35 Redevelopment District (the “District”) as further described on **Exhibit A** and adopted a Redevelopment District Comprehensive Plan relating to the development of the District (the “District Plan” as amended is set forth on **Exhibit B**).

B. Pursuant to Ordinance No. 1446 passed on July 28, 2003, Ordinance No. 1485 passed on October 25, 2004, Ordinance No. 1667 passed on March 28, 2011, Ordinance No. 1687 passed on April 23, 2012 and Ordinance No. ~~—~~1766 passed on July 24, 2017, the Governing Body of the City has approved a redevelopment project plan (the “Project Plan” as amended and as shown on **Exhibit C**) for the portion of the District shown on **Exhibit D** (the “Project Area”), which project plan is known as the Merriam Pointe Redevelopment Project (the “Project”).

C. The Original Developer assigned its rights and obligations to the Original Agreement pursuant to an Assignment of TIF Rights and First Amendment to Assignment of TIF Rights both dated January 31, 2011, from the Original Developer to the Lead Developer which are attached to this Agreement as **Exhibit J**.

D. The Original Co-Developer completed its development responsibilities under the Original Agreement and acknowledged that it received in full the payments under the Original Agreement, and City released the Original Co-Developer from any and all of its rights and interests

under the Original Agreement pursuant to an Acknowledgement and Release dated August 12, 2016 attached to this Agreement as **Exhibit K**.

E. The City and the Developers desire to further amend the Original Agreement to extend a milestone related to the Tract B Project, as herein defined.

F. The City and the Developers desire to enter into this Agreement to implement the Project Plan including the financing of the Project Plan.

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

## **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

Section 101. **Definitions.** The following words shall, for purposes of this Agreement, have the following meanings:

“Agreement” means this Agreement as may be amended in accordance with the terms hereof.

“City” means the City of Merriam, Kansas.

“City Annual Administrative Fee” means \$15,000.

“City Expenses” means the reasonable City expenses for financial and legal expenses incurred in connection with the Project including those expenses which accrued prior to the execution of this Agreement.

“Co-Developer” means Merriam Luxury Imports, LLC, MLI, a Kansas Corporation, a Kansas limited liability company, and its lawful successors and assigns.

“Component Developer” means any entity to which a Developer assigns, in accordance with the terms of this Agreement, the obligations and rights of such Developer under this Agreement with respect to a portion of the Project Area.

“County” means Johnson County, Kansas.

“Developer Improvements” means the private or public improvements to be constructed by each Developer and financed by such Developer as further described on the Development Timeline.

“Developers” means the Lead Developer, the Co-Developer and their lawful successors and assigns.

“Development Timeline” means the projected schedule for development of the Project Area shown on **Exhibit F** to this Agreement.

“District” means the tax increment redevelopment district described in the recitals to this Agreement.

“District Plan” means the District Plan described in the recitals to this Agreement and as further described on **Exhibit B** to this Agreement.

“Drainage Improvements” means construction in accordance with any and all applicable City codes of a box culvert, redirection of Quail Creek and other drainage improvements necessary to make the Tract B Project Area Pad Ready.

“Eligible Expenses” mean expenses related to the Project, including City Expenses, to the extent such expenses are “redevelopment project costs” as defined in the TIF Act as further described on **Exhibit E** to this Agreement; provided, however, Eligible Expenses shall not include reimbursement of interest expense to a Developer.

“Existing Certified Expenses” means those Eligible Expenses previously approved by the City in accordance with Section 401 and shown as “Existing Certified Expenses” on **Exhibit E**.

“Funding Agreement” means the Funding Agreement dated April 12, 2017, between the City, Merriam Investors LLC and Merriam Luxury Imports, LLC.

“I-35 Redevelopment District Fund” means the fund maintained by the City that derives its revenues from the tax increment generated in the District.

“Incremental Real Property Taxes” mean the amount of real property taxes collected from real property located within the Project Area that is in excess of the amount of real property taxes which is collected from the base year assessed valuation, *i.e.*, 1994, for the Project Area all in accordance with the TIF Act.

“Lead Developer” means Merriam Investors LLC, a Kansas limited liability company, and its lawful successors and assigns.

“Maximum Reimbursement Amount” means the total amount of the Tract B Eligible Expenses reimbursable to the Co-Developer as provided herein; provided, in no event shall the Maximum Reimbursement Amount exceed the lesser of (a) the total Incremental Real Property Taxes produced during the Project Plan Term plus the Supplemental TIF Disbursement or (b) \$6,000,000.

“Original Undeveloped Project Area” means the portion of the Project Area that is undeveloped as of the date of this Agreement excluding property owned by the City or Group 1 Realty Inc., as of the date of this Agreement, all as further described on **Exhibit G**.

“Pad Ready” means, with respect to Tract B Project Area, the completion by the Developer of the site improvements, utility extensions, relocations, repairs and/or replacement, the Drainage Improvements and preparation of a building pad necessary for the Tract B Project, as evidenced by the issuance by the City’s third-party City Engineer of a confirmation letter stating the aforementioned improvements have been completed and the site is sufficiently prepared for the eventual vertical construction of a Retail Facility.

“Project” means the Developer Improvements described in the Project Plan; provided, however, the Project shall be modified, if necessary, to conform with any PUD Plan adopted for the Project Area.

“Project Area” means the area legally described on **Exhibit D** to this Agreement.

“Project Plan” means the Redevelopment Project Plan described on **Exhibit C** to this Agreement as may be modified with the written consent of the Developers and in accordance with the procedures of the TIF Act.

“Project Plan Term” shall have the meaning set forth in paragraph 2 of Section 302 of this Agreement.

“Project Portion” means the portion of the Project that each Developer shall be responsible for developing which portions are described on **Exhibit D**.

“PUD Plan” means an adopted Planned Unit Development Plan as provided for in the Merriam Zoning Regulations, as amended from time to time.

“Remaining Undeveloped Project Area” means the portion of the Original Undeveloped Project Area that remains undeveloped as of any particular date.

“Retail Facility” means the operation of an automobile dealership for the sale of new automobiles by a flagship brand that is not currently sold in the City.

“Special Counsel” means Kutak Rock LLP, Kansas City, Missouri, or such other firm of attorneys selected by the City with particular expertise in matters relating to Kansas tax increment financing.

“Supplemental TIF Disbursement” means the amount equal to \$2,000,000 of Incremental Real Property Taxes accumulated from the District and on deposit within the I-35 Redevelopment District Fund.

“Taxes” mean all ad valorem real property taxes including any special assessments.

“TIF Act” means K.S.A. 12-1770 *et seq.*, as amended.

“TIF Cap” means an amount to provide reimbursement to the Developers for Existing Certified Expenses and Eligible Expenses in accordance with the further terms of this Agreement; provided such aggregate amount shall not exceed \$10,750,000 less \$4,344,156.30, *i.e.*, the amount of reimbursement previously distributed by the City for Existing Certified Expenses or accrued as City Expenses prior to February 24, 2017, leaving a remaining TIF Cap of \$6,405,843.70; and provided further for such reduction as set forth in Section 4.02(5).

“Tract B Eligible Expenses” mean such Eligible Expenses solely related to the Tract B Project Area.

“Tract B Improvements” means the Developer Improvements associated with the Tract B Project Area to be constructed by the Developer and financed by such Developer, including but not limited to, site improvements, utility extensions, repairs and/or replacement, construction of the Drainage Improvements, and construction of surface parking within the Tract B Project Area, necessary for the construction of the Tract B Project, as further described on the Development Timeline.

“Tract B Project” means the Tract B Improvements and the construction of an approximately 45,500 square foot commercial facility for the purpose of the operations of a Retail Facility.

“Tract B Project Area” means that portion of the Project Area legally described on **Exhibit H** to this Agreement.

Section 102. **Rules of Construction.** The following rules of construction shall apply in construing the provisions of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

1. The terms defined in this Article and throughout the Agreement include the plural as well as the singular.

2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted governmental accounting principles.

3. All references herein to “generally accepted governmental accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

4. All references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this Agreement as originally executed.

5. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

## **ARTICLE II REDEVELOPMENT STRUCTURE**

Section 201. **In General.** The parties acknowledge that, since the approval of the Project Plan, four (4) commercial buildings, each of which houses an automobile dealership, have been constructed within the Project Area. Within the Project Area, there remains the Tract B Project Area and one additional developable lot. The Developers intend to construct the Tract B Project in accordance with the Project Plan and this Agreement.

**Section 202. Development Responsibility.** Subject to the other terms of this Agreement, the parties agree that each Developer has caused or shall cause its Project Portion to be completed and developed pursuant to the Project Plan and this Agreement, and each Developer has borne or shall bear the costs of the development of its Project Portion. Each Developer agrees, with respect to the Project Portion it is responsible for completing and developing, that such Project Portion will be constructed in substantial compliance with the Project Plan. Each Developer further represents that, with respect to the Project Portion it is responsible for completing and developing, it reasonably expects such Project Portion to be completed in accordance with the descriptions and construction dates set forth in **Exhibit F** hereto.

## **ARTICLE III FINANCING**

**Section 301. Development Costs and City Expenses; Administrative Fee.** Each Developer shall be responsible for funding or causing the Component Developers to fund the cost of implementing the Developer Improvements for such Developer's Project Portion with available resources and these costs shall not be an obligation of the City. In addition thereto, the Lead Developer shall be responsible for and pay, within twenty (20) days after notice has been given of an applicable invoice, the City Expenses. The City agrees to submit to the Developer an itemized statement of all City Expenses. The City acknowledges receipt from the Developers of a prior deposit equal to the sum of \$50,000 to be held by the City and used to pay City Expenses pursuant to the Funding Agreement. As long as Incremental Real Property Taxes from the Project Area are sufficient to pay the City Annual Administrative Fee, such Incremental Real Property Taxes shall be used to pay the City Annual Administrative Fee, which fee shall be paid annually prior to the distribution of Incremental Real Property Taxes to the Developers. Incremental Real Property Taxes received by the City will be applied first to pay any City Annual Administrative Fee due and any City Expenses that have not been paid by the Developers within the 20-day period previously specified. If Incremental Real Property Taxes are not sufficient to pay the City Annual Administrative Fee when due, the Lead Developer will be responsible for and pay, within twenty (20) days after notice has been given that the fee is due, the City Annual Administrative Fee.

**Section 302. TIF Financing.**

1. **Incremental Real Property Taxes.** Except as otherwise set forth herein, all Incremental Real Property Taxes generated within the Project Area in an amount not exceeding the TIF Cap shall be available for and dedicated to financing the Eligible Expenses associated with the Project for the duration of the Project Plan Term or until this Agreement terminates, whichever occurs first, and shall be utilized according to the procedures set forth herein.

2. **Project Plan Term.** The term of the Project Plan shall be for a maximum term of twenty (20) years from the date of adoption of the original Project Plan by the Governing Body of the City in accordance with the TIF Act, *i.e.* July 28, 2003, through July 28, 2023 ("Project Plan Term"), unless the City takes the appropriate actions required by law to terminate the Project Plan. Except as provided in this Agreement, the City shall not, under any circumstances without the written consent of the Developers, terminate the Project Plan, amend the Project Plan, reduce the Project Plan Term or reduce the TIF Cap

in a manner which would adversely impact the ability of the Developers to be reimbursed for Eligible Expenses up to the TIF Cap on reimbursement set forth in this Agreement.

3. **Eligible Expenses to be Reimbursed**. Unless or until the Project Plan Term expires or this Agreement is terminated in accordance with its terms, the City agrees to reimburse the Developers for Eligible Expenses subject to the further provisions of this Agreement.

4. **Development Criteria**. In order for property to be considered “developed” for the purposes of this Agreement, the City must have issued a certificate of occupancy for a building or buildings on the applicable parcel of land and such building or buildings must be in conformance with the PUD Plan.

## **ARTICLE IV ELIGIBLE TIF EXPENSES**

Section 401. **Procedures for Certification of Expenditures**. For Certifications of Expenditures to be made in connection with the Eligible Expenses:

1. Unless an Eligible Expense has already been approved by the City as an Existing Certified Expense shown on **Exhibit E** for which no further action is required by the Developers, the Co-Developer shall submit to the City a Certification of Expenditure similar to that shown on **Exhibit I** setting forth the amount for which certification is sought and identification of the relevant Eligible Expenses.

2. The Certification of Expenditure which segregates and/or identifies Eligible Expenses and shall be accompanied by such bills, contracts, invoices, lien waivers and proof of current paid Taxes or other evidence as the City shall reasonably require to document appropriate payment.

3. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certification of Expenditure is submitted, to examine each Developer's and others' records relating to all Eligible Expenses to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

4. The City shall have thirty (30) calendar days after receipt of any Certification of Expenditure to review and respond by written notice to the Co-Developer that submitted the Certification. If the submitted documentation demonstrates that: (1) the Certification of Expenditure is an Eligible Expense and (2) the expense was previously paid by the Co-Developer, then the City shall approve the Certification of Expenditure, and if there are sufficient funds available in the appropriate funds as set forth herein, make, or cause to be made, reimbursement at the time set forth herein. If the City disapproves the Certification of Expenditure, the City shall notify the applicable Co-Developer in writing of the reason for such disapproval within such thirty (30) calendar-day period. Approval of a Certification of Expenditure for reimbursement of Eligible Expenses will not be unreasonably withheld.

5. Subject to the further terms of this Agreement, if Incremental Property Tax Revenue is available, any requested reimbursement approved pursuant to this Section shall be paid to the applicable Developer, by check or wire transfer; provided, however, that (1) any amount due for the City Annual Administrative Fee or City Expenses shall be disbursed to the City before reimbursement is paid to the Developers, (2) reimbursement to a Developer shall only occur twice each year, which payment shall be made by the City within 30 days following receipt by the City from the County of the Incremental Real Property Taxes collected for each year's tax payments on or before the due date for such taxes (currently the City receives such payments in January and June), (3) the aggregate reimbursement to the Developers shall not exceed the TIF Cap, (4) disbursements to the Developers shall only be made from the Incremental Property Tax Revenue collected from the Project Area before the end of the Project Plan Term and (5) the Developer shall provide written instructions regarding the method of payment requested. No payment shall be made by the City to a Developer on the payment dates specified herein unless (a) such Developer paid its Taxes for all property it owns within the District on or before the applicable due date for Taxes (currently December 20 and May 10) for such year, (b) the request for payment otherwise complies with the provisions of this Agreement, (c) the applicable Developer is not in material default under this Agreement or the Funding Agreement and (d) there is no evidence of fraud on the part of the applicable Developer. Additionally, no payment shall be made by the City to the Developers on the payment dates specified herein unless all Taxes for all property that the Developers own in the Project Area have been paid to the County (a) for any Taxes that are past due as of the date of this Agreement, and (b) for all Taxes due after such date, on or before the applicable dates set forth in Section 601.

**Section 402. Reimbursement for Existing Certified Expenses and Tract B Eligible Expenses.** Subject to further terms of this Agreement:

1. Unless and until the Lead Developer assigns its rights, duties and obligations to the Co-Developer as provided in Section 702, the Lead Developer shall be entitled to receive reimbursement of Existing Certified Expenses; provided the annual amount may be distributed in two (2) payments per year as described in paragraph 5 of Section 401 above.

2. The Co-Developer shall be entitled to receive reimbursement of the Tract B Eligible Expenses once the Tract B Project becomes operational up to the Maximum Reimbursement Amount; provided the annual amount may be distributed in two payments per year as described in paragraph 5 of this Section 401 above. For the purpose of this Agreement, "becomes operational" shall mean the date on which the Tract B Project is opened to the public for business as a Retail Facility.

3. The City agrees to distribute to the Co-Developer the Supplemental TIF Disbursement in two installments. One-half of the Supplemental TIF Disbursement shall be distributed to the Co-Developer on the date the Tract B Project becomes operational, and one-half of the Supplemental TIF Disbursement shall be distributed to the Co-Developer on the date which is one year after the Tract B Project becomes operational. The Maximum Reimbursement Amount shall be reduced by the amount of Supplemental TIF

Disbursement distributed to the Co-Developer. The Maximum Reimbursement Amount distributed to the Co-Developer shall not reduce the TIF Cap.

4. The Maximum Reimbursement Amount shall be reduced to \$0.00 if (a) the Tract B Project is not operational as a Retail Facility by July 24, 2020,December 31, 2021, (b) after the Tract B Project begins operations, it ceases operations for a period of more than 3 months or (c) the Developers fail to cure, within 90 days after written notice by the City, a material violation of applicable local, state or federal law with respect to the operation and ownership of the Tract B Project. The dates set forth in this paragraph shall be extended as mutually agreed by the Developers and City for any acts of *force majeure* effecting the construction or operation of the Tract B Project provided the Developers notify the City in writing of the basis for the delay and proceeds with due diligence to begin operations, resume operations or correct the violation of law, as applicable. For the purposes of the Agreement "*force majeure*" shall mean any delay resulting from a condition or event outside the reasonable control and through no fault of the Developers, excluding conditions or events relating to the economic resources of the Developers, it being the intent to construe this term to mean events such as natural disasters, fires, failure of suppliers or subcontractors to perform in accordance with contractual obligations and similar acts beyond the control of the Developers and does not include failure of the Developers to provide or obtain necessary financing, a business decision to delay or withdraw resources to the Tract B Project or similar acts related to monetary circumstances.

5. If the Maximum Reimbursement Amount is reduced to \$0.00 as provided in the preceding paragraph, then the TIF Cap shall revert to the TIF Cap prior to the execution of the Agreement (\$6,750,000.00), and the City shall only reimburse the Lead Developer for the Existing Certified Expenses.

## ARTICLE V DEVELOPMENT OF PROJECT

Section 501. **Development of Project.** The Developers are hereby given exclusive development rights to their respective Project Portion within the Project Area to the extent permitted by law and provided in this Agreement. In order to further the development of the Project, the City hereby authorizes each Developer, and each Developer agrees to develop the applicable Developer Improvements on such Developer's Project Portion in accordance with the requirements of this Agreement, the adopted Project Plan and an approved PUD Plan.

Section 502. **Plan Approval; Additional Project Area Development Approval.** The Developer has caused to be submitted to the City a preliminary PUD Plan and the Developer shall submit PUD Final Plans as necessary for final zoning approvals of the development and construction plans as required by any and all applicable City codes. Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, the City shall use its standard procedures for review and approval of such submissions so as to not unduly hinder or delay the development. The City agrees to consider and act on any zoning, planning and construction applications filed by a Developer in due course and good faith in accordance with applicable City codes and laws of the State of Kansas.

Section 503. **Insurance and Indemnification.** Each Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees in the performance of this Agreement. The Developer shall give the City immediate written notice of any claim, suit or demand which may be subject to this provision.

Not in derogation of the indemnification provisions set forth herein, each Developer shall, at its sole cost and expense, throughout the term of this Agreement and during all phases of the development related to such Developers Project Portion, maintain in effect all insurance coverage required herein.

1. With regard to private improvements, the Developer shall cause to be maintained commercially reasonable types and amounts of insurance which shall name the City as an additional insured.

2. With regard to work performed on City property or right-of-way:

a. **General Requirements.**

(i) All insurance coverage shall be provided by insurance companies with a Best's rating of no less than "A-" and/or that is acceptable to the City.

(ii) Each Developer shall provide to the City properly completed insurance certificates prior to beginning work under this Agreement for not less than the limits and terms set forth herein.

b. All certificates of insurance shall provide that the insurer will give thirty (30) days written notice to the City before cancellation of any policy. Upon the expiration, cancellation or renewal of any policy, the applicable Developer shall supply to the City a new certificate of insurance that complies with the requirements of this Agreement.

c. The City shall be named as an additional insured and loss payee for all coverage required herein except workers' compensation coverage.

3. **Specific Coverage Requirements.**

a. **Commercial General Liability.** Each Developer shall maintain general liability coverage including premises-operations liability, independent contractors liability, products and completed operations, and broad form property damage with these minimum limits:

**Bodily Injury & Property Damage**

\$2,000,000 combined single limit per occurrence

\$2,000,000 annual aggregate

**Fire Damage Liability**  
\$ 50,000

**Medical Payments**  
\$ 5,000

The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

b. **Comprehensive Automobile Liability.** Each Developer shall maintain automobile liability coverage including coverage for owned, hired and non-owned liability providing for all injuries to members of the public and damage to property of others arising from the use of motor vehicles on and off the work site with these minimum limits:

**Bodily Injury & Property Damage**  
\$2,000,000 combined single limit per occurrence.

c. **Workers' Compensation and Employer's Liability.** Each Developer shall maintain workers' compensation coverage for all claims made under applicable state workers' compensation laws. Each Developer shall also maintain employer's liability coverage for claims made for injury, disease or death of an employee which, for any reason, may not fall within the provisions of a worker's compensation law. The following minimum limits shall apply:

**Workers' Compensation**  
Statutory limits

**Employer's Liability**  
\$1,000,000 each accident  
\$1,000,000 disease – policy limit  
\$1,000,000 disease – each employee

d. **Performance Bond for Drainage Improvements.** Prior to the issuance of the permit for the Drainage Improvements, the Co-Developer shall post, or cause to be posted by its general contractor, a performance bond, cash escrow, certified check or other acceptable form of performance security with the City in an amount equal to 125 percent of the estimated cost of the drainage improvements, to assure completion of the Drainage Improvements. The security will remain in effect for one year after the date of completion of the Drainage Improvement.

Section 504. **Local, State and Federal Laws.** Each Developer agrees that it shall abide by, and the Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

Section 505. **Hazardous Materials.** Each Developer acknowledges that it is responsible for maintaining the Project in compliance with all environmental laws and agrees to expeditiously proceed with any compliance action required by any local, state or federal authority under applicable environmental law with respect to any property in the Project Area it owns. Each Developer further agrees to give immediate written notice to the City of any violation of any environmental law of which violation such Developer has actual knowledge and which relates to any property in the Project Area it owns.

Section 506. **Nondiscrimination During Construction.** Each Developer, for itself and its successors and assigns, agrees that in the construction of the Project Portion such Developer is responsible for, such Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 507. **Utilities and Fees.** The City hereby agrees that each Developer shall have the right to connect to any and all City utility lines constructed in the vicinity of the Project Area subject to compliance with the City's codes and procedures for such connections. Each Developer shall pay, in connection with the development of its Project Portion, all applicable water, sanitary and storm sewer, building permit, engineering, inspection and other fees. Each Developer hereby acknowledges that the City shall have no financing obligations in connection with the development except as expressly provided herein.

Section 508. **City and Other Governmental Permits.** Before commencement of construction or development of any buildings, structures or other work or improvement on a Project Portion the applicable Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction development or work. The City shall follow its standard procedures for providing assistance to such Developer in securing these permits.

## **ARTICLE VI** **REAL ESTATE TAXES**

Section 601. **Agreement to Pay Taxes and Assessments; Request for Reclassification.** Each Developer shall pay its Taxes for all property it owns within the District on or before the applicable due date for Taxes (currently December 20 and May 10 for each year). Additionally, the Lead Developer shall pay or cause to be paid on or before the applicable due date for Taxes (currently December 20 and May 10 for each year) all Taxes for all property in the Remaining Undeveloped Project Area (regardless of the owner of such property). Notwithstanding the foregoing, if Taxes for all property in the Remaining Undeveloped Project Area (excluding any property owned by the Lead Developer or affiliates of the Lead Developer) are not paid on or before their applicable due date, the City shall provide written notice to the Lead Developer of the delinquency and the Lead Developer shall pay such delinquent Taxes within forty-five (45) days of the date such notice is given. Each Developer or its successors shall have the right to pay said Taxes under protest in accordance with applicable law. A Developer shall not request a change in taxation classification without prior written City approval.

Section 602. **Notice of Protest or Appeal.** Each Developer shall promptly notify the City in writing of its protest or appeal of Taxes or valuation of any property within the Project Area by the County Assessor.

## ARTICLE VII USE, ASSIGNMENT, SALES AND LEASING

Section 701. **Use Restrictions.** The allowable uses on the Property and within the Project Area will be subject to the lawful zoning power of the City and will not be subject to use restrictions solely by virtue of this Agreement.

Section 702. **No Restriction on Transfer.** There shall be no restriction in the sale, transfer or leasing of the property within the Project Area except as specifically set forth herein and except that neither Developer shall transfer any real property within the Project Area to any tax-exempt organization without prior written approval of the City nor seek any change to agricultural tax or usage classification related to tax assessments.

1. **Transfer of Obligations.** Subject to the following paragraph 2 of this Section, the rights, duties and obligations hereunder of each Developer may be assigned, in whole, to another entity or, in part, to one or more Component Developers, subject to the approval of the City Administrator following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as determined by the City Administrator, necessary and adequate to fulfill the obligations of applicable Developer with respect to the portion of the Project Area being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of such Developer under this Agreement and agree to be subject to all the conditions and restrictions to which such Developer is subject (or, in the event the transfer is of or relates to a portion of the Project Area, such obligations, conditions and restrictions to the extent that they relate to such portion). Such Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release such Developer. Such Developer agrees to record all assignments in the office of the register of deeds of Johnson County, Kansas, in a timely manner following the execution of such agreements and to promptly provide the City with a copy of the recorded assignment.

2. **Assignment from Lead Developer to Co-Developer.** The parties acknowledge that the Lead Developer desires to assign its rights, duties and obligations to the Co-Developer, including the right to receive reimbursement for the Existing Certified Expenses. Despite anything contained herein to the contrary, the Lead Developer shall not assign any of its duties and obligations hereunder to the Co-Developer until the Tract B Project Area is Pad Ready. At all times until such assignment, if any, David Christie and David Block shall maintain control and have a majority ownership interest in the Lead Developer.

3. **Assumptions of Obligations.** The parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors,

administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of the Project Area shall be bound by any obligation of a Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within the Project Area except the Developers shall be entitled to any rights whatsoever or claim upon the Incremental Real Property Taxes set forth herein, except as specifically authorized in writing by the applicable Developer.

4. **Collateral Assignment to Lender.** The parties hereto acknowledge and agree that Co-Developer shall have the right to collaterally assign and grant a security interest in its right to receive reimbursements thereunder to its construction lender.

## **ARTICLE VIII** **DEFAULTS AND REMEDIES**

### Section 801. **Defaults - General.**

1. Unless otherwise specified herein, failure or delay by either party to perform any term or provision of this Agreement constitutes a “default” under this Agreement. A party claiming a default (“claimant”) shall give written notice of default to the other party, specifying the default complained of.

2. The claimant shall not institute proceedings against the other party, nor be entitled to damages if the other party:

(a) with due diligence, commences to cure, correct or remedy such failure or delay within fourteen (14) days from the date written notice is given to the defaulting party in accordance with the notice provisions of Section 913, and

(b) (i) completes such cure, correction or remedy within thirty (30) days from the date such notice is given or (ii) if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period and this Agreement does not specify that a cure period is not applicable to such default, diligently and continuously pursues such cure, correction or remedy until completion thereof.

3. In addition to the right of a party to the Agreement to institute proceedings against another party and notwithstanding any provision in the Agreement to the contrary, if a default occurs, the claimant may terminate this Agreement if a default has not been cured within fourteen (14) days after written notice of such default and the intent to terminate the Agreement is given to the defaulting party; provided, however, except for a default due to the failure to timely pay Taxes or to meet the Development Timeline for which no additional cure period is permitted, if the defaulting party has commenced to cure the default within the 14-day period, is diligently pursuing such cure and has provided notice to the other party within such 14-day period of its intent to cure the default and its

proposed action to cure the default, the defaulting party will have 30 days from the date of such notice of default to cure the default.

Section 802. **Legal Actions.**

1. **Institution of Legal Actions.** Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

2. **Acceptance of Service of Process.**

a. In the event that any legal action is commenced by a Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against a Developer, service of process on such Developer shall be made by personal service upon an officer or agent of such Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

Section 803. **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 804. **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## **ARTICLE IX** **GENERAL PROVISIONS**

Section 901. **Time of Essence.** Time is of the essence of this Agreement. The City and each Developer will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 902. **Developer Agreement Not to Challenge.** If the Agreement is terminated with respect to a Developer because of the failure of such to pay Taxes (including special assessments) in accordance with Section 601 of this Agreement or because a Developer failed to progress in the development of its Project Portion in accordance with **Exhibit F** of this Agreement,

no Developer shall challenge, contest or litigate the use of Incremental Real Property Taxes by the City for other purposes.

Section 903. **Developer Quarterly Reports.** Beginning September 1, 2017, each Developer agrees to provide written quarterly reports on the progress of the development of the Tract B Project; provided, nothing herein is intended to obligate the Developer to provide confidential information or information that may hinder its ability to develop the Tract B Project.

Section 904. **No Third-Party Beneficiaries.** The parties acknowledge that the City does not intend to grant any rights to enforce this Agreement to any party other than the Developers and any Component Developer, and nothing herein is intended to create any third-party beneficiaries with respect to the rights and obligations of the City under this Agreement.

Section 905. **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's Governing Body approving said amendment, and by the execution of said amendment by the parties to this Agreement or their successors in interest.

Section 906. **Immunity of Officers, Employees and Members of the City.** No personal recourse shall be had for the payment of the principal of or interest on the Project costs or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to either Developer, or any successor in interest, for any default or breach by the City.

Section 907. **Right to Inspect.** Each Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of such Developer's books and records relating to the Project as pertinent to the purposes of this Agreement.

Section 908. **Right of Access.** For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Project, without charges or fees, at normal construction hours during the period of construction for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall carry proper identification, and shall not interfere with the construction activity.

Section 909. **No Other Agreement.** Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

Section 910. **Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

Section 911. **Amendment to Carry Out Intent.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future governing body of the City in a manner prohibited by the laws of the State of Kansas. If any provision in this Agreement relating to the performance by the City of an act in the future is determined by a court of law to be the exercise of the City's legislative or governmental power, as opposed to an exercise of its proprietary or administrative power, such provision shall be deemed to be an expression of the intent of the City to perform such act.

Section 912. **Kansas Law.** This Agreement shall be construed in accordance with the laws of the State of Kansas.

Section 913. **Notice.** All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Lead Developer:

Mr. David J. Christie  
Merriam Investors, LLC  
7387 W. 162nd Street, Suite 200  
Overland Park, KS 66085

and

David M. Block  
Merriam Investors, LLC  
605 West 47<sup>th</sup> Street, Suite 200  
Kansas City, MO 64112

To the Co-Developer:

Richard Webb  
6960 W. Frontage Road  
Merriam, Kansas 66203

With a copy to:

Sandra S. Watts, Esq.  
White Goss, a Professional Corporation  
4510 Bellevue, Suite 300  
Kansas City, MO 64111

and

To the City:

Mr. Chris Engel, City Administrator  
City of Merriam  
Merriam City Hall  
9001 W. 62nd Terrace  
Merriam, KS 66202

With copies to:

Ms. Nicole AikenMr. Ryan Denk, City Attorney  
City of Merriam  
Merriam City Hall  
9001 W. 62nd Terrace  
Merriam, KS 66202

Mr. Joseph D. Serrano, City Special Counsel  
Kutak Rock LLP  
2300 Main Street, Suite 800  
Kansas City, MO 64108

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested.

Section 914. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 915. **Recordation of Agreement**. The City may record this Agreement in the real property records of Johnson County, Kansas, and the parties agree to execute and deliver this Agreement in proper form for recording.

Section 916. **Survivorship**. Notwithstanding the termination of this Agreement, each Developer's obligations with respect to Section 503 ("Insurance and Indemnification"), Article IX. ("General Provisions"), and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Agreement.

Section 917. **Incorporation of Exhibits**. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein. If a

conflict exists between the legal description of a parcel and a map, the legal description shall control for the purposes of this Agreement.

IN WITNESS WHEREOF, the City and the Developers have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY OF MERRIAM**  
a Kansas municipal corporation

By: \_\_\_\_\_  
Ken Sissom, Mayor

**ATTEST:**

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Juliana Pinnick, City Clerk

**APPROVED AS TO FORM:**

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Nicole AikenRyan Denk, City Attorney

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Joseph D. Serrano, Special City Counsel

**THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT  
FOR THE  
MERRIAM POINTE  
REDEVELOPMENT PROJECT**

THIS THIRD AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of May 11, 2020, by and between the CITY OF MERRIAM, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (“City”), MERRIAM INVESTORS LLC, a Kansas limited liability company (the “Lead Developer” and assignee of the Original Developer as herein defined), and MLI, Inc., a Kansas corporation (“Co-Developer”) (as assignee of Merriam Luxury Imports, LLC, a Kansas limited liability company), and amends and restates in its entirety the Redevelopment Agreement dated as of September 15, 2004, as amended by a First Amendment to the Redevelopment Agreement dated as of September 11, 2009, as further amended and restated by an Amended and Restated Redevelopment Agreement dated as of March 28, 2011, as further amended and restated by a Second Amended and Restated Redevelopment Agreement dated as of July 24, 2017 (collectively, the “Original Agreement”), between the City, Hendrick Automotive Group, a New York general partnership (the “Original Co-Developer”), and Merriam Pointe, LLC, a Kansas limited liability company (the “Original Developer”) (the Lead Developer and the Co-Developer are referred to herein collectively as the “Developers” and each individually as a “Developer”).

**RECITALS**

A. Pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “TIF Act”), and to provide certain tax increment financing to assist with redevelopment, the City has established a redevelopment district known as the I-35 Redevelopment District (the “District”) as further described on **Exhibit A** and adopted a Redevelopment District Comprehensive Plan relating to the development of the District (the “District Plan” as amended is set forth on **Exhibit B**).

B. Pursuant to Ordinance No. 1446 passed on July 28, 2003, Ordinance No. 1485 passed on October 25, 2004, Ordinance No. 1667 passed on March 28, 2011, Ordinance No. 1687 passed on April 23, 2012 and Ordinance No. 1766 passed on July 24, 2017, the Governing Body of the City has approved a redevelopment project plan (the “Project Plan” as amended and as shown on **Exhibit C**) for the portion of the District shown on **Exhibit D** (the “Project Area”), which project plan is known as the Merriam Pointe Redevelopment Project (the “Project”).

C. The Original Developer assigned its rights and obligations to the Original Agreement pursuant to an Assignment of TIF Rights and First Amendment to Assignment of TIF Rights both dated January 31, 2011, from the Original Developer to the Lead Developer which are attached to this Agreement as **Exhibit J**.

D. The Original Co-Developer completed its development responsibilities under the Original Agreement and acknowledged that it received in full the payments under the Original Agreement, and City released the Original Co-Developer from any and all of its rights and interests under the Original Agreement pursuant to an Acknowledgement and Release dated August 12, 2016 attached to this Agreement as **Exhibit K**.

E. The City and the Developers desire to further amend the Original Agreement to extend a milestone related to the Tract B Project, as herein defined.

F. The City and the Developers desire to enter into this Agreement to implement the Project Plan including the financing of the Project Plan.

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

## **ARTICLE I** **DEFINITIONS AND RULES OF CONSTRUCTION**

Section 101. **Definitions.** The following words shall, for purposes of this Agreement, have the following meanings:

“Agreement” means this Agreement as may be amended in accordance with the terms hereof.

“City” means the City of Merriam, Kansas.

“City Annual Administrative Fee” means \$15,000.

“City Expenses” means the reasonable City expenses for financial and legal expenses incurred in connection with the Project including those expenses which accrued prior to the execution of this Agreement.

“Co-Developer” means MLI, Inc, a Kansas corporation, and its lawful successors and assigns.

“Component Developer” means any entity to which a Developer assigns, in accordance with the terms of this Agreement, the obligations and rights of such Developer under this Agreement with respect to a portion of the Project Area.

“County” means Johnson County, Kansas.

“Developer Improvements” means the private or public improvements to be constructed by each Developer and financed by such Developer as further described on the Development Timeline.

“Developers” means the Lead Developer, the Co-Developer and their lawful successors and assigns.

“Development Timeline” means the projected schedule for development of the Project Area shown on **Exhibit F** to this Agreement.

“District” means the tax increment redevelopment district described in the recitals to this Agreement.

“District Plan” means the District Plan described in the recitals to this Agreement and as further described on **Exhibit B** to this Agreement.

“Drainage Improvements” means construction in accordance with any and all applicable City codes of a box culvert, redirection of Quail Creek and other drainage improvements necessary to make the Tract B Project Area Pad Ready.

“Eligible Expenses” mean expenses related to the Project, including City Expenses, to the extent such expenses are “redevelopment project costs” as defined in the TIF Act as further described on **Exhibit E** to this Agreement; provided, however, Eligible Expenses shall not include reimbursement of interest expense to a Developer.

“Existing Certified Expenses” means those Eligible Expenses previously approved by the City in accordance with Section 401 and shown as “Existing Certified Expenses” on **Exhibit E**.

“Funding Agreement” means the Funding Agreement dated April 12, 2017, between the City, Merriam Investors LLC and Merriam Luxury Imports, LLC.

“I-35 Redevelopment District Fund” means the fund maintained by the City that derives its revenues from the tax increment generated in the District.

“Incremental Real Property Taxes” mean the amount of real property taxes collected from real property located within the Project Area that is in excess of the amount of real property taxes which is collected from the base year assessed valuation, *i.e.*, 1994, for the Project Area all in accordance with the TIF Act.

“Lead Developer” means Merriam Investors LLC, a Kansas limited liability company, and its lawful successors and assigns.

“Maximum Reimbursement Amount” means the total amount of the Tract B Eligible Expenses reimbursable to the Co-Developer as provided herein; provided, in no event shall the Maximum Reimbursement Amount exceed the lesser of (a) the total Incremental Real Property Taxes produced during the Project Plan Term plus the Supplemental TIF Disbursement or (b) \$6,000,000.

“Original Undeveloped Project Area” means the portion of the Project Area that is undeveloped as of the date of this Agreement excluding property owned by the City or Group 1 Realty Inc., as of the date of this Agreement, all as further described on **Exhibit G**.

“Pad Ready” means, with respect to Tract B Project Area, the completion by the Developer of the site improvements, utility extensions, relocations, repairs and/or replacement, the Drainage Improvements and preparation of a building pad necessary for the Tract B Project, as evidenced by the issuance by the City’s third-party City Engineer of a confirmation letter stating the aforementioned improvements have been completed and the site is sufficiently prepared for the eventual vertical construction of a Retail Facility.

“Project” means the Developer Improvements described in the Project Plan; provided, however, the Project shall be modified, if necessary, to conform with any PUD Plan adopted for the Project Area.

“Project Area” means the area legally described on **Exhibit D** to this Agreement.

“Project Plan” means the Redevelopment Project Plan described on **Exhibit C** to this Agreement as may be modified with the written consent of the Developers and in accordance with the procedures of the TIF Act.

“Project Plan Term” shall have the meaning set forth in paragraph 2 of Section 302 of this Agreement.

“Project Portion” means the portion of the Project that each Developer shall be responsible for developing which portions are described on **Exhibit D**.

“PUD Plan” means an adopted Planned Unit Development Plan as provided for in the Merriam Zoning Regulations, as amended from time to time.

“Remaining Undeveloped Project Area” means the portion of the Original Undeveloped Project Area that remains undeveloped as of any particular date.

“Retail Facility” means the operation of an automobile dealership for the sale of new automobiles by a flagship brand that is not currently sold in the City.

“Special Counsel” means Kutak Rock LLP, Kansas City, Missouri, or such other firm of attorneys selected by the City with particular expertise in matters relating to Kansas tax increment financing.

“Supplemental TIF Disbursement” means the amount equal to \$2,000,000 of Incremental Real Property Taxes accumulated from the District and on deposit within the I-35 Redevelopment District Fund.

“Taxes” mean all ad valorem real property taxes including any special assessments.

“TIF Act” means K.S.A. 12-1770 *et seq.*, as amended.

“TIF Cap” means an amount to provide reimbursement to the Developers for Existing Certified Expenses and Eligible Expenses in accordance with the further terms of this Agreement; provided such aggregate amount shall not exceed \$10,750,000 less \$4,344,156.30, *i.e.*, the amount of reimbursement previously distributed by the City for Existing Certified Expenses or accrued as City Expenses prior to February 24, 2017, leaving a remaining TIF Cap of \$6,405,843.70; and provided further for such reduction as set forth in Section 4.02(5).

“Tract B Eligible Expenses” mean such Eligible Expenses solely related to the Tract B Project Area.

“Tract B Improvements” means the Developer Improvements associated with the Tract B Project Area to be constructed by the Developer and financed by such Developer, including but not limited to, site improvements, utility extensions, repairs and/or replacement, construction of the Drainage Improvements, and construction of surface parking within the Tract B Project Area, necessary for the construction of the Tract B Project, as further described on the Development Timeline.

“Tract B Project” means the Tract B Improvements and the construction of an approximately 45,500 square foot commercial facility for the purpose of the operations of a Retail Facility.

“Tract B Project Area” means that portion of the Project Area legally described on **Exhibit H** to this Agreement.

Section 102. **Rules of Construction.** The following rules of construction shall apply in construing the provisions of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

1. The terms defined in this Article and throughout the Agreement include the plural as well as the singular.

2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted governmental accounting principles.

3. All references herein to “generally accepted governmental accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

4. All references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this Agreement as originally executed.

5. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

## **ARTICLE II REDEVELOPMENT STRUCTURE**

Section 201. **In General.** The parties acknowledge that, since the approval of the Project Plan, four (4) commercial buildings, each of which houses an automobile dealership, have been constructed within the Project Area. Within the Project Area, there remains the Tract B Project Area and one additional developable lot. The Developers intend to construct the Tract B Project in accordance with the Project Plan and this Agreement.

**Section 202. Development Responsibility.** Subject to the other terms of this Agreement, the parties agree that each Developer has caused or shall cause its Project Portion to be completed and developed pursuant to the Project Plan and this Agreement, and each Developer has borne or shall bear the costs of the development of its Project Portion. Each Developer agrees, with respect to the Project Portion it is responsible for completing and developing, that such Project Portion will be constructed in substantial compliance with the Project Plan. Each Developer further represents that, with respect to the Project Portion it is responsible for completing and developing, it reasonably expects such Project Portion to be completed in accordance with the descriptions and construction dates set forth in **Exhibit F** hereto.

## **ARTICLE III FINANCING**

**Section 301. Development Costs and City Expenses; Administrative Fee.** Each Developer shall be responsible for funding or causing the Component Developers to fund the cost of implementing the Developer Improvements for such Developer's Project Portion with available resources and these costs shall not be an obligation of the City. In addition thereto, the Lead Developer shall be responsible for and pay, within twenty (20) days after notice has been given of an applicable invoice, the City Expenses. The City agrees to submit to the Developer an itemized statement of all City Expenses. The City acknowledges receipt from the Developers of a prior deposit equal to the sum of \$50,000 to be held by the City and used to pay City Expenses pursuant to the Funding Agreement. As long as Incremental Real Property Taxes from the Project Area are sufficient to pay the City Annual Administrative Fee, such Incremental Real Property Taxes shall be used to pay the City Annual Administrative Fee, which fee shall be paid annually prior to the distribution of Incremental Real Property Taxes to the Developers. Incremental Real Property Taxes received by the City will be applied first to pay any City Annual Administrative Fee due and any City Expenses that have not been paid by the Developers within the 20-day period previously specified. If Incremental Real Property Taxes are not sufficient to pay the City Annual Administrative Fee when due, the Lead Developer will be responsible for and pay, within twenty (20) days after notice has been given that the fee is due, the City Annual Administrative Fee.

**Section 302. TIF Financing.**

1. **Incremental Real Property Taxes.** Except as otherwise set forth herein, all Incremental Real Property Taxes generated within the Project Area in an amount not exceeding the TIF Cap shall be available for and dedicated to financing the Eligible Expenses associated with the Project for the duration of the Project Plan Term or until this Agreement terminates, whichever occurs first, and shall be utilized according to the procedures set forth herein.

2. **Project Plan Term.** The term of the Project Plan shall be for a maximum term of twenty (20) years from the date of adoption of the original Project Plan by the Governing Body of the City in accordance with the TIF Act, *i.e.* July 28, 2003, through July 28, 2023 ("Project Plan Term"), unless the City takes the appropriate actions required by law to terminate the Project Plan. Except as provided in this Agreement, the City shall not, under any circumstances without the written consent of the Developers, terminate the Project Plan, amend the Project Plan, reduce the Project Plan Term or reduce the TIF Cap

in a manner which would adversely impact the ability of the Developers to be reimbursed for Eligible Expenses up to the TIF Cap on reimbursement set forth in this Agreement.

3. **Eligible Expenses to be Reimbursed**. Unless or until the Project Plan Term expires or this Agreement is terminated in accordance with its terms, the City agrees to reimburse the Developers for Eligible Expenses subject to the further provisions of this Agreement.

4. **Development Criteria**. In order for property to be considered “developed” for the purposes of this Agreement, the City must have issued a certificate of occupancy for a building or buildings on the applicable parcel of land and such building or buildings must be in conformance with the PUD Plan.

## **ARTICLE IV ELIGIBLE TIF EXPENSES**

Section 401. **Procedures for Certification of Expenditures**. For Certifications of Expenditures to be made in connection with the Eligible Expenses:

1. Unless an Eligible Expense has already been approved by the City as an Existing Certified Expense shown on **Exhibit E** for which no further action is required by the Developers, the Co-Developer shall submit to the City a Certification of Expenditure similar to that shown on **Exhibit I** setting forth the amount for which certification is sought and identification of the relevant Eligible Expenses.

2. The Certification of Expenditure which segregates and/or identifies Eligible Expenses and shall be accompanied by such bills, contracts, invoices, lien waivers and proof of current paid Taxes or other evidence as the City shall reasonably require to document appropriate payment.

3. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certification of Expenditure is submitted, to examine each Developer's and others' records relating to all Eligible Expenses to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

4. The City shall have thirty (30) calendar days after receipt of any Certification of Expenditure to review and respond by written notice to the Co-Developer that submitted the Certification. If the submitted documentation demonstrates that: (1) the Certification of Expenditure is an Eligible Expense and (2) the expense was previously paid by the Co-Developer, then the City shall approve the Certification of Expenditure, and if there are sufficient funds available in the appropriate funds as set forth herein, make, or cause to be made, reimbursement at the time set forth herein. If the City disapproves the Certification of Expenditure, the City shall notify the applicable Co-Developer in writing of the reason for such disapproval within such thirty (30) calendar-day period. Approval of a Certification of Expenditure for reimbursement of Eligible Expenses will not be unreasonably withheld.

5. Subject to the further terms of this Agreement, if Incremental Property Tax Revenue is available, any requested reimbursement approved pursuant to this Section shall be paid to the applicable Developer, by check or wire transfer; provided, however, that (1) any amount due for the City Annual Administrative Fee or City Expenses shall be disbursed to the City before reimbursement is paid to the Developers, (2) reimbursement to a Developer shall only occur twice each year, which payment shall be made by the City within 30 days following receipt by the City from the County of the Incremental Real Property Taxes collected for each year's tax payments on or before the due date for such taxes (currently the City receives such payments in January and June), (3) the aggregate reimbursement to the Developers shall not exceed the TIF Cap, (4) disbursements to the Developers shall only be made from the Incremental Property Tax Revenue collected from the Project Area before the end of the Project Plan Term and (5) the Developer shall provide written instructions regarding the method of payment requested. No payment shall be made by the City to a Developer on the payment dates specified herein unless (a) such Developer paid its Taxes for all property it owns within the District on or before the applicable due date for Taxes (currently December 20 and May 10) for such year, (b) the request for payment otherwise complies with the provisions of this Agreement, (c) the applicable Developer is not in material default under this Agreement or the Funding Agreement and (d) there is no evidence of fraud on the part of the applicable Developer. Additionally, no payment shall be made by the City to the Developers on the payment dates specified herein unless all Taxes for all property that the Developers own in the Project Area have been paid to the County (a) for any Taxes that are past due as of the date of this Agreement, and (b) for all Taxes due after such date, on or before the applicable dates set forth in Section 601.

**Section 402. Reimbursement for Existing Certified Expenses and Tract B Eligible Expenses.** Subject to further terms of this Agreement:

1. Unless and until the Lead Developer assigns its rights, duties and obligations to the Co-Developer as provided in Section 702, the Lead Developer shall be entitled to receive reimbursement of Existing Certified Expenses; provided the annual amount may be distributed in two (2) payments per year as described in paragraph 5 of Section 401 above.

2. The Co-Developer shall be entitled to receive reimbursement of the Tract B Eligible Expenses once the Tract B Project becomes operational up to the Maximum Reimbursement Amount; provided the annual amount may be distributed in two payments per year as described in paragraph 5 of this Section 401 above. For the purpose of this Agreement, "becomes operational" shall mean the date on which the Tract B Project is opened to the public for business as a Retail Facility.

3. The City agrees to distribute to the Co-Developer the Supplemental TIF Disbursement in two installments. One-half of the Supplemental TIF Disbursement shall be distributed to the Co-Developer on the date the Tract B Project becomes operational, and one-half of the Supplemental TIF Disbursement shall be distributed to the Co-Developer on the date which is one year after the Tract B Project becomes operational. The Maximum Reimbursement Amount shall be reduced by the amount of Supplemental TIF

Disbursement distributed to the Co-Developer. The Maximum Reimbursement Amount distributed to the Co-Developer shall not reduce the TIF Cap.

4. The Maximum Reimbursement Amount shall be reduced to \$0.00 if (a) the Tract B Project is not operational as a Retail Facility by December 31, 2021, (b) after the Tract B Project begins operations, it ceases operations for a period of more than 3 months or (c) the Developers fail to cure, within 90 days after written notice by the City, a material violation of applicable local, state or federal law with respect to the operation and ownership of the Tract B Project. The dates set forth in this paragraph shall be extended as mutually agreed by the Developers and City for any acts of *force majeure* effecting the construction or operation of the Tract B Project provided the Developers notify the City in writing of the basis for the delay and proceeds with due diligence to begin operations, resume operations or correct the violation of law, as applicable. For the purposes of the Agreement “*force majeure*” shall mean any delay resulting from a condition or event outside the reasonable control and through no fault of the Developers, excluding conditions or events relating to the economic resources of the Developers, it being the intent to construe this term to mean events such as natural disasters, fires, failure of suppliers or subcontractors to perform in accordance with contractual obligations and similar acts beyond the control of the Developers and does not include failure of the Developers to provide or obtain necessary financing, a business decision to delay or withdraw resources to the Tract B Project or similar acts related to monetary circumstances.

5. If the Maximum Reimbursement Amount is reduced to \$0.00 as provided in the preceding paragraph, then the TIF Cap shall revert to the TIF Cap prior to the execution of the Agreement (\$6,750,000.00), and the City shall only reimburse the Lead Developer for the Existing Certified Expenses.

## ARTICLE V DEVELOPMENT OF PROJECT

Section 501. **Development of Project.** The Developers are hereby given exclusive development rights to their respective Project Portion within the Project Area to the extent permitted by law and provided in this Agreement. In order to further the development of the Project, the City hereby authorizes each Developer, and each Developer agrees to develop the applicable Developer Improvements on such Developer’s Project Portion in accordance with the requirements of this Agreement, the adopted Project Plan and an approved PUD Plan.

Section 502. **Plan Approval; Additional Project Area Development Approval.** The Developer has caused to be submitted to the City a preliminary PUD Plan and the Developer shall submit PUD Final Plans as necessary for final zoning approvals of the development and construction plans as required by any and all applicable City codes. Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, the City shall use its standard procedures for review and approval of such submissions so as to not unduly hinder or delay the development. The City agrees to consider and act on any zoning, planning and construction applications filed by a Developer in due course and good faith in accordance with applicable City codes and laws of the State of Kansas.

Section 503. **Insurance and Indemnification.** Each Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees in the performance of this Agreement. The Developer shall give the City immediate written notice of any claim, suit or demand which may be subject to this provision.

Not in derogation of the indemnification provisions set forth herein, each Developer shall, at its sole cost and expense, throughout the term of this Agreement and during all phases of the development related to such Developers Project Portion, maintain in effect all insurance coverage required herein.

1. With regard to private improvements, the Developer shall cause to be maintained commercially reasonable types and amounts of insurance which shall name the City as an additional insured.

2. With regard to work performed on City property or right-of-way:

a. **General Requirements.**

(i) All insurance coverage shall be provided by insurance companies with a Best's rating of no less than "A-" and/or that is acceptable to the City.

(ii) Each Developer shall provide to the City properly completed insurance certificates prior to beginning work under this Agreement for not less than the limits and terms set forth herein.

b. All certificates of insurance shall provide that the insurer will give thirty (30) days written notice to the City before cancellation of any policy. Upon the expiration, cancellation or renewal of any policy, the applicable Developer shall supply to the City a new certificate of insurance that complies with the requirements of this Agreement.

c. The City shall be named as an additional insured and loss payee for all coverage required herein except workers' compensation coverage.

3. **Specific Coverage Requirements.**

a. **Commercial General Liability.** Each Developer shall maintain general liability coverage including premises-operations liability, independent contractors liability, products and completed operations, and broad form property damage with these minimum limits:

**Bodily Injury & Property Damage**

\$2,000,000 combined single limit per occurrence

\$2,000,000 annual aggregate

**Fire Damage Liability**  
\$ 50,000

**Medical Payments**  
\$ 5,000

The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

b. **Comprehensive Automobile Liability.** Each Developer shall maintain automobile liability coverage including coverage for owned, hired and non-owned liability providing for all injuries to members of the public and damage to property of others arising from the use of motor vehicles on and off the work site with these minimum limits:

**Bodily Injury & Property Damage**  
\$2,000,000 combined single limit per occurrence.

c. **Workers' Compensation and Employer's Liability.** Each Developer shall maintain workers' compensation coverage for all claims made under applicable state workers' compensation laws. Each Developer shall also maintain employer's liability coverage for claims made for injury, disease or death of an employee which, for any reason, may not fall within the provisions of a worker's compensation law. The following minimum limits shall apply:

**Workers' Compensation**  
Statutory limits

**Employer's Liability**  
\$1,000,000 each accident  
\$1,000,000 disease – policy limit  
\$1,000,000 disease – each employee

d. **Performance Bond for Drainage Improvements.** Prior to the issuance of the permit for the Drainage Improvements, the Co-Developer shall post, or cause to be posted by its general contractor, a performance bond, cash escrow, certified check or other acceptable form of performance security with the City in an amount equal to 125 percent of the estimated cost of the drainage improvements, to assure completion of the Drainage Improvements. The security will remain in effect for one year after the date of completion of the Drainage Improvement.

Section 504. **Local, State and Federal Laws.** Each Developer agrees that it shall abide by, and the Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

Section 505. **Hazardous Materials.** Each Developer acknowledges that it is responsible for maintaining the Project in compliance with all environmental laws and agrees to expeditiously proceed with any compliance action required by any local, state or federal authority under applicable environmental law with respect to any property in the Project Area it owns. Each Developer further agrees to give immediate written notice to the City of any violation of any environmental law of which violation such Developer has actual knowledge and which relates to any property in the Project Area it owns.

Section 506. **Nondiscrimination During Construction.** Each Developer, for itself and its successors and assigns, agrees that in the construction of the Project Portion such Developer is responsible for, such Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 507. **Utilities and Fees.** The City hereby agrees that each Developer shall have the right to connect to any and all City utility lines constructed in the vicinity of the Project Area subject to compliance with the City's codes and procedures for such connections. Each Developer shall pay, in connection with the development of its Project Portion, all applicable water, sanitary and storm sewer, building permit, engineering, inspection and other fees. Each Developer hereby acknowledges that the City shall have no financing obligations in connection with the development except as expressly provided herein.

Section 508. **City and Other Governmental Permits.** Before commencement of construction or development of any buildings, structures or other work or improvement on a Project Portion the applicable Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction development or work. The City shall follow its standard procedures for providing assistance to such Developer in securing these permits.

## **ARTICLE VI** **REAL ESTATE TAXES**

Section 601. **Agreement to Pay Taxes and Assessments; Request for Reclassification.** Each Developer shall pay its Taxes for all property it owns within the District on or before the applicable due date for Taxes (currently December 20 and May 10 for each year). Additionally, the Lead Developer shall pay or cause to be paid on or before the applicable due date for Taxes (currently December 20 and May 10 for each year) all Taxes for all property in the Remaining Undeveloped Project Area (regardless of the owner of such property). Notwithstanding the foregoing, if Taxes for all property in the Remaining Undeveloped Project Area (excluding any property owned by the Lead Developer or affiliates of the Lead Developer) are not paid on or before their applicable due date, the City shall provide written notice to the Lead Developer of the delinquency and the Lead Developer shall pay such delinquent Taxes within forty-five (45) days of the date such notice is given. Each Developer or its successors shall have the right to pay said Taxes under protest in accordance with applicable law. A Developer shall not request a change in taxation classification without prior written City approval.

Section 602. **Notice of Protest or Appeal.** Each Developer shall promptly notify the City in writing of its protest or appeal of Taxes or valuation of any property within the Project Area by the County Assessor.

## ARTICLE VII USE, ASSIGNMENT, SALES AND LEASING

Section 701. **Use Restrictions.** The allowable uses on the Property and within the Project Area will be subject to the lawful zoning power of the City and will not be subject to use restrictions solely by virtue of this Agreement.

Section 702. **No Restriction on Transfer.** There shall be no restriction in the sale, transfer or leasing of the property within the Project Area except as specifically set forth herein and except that neither Developer shall transfer any real property within the Project Area to any tax-exempt organization without prior written approval of the City nor seek any change to agricultural tax or usage classification related to tax assessments.

1. **Transfer of Obligations.** Subject to the following paragraph 2 of this Section, the rights, duties and obligations hereunder of each Developer may be assigned, in whole, to another entity or, in part, to one or more Component Developers, subject to the approval of the City Administrator following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as determined by the City Administrator, necessary and adequate to fulfill the obligations of applicable Developer with respect to the portion of the Project Area being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of such Developer under this Agreement and agree to be subject to all the conditions and restrictions to which such Developer is subject (or, in the event the transfer is of or relates to a portion of the Project Area, such obligations, conditions and restrictions to the extent that they relate to such portion). Such Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release such Developer. Such Developer agrees to record all assignments in the office of the register of deeds of Johnson County, Kansas, in a timely manner following the execution of such agreements and to promptly provide the City with a copy of the recorded assignment.

2. **Assignment from Lead Developer to Co-Developer.** The parties acknowledge that the Lead Developer desires to assign its rights, duties and obligations to the Co-Developer, including the right to receive reimbursement for the Existing Certified Expenses. Despite anything contained herein to the contrary, the Lead Developer shall not assign any of its duties and obligations hereunder to the Co-Developer until the Tract B Project Area is Pad Ready. At all times until such assignment, if any, David Christie and David Block shall maintain control and have a majority ownership interest in the Lead Developer.

3. **Assumptions of Obligations.** The parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors,

administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of the Project Area shall be bound by any obligation of a Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within the Project Area except the Developers shall be entitled to any rights whatsoever or claim upon the Incremental Real Property Taxes set forth herein, except as specifically authorized in writing by the applicable Developer.

4. **Collateral Assignment to Lender.** The parties hereto acknowledge and agree that Co-Developer shall have the right to collaterally assign and grant a security interest in its right to receive reimbursements thereunder to its construction lender.

## **ARTICLE VIII** **DEFAULTS AND REMEDIES**

### **Section 801. Defaults - General.**

1. Unless otherwise specified herein, failure or delay by either party to perform any term or provision of this Agreement constitutes a “default” under this Agreement. A party claiming a default (“claimant”) shall give written notice of default to the other party, specifying the default complained of.

2. The claimant shall not institute proceedings against the other party, nor be entitled to damages if the other party:

(a) with due diligence, commences to cure, correct or remedy such failure or delay within fourteen (14) days from the date written notice is given to the defaulting party in accordance with the notice provisions of Section 913, and

(b) (i) completes such cure, correction or remedy within thirty (30) days from the date such notice is given or (ii) if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period and this Agreement does not specify that a cure period is not applicable to such default, diligently and continuously pursues such cure, correction or remedy until completion thereof.

3. In addition to the right of a party to the Agreement to institute proceedings against another party and notwithstanding any provision in the Agreement to the contrary, if a default occurs, the claimant may terminate this Agreement if a default has not been cured within fourteen (14) days after written notice of such default and the intent to terminate the Agreement is given to the defaulting party; provided, however, except for a default due to the failure to timely pay Taxes or to meet the Development Timeline for which no additional cure period is permitted, if the defaulting party has commenced to cure the default within the 14-day period, is diligently pursuing such cure and has provided notice to the other party within such 14-day period of its intent to cure the default and its

proposed action to cure the default, the defaulting party will have 30 days from the date of such notice of default to cure the default.

Section 802. **Legal Actions.**

1. **Institution of Legal Actions.** Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

2. **Acceptance of Service of Process.**

a. In the event that any legal action is commenced by a Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against a Developer, service of process on such Developer shall be made by personal service upon an officer or agent of such Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law.

Section 803. **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 804. **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

## **ARTICLE IX GENERAL PROVISIONS**

Section 901. **Time of Essence.** Time is of the essence of this Agreement. The City and each Developer will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 902. **Developer Agreement Not to Challenge.** If the Agreement is terminated with respect to a Developer because of the failure of such to pay Taxes (including special assessments) in accordance with Section 601 of this Agreement or because a Developer failed to progress in the development of its Project Portion in accordance with **Exhibit F** of this Agreement,

no Developer shall challenge, contest or litigate the use of Incremental Real Property Taxes by the City for other purposes.

Section 903. **Developer Quarterly Reports.** Beginning September 1, 2017, each Developer agrees to provide written quarterly reports on the progress of the development of the Tract B Project; provided, nothing herein is intended to obligate the Developer to provide confidential information or information that may hinder its ability to develop the Tract B Project.

Section 904. **No Third-Party Beneficiaries.** The parties acknowledge that the City does not intend to grant any rights to enforce this Agreement to any party other than the Developers and any Component Developer, and nothing herein is intended to create any third-party beneficiaries with respect to the rights and obligations of the City under this Agreement.

Section 905. **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's Governing Body approving said amendment, and by the execution of said amendment by the parties to this Agreement or their successors in interest.

Section 906. **Immunity of Officers, Employees and Members of the City.** No personal recourse shall be had for the payment of the principal of or interest on the Project costs or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to either Developer, or any successor in interest, for any default or breach by the City.

Section 907. **Right to Inspect.** Each Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of such Developer's books and records relating to the Project as pertinent to the purposes of this Agreement.

Section 908. **Right of Access.** For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Project, without charges or fees, at normal construction hours during the period of construction for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall carry proper identification, and shall not interfere with the construction activity.

Section 909. **No Other Agreement.** Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

Section 910. **Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

Section 911. **Amendment to Carry Out Intent.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future governing body of the City in a manner prohibited by the laws of the State of Kansas. If any provision in this Agreement relating to the performance by the City of an act in the future is determined by a court of law to be the exercise of the City's legislative or governmental power, as opposed to an exercise of its proprietary or administrative power, such provision shall be deemed to be an expression of the intent of the City to perform such act.

Section 912. **Kansas Law.** This Agreement shall be construed in accordance with the laws of the State of Kansas.

Section 913. **Notice.** All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Lead Developer:

Mr. David J. Christie  
Merriam Investors, LLC  
7387 W. 162nd Street, Suite 200  
Overland Park, KS 66085

and

David M. Block  
Merriam Investors, LLC  
605 West 47<sup>th</sup> Street, Suite 200  
Kansas City, MO 64112

To the Co-Developer:

Richard Webb  
6960 W. Frontage Road  
Merriam, Kansas 66203

With a copy to:

Sandra S. Watts, Esq.  
White Goss, a Professional Corporation  
4510 Bellevue, Suite 300  
Kansas City, MO 64111

and

To the City:

Mr. Chris Engel, City Administrator  
City of Merriam  
Merriam City Hall  
9001 W. 62nd Terrace  
Merriam, KS 66202

With copies to:

Mr. Ryan Denk, City Attorney  
City of Merriam  
Merriam City Hall  
9001 W. 62nd Terrace  
Merriam, KS 66202

Mr. Joseph D. Serrano, City Special Counsel  
Kutak Rock LLP  
2300 Main Street, Suite 800  
Kansas City, MO 64108

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested.

Section 914. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 915. **Recordation of Agreement.** The City may record this Agreement in the real property records of Johnson County, Kansas, and the parties agree to execute and deliver this Agreement in proper form for recording.

Section 916. **Survivorship.** Notwithstanding the termination of this Agreement, each Developer's obligations with respect to Section 503 ("Insurance and Indemnification"), Article IX. ("General Provisions"), and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Agreement.

Section 917. **Incorporation of Exhibits.** The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein. If a

conflict exists between the legal description of a parcel and a map, the legal description shall control for the purposes of this Agreement.

IN WITNESS WHEREOF, the City and the Developers have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY OF MERRIAM**  
a Kansas municipal corporation

By: \_\_\_\_\_  
Ken Sissom, Mayor

**ATTEST:**

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Juliana Pinnick, City Clerk

**APPROVED AS TO FORM:**

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Ryan Denk, City Attorney

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Joseph D. Serrano, Special City Counsel

## ACKNOWLEDGMENT

STATE OF KANSAS        )  
                            )  
COUNTY OF JOHNSON     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for said County and State, came Ken Sissom, Mayor of the City of Merriam, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Juliana Pinnick, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

[SEAL]

---

Notary Public in and for  
said County and State

My Commission Expires: \_\_\_\_\_

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**MERRIAM INVESTORS LLC,**  
a Kansas limited liability company

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

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

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
                      ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me appeared  
\_\_\_\_\_ and \_\_\_\_\_ to me personally known, who, being by me duly  
sworn did each say that he is co-managing member of Merriam Investors LLC, a Kansas limited  
liability company, and that said instrument was signed on behalf of said company, and said person  
acknowledged said instrument to be the free act and deed of said company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day  
and year first above written.

[SEAL]

---

Notary Public in and for  
said County and State

My Commission Expires: \_\_\_\_\_

**MLI, INC,**  
a Kansas corporation

By:

Its:

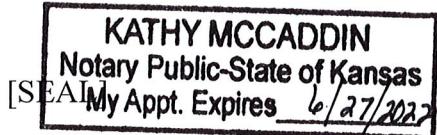
RICHARD WEBB, MCR

### ACKNOWLEDGMENT

STATE OF Kansas )  
                            ) ss.  
COUNTY OF Johnson)

On this 6<sup>th</sup> day of May 2020, before me appeared Richard Webb to me personally known, who, being by me duly sworn did say that he/she is the manager of MLI, Inc., a Kansas corporation, and that said instrument was signed on behalf of said company, and said person acknowledged said instrument to be the free act and deed of said company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.



Kathy McCadden  
Notary Public in and for  
said County and State

My Commission Expires: 06/27/2022

## **EXHIBITS**

Exhibit A	TIF District (legal description and map)
Exhibit B	TIF District Plan
Exhibit C	Project Plan
Exhibit D	Project Area (legal description and map including delineation of area to be developed by each Developer)
Exhibit E	Eligible Expenses (including Existing Certified Expenses)
Exhibit F	Development Timeline
Exhibit G	Original Undeveloped Project Area (legal description and map)
Exhibit H	Tract B Project Area
Exhibit I	Certification of Expenditure Form
Exhibit J	Assignment of TIF Rights and First Amendment to Assignment of TIF Rights
Exhibit K	Acknowledgement and Release

**EXHIBIT I**  
**CERTIFICATION OF EXPENDITURE FORM**

**CERTIFICATION OF EXPENDITURES**  
**MERRIAM POINTE REDEVELOPMENT PROJECT**

Date: \_\_\_\_\_  
Certification # \_\_\_\_\_

Governing Body of the  
City of Merriam, Kansas

In accordance with the Third Amended and Restated Redevelopment Agreement dated \_\_\_\_\_, 2020 (the “Agreement”), between the city of Merriam, Kansas (the “City”), Merriam Investors LLC, and MLI, Inc., \_\_\_\_\_ [insert Merriam Investors LLC, or MLI, Inc., as applicable] (the “Developer”) hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developers (as defined in the Agreement) as provided in the Agreement, as follows:

1. To the best of my knowledge, all amounts are Eligible Expenses that are reimbursable to the Developers pursuant to the Agreement.
2. All amounts have been advanced by the Developer for Redevelopment Project Costs in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$ \_\_\_\_\_ which amount is itemized on Exhibit A attached hereto and which Exhibit A includes \_\_\_\_\_ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

Payment to the undersigned Developer of the Eligible Expenses requested by this Certificate are to paid to the Developer in accordance with the following instructions (insert check and address check for receipt of check or wire transfer instructions):

---

---

Developer's Name: \_\_\_\_\_

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

**EXHIBIT A**  
**TO CERTIFICATION OF EXPENDITURES**  
**MERRIAM POINTE REDEVELOPMENT PROJECT**  
**(MERRIAM POINTE TIF PROJECT)**  
**PAGE \_\_\_\_ OF \_\_\_\_**

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

Certification # \_\_\_\_\_

<b>Description of Expense (attach additional supporting documentation)</b>	<b>Amount of Expense</b>
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
<b>Total Expenses</b>	<b>\$</b>

\_\_\_\_\_  
Initials of Developer

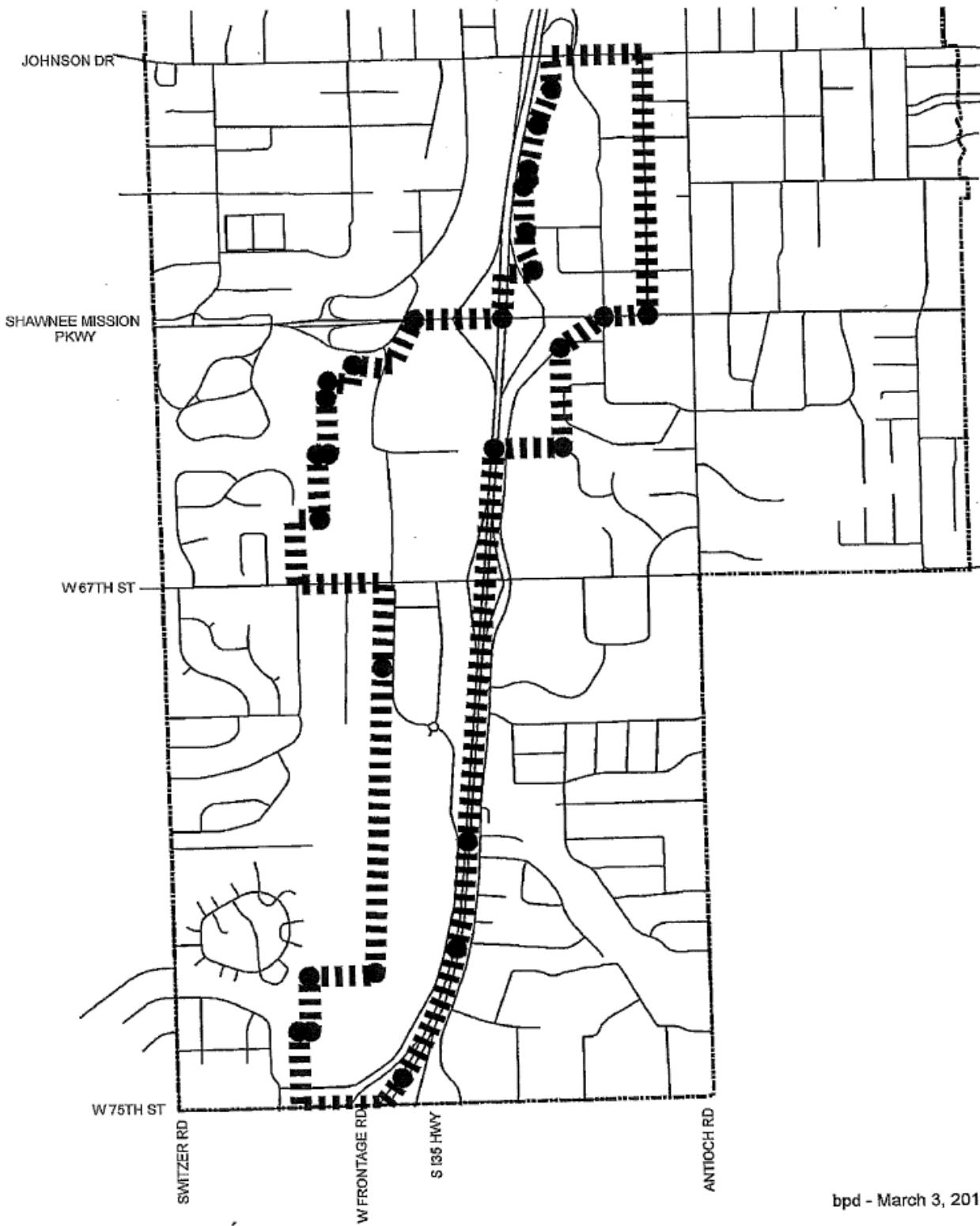
**EXHIBIT A**

**TIF DISTRICT**  
**(legal description and map)**

**TIF DISTRICT**  
**(legal description and map)**

Beginning at the intersection of Interstate Highway 35 and 75<sup>th</sup> Street; thence west along 75<sup>th</sup> Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad; thence north 800 feet; thence east 100 feet; thence north 540 feet; thence east approximately 690 feet to the centerline of the Burlington Northern Right-of-Way; thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67<sup>th</sup> Street; thence west along 67<sup>th</sup> Street to the west property line of Lot 5, Cunningham Gardens Subdivision; thence north along the west property line of Lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision; thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision; thence north to the north property line of said subdivision; thence east 100 feet along the boundary between the existing R-1 and I-1 zoning districts; thence north 750 feet along said zoning district boundary; thence easterly 230 feet along said zoning district boundary; thence northerly 200 feet along said zoning district boundary; thence easterly 253 feet along said zoning district boundary; thence northerly 50 feet along said zoning district boundary; thence easterly to the centerline of the Burlington Northern right-of-way; thence northerly along said railroad right-of-way to Shawnee Mission Parkway; thence east along said parkway to Interstate Highway 35; thence north along said highway to a point west of 62<sup>nd</sup> Terrace projected; thence easterly along 62<sup>nd</sup> Terrace to Slater Road; thence south along Slater Road to Shawnee Mission Parkway; thence west along said parkway to the intersection of the East Frontage Road; thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected; thence south along said line to a point east of 65<sup>th</sup> Street projected; thence west along said line and 65<sup>th</sup> Street to Interstate Highway 35; thence south along said highway to the point of beginning on 75<sup>th</sup> Street, and;

Part of the Southeast ¼ of Section 12, Township 12 South, Range 24 East in the City of Merriam, Johnson County, Kansas, more particularly described as follows: BEGINNING at the point of intersection of the Centerline of Slater Road and the Centerline of Johnson Drive, said centerline of Johnson Drive also being the North line of the Southeast ¼, of said Section 12; thence North 90° West along the centerline of Johnson Drive and the North line of said Southeast ¼, 918.48 feet to the point of intersection of said North Line of the Northeast ¼ and the Northerly prolongation of the Westerly right of way line of Grandview Avenue, said point of the intersection also being a point on the Easterly right of way line of Interstate Highway No. I-35; thence Southerly along the Easterly right of way line of Interstate Highway No. I-35 to the point of intersection of said Easterly right of way line of Interstate Highway No. I-35 and the Westerly prolongation of the Centerline of 62<sup>nd</sup> Street Terrace; thence South 89° 49' 24" East along said centerline of 62<sup>nd</sup> Street Terrace, 1129.62' to the point of the intersection of said centerline of said 62<sup>nd</sup> Street Terrace and the centerline of Slater Road; thence North 00° 37' 19" East, along the centerline of Slater Road, 2206.37 feet to the POINT OF BEGINNING. Containing 307 acres of land, more or less



bpd - March 3, 2011

**EXHIBIT B**

**TIF DISTRICT PLAN**

**and**

**PRIOR PROJECT PLANS**

**Original TIF District Plan**

# FILE COPY

ORDINANCE NO. 1222

AN ORDINANCE ESTABLISHING A REDEVELOPMENT DISTRICT PURSUANT OF  
K.S.A. 12-1771.

WHEREAS, on the 27th day of June, 1994, a public hearing was held, after proper notice, to consider the establishment of a redevelopment district in the City of Merriam; and

WHEREAS, on the 25th day of July, the Governing Body of the City of Merriam, Kansas, by Resolution No. A-573, found that the area proposed for the redevelopment district is in an Enterprise Zone established prior to July 1, 1992 and that the conservation, development and redevelopment of the proposed area described is necessary to promote the general and economic welfare of the City of Merriam, Kansas.

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

SECTION ONE: That the real property described on Exhibit "A" attached hereto is hereby established as a redevelopment district pursuant to K.S.A. 12-1771.

SECTION TWO: The boundaries of the redevelopment district described above contain only those properties given notice pursuant to the notice requirements of K.S.A. 12-1771(d).

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

PASSED BY THE City Council the 22<sup>nd</sup> day of August, 1994.

APPROVED BY THE Mayor the 22<sup>nd</sup> day of August, 1994.

(SEAL)



\_\_\_\_\_  
IRENE B. FRENCH, Mayor

ATTEST:

\_\_\_\_\_  
Michael J. Scanlon, Acting City Clerk

APPROVED AS TO FORM:

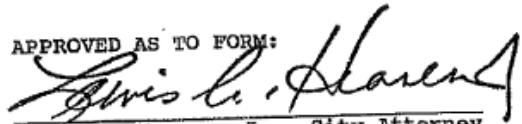
  
Lewis A. Heaven, Jr., City Attorney

EXHIBIT A

Boundaries of the Enterprise Zone Redevelopment District

Beginning at the intersection of Interstate Highway 35 and 75th Street, thence west along 75th Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad, then north 800 feet, thence east 100 feet, thence north 540 feet, thence east approximately 690 feet to the centerline of the Burlington Northern right-of-way, thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67th Street, thence west along 67th Street to the west property line of lot 5, Cunningham Gardens Subdivision, thence north along the west property line of lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision, thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision, thence north to the north property line of said subdivision, thence east 100 feet along the boundary between the R-1 and I-1 zoning districts, thence north 750 feet along said zoning district boundary, thence easterly 230 feet along said zoning district boundary, thence northerly 200 feet along said zoning district boundary, thence easterly 253 feet along said zoning district boundary, thence northerly 50 feet along said zoning district boundary, thence easterly to the centerline of the Burlington Northern right-of-way, thence northerly along said railroad right-of-way to Shawnee Mission Parkway, thence east along said parkway to Interstate Highway 35, thence north along said highway to a point west of 62nd Terrace projected, thence east along 62nd Terrace to Slater Road, thence south along Slater Road to Shawnee Mission Parkway, thence west along said parkway to the intersection of the East Frontage Road, thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected, thence south along said line to a point east of 65th Street projected, thence west along said line and 65th Street to Interstate Highway 35, thence south along said highway to the point of beginning on 75th Street, said area containing 241 acres more or less.

**FILE COPY**

RESOLUTION NO. A-523

WHEREAS, the City Council of the City of Merriam did hold a public hearing on establishment of a redevelopment district, as provided for in K.S.A. 12-1771, said hearing being held on June 27, 1994 in the City Council Chambers at Merriam City Hall at 7:00 P.M. and;

WHEREAS, said public hearing was adjourned on June 27, 1994 and;

WHEREAS, notice of said public hearing was duly published, mailed and delivered all as provided for in K.S.A. 12-1772(c) and;

WHEREAS, K.S.A. 12-1771(a) requires that the City council make certain findings before proceeding with a redevelopment district. Those findings are: 1) the area sought to be redeveloped is blighted or is located in an enterprise zone designated prior to July 1, 1992; and 2) the conservation, development or redevelopment of the area is necessary to promote the general and economic welfare of such city and;

WHEREAS, the proposed redevelopment area is within an enterprise zone established prior to July 1, 1992.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MERRIAM, KANSAS that the following findings are hereby made:

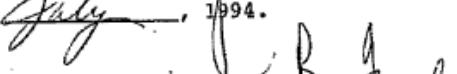
1. That the area as described in Exhibit "A" is in an enterprise zone established prior to July 1, 1992 and designated as such by the City by Resolution No. A-475 on 12/19,  
19 88.

2. That the conservation, development and redevelopment of the area described in Exhibit "A" is necessary to promote the general and economic welfare of the City of Merriam, Kansas.

BE IT FURTHER RESOLVED by the City of Merriam, Kansas that the comprehensive plan which identifies all proposed redevelopment project areas and identifies in a general manner all buildings and facilities which are proposed to be constructed or improved in each project area is identified as and attached hereto as Exhibit "B" and incorporated by reference as if fully set forth herein.

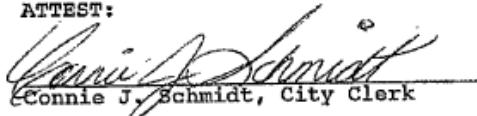
BE IT FURTHER RESOLVED by the City Council of the City of Merriam that no privately owned property subject to ad valorem taxes shall be acquired and developed under the provisions of K.S.A. 12-1770, et seq. if the Board of County Commissioners of Johnson County or the Board of Education for U.S.D. 512 determines by resolution adopted within 30 days following the conclusion of the public hearing held on June 27, 1994 by the City Council of the City of Merriam that the proposed redevelopment district will have an adverse effect on the county or said school district.

ADOPTED by the Governing Body of the City of Merriam, Kansas this 25 day of July, 1994.

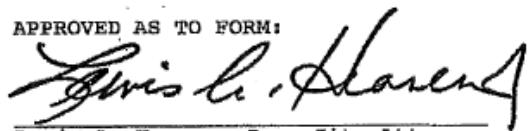
  
IRENE B. FRENCH, Mayor

(SEAL)

ATTEST:

  
Connie J. Schmidt, City Clerk

APPROVED AS TO FORM:

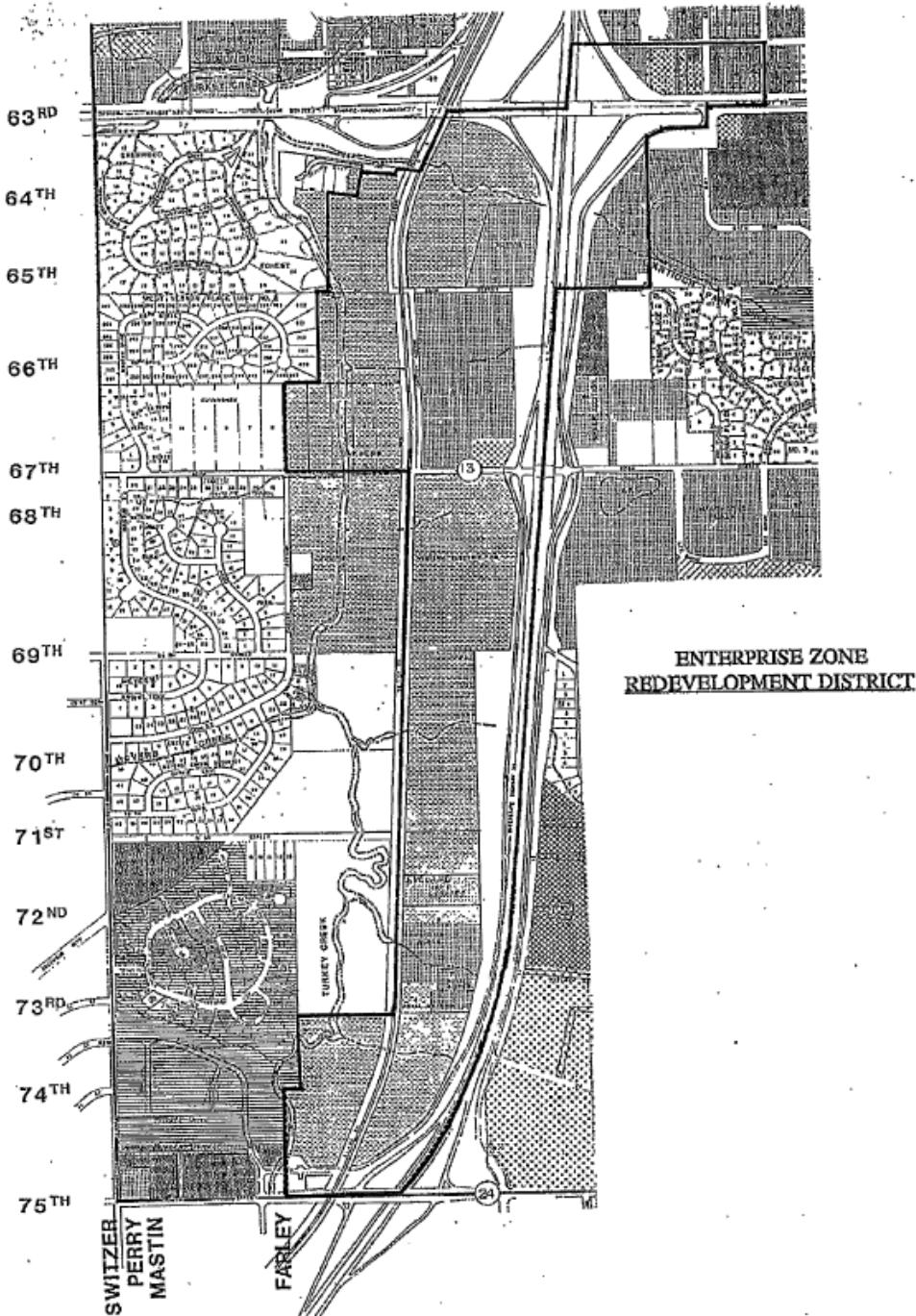
  
Lewis A. Heaven, Jr.

Jr., City Attorney

EXHIBIT A

**Boundaries of the Enterprise Zone Redevelopment District**

Beginning at the intersection of Interstate Highway 35 and 75th Street, thence west along 75th Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad, then north 800 feet, thence east 100 feet, thence north 540 feet, thence east approximately 690 feet to the centerline of the Burlington Northern right-of-way, thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67th Street, thence west along 67th Street to the west property line of lot 5, Cunningham Gardens Subdivision, thence north along the west property line of lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision, thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision; thence north to the north property line of said subdivision, thence east 100 feet along the boundary between the R-1 and I-1 zoning districts, thence north 750 feet along said zoning district boundary, thence easterly 230 feet along said zoning district boundary, thence northerly 200 feet along said zoning district boundary, thence easterly 253 feet along said zoning district boundary, thence northerly 50 feet along said zoning district boundary, thence easterly to the centerline of the Burlington Northern right-of-way, thence northerly along said railroad right-of-way to Shawnee Mission Parkway, thence east along said parkway to Interstate Highway 35, thence north along said highway to a point west of 62nd Terrace projected, thence east along 62nd Terrace to Slater Road, thence south along Slater Road to Shawnee Mission Parkway, thence west along said parkway to the intersection of the East Frontage Road, thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected, thence south along said line to a point east of 65th Street projected, thence west along said line and 65th Street to Interstate Highway 35, thence south along said highway to the point of beginning on 75th Street, said area containing 241 acres more or less.



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**EXHIBIT B**  
Redevelopment District Comprehensive Plan  
Enterprise Zone - Merriam Kansas

**Existing Conditions:**

In 1988 the City of Merriam, in cooperation with the State of Kansas, established an Enterprise Zone located generally west of Interstate Highway 35 and south of Shawnee Mission Parkway. Portions of the Enterprise Zone were located east of I-35, immediately north and south of Shawnee Mission Parkway. At the time the Enterprise Zone was established, Kansas law permitted certain special incentives for new business and industry to locate within enterprise zones which were not generally available outside enterprise zones. Since that time Kansas law has been changed so that the financial incentives for businesses to develop within enterprise zones are no different than those generally available throughout the County.

Kansas law does however permit cities to establish redevelopment districts and undertake redevelopment projects in areas which were established as enterprise zones prior to July 1, 1992. The Enterprise Zone in Merriam was established prior to July 1, 1992. Several specific tracts of land exist within the Enterprise Zone which remain undeveloped or substantially underdeveloped. Each of these sites or tracts has certain characteristics which have made the site difficult or unusually costly to develop to its full potential. The establishment of a Redevelopment District in accordance with K.S.A. 12-1770 *et seq.* will permit redevelopment actions to assist the development of the Enterprise Zone/Redevelopment District to its fullest, soundest potential.

**Redevelopment District Boundary:**

The proposed boundary for the Redevelopment District is identical to the established boundary of the existing Enterprise Zone. This boundary is shown on Figure 1.

**Proposed Redevelopment Project Areas:**

Proposed Redevelopment Project Areas are illustrated on Figure 2. The areas shown on Figure 2 are those parcels, tracts, or areas which remain undeveloped or which have been developed in a manner not consistent with their full development potential. Each of the areas shown on Figure 2 is impacted by some identifiable development constraint which has made the full development of the area difficult or unusually costly, and which thus has retarded the overall development of the Enterprise Zone, and the City of Merriam, to its fullest potential.

The primary identifiable development constraints which impact each area identified on Figure 2 are set forth below:

Area A contains an automobile dealership and a vacant building which used to house an automobile dealership. The two sites are separated by considerable grade change. The site of the existing

automobile dealership has extremely poor access, and the access point poses hazards for traffic on Shawnee Mission Parkway. The vacant dealership has excellent access to Eby, but has remained vacant or in only interim use for a considerable period of time. The overall development of this area would be significantly enhanced if the two parcels could be combined, significantly re-graded, and oriented to access from Eby.

Area B is a vacant parcel of land with considerable development potential, but also with severe development constraints. A drainage channel runs from west to east through the center of the parcel, and the parcel slopes to this channel, both north of and south of the channel. The site has excellent visibility and access, but the topography imposes high site grading costs to render the site usable.

Area C is a vacant parcel along West Frontage Road. This sight has excellent visibility, and reasonably good access to West Frontage Road. There is a drainage channel which isolates a portion of the site, and much of the site has been filled. These constraints also impose higher than normal site grading and foundation costs in order to develop the site.

Area D is composed of two parcels of land. One parcel lies west of the railroad tracks and contains a concrete ready-mix plant. The other site lies east of the railroad tracks along West Frontage Road. The concrete plant is a long-standing industrial use, which has become less well suited for its location since development has occurred in the areas surrounding its site. The portion of Area D which is between the railroad tracks and West Frontage Road is impacted by its location adjacent to the concrete plant, and by the fact that it contains a substantial amount of unknown fill material and higher than normal grading and foundation costs.

Area E is an area north of 67th Street adjacent to the railroad tracks. The eastern half of this area is vacant land. The western half of the parcel contains a small industrial building. The area has irregular elevations, dropping off to the north, and appears to be partially filled. The area has remained vacant or underutilized for a substantial period of time.

Area F is an area lying west of I-35, south of 67th Street currently housing a large facility operated by AT&T. The employment at this facility has declined precipitously over the past several years. Rapid technological and business changes in the telecommunications industry make the long run future of the existing unpredictable. Expansion, re-use, or redevelopment of this area may become desirable within the planning and redevelopment period encompassed by this plan.

It is the intent of this general comprehensive plan for the Redevelopment District that each area identified above may become a specific Redevelopment Project Area to be established in accordance with the procedures set forth in K.S.A. 12-1770 *et seq.* In addition to the potential project areas identified herein, additional project areas may be identified and may be included in this general comprehensive plan by amendment to this plan.

automobile dealership has extremely poor access, and the access point poses hazards for traffic on Shawnee Mission Parkway. The vacant dealership has excellent access to Eby, but has remained vacant or in only interim use for a considerable period of time. The overall development of this area would be significantly enhanced if the two parcels could be combined, significantly re-graded, and oriented to access from Eby.

Area B is a vacant parcel of land with considerable development potential, but also with severe development constraints. A drainage channel runs from west to east through the center of the parcel, and the parcel slopes to this channel, both north of and south of the channel. The site has excellent visibility and access, but the topography imposes high site grading costs to render the site usable.

Area C is a vacant parcel along West Frontage Road. This sight has excellent visibility, and reasonably good access to West Frontage Road. There is a drainage channel which isolates a portion of the site, and much of the site has been filled. These constraints also impose higher than normal site grading and foundation costs in order to develop the site.

Area D is composed of two parcels of land. One parcel lies west of the railroad tracks and contains a concrete-ready-mix plant. The other site lies east of the railroad tracks along West Frontage Road. The concrete plant is a long-standing industrial use, which has become less well-suited for its location since development has occurred in the areas surrounding its site. The portion of Area D which is between the railroad tracks and West Frontage Road is impacted by its location adjacent to the concrete plant, and by the fact that it contains a substantial amount of unknown fill material and higher than normal grading and foundation costs.

Area E is an area north of 67th Street adjacent to the railroad tracks. The eastern half of this area is vacant land. The western half of the parcel contains a small industrial building. The area has irregular elevations, dropping off to the north, and appears to be partially filled. The area has remained vacant or underutilized for a substantial period of time.

Area F is an area lying west of I-35, south of 67th Street currently housing a large facility operated by AT&T. The employment at this facility has declined precipitously over the past several years. Rapid technological and business changes in the telecommunications industry make the long run future of the existing unpredictable. Expansion, re-use, or redevelopment of this area may become desirable within the planning and redevelopment period encompassed by this plan.

It is the intent of this general comprehensive plan for the Redevelopment District that each area identified above may become a specific Redevelopment Project Area to be established in accordance with the procedures set forth in K.S.A. 12-1770 *et seq.* In addition to the potential project areas identified herein, additional project areas may be identified and may be included in this general comprehensive plan by amendment to this plan.

Area E: This area abuts W. 67th Street near I-35. The area has excellent regional accessibility, but lacks direct visibility from I-35. It is best suited for a single large building for warehouse or light manufacturing use, or one or more buildings for general commercial use which is a destination business as opposed to a business which requires direct visibility to high volumes of motorists.

Area F: This area abuts West Frontage Road, along I-35, immediately south of 67th Street. The site characteristics are similar to those set forth for Area C above. The area is suitable for a broad range of potential future uscs including one or more large buildings for commercial, warehouse, light manufacturing, and corporate office use. The area is also considered suitable for a multi-structure general commercial development, should the current use of the area become obsolete.

**Proposed Public Actions:**

It is the goal of the City of Merriam to encourage the sound development and redevelopment of the Enterprise Zone to its highest potential, consistent with this Plan. The establishment of individual Redevelopment Projects within the areas identified in this Plan. In furtherance of this goal, the City may exercise any of the individual actions and authorities set forth in K.S.A. 12-1773(b). Specific public actions to be undertaken in furtherance of this general comprehensive plan for the Redevelopment District will be specifically identified in the detailed Redevelopment Project Plans for each area identified herein.

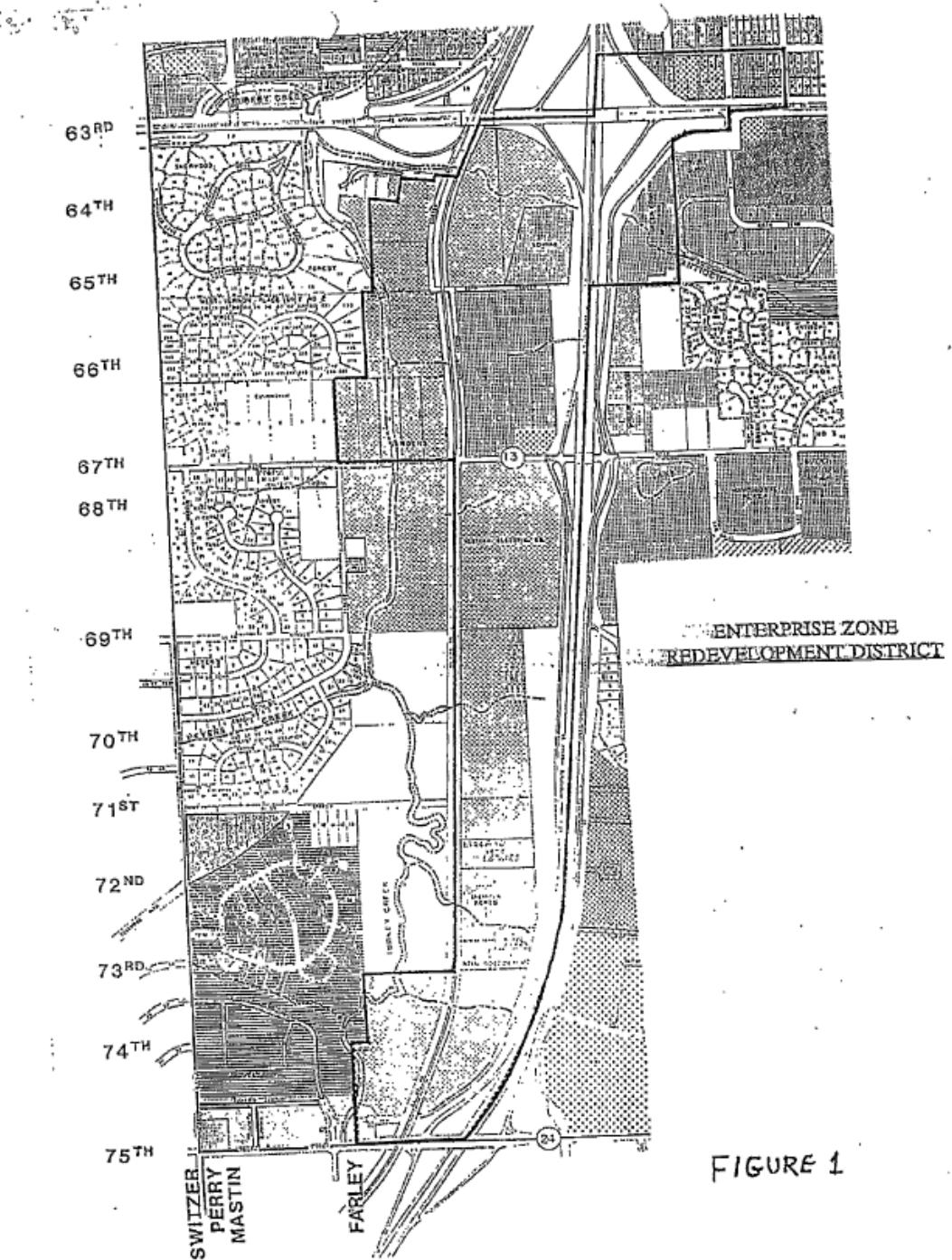
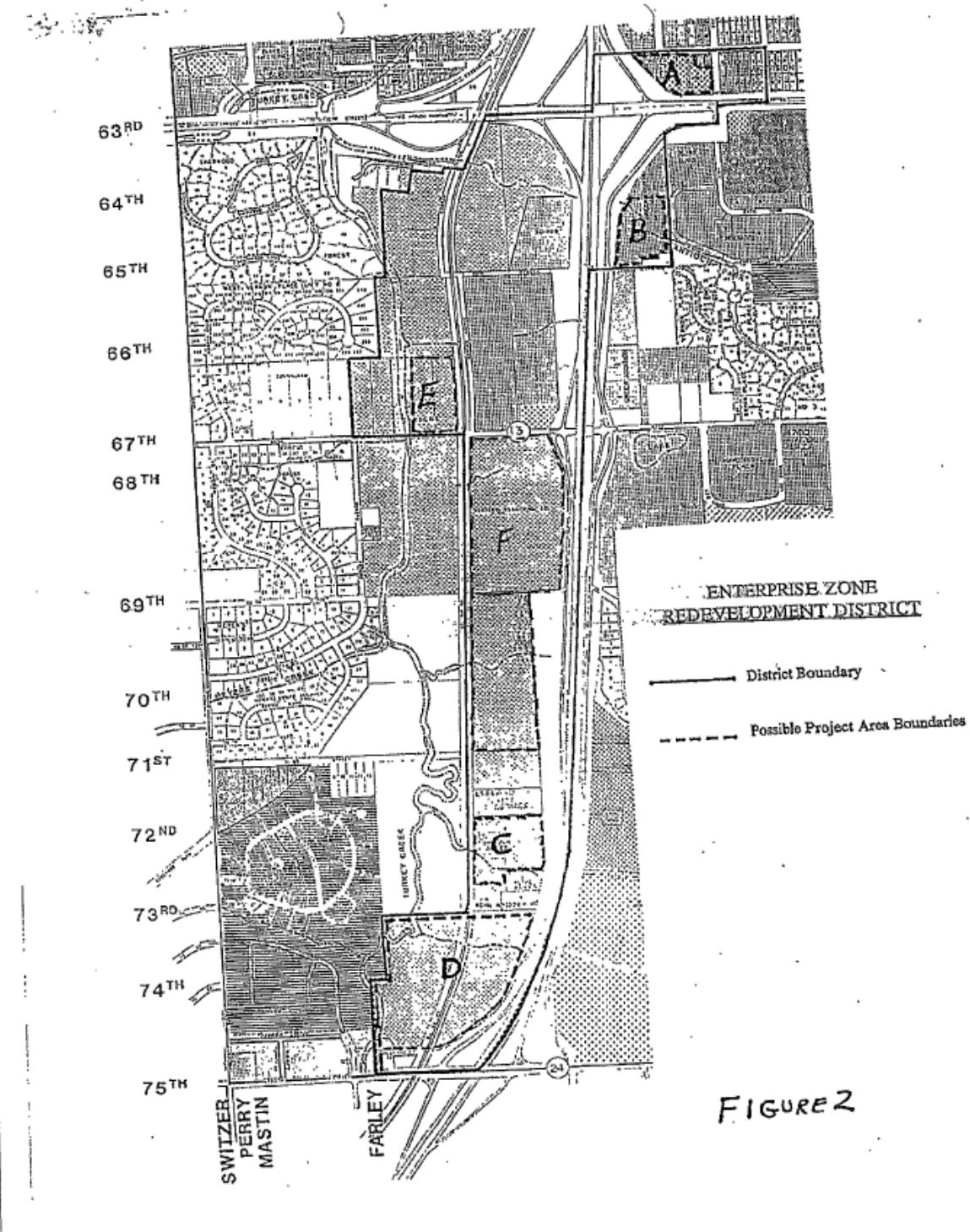


FIGURE 1



**First Amendment to TIF District Plan**

ORDINANCE NO. 1412

**FILE COPY**

AN ORDINANCE AMENDING ORDINANCE NO. 1222, ESTABLISHING A  
REDEVELOPMENT DISTRICT, TO INCLUDE ADDITIONAL REDEVELOPMENT  
PROJECT AREAS AND DESCRIPTIONS THEREOF.

WHEREAS, on the 26 day of November, 2001, a public hearing was held, after proper notice pursuant to K.S.A. 12-1771, to consider the adoption of proposed modifications to the Enterprise Zone Redevelopment District in the City established by Ordinance No. 1222; and

WHEREAS, the Governing Body, after receiving public comment and after due deliberation, finds that the proposed modifications to the Enterprise Zone Redevelopment District should be adopted.

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

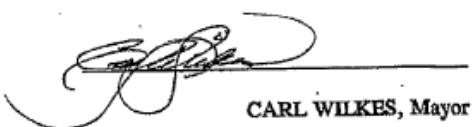
**Section 1. Amendment.** That Ordinance No. 1222 is hereby amended to include the redevelopment project areas set forth on Exhibit A and incorporated herein by reference.

**Section 2. Take Effect.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the official City newspaper, all as provided by law.

PASSED BY THE City Council the 17<sup>th</sup> day of December, 2001.

APPROVED BY THE Mayor this 17<sup>th</sup> day of December, 2001.

**FILE COPY**

  
CARL WILKES, Mayor

(SEAL)

ATTEST:



Sheryl Roederer  
Sheryl Roederer, City Clerk

APPROVED AS TO FORM:

Michelle Daise  
Michelle Daise, City Attorney

EXHIBIT A  
AMENDMENT TO THE REDEVELOPMENT DISTRICT COMPREHENSIVE PLAN  
ENTERPRISE ZONE REDEVELOPMENT DISTRICT  
MERRIAM, KANSAS

1. The Proposed Redevelopment Project Areas set forth in the adopted Redevelopment District Comprehensive Plan are hereby amended to add:

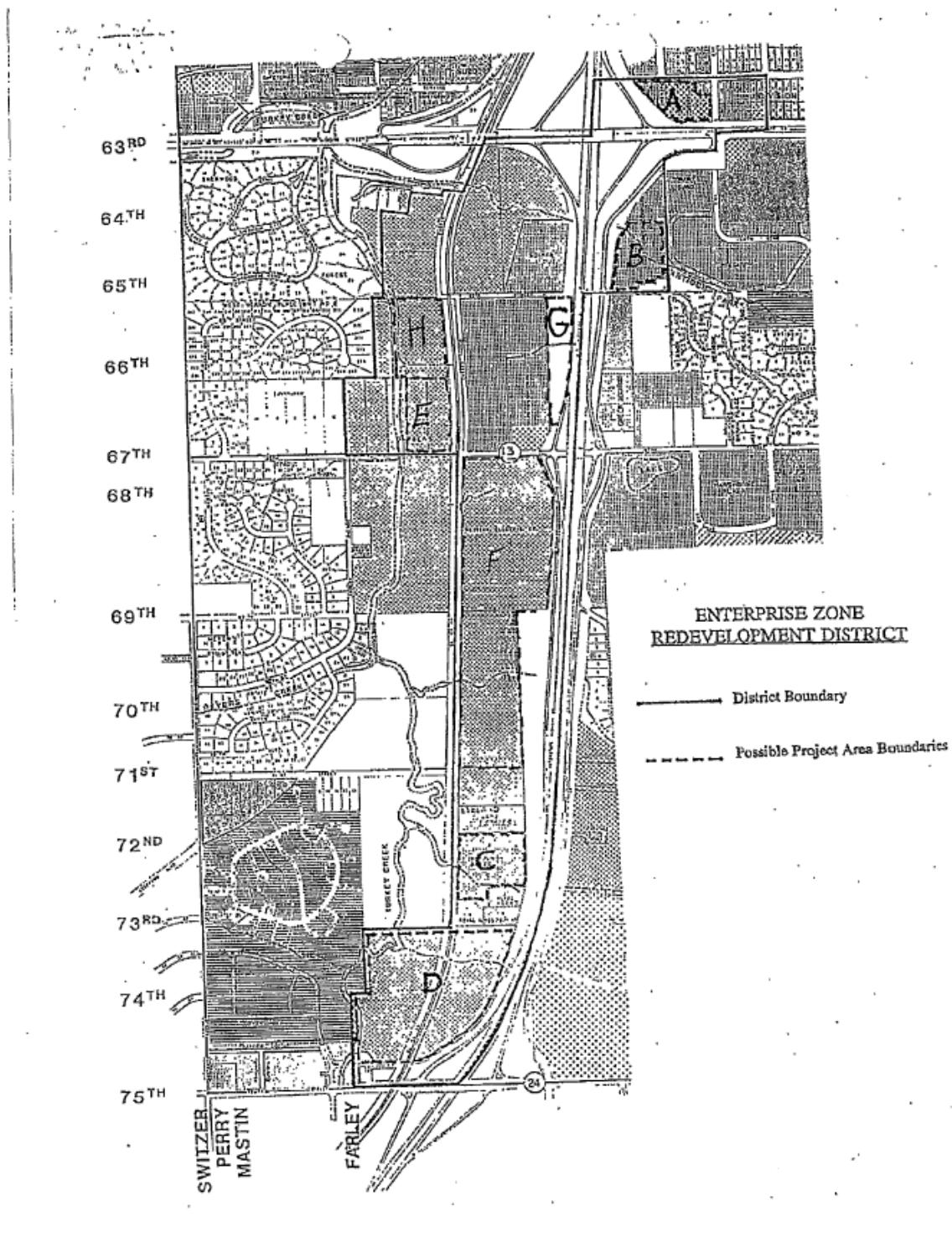
Area G is an area of excess U.S. Interstate Highway 35 (I-35) right-of-way located west of I-35 and north of 67<sup>th</sup> Street. The area is usable by adjacent property owners if combined with existing private property but lacks independent access to the public street system. The area contains a ravine which will require substantial fill prior to development.

Area H is an approximate 5.75 acre site containing a Water District service center facility constructed in 1966. The area is located west of the BNSF Railway railroad tracks and east of Turkey Creek, immediately south of 65<sup>th</sup> Street. The facility contains an office building, roof-covered storage, and an outside storage yard. The site is being vacated by the Water District in its move to a new consolidated facility.

2. The Buildings and Facilities to be Constructed set forth in the adopted Redevelopment District Comprehensive Plan are hereby amended to add:

Area G: This area abuts I-35 and has excellent visibility from the highway. It lacks independent access but may be combined with the abutting automobile dealership facility or other adjacent property. It is suitable for combination with abutting property to extend the abutting use in a manner which does not require direct access to the public street system. The site is appropriate for expansion of the auto dealership facility or the expansion of the parking area for the abutting financial services business.

Area H: This area is located in a commercial / industrial area adjacent to the BNSF Railway railroad tracks. It is suitable for a range of commercial and industrial uses typically found in light industrial areas, including light manufacturing, automotive service, and construction industry uses.



## **Second Amendment to TIF District Plan**

**ORDINANCE NO. 1464**

**AN ORDINANCE MODIFYING THE BOUNDARIES OF THE ENTERPRISE ZONE REDEVELOPMENT DISTRICT IN THE CITY OF MERRIAM, KANSAS AND ADOPTING AN AMENDMENT TO THE DISTRICT PLAN ASSOCIATED THEREWITH PURSUANT TO K.S.A. 12-1771; AND ELECTING, PURSUANT TO K.S.A. 12-1780a, TO HAVE THE PROVISIONS OF THE TIF ACT, AS AMENDED, APPLY TO THE ENTERPRISE ZONE REDEVELOPMENT DISTRICT.**

WHEREAS, on the 22<sup>nd</sup> day of August, 1994, the governing body of the City of Merriam, Kansas ("City") established by Ordinance No. 1222 the Enterprise Zone Redevelopment District ("District") and adopted a district plan describing the proposed development of said redevelopment district;

WHEREAS, on the 17<sup>th</sup> day of December, 2001, the governing body of the City by Ordinance No. 1412 amended said district plan to include additional project areas;

WHEREAS, on the 19<sup>th</sup> day of February, 2004, the governing body of the City passed Resolution No. 703 stating its intent to consider the addition of area to the existing District and modification of the boundaries thereof; and

WHEREAS, on the 22<sup>nd</sup> day of March, 2004, a public hearing was held, after proper notice, to consider the addition of area to the District.

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

Section 1. That the governing body of the City hereby finds that the addition of area, the legal description of which is attached hereto as Exhibit A and incorporated herein by reference, to the District is an eligible area and that the conservation, development or redevelopment of such area is necessary to promote the general and economic welfare of the City.

Section 2. That the district plan which was previously adopted by Ordinance No. 1222 and amended by Ordinance No. 1412 and which is on file in the office of the City Clerk is hereby amended, such amendment being attached hereto as Exhibit B, incorporated herein by reference.

Section 3. That the boundaries of the area hereby added to the District contain only those properties given notice pursuant to the notice requirements of K.S.A. 12-1771(a).

Section 4. That the District is hereby modified to include the area set forth on Exhibit A. The boundaries of the District, as modified, are hereby established as that area

which is legally described on Exhibit C, attached hereto and incorporated herein by reference.

Section 5. That the City hereby elects, pursuant to K.S.A. 12-1780a, to have the provisions of 12-1770 et. seq. (as amended), commonly referred to as the "TIF Act," apply to the District which was originally established prior to the effective date of the act.

Section 6. Effective Date. This ordinance shall be in full force and effect from and after its passage, approval and publication in the official City newspaper, all as provided by law.

PASSED BY THE City Council the 22<sup>nd</sup> day of March, 2004.

APPROVED BY THE Mayor this 22<sup>nd</sup> day of March, 2004.

ATTEST:

Sheryl Koederer  
Sheryl Koederer, City Clerk

  
Carl Wilkes, Mayor

APPROVED AS TO FORM:

Michelle D. Daise  
Michelle D. Daise, City Attorney



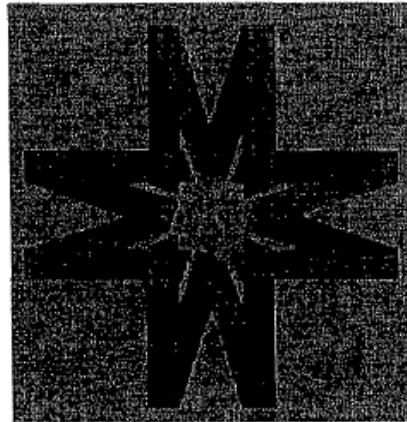
**EXHIBIT A**  
**PROPERTY TO BE ADDED TO THE ENTERPRISE ZONE REDEVELOPMENT DISTRICT**

**Description:**

Part of the Southeast  $\frac{1}{4}$  of Section 12, Township 12 South, Range 24 East in the City of Merriam, Johnson County, Kansas, more particularly described as follows: BEGINNING at the point of intersection of the Centerline of Slater Road and the Centerline of Johnson Drive, said centerline of Johnson Drive also being the North line of the Southeast  $\frac{1}{4}$ , of said Section 12; thence North 90° West along the centerline of Johnson Drive and the North line of said Southeast  $\frac{1}{4}$ , 918.48 feet to the point of intersection of said North Line of the Northeast  $\frac{1}{4}$  and the Northerly prolongation of the Westerly right of way line of Grandview Avenue, said point of intersection also being a point on the Easterly right of way line of Interstate Highway No. I-35; thence Southerly along the Easterly right of way line of Interstate Highway No. I-35 to the point of intersection of said Easterly right of way line of Interstate Highway No. I-35 and the Westerly prolongation of the Centerline of 62<sup>nd</sup> Street Terrace; thence South 89° 49' 24" East along said centerline of 62<sup>nd</sup> Street Terrace, 1129.62' to the point of intersection of said centerline of said 62<sup>nd</sup> Street Terrace and the centerline of Slater Road; thence North 00° 37'19" East, along the centerline of Slater Road, 2206.37 feet to the POINT OF BEGINNING. Containing 56.1 acres of land, more or less.

**EXHIBIT B**

**AMENDMENT TO  
REDEVELOPMENT DISTRICT COMPREHENSIVE PLAN  
ENTERPRISE ZONE REDEVELOPMENT DISTRICT**



**Enterprise Zone Redevelopment District  
City of Merriam, Kansas  
February, 2004**

**Amendment to the Redevelopment District Comprehensive Plan  
Enterprise Zone Redevelopment District - Merriam, Kansas**

**Background:**

The 1982 session of the Kansas Legislature passed the Kansas Enterprise Zone Act to "expand and renew the local economy and improve the social and economic welfare of residents of economically distressed zone areas located within the cities of Kansas." As stated by the Kansas Department of Economic Development, "The purpose of an Enterprise Zone is to renew the local economy and improve social and economic welfare of Kansas by providing incentives to business and industry to create new jobs and sources of income which will benefit the area... These benefits include: increased personal income; increased assessed property values; increased retail sales; and increased bank deposits."

In 1988 the City of Merriam identified an area meeting the state's requirements for designation as an Enterprise Zone. Resolution A-475 was adopted by the Governing Body on December 19, 1988. This resolution requested the State of Kansas to designate an area in Merriam as an Enterprise Zone. The proposed Enterprise Zone contained a number of areas which were significantly underdeveloped or undeveloped. These included two large vacant sites along the west side of I-35 with unstable fill materials which had been placed in the past. These areas also included a large vacant parcel bisected by Antioch Park Creek with steep slopes and areas subject to flooding, and other sites found to be under-developed. The state Department of Commerce verified the area's eligibility and designated the requested area to be an Enterprise Zone, effective December 21, 1988.

The Kansas Statutes at K.S.A. 12-1770 through 12-1780 set forth the state law relating to Redevelopment Districts and Redevelopment Projects undertaken by cities. K.S.A. 12-1770 states in pertinent part, "It is hereby declared to be the purpose of this act to promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities and to assist in the development and redevelopment of ...enterprise zones located within cities, thus promoting the general welfare of the citizens of this state... The necessity in the public interest for the provisions of this act is hereby declared as a matter of legislative determination."

In 1994 the City undertook the consideration of the establishment of a Redevelopment District within the established Enterprise Zone as provided for in state law. A General Comprehensive Plan for the District was prepared. Notices were mailed to all property owners and tenants within the proposed District, and a Public Hearing was held. In Resolution A-573 adopted July 25, 1994, the Governing Body found, "That the conservation, development, and redevelopment of the area... is necessary to promote the general and economic welfare of the City of Merriam, Kansas." On August 22, 1994 the

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Governing Body adopted Ordinance 1222 which established the Enterprise Zone Redevelopment District.

The Redevelopment District Comprehensive Plan for the Enterprise Zone Redevelopment District was amended by Ordinance 1412, December 17, 2001 to identify additional potential project areas in the vicinity of the area which contained Aristocrat Motors.

Since the establishment of the Enterprise Zone, several of the recognized problem areas have been redeveloped – some with and some without public assistance pursuant to the City's redevelopment authority. These projects include the Holiday House / National Equipment Company development, the expansion of the Aristocrat Motors facility, the Storage Trust development at 75<sup>th</sup> and I-35, the Hampton Suites Hotel, the Homestead Village hotel development and the Rio Bravo (now Chevy's) restaurant development, the Lock & Key Storage facility at 67<sup>th</sup> and Carter, the expansion of the Monogram Retail Credit Services facility, the City's Public Works facility, the expansion of the facility at Consolidated Lumber Company, the replacement of the concrete plant facility in, and the Baron BMW and Baron Volkswagen facilities. The Baron BMW and Volkswagen developments, the Homestead Village and Rio Bravo developments, and the Hampton Inn & Suites and Storage Trust developments involved the use of pay-as-you-go tax increment financing under approved Redevelopment Plans in this District. The other projects did not include any public participation.

**Proposed Addition to the Enterprise Zone Redevelopment District:**

It is now desirable to consider the addition of an adjacent area, to the Enterprise Zone Redevelopment District (the District). The area proposed to be added to the District is bounded by the existing northern boundary of the District along the center line of 62<sup>nd</sup> Terrace on the south; Slater Street on the east; Johnson Drive on the north; and, I-35 on the west.

The area proposed to be added to the District is shown in Figure 1.

**Existing Conditions:**

The area proposed to be added to the District presently has a variety of uses. The character of the area is heavily influenced by the existence of U.S. Interstate Highway 35 (I-35) which forms the western boundary of the area. The area was substantially developed prior to the construction and subsequent widening of I-35. The single family residential character of much of the area has been significantly degraded by the current configuration and traffic volumes on I-35. A number of commercial uses exist in the vicinity of Johnson Drive. These uses can be generally characterized as auto oriented uses and auto service uses. The transition of the character of the commercial area has begun, due to the location of the Merriam Town Center Redevelopment Project across Johnson Drive to the north. A vacant convenience store has been converted into a Pizza establishment, and a new convenience store with an attached bank facility has been constructed at the corner of Slater and Johnson Drive. Outside of, but adjacent to the area

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proposed to be added to the District, aging residential and commercial properties were replaced with a new Walgreen's Pharmacy.

The area proposed to be added to the District is more specifically described below:

At the north along Johnson Drive between Slater and Grandview are several commercial buildings. This area of the is predominately automotive in nature with three used car facilities and three auto repair facilities. The new Texaco convenience store and converted Papa John's Pizza establishment are located adjacent to Johnson Drive, at Slater Street. A day care facility and 12 unit multi-family residence building are also located in the area.

Along Grandview Avenue, south to 61<sup>st</sup> Terrace and East to the Eby right of way, the predominant use is single family residential. Residences also front on 60<sup>th</sup> Terrace, 61<sup>st</sup> Street, and 62<sup>nd</sup> Street. These streets have been cut off by I-35 west of Grandview, creating undesirable dead-end street conditions adjacent to the Interstate highway. The majority of the houses are over 50 years old, many having been built in the 1920's, 1930's, and 1940's.

From 61<sup>st</sup> Terrace South, the uses again turn to commercial, including a printing company, an exterminator company, and major automobile dealership abutting the proposed District on the South.

The City of Merriam City Hall including the Fire Station, the City Public Safety (Police) Building, and the City's Vavra Park are also located within the proposed addition to the District.

It is the City's goal to encourage the sound development and redevelopment of the properties within the area to be added to the District, to their highest potential.

#### **Proposed Redevelopment Project Areas:**

The Proposed Redevelopment Project Areas located within the area to be added to the District are shown on Figure 2. The area contains parcels and tracts that have been previously developed in a manner not consistent with their fullest current development potential. All of the areas shown on Figure 2 are impacted by some identifiable development constraints which have made the full development and redevelopment of the area difficult or unusually costly, and which have thus retarded the overall development of the area to its fullest potential.

The primary identifiable development constraint which currently impacts the area in general is the number of parcels which must be acquired to make a viable redevelopment of the area possible. With nearly 70 parcels and 60 owners, the expense in acquisition of this area by utilization of private funds makes the economic viability of any major, quality redevelopment impossible. Without the use of some governmental aid such as tax

increment financing and/or a transportation development district, the area will develop slowly and in a "hodge-podge" fashion. This would take several years and would not only disrupt the present residents but would keep the area in transition for an extended period of time.

The second most identifiable constraint to development are the topographical changes from 62<sup>nd</sup> Terrace to Johnson Drive. The severe grade changes will require significant site work and restraining walls to make the area usable for the area's fullest development. Without control of the entire area, this type of site work would be difficult if not impossible and would result in an inefficient use of the land.

The third most identifiable constraint is the existing pattern of street rights-of-way, including the location of the Grandview right of way. As the area is presently configured, Grandview bisects most of the potential usable land suitable for commercial development. This makes the area unsuitable for significant commercial uses because there is not enough space for parking to support any large commercial users. Keeping Grandview in its present configuration would result in an inefficient use of the development area and not allow the fullest development of the land.

In addition, the northern terminus of Grandview creates a "T" intersection with Johnson Drive. This intersection is offset from the signalized I-35 ramp's intersection, and is controlled by a stop sign. This retards the flow of traffic into and out of the area from Johnson Drive. Without an abandonment of Grandview at its current alignment, and a realignment of Eby to intersect with the off/on ramp of I-35 the ingress and egress to and through the area will not support significant commercial development which is the greatest potential use for the development area.

#### **Buildings and Facilities to be Constructed:**

The proposed project areas are generally located South of Johnson Drive, North of 62<sup>nd</sup> Terrace, West of the Eby right of way and East of I-35. The general intent of this plan is to encourage the full development of the I-35 corridor in planned commercial and multi-family residential uses most appropriate for each specific site. The planned categories of uses are set forth in this plan are consistent with the general plan for the development of the community as a whole. The proposed plan will call for the rezoning of several parcels from single family residential to commercial or multi-family residential.

Detailed plans for the development of each parcel will be developed in conjunction with the private sector owner or developer. Each of the identified areas is considered suitable for development generally as follows:

**AREA I:** This area is between 62<sup>nd</sup> Terrace and 62<sup>nd</sup> Street on Grandview, West of the present Municipal City Hall and Fire Station, to I-35. This area should be developed into commercial uses with the greatest potential being automotive sales and or services.

Access to this area should be from 62<sup>nd</sup> Terrace and with adequate parking this area should support between 25,000 and 35,000 of retail or automotive services space.

**AREA J:** This area extends from 62<sup>nd</sup> Street on the South to 60<sup>th</sup> Terrace on the North, a realigned Eby on the East, to I-35 on the West. This area has excellent visibility from I-35 and is suitable for a broad range of retail commercial uses. It should be developed into a community retail center, or similar retail configuration of uses. This type of development would complement the existing retail development directly north of the subject property called Merriam Town Center. Merriam Town Center is considered regional in nature and would not normally be in direct competition with the commercial development of Area J.

This area should be developed with flexible uses for a variety of store sizes ranging from 5,000 square feet up to 100,000 square feet. With adequate parking available, this area should support between 150,000 to 210,000 square feet of retail buildings.

**AREA K:** This area is roughly from I-35 on the West to the middle of the 8900 block of 60<sup>th</sup> street on the East. It then extends south along the realigned Eby and west of Quaker Creek. Johnson Drive forms the northern boundary and 60<sup>th</sup> Street bounds the area on the South. Eby would be realigned to create the northern terminus to align with the existing on/off ramp of I-35. Quaker creek may be enclosed from 60<sup>th</sup> Street to the other side of the current alignment of Grandview to allow for additional parking and to eliminate several short sections of open creek. This area should contain five to six out lots for a variety of commercial uses. The target uses will range from automotive repairs, service stations, restaurants, retail stores and banks. Buildings should be expected to range in size from 5,000 square feet to 25,000 square feet. The redevelopment of this area should complement and not directly compete with present uses in the Merriam Town Center.

**AREA L:** The area east of Quaker Creek to Slater and from 60<sup>th</sup> Terrace North to the existing commercial uses along Johnson Drive is suitable for the Multi Family residential development. The area is attractive for residence for active seniors. This should consist of a total of from 80 to 100 senior's independent living units. The housing units should be moderately priced and affordable to Merriam residents in the appropriate age categories. The units should offer reasonable amenities, and should be designed to take advantage of the location near City facilities, the public library, and the nearby shopping opportunities.

#### Proposed Public Actions:

It is the goal of the City of Merriam to encourage and allow the sound development and redevelopment of this area to be added to the Enterprise Zone Redevelopment District through the establishment of one or more redevelopment projects within the project areas identified in this amendment to the District plan. In furtherance of this goal, the City may exercise any of the individual actions and authorities set forth in K.S.A. 12-1770 et.seq.

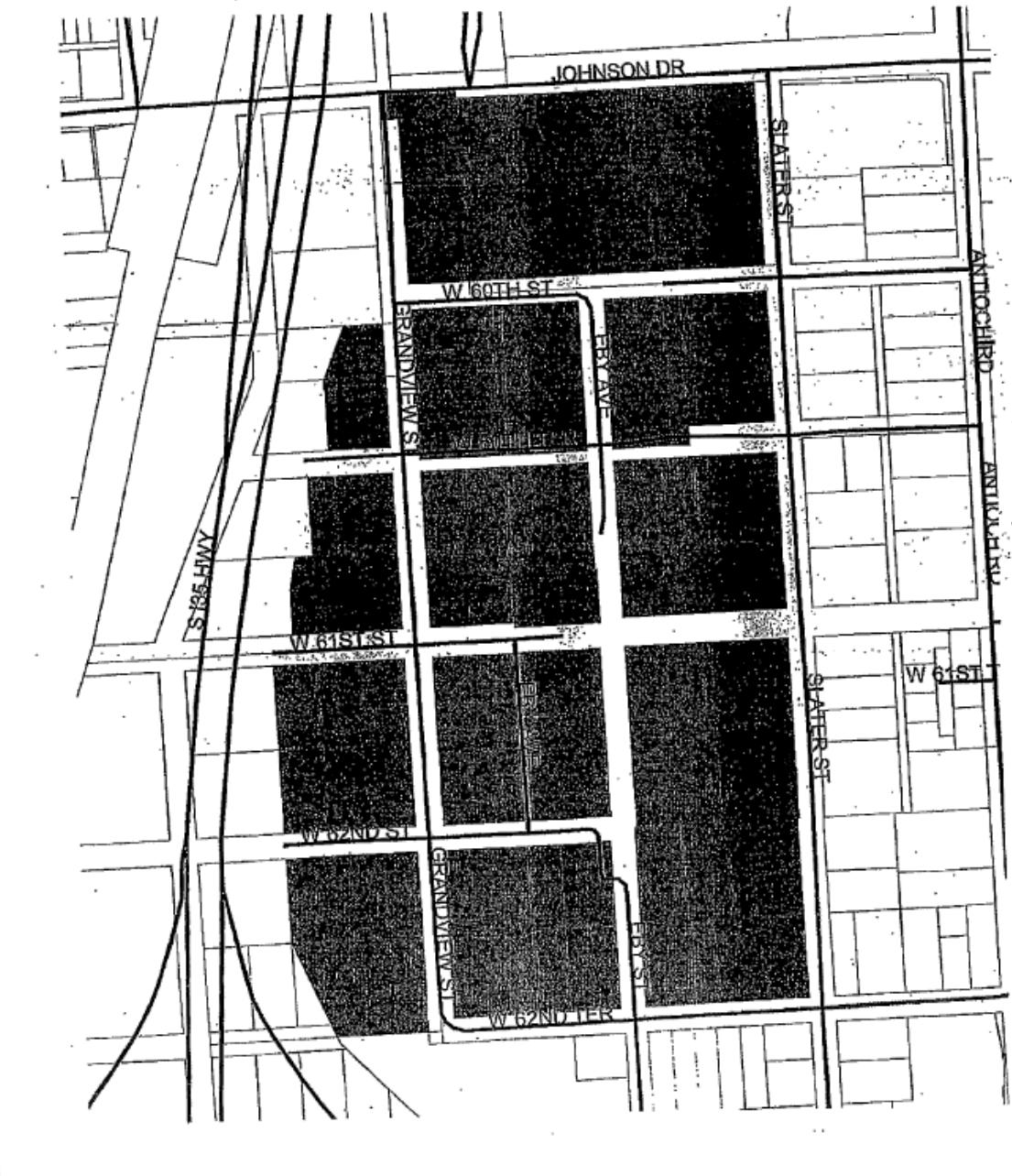
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Specific public actions to be undertaken in furtherance of the redevelopment of the District will be identified in Redevelopment Project Plans for projects to be undertaken in the project areas identified herein. Such actions may include the construction of public facilities or infrastructure necessarily and desirable for the sound overall development of the District.

**Prior Plans to Remain in Effect:**

The Redevelopment District Comprehensive Plan – Enterprise Zone Redevelopment District and prior amendments to such plan shall remain in effect and shall be unmodified except as specifically modified by this plan amendment.

**Figure 1**  
Area to be Added to the District



**Figure 2**  
**Proposed Redevelopment Project Areas**

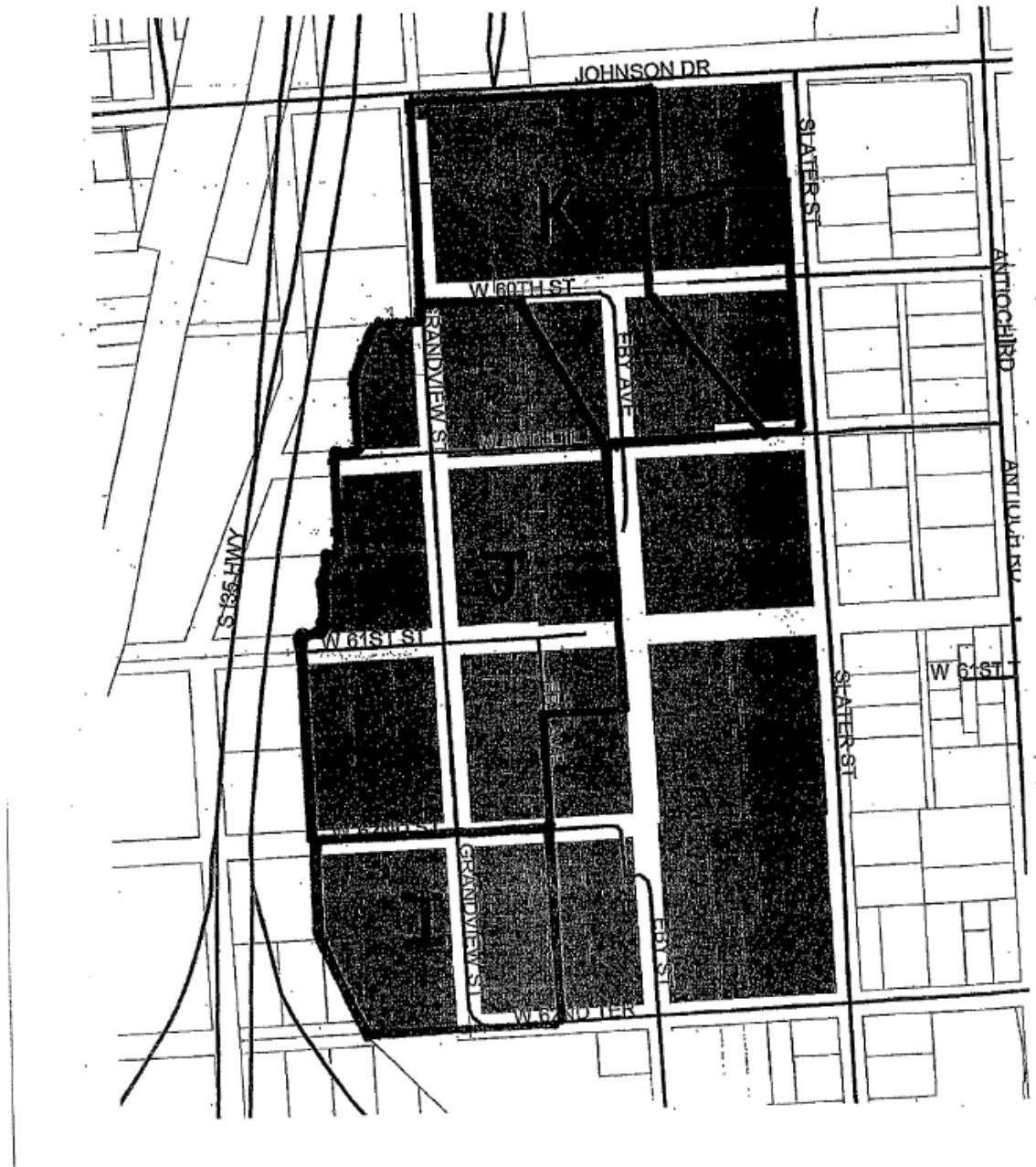


EXHIBIT C

**BOUNDARIES OF THE ENTERPRISE ZONE REDEVELOPMENT DISTRICT**

Description:

Beginning at the intersection of Interstate Highway 35 and 75<sup>th</sup> Street, thence west along 75<sup>th</sup> Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad, then north 800 feet, thence east 100 feet, thence north 540 feet, thence east approximately 690 feet to the centerline of the Burlington Northern right-of-way, thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67<sup>th</sup> Street, thence west along 67<sup>th</sup> Street to the west property line of lot 5, Cunningham Gardens Subdivision, thence north along the west property line of lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision, thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision, thence north to the north property line of said subdivision, thence east 100 feet along the boundary between the R-1 and I-1 zoning districts, thence north 750 feet along said zoning district boundary, thence easterly 230 feet along said zoning district boundary, thence northerly 200 feet along said zoning district boundary, thence easterly 253 feet along said zoning district boundary, thence northerly 50 feet along said zoning district boundary, thence easterly to the centerline of the Burlington Northern right-of-way, thence northerly along said railroad right-of-way to Shawnee Mission Parkway, thence east along said parkway to Interstate Highway 35, thence north along said highway to a point west of 62nd Terrace projected, thence east along 62nd Terrace to Slater Road, thence south along Slater Road to Shawnee Mission Parkway, thence west along said parkway to the intersection of the East Frontage Road, thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected, thence south along said line to a point east of 65<sup>th</sup> Street projected, thence west along said line and 65<sup>th</sup> Street to Interstate Highway 35, thence south along said highway to the point of beginning

AND

Description:

Part of the Southeast  $\frac{1}{4}$  of Section 12, Township 12 South, Range 24 East in the City of Merriam, Johnson County, Kansas, more particularly described as follows: BEGINNING at the point of intersection of the Centerline of Slater Road and the Centerline of Johnson Drive, said centerline of Johnson Drive also being the North line of the Southeast  $\frac{1}{4}$ , of said Section 12; thence North 90° West along the centerline of Johnson Drive and the North line of said Southeast  $\frac{1}{4}$ , 918.48 feet to the point of intersection of said North Line of the Northeast  $\frac{1}{4}$  and the Northerly prolongation of the Westerly right of way line of Grandview Avenue, said point of intersection also being a point on the Easterly right of way line of Interstate Highway No. I-35; thence Southerly along the Easterly right of way line of Interstate Highway No. I-35 to the point of intersection of said Easterly right of way line of Interstate Highway No. I-35 and the Westerly prolongation of the Centerline of 62<sup>nd</sup> Street Terrace; thence South 89° 49' 24" East along said centerline of 62<sup>nd</sup> Street Terrace, 1129.62' to the point of intersection of said centerline of said 62<sup>nd</sup> Street Terrace and the centerline of Slater Road; thence North 00° 37' 19" East, along the centerline of Slater Road, 2206.37 feet to the POINT OF BEGINNING. Containing 56.1 acres of land, more or less.



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**MERRIAM POINTE PROJECT PLAN**

**CITY OF MERRIAM, KANSAS**

**APPROVED BY ORDINANCE No. 1667**

**MARCH, 28, 2011**

ORDINANCE NO. 1667

**AN ORDINANCE ADOPTING AN AMENDMENT TO THE REDEVELOPMENT PROJECT PLAN FOR THE MERRIAM POINTE REDEVELOPMENT PROJECT IN THE CITY OF MERRIAM, KANSAS, PURSUANT TO K.S.A. 12-1770 *et seq.***

WHEREAS, the City of Merriam, Kansas (the "City") has heretofore, pursuant to K.S.A. 12-1770, *et seq.* (the "Act"), created a redevelopment district known as the I-35 Redevelopment District (the "District") for the purposes of developing and redeveloping statutorily eligible areas within the boundaries of the City;

WHEREAS, a redevelopment project plan for the project known as the Merriam Pointe Redevelopment Project (the "Project"), located within the District, was approved by the City of Merriam by Ordinance 1446 on July 28, 2003 and later amended by Ordinance 1485, adopted October 25, 2004;

WHEREAS, the City wishes to amend the approved redevelopment project plan for the Project to reflect and modify the redevelopment improvements to be made within the Project area;

WHEREAS, such amended redevelopment project plan for the Merriam Pointe Redevelopment Project has been prepared and is on file with the City Clerk for public inspection;

WHEREAS, following proper notice, a public hearing was held on March 28, 2011 to consider the adoption of the amended redevelopment project plan for the Merriam Pointe Redevelopment Project; and

WHEREAS, the Governing Body, after receiving public comment and after due deliberation, finds that the amended redevelopment project plan for the Merriam Pointe Redevelopment Project should be adopted.

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

**SECTION ONE:** That the amended redevelopment project plan for the Merriam Pointe Redevelopment Project, which is currently on file with the City Clerk, is hereby adopted as the redevelopment project plan for the Merriam Pointe Redevelopment Project within the I-35 Redevelopment District. In accordance with the Act, following publication of this Ordinance, the City Clerk is authorized and directed to send a copy of the description of the land within the I-35 Redevelopment District, a copy of this Ordinance and a map indicating the boundaries of the I-35 Redevelopment District to the County Clerk, County Assessor, County Treasurer and Board of County Commissioners of Johnson County, Kansas, and the Board of Education of Unified School District No. 512.

**SECTION TWO:** That this Ordinance shall be in full force and effect from and after its passage by a 2/3 vote of the Governing Body of the City and publication in the official City newspaper.

PASSED BY A TWO-THIRDS VOTE OF THE Governing Body the 28 day of  
March, 2011.

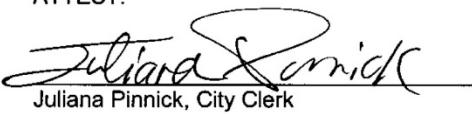
APPROVED BY THE Mayor the 28 day of March, 2011.



ATTEST:

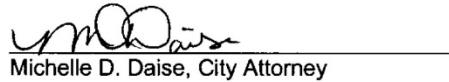


Ken Sissom, Mayor



Juliana Pinnick, City Clerk

APPROVED AS TO FORM:



Michelle D. Daise, City Attorney

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**EXHIBIT C**  
**PROJECT PLAN**

**Merriam Pointe Redevelopment Project Plan (Amended)**  
**Merriam, Kansas**

**I. Introduction**

The Kansas Statutes, at K.S.A. 12-1770, *et. seq.* (as amended), permit cities to establish Redevelopment Districts and carry out Redevelopment Projects within such districts. Redevelopment Districts may be established in areas which have been found to be blighted, or in areas which were established as Kansas Enterprise Zones prior to July 1, 1992, or in certain other areas as defined by law.

U.S. Interstate Highway 35 (I-35) traverses Merriam from the city's southern boundary at 75<sup>th</sup> Street to a point near the City's northeast corner, at Antioch Road. Portions of the I-35 corridor within Merriam are undeveloped or underdeveloped. Responding to the need to encourage future development within the I-35 corridor, the City of Merriam established an Enterprise Zone in 1988. On August 22, 1994 the city of Merriam Governing Body adopted Ordinance 1222 which established a Redevelopment District with identical boundaries to that Enterprise Zone. The general comprehensive plan for the District identifies the potential redevelopment project areas located within the District and the suitability of each such area for redevelopment. The comprehensive plan for the District was amended by Ordinance 1412, adopted December 17, 2001, adding the vacant Water District No. 1 property at 6500 Carter and certain excess Kansas Department of Transportation I-35 right-of-way to the list of potential redevelopment project areas. The District Plan was further amended and the boundaries of the District were modified by the addition of area to the District by Ordinance No. 1464 passed by the Governing Body of the City on March 22, 2004.

**II. Redevelopment Project Plan**

This Plan is the Redevelopment Project Plan for the Merriam Pointe Redevelopment Project, located within the Redevelopment District. This Plan sets forth the information required by K.S.A. 12-1772 (as amended) to be included in a Redevelopment Project Plan, as follows:

**A. Summary of the Feasibility Study**

K.S.A. 12-1770a (k) (as amended) requires that before any redevelopment project is undertaken, a comprehensive feasibility study must be undertaken, which shows whether a redevelopment project's benefits and tax increment revenue and other available revenues under K.S.A. 12-1774 (a) (1) (as amended) are expected to exceed or be sufficient to pay for the redevelopment project's costs. The City's financial advisors has prepared this study. A summary of the feasibility study is attached to this Plan as Exhibit A.

**B. Redevelopment District Plan Established Under K.S.A. 12-1771**

The Governing Body adopted Resolution A-568 on April 25, 1994. This resolution set June 27, 1994 for a public hearing to consider the establishment of a redevelopment district in the then existing Enterprise Zone. The Redevelopment District Comprehensive Plan for the Redevelopment District is set forth as Attachment A to Resolution A-568. The comprehensive plan for the District was adopted by the Governing Body by Resolution

Merriam Pointe Redevelopment Project Plan (amended)

-1-

Rev - 03/28/2011

A-573 on July 25, 1994 and the District was established by Ordinance 1222 adopted August 22, 1994. The comprehensive plan for the District was amended by Ordinance 1412, adopted December 17, 2001. This amendment added the identification of the Water District No. 1 property at 6500 Carter and certain excess KDOT I-35 right-of-way as Areas G and H. The District Plan was further amended and the boundaries of the District were modified by the addition of area to the District by Ordinance No. 1464 passed by the Governing Body of the City on March 22, 2004.

The comprehensive plan for the District defines the City's goal to encourage the sound development and redevelopment of the District to its highest potential. The District Plan identifies specific areas or sites located within the District which are either undeveloped or underdeveloped. The plan further identifies the key constraints which have served to retard or inhibit the sound development of each site or area. The District Plan sets forth the City's intent to seek to establish redevelopment projects for these areas within the District, and to utilize the authority provided in K.S.A. 12-1770 *et. seq.* (as amended) to promote and assist the redevelopment of the identified areas within the District.

The proposed site for the Merriam Pointe Redevelopment Project is identified as Area F in the District comprehensive plan.

#### C. Description and Map of the Redevelopment Project area to be Redeveloped

The area proposed to be redeveloped is an approximate 43 acre tract of land located immediately west of I-35, between 67<sup>th</sup> Street and 75<sup>th</sup> Street. The area extends approximately one-half mile south of W. 67<sup>th</sup> Street and lies between I-35 and the BNSF railroad tracks. The legal description of the Redevelopment Project Area is Merriam Pointe and Merriam Pointe Second plat, Johnson County, Kansas. The location of the proposed Redevelopment Project Area is shown on the map attached to this Plan.

The rezoning of the property to Planning Unit Development General (PUD-G) occurred following the initial approval of this Redevelopment Project Plan. Additionally, a preliminary development plan, including a site plan, was approved. The preliminary development plan showed retail commercial uses for the subject property. Those retail commercial uses included automobile dealerships, inline and "big box" retail stores, and retail pad sites. Over the years since its initial adoption, the development has been amended to include hotel uses.

The start of construction on the subject property included the significant project of removing the AT&T/Lucent building and re-grading the property. Additionally, all public infrastructure was installed and the utilities, including a major natural gas pipeline, were relocated.

Since the creation of the Project Plan, only one retail building has been constructed Plan area. That retail building is located at the southern end of the Project Plan area and is occupied the Shawnee Mission Hyundai automobile dealership. After the construction of the building the project stalled with no additional building occurring.

**D. Relocation Assistance Plan**

There will be no persons or businesses displaced as a result of the Redevelopment Project. No relocation payments, damages to retailers, or other assistance are necessary or planned as a part of this Project.

**E. Description of the Buildings and Facilities Proposed to be Constructed**

The Merriam Pointe Redevelopment Project is proposed to include the existing approved uses of two automobile dealerships located at the southern end of the project area, hotels, and a relocated retail pad site. The attached site plan shows the addition of two automobile dealerships that replace a large in-line retail building

**MERRIAM POINTE  
PROJECT PLAN AREA**

That part of the Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section 13, Township 12 South, Range 24 East, in the City of Merriam, Johnson County, Kansas described as follows:

Commencing at the Northwest corner of the Northwest quarter of said Southeast quarter; thence South 00 degrees, 21 minutes, 20 seconds West along the West line of the Northwest quarter of said Southeast quarter, 33.00 feet to the Point of Beginning, said point being on the South right-of-way of 67th Street; thence North 89 degrees, 56 minutes, 54 seconds East along said right-of-way, 231.98 feet to a point on the West line of U.S. Highway I-35; thence on a curve to the right with an initial tangent bearing (ITB) of South 45 degrees, 55 minutes, 33 seconds East, and a radius of 38.00 feet, 8.52 feet along said West line; thence South 18 degrees, 02 minutes, 19 seconds West along said West line, 54.27 feet; thence South 43 degrees, 47 minutes, 09 seconds East along said West line, 67.99 feet; thence on a curve to the right, with a radius of 113.00 feet and tangent to the last described course, 76.09 feet along said West line; thence South 05 degrees, 12 minutes, 18 seconds East, 184.11 feet along said West line; thence South 05 degrees, 37 minutes, 15 seconds West along a line parallel to and 178.00 feet West of the centerline of said U. S. Highway I-35, 125.00 feet along said West line; thence South 07 degrees, 00 minutes, 16 seconds East, 128.10 feet along said West line to a point 150.00 feet West of the centerline of said U. S. Highway I-35; thence South 05 degrees, 37 minutes, 15 seconds West along a line parallel to and 150.00 feet West of the centerline of said U. S. Highway I-35, 686.34 feet along said West line to a point on the South line of the North 1/2 of said Southeast quarter; thence South 89 degrees 54 minutes 22 seconds West along said North line, 10.37 feet; thence South 05 degrees 42 minutes 58 seconds West, 1333.10 feet to a point on the South line of the Southwest 1/4 of the Southwest 1/4; thence South 89 degrees, 52 minutes, 25 seconds West along the South line, 669.24 feet to a point on the East right-of-way line of the Burlington Northern Railroad; thence North 3 degrees, 21 minutes, 51 seconds East along said Easterly right-of-way line, 2624.97 feet to a point on the to a point on the South right-of-way of 67th Street; thence North 89 degrees, 56 minutes, 18 seconds East along said South right-of-way, 406.91 feet to the Point of Beginning.

Containing 43.01 acres, more or less.

PROJECT PLAN AREA

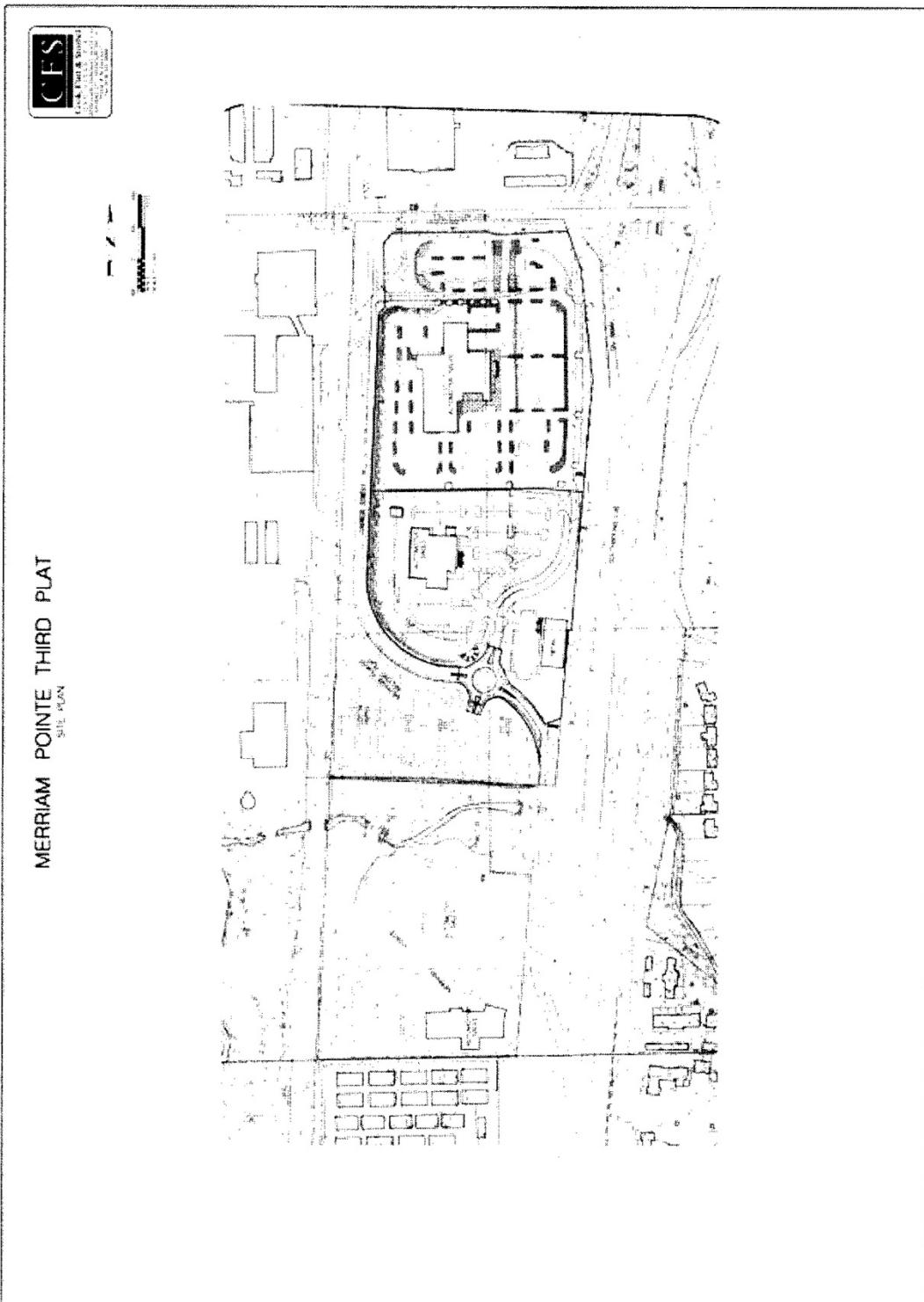


**Legend**

Merriam Pointe Plan Area

bpd - 03/04/2011

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# PiperJaffray®

March 22, 2011

City of Merriam  
9000 West 62<sup>nd</sup> Terrace  
Merriam, Kansas 66202-2815

RE: Merriam Pointe Redevelopment Project

Ladies and Gentlemen:

We have been requested to provide updated revenue and cashflow projections related to the Merriam Pointe Redevelopment Project (the "Project") based upon proposed revisions to the project by the developer pursuant to the Amended and Restated Redevelopment Agreement for the Merriam Pointe Redevelopment Project by and between the City of Merriam, Kansas and Merriam Investors, LLC and Hendrick Automotive Group dated as of March 28, 2011, (the "Redevelopment Agreement") for the Merriam Pointe Redevelopment Project. It is our understanding that the City of Merriam, Kansas (the "City") has been presented with a proposed change to the scope of the project which would include the following improvements:

Merriam Pointe TIF Project Area Improvements					
LOTS	OWNER	ACRES	BUILDING SF	APPRaised VALUE	ASSESSED
1,2,3,4,5	Automobile Dealership	12.00	62,000	\$15,000,000	\$3,750,000
13	Automobile Dealership	4.00	30,000	4,000,000	1,000,000
16	Automobile Dealership	6.86	40,000 (Est.)	10,000,000	2,500,000
	<b>TOTALS</b>	<b>16.00</b>	<b>92,000</b>	<b>\$29,000,000</b>	<b>\$7,250,000</b>

The timing and valuation of additional development within the Merriam Pointe TIF Project Area, beyond the proposed automobile dealership, has not been included in our analysis. The development of any additional lots may result in an increase in the assessed valuation and property tax increment.

#### *Assessed Valuation*

The tax increment generated by the Project will consist of the TIF-applicable property tax collections on the increase in assessed valuation over the Original Assessed Valuation. The Original Assessed Valuation, in the amount of \$1,002,950, consists of the assessed valuation of the property in the Merriam Pointe Redevelopment Project prior to the creation of the district in 1994.

City of Merriam, Kansas – Page Two  
 March 22, 2011

In our analysis we have relied upon information provided by the developer regarding the improvements to be completed and their resulting assessed valuation. Furthermore, we have relied upon estimates regarding the timing of completion of the improvements. The following table sets forth the improvements to be completed and the estimated assessed valuation of such improvements:

Improvement	Estimated Assessed Valuation	Estimated Completion Date
Automobile Dealership	\$3,750,000	2012
Automobile Dealership (Anticipated)	2,500,000	2019
Existing Automobile Dealership	1,000,000	Existing
Total Estimated Assessed Valuation	\$7,250,000	

The Estimated Completion Date assumes that the improvements will be completed during the calendar year. This will result in the valuation of the improvements being added to the assessed valuation as compiled by the County Appraiser's Office as of the following January 1<sup>st</sup>. Although it is possible, we have not assumed that the County Appraiser's Office will include any partially completed improvement in the assessed valuation in any year prior to completion. For example, if an improvement is completed in 2012, we have assumed that the full assessed valuation of the improvement will be added to the tax rolls as of January 1, 2013 and included in the final assessed valuation reported by the County Clerk's Office in November, 2013. The first property tax payment will be made by the property owner in December, 2013 and then disbursed in early 2014. The property tax payment dates are December 20<sup>th</sup> and the following May 10<sup>th</sup> of each year.

#### ***Projected Tax Increment***

The calculation of the TIF-applicable property tax increment is based upon 100% of the property tax generated on the increase in assessed valuation generated by the Project over the original assessed valuation. The Original Assessed Valuation is \$1,002,950. The proposed improvements in the Project are expected to result in an increase in assessed valuation over the Originial Assessed Valuation of \$6,247,050 (the "Captured Assessed Valuation"). The Captured Assessed Valuation is based upon development plans provided by the developer and is calculated as follows:

Estimated Fair Market Value of Improvements	\$29,000,000
Assessment Rate	25%
Assessed Valuation	\$7,250,000
Less: Original Assessed Valuation	(1,002,950)
Captured Assessed Valuation	\$6,247,050

City of Merriam, Kansas – Page Three  
March 22, 2011

The Projected Tax Increment is calculated by taking the Captured Assessed Valuation and applying the TIF-applicable Property Tax Rate against such valuation in order to determine the amount of revenue generated from the Property Tax Increment.

***Property Tax Rates***

Our analysis takes into consideration the TIF-applicable property tax rates in calculating the amount of the tax increment captured in the Project. The mill levy rates used in our analysis consist of the rates for 2010 as follows:

Taxing Entity	Mill Levy
City of Merriam, Kansas	27.474
Johnson County, Kansas	23.256
Johnson County Community College	8.799
Unified School District No. 512	57.192
Total Mill Levy	116.721

It is important to note that the tax increment finance district was created prior to the enactment of legislation exempting the 20.000 mill general fund levy for school districts from being captured in the tax increment. We have therefore included the total mill levy, including the general fund levy, for the Unified School District No. 512 in our calculation.

***Assumptions in our Cashflow Analysis***

In our analysis we have used several assumptions as follows:

- In our analysis we have made assumptions related to the timing of the completion of certain improvements and the assessed valuation of such improvements based upon representations made by the developer to the City.
- We have assumed that the assessed valuation of the property within the TIF District will increase at 1% annually.
- Our analysis further assumes that the agreement between the City and the developer results in payments to the developer of not to exceed \$6,750,000 solely from the property tax increment.

It is important to note that changes to these and other assumptions will impact the tax increment and related cashflow within the Project.

City of Merriam, Kansas – Page Four  
March 22, 2011

***Project Expenditures***

The City has agreed to provide payments to the Developer to the extent funds are available equal to the the Property Tax Increment less any City administrative fee up to a maximum amount of \$6,750,000. In our analysis we have shown the City Administrative Fee as \$15,000 per year. It is also our understanding that the previous developer has received or accrued \$383,871 of Property Tax Increment to date and the remaining amount available under the Redevelopment Agreement will be \$6,366,129. Based upon our analysis we believe that the TIF cap of \$6,750,000 will be reached by the year 2023.

***Compliance with the City's Tax Increment Financing Policy***

We have reviewed the City's Tax Increment Financing Policy No. 124 and believe that the Redevelopment Agreement and proposed changes to the Project comply with the policy. Section 1.04(F) of the City TIF Policy states "The City shall use the Cost-Benefit Analysis to assist in its decision-making process, but the results will not be determinative or obligate the City to any course of action." Given that the payments to the developer will be made solely from funds collected as part of the Tax Increment and bonds will not be issued for the Project, we believe that the benefits to the City outweigh any costs.

Since the proposed developer assistance includes only the property tax increment, the City will receive sales tax collections from retail sales within the Project. In addition, property tax collections received from taxes levied against the property within the Project will be distributed to all taxing entities once the TIF cap has been reached pursuant to the Redevelopment Agreement. Based upon our analysis, we believe that the distribution of property taxes to all taxing entities will begin with the tax collections received in 2024. Furthermore, an additional benefit to the City is the creation of full-time and part-time employment opportunities. In our opinion and based upon our review of previous feasibility analyses related to the Project, we believe that the benefits to the City, including the sales tax revenue, job creation and future increases in the tax base of the City, outweigh any costs related to the Project.

In addition, the TIF Policy of the City states that "All TIF applicants shall be considered in light of the "but for" principle, i.e. – the TIF must make a difference in the decision of the applicant that the Project would not be economically feasible but for the availability of TIF. The Governing Body does not encourage the subsidy of private businesses with public funds, the indirect consequence of TIF, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City."

City of Merriam, Kansas – Page Five  
March 22, 2011

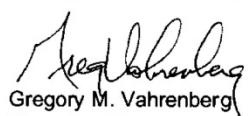
We have reviewed the previous analyses and findings prepared for the City related to the Project. We agree with the previous conclusion that the economic necessity of TIF assistance for the Project was an important factor in the developer's decision to move forward with the Project and without TIF assistance the Project would not be economically feasible. We support the conclusion in these reports that the Project may not occur "but for" the availability of TIF assistance.

**Conclusion**

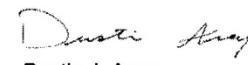
We believe that the proposed changes to the development plan and projected revenue from the Project result in a minimal risk to the City given that the developer will be paid solely from the property tax increment, if and only to the extent that funds are available. Based upon information provided to us by the developer, our analysis shows that the projected collections from the property tax increment will likely result in payments due the developer pursuant to the Redevelopment Agreement that will be paid in full by 2023.

We appreciate having the opportunity to assist the City with this project. Should you have any questions or need any additional information, please feel free to contact us at (913) 345-3300.

Sincerely,  
**PIPER JAFFRAY & CO.**

  
Gregory M. Vahrenberg  
Managing Director

  
Dennis V. Mitchell  
Managing Director

  
Dustin J. Avey  
Senior Vice President

**City of Merriam, Kansas**

Tax Increment Projections  
(Merriam Pointe Development Project)

March 22, 2011

**Summary of Cash Flows**

Year Appraised	Year Payable	Total Assessed Value	Base Year Assessed Value	TIF-Captured Assessed Value	Applicable TIF Rate	Property Tax Increment	Cumulative Property Tax Increment
2003	2004	\$ 1,175,000	\$ 1,002,950	\$ 172,050	88.191	\$ 15,173	\$ 15,173
2004	2005	1,224,878	1,002,950	221,928	92.732	20,580	35,753
2005	2006	732,057	1,002,950	(270,893)	101.112	-	35,753
2006	2007	738,541	1,002,950	(264,409)	105.232	-	35,753
2007	2008	984,822	1,002,950	(18,128)	105.185	-	35,753
2008	2009	2,683,736	1,002,950	1,680,786	111.387	187,218	222,971
2009	2010	2,226,314	1,002,950	1,223,364	114.667	140,279	363,250
2010	2011	1,770,927	1,002,950	767,977	116.721	89,639	452,889
2011	2012	1,788,638	1,002,950	785,688	116.721	91,706	544,596
2012	2013	1,806,523	1,002,950	803,573	116.721	93,794	638,389
2013	2014	5,574,588	1,002,950	4,571,638	116.721	533,606	1,171,996
2014	2015	5,630,334	1,002,950	4,627,384	116.721	540,113	1,712,108
2015	2016	5,686,637	1,002,950	4,683,687	116.721	546,685	2,258,793
2016	2017	5,743,504	1,002,950	4,740,554	116.721	553,322	2,812,115
2017	2018	5,800,939	1,002,950	4,797,989	116.721	560,026	3,372,141
2018	2019	5,858,948	1,002,950	4,855,998	116.721	566,797	3,938,938
2019	2020	8,417,537	1,002,950	7,414,587	116.721	865,438	4,804,376
2020	2021	8,501,713	1,002,950	7,498,763	116.721	875,263	5,679,639
2021	2022	8,586,730	1,002,950	7,583,780	116.721	885,186	6,564,826
2022	2023	8,672,597	1,002,950	7,669,647	116.721	895,209	7,460,035
2023	2024	8,759,323	1,002,950	7,756,373	116.721	528,110	7,988,145

Total Tax Increment: \$ 7,988,145  
Annual Admin Fees at \$15,000/year 2008-2023 225,000

Projected Net Tax Increment 7,763,145

TIF Increment cap per Redevelopment Agreement \$ 6,750,000  
Increment previously distributed or accrued 383,371

Projected Tax Increment available payable per terms of Redevelopment Agreement \$ 6,366,629

**Assumptions**

- TIF applicable mill excludes 1.5 mill for State of Kansas
- TIF applicable mill excludes the Merriam Drainage District
- Mill levy remains unchanged beyond 2010 levy
- Actual Assessed Value through 2010
- Assessed Value grows 1% annually beginning in 2011
- Automobile Dealership added to tax rolls for \$3.75 million on January 1, 2013
- Second Automobile Dealership added to tax rolls for \$2.5 million on January 1, 2019
- Property taxes collected at 100% with no delinquencies
- Property Tax increment includes an initial payment of \$15,173
- TIF Project Plan terminates July 28, 2023, payments prorated for 7 months of 2023

PiperJaffray\*

**EXHIBIT D  
PROJECT AREA**

(legal description and map including delineation of area to be developed by each Developer)

Description of area to be developed by Lead Developer:

Lots 14 and 15, Merriam Pointe Second Plat; and,  
Tract A, Merriam Pointe Plat (Signage); and,  
Lots 16 and 18, Merriam Pointe Third Plat as shown in Merriam Planning Commission  
application **P-1-11-Final Plat**

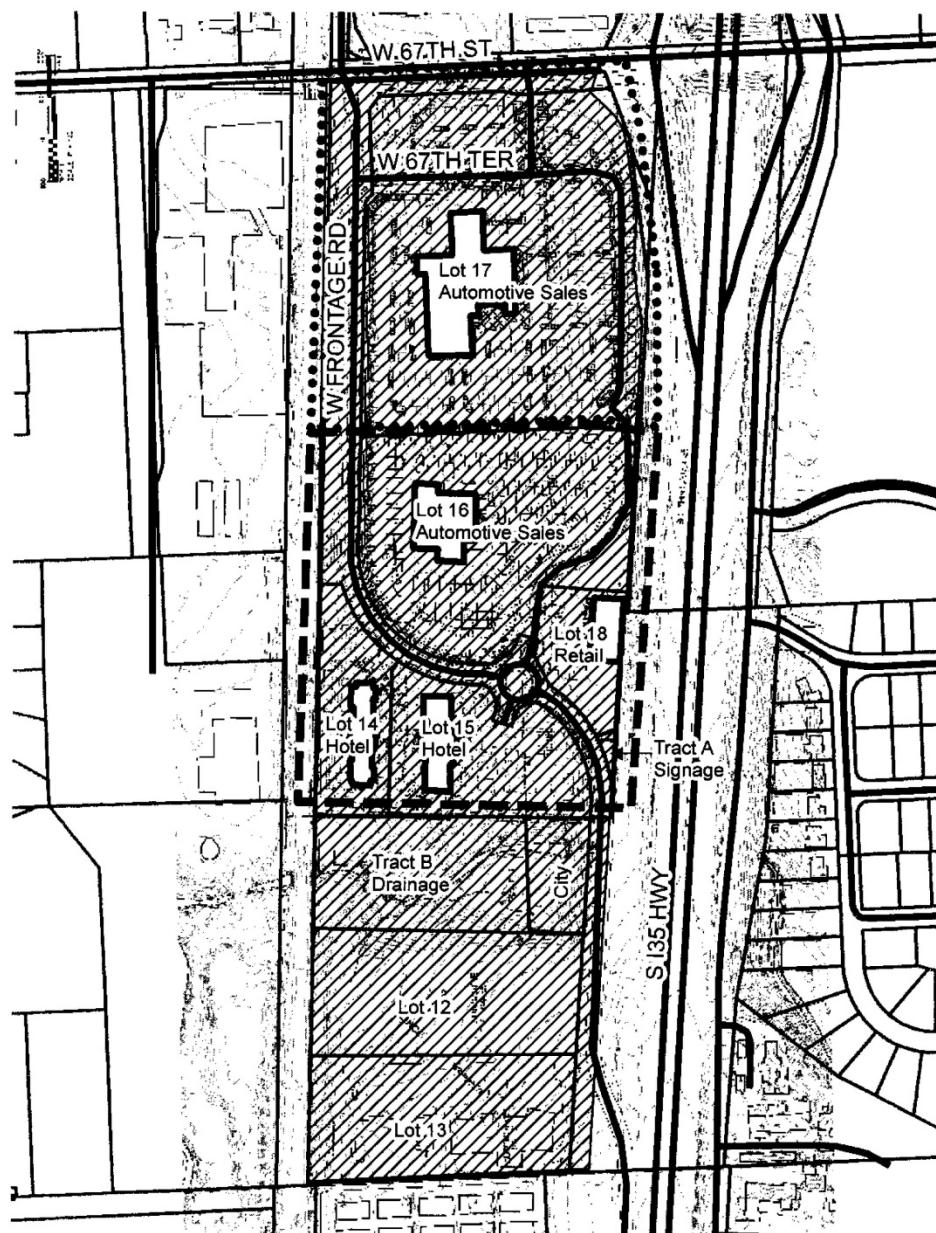
Description of area to be developed by Co-Developer:

Lot 17, Merriam Pointe Third Plat as shown in Merriam Planning Commission  
application **P-1-11-Final Plat**

Areas to be developed by others or to remain undeveloped:

Tract B, Merriam Pointe, currently owned by M&I Bank  
Lot 12 Merriam Pointe, currently owned by JPMR, LLC  
Lot 13 Merriam Pointe, currently owned by P. D. Investment Group, LLC  
13-12-24 BG 579.96' N SW CR, SE1/4 N 281.18' TO PT 467.84' S NW CR S 1/2 SE1/4  
E 154.28' S 280.04' W 128.91' TO POB, currently owned by the City of Merriam

**EXHIBIT D**  
**PROJECT AREA**



**Legend**

Co-Developer  
Lead Developer

Merriam Pointe  
Project Area

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**EXHIBIT E**  
**ELIGIBLE EXPENSES**  
(including delineation of Certified Expenses)

**Merriam Pointe**  
**Certified Expenses and TIF Reimbursements**  
as of March 1, 2011

	<u>Date</u>	<u>Amount</u>
<b><u>Certification of Eligible Expenses</u></b>		
Certification #1 - Real Estate Purchases (Lucent and City of Merriam)	9/14/2004	\$ 7,274,946.50
Less prior TIF payment - per 9/15/04 RDA, recital F	10/26/2004	<u>(2,000,000.00)</u>
 Eligible Expenses		\$ 5,274,946.50
Remaining amount available for certification of eligible expenses		<u>1,475,053.50</u>
 TIF Cap		 <u>\$ 6,750,000.00</u>

<b><u>TIF increment payments subject to Cap</u></b>		
Check 10454 - increment paid for 2004 thru partial 2008	4/8/2009	\$ 55,821.57
Check 12218 - increment paid for remainder of 2004 thru partial 2008	10/14/2009	105,510.43
Check 13135 - increment paid for 1st half 2009 + delinquent payments	2/3/2010	133,213.00
Check 14442 - increment paid for 2nd half 2009	6/23/2010	70,139.00
TIF Mill correction		<u>(1,434.00)</u>
 Total TIF increment payments to date		 <u>\$ 363,250.00</u>

<b><u>City Expenses to be applied to next TIF Increment payment</u></b>		
<i>amounts billed or to be billed to Merriam Pointe, LLC for City Expenses</i>		
Previous billings	2010 various	\$ 13,409.26
to be billed	12/10 - 1/11	<u>7,212.04</u>
		 <u>\$ 20,621.30</u>

**EXHIBIT F  
DEVELOPMENT TIMELINE**

**December 31, 2012**

Lot 17, Merriam Pointe Third Plat as shown in Merriam Planning Commission application **P-1-11-Final Plat**, will be developed and operational

**September 15, 2018**

An additional 7 acres of the Original Undeveloped Project Area will be developed

**September 15, 2020**

All acreage within the Original Undeveloped Project Area, less the area described as Tracts A and B Merriam Pointe, will be developed

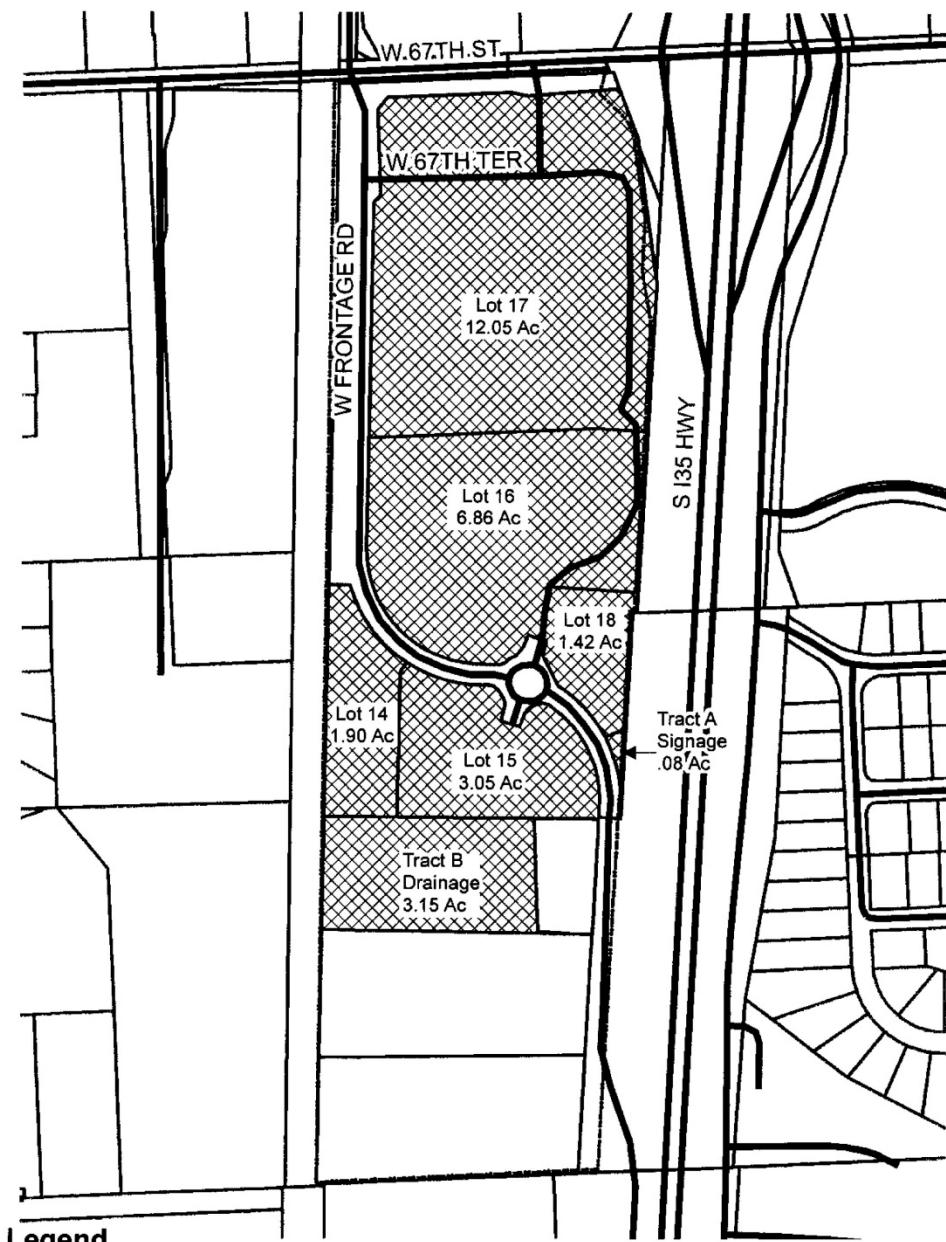
**EXHIBIT G**  
**ORIGINAL UNDEVELOPED PROJECT AREA**  
(legal description and map)

Tracts A and B Merriam Pointe; and,

Lots 14 and 15, Merriam Pointe Second Plat; and,

Lots 16, 17, and 18 Merriam Pointe Third Plat as shown in Merriam Planning Commission application **P-1-11-Final Plat**.

**EXHIBIT G**  
**ORIGINAL UNDEVELOPED PROJECT AREA**



bpd - 03/07/2011

**EXHIBIT H  
CERTIFICATION OF EXPENDITURE FORM**

**CERTIFICATION OF EXPENDITURES  
MERRIAM POINTE REDEVELOPMENT PROJECT**

Date: \_\_\_\_\_  
Certification # \_\_\_\_\_

Governing Body of the  
City of Merriam, Kansas

In accordance with the Amended and Restated Redevelopment Agreement dated \_\_\_\_\_, 2011 (the "Agreement"), between the city of Merriam, Kansas (the "City"), Merriam Investors LLC, and Hendrick Automotive Group, the \_\_\_\_\_ [insert Merriam Investors LLC, or Hendrick Automotive Group, as applicable] (the "Developer") hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developers (as defined in the Agreement) as provided in the Agreement, as follows:

1. To the best of my knowledge, all amounts are Eligible Expenses that are reimbursable to the Developers pursuant to the Agreement.
2. All amounts have been advanced by the Developer for Redevelopment Project Costs in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$ \_\_\_\_\_ which amount is itemized on Exhibit A attached hereto and which Exhibit A includes \_\_\_\_\_ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

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Payment to the undersigned Developer of the Eligible Expenses requested by this Certificate are to paid to the Developer in accordance with the following instructions (insert check and address check for receipt of check or wire transfer instructions):

Developer's Name: \_\_\_\_\_

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

*EXHIBIT A*  
*TO CERTIFICATION OF EXPENDITURES*  
*MERRIAM POINTE REDEVELOPMENT PROJECT*  
*(MERRIAM POINTE TIF PROJECT)*  
*PAGE \_\_\_\_ OF \_\_\_\_*

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

Certification # \_\_\_\_\_

Description of Expense (attach additional supporting documentation)	Amount of Expense
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
<b>Total Expenses</b>	\$ _____

\_\_\_\_\_  
Initials of Developer

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**EXHIBIT I**

**ASSIGNMENT OF TIF RIGHTS  
AND FIRST AMENDMENT TO ASSIGNMENT OF TIF RIGHTS**

4829-4243-1496.4/1

4841-6809-9515.1

**ASSIGNMENT OF TIF RIGHTS**

THIS ASSIGNMENT OF TIF RIGHTS ("Agreement") is made as of  
JAN. 31, 2011, by and between MERRIAM POINTE, LLC  
("Seller") and MERRIAM INVESTORS LLC ("Buyer").

**RECITALS**

A. Seller is the "Developer" under that certain Redevelopment Agreement dated September 15, 2004 with the City of Merriam, Kansas (the "City"), as amended by agreement dated September 11, 2009 (the "Redevelopment Agreement") and is the owner and holder of all of the rights and entitlements thereunder.

B. Buyer desires to purchase all of Seller's rights and entitlements under the Redevelopment Agreement and Seller is willing to sell and assign the same to Buyer on the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of Seller and Buyer, parties agree as follows:

1. **Assignment and Assumption.** Seller hereby sells, assigns, grants, conveys, and transfers to Buyer, and Buyer hereby accepts and assumes, Seller's entire right, title and interest of every kind and nature (a) as Developer in and under the Redevelopment Agreement and (b) in, under and in respect to the Redevelopment Agreement, including but not limited to, the right to receive reimbursement payments to be made pursuant to the Redevelopment Agreement and all of the other rights and entitlements under the Redevelopment Agreement.

2. **Buyer's Rights.** Buyer acknowledges that the foregoing assignment by Seller is subject to the consent and approval by the City. Buyer agrees to promptly apply to the City for such approval and consent and to pursue obtaining the same in good faith at its sole cost and expense. Upon request by Buyer, Seller agrees to cooperate with Buyer in obtaining such approval

and consent, but shall not be obligated to incur any expense in connection therewith.

3. **Buyer's Efforts.** Buyer agrees to use commercially reasonable best efforts to cause the City to defer taking any action to terminate the Redevelopment Agreement for any reason prior to the Closing Date provided for below.

4. **Seller Agreement.** Seller agrees that if Buyer desires to request approval of this Agreement from the bankruptcy court in the Chapter 11 bankruptcy proceeding concerning Seller in Case No. 09-23186-11-rdb in the United States Bankruptcy Court for the District of Kansas, Kansas City Division ("Seller's Bankruptcy"), Seller agrees to cooperate with Buyer, and support, agree to and sign all reasonable applications, requests, consents and joinders in connection with such request, but Seller shall not be obligated to incur any expense in connection therewith. In the event Seller incurs any such expense, Buyer will, upon billing by Seller, reimburse Seller for its actual reasonable expenses incurred in providing said cooperation including, but not limited to Seller's attorneys' fees. Seller's obligations under this paragraph shall survive the within assignment and the Closing provided for below.

5. **Closing.** Buyer, along with David J Christie and David M. Block, has or will enter into a separate agreement (the "Claims Agreement") with Ross Stiner, Jess J. Davis, Jr., John E. Davidson and Phillip Holcomb to purchase their entire right, title and interest as creditors in Seller's Bankruptcy, including but not limited to, their entire right, title and interest as Class 2 Creditors therein, all as more fully set forth or to be set forth in the Claims Agreement. The closing of such purchase (the "Closing") will be held within five (5) business days after the City approves or consents to the assignment of TIF rights as herein set forth and executes an amendment or restatement of the Redevelopment Agreement or an agreement replacing the Redevelopment Agreement (collectively, a "New Redevelopment Agreement") providing for payment of the TIF Funds referred to in Seller's Bankruptcy to Buyer (the "Closing Date"). If (i) Buyer does not obtain approval and consent to the within assignment by the City or if the City does not execute a New Redevelopment Agreement on or before April 30, 2011, or such later date as is hereafter agreed to by the parties, this Agreement shall terminate in which event the rights

and entitlements herein assigned shall be deemed automatically reassigned to Seller by Buyer. Promptly upon request by Seller, Buyer agrees to execute, acknowledge (if appropriate) and deliver all such further and other documents as shall be necessary to effect the terms and understanding set forth in this paragraph, all such documents and actions to be deemed effective as of the date of termination of this Agreement. Buyer's obligations under this paragraph shall survive termination of this Agreement.

6. **Seller's Representations and Warranties.** To induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer as follows:

A. Seller is the Developer under the Redevelopment Agreement and is the owner and holder of all of the rights and entitlements of Developer thereunder. Seller has full right, power and authority, subject to the right of the City to approve the assignment of the Redevelopment Agreement, to sell and assign the rights and entitlements hereby conveyed to Buyer and to enter into and otherwise perform and comply with the terms of this Agreement.

B. This Agreement is duly authorized, executed and delivered by Seller and is the legal, valid and binding obligation of Seller.

7. **Miscellaneous.** This Agreement:

A. constitutes the entire agreement between the parties hereto with respect to the subject matter hereof;

B. shall be construed and governed by the laws of the State of Kansas;

C. shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns;

D. may not be amended except by written agreement of the parties hereto; and

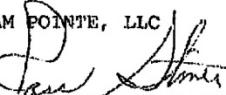
E. may be executed in multiple counterparts, whether of the entire agreement or of the signature page, or both, all of which counterparts taken together shall constitute the complete Agreement.

8. **Facsimile Execution.** Facsimile and/or electronic counterpart copies of this Agreement shall be considered as originals for all purposes, including execution and delivery.

IN WITNESS WHEREOF the parties have duly executed this Assignment of TIF Rights as of the date first set forth above.

SELLER:

MERRIAM POINTE, LLC

By:   
Ross Stiner, Manager

BUYER:

MERRIAM INVESTORS LLC

By:   
David J. Christie, Manager

By:   
David M. Block, Manager

FIRST AMENDMENT  
TO  
ASSIGNMENT OF TIF RIGHTS

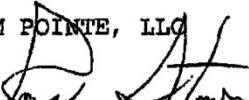
THIS FIRST AMENDMENT TO ASSIGNMENT OF TIF RIGHTS ("Agreement") is executed the dates set forth below effective as of January 31, 2011 by and between MERRIAM POINTE, LLC ("Seller") and MERRIAM INVESTORS LLC ("Buyer") who hereby amend that certain Assignment of TIF Rights dated January 31, 2011 (the "Assignment") as follows:

1. Buyer's acceptance and assumption set forth in paragraph 1 of the Assignment is for itself and its successors and assigns and specifically includes the duties and obligations of Seller as Developer in and under the Redevelopment Agreement and under and in respect to the Redevelopment Agreement.
2. The Assignment and this Agreement are not effective unless and until the City of Merriam, Kansas consents to and approves of the assignment of the Redevelopment Agreement to Buyer.
3. Except as expressly provided herein, the Assignment is unamended and the parties hereby ratify the same as herein modified. In the event of conflict or ambiguity between the terms of the Assignment and the provisions of this Agreement, the provisions of this Agreement shall govern and control.

IN WITNESS WHEREOF the parties have duly executed this First Amendment to Assignment of TIF Rights.

SELLER:

MERRIAM POINTE, LLC

By:   
Ross Stiner, Manager

Date: 2/21/11

BUYER:

MERRIAM INVESTORS LLC

By:   
David J. Christie, Manager

By:   
David M. Block, Manager

Date: 2/21/11



**ORDINANCE NO. 1687**

**AN ORDINANCE ADOPTING AN AMENDMENT TO THE REDEVELOPMENT PROJECT PLAN FOR THE MERRIAM POINTE REDEVELOPMENT PROJECT IN THE CITY OF MERRIAM, KANSAS, PURSUANT TO K.S.A. 12-1770 *et seq.***

WHEREAS, the City of Merriam, Kansas (the "City") has heretofore, pursuant to K.S.A. 12-1770, *et seq.* (the "Act"), created a redevelopment district known as the I-35 Redevelopment District (the "District") for the purposes of developing and redeveloping statutorily eligible areas within the boundaries of the City;

WHEREAS, a redevelopment project plan for the project known as the Merriam Pointe Redevelopment Project (the "Project"), located within the District, was approved by the City of Merriam by Ordinance 1446 on July 28, 2003;

WHEREAS, the redevelopment project plan was subsequently amended by Ordinance 1485, adopted October 25, 2004 and later by Ordinance 1667, adopted March 28, 2011;

WHEREAS, the City wishes to amend the approved redevelopment project plan for the Project to reflect and modify the redevelopment improvements to be made within the Project area;

WHEREAS, at their regular scheduled meeting on March 7, 2012, the City of Merriam Planning Commission found the proposed Merriam Pointe Redevelopment Project Plan (Amended – 2012) to be consistent with the intent of the Merriam Comprehensive Plan;

WHEREAS, such amended redevelopment project plan for the Merriam Pointe Redevelopment Project has been prepared and is on file with the City Clerk for public inspection;

WHEREAS, following proper notice, a public hearing was held on April 23, 2012 to consider the adoption of the amended redevelopment project plan for the Merriam Pointe Redevelopment Project; and

WHEREAS, the Governing Body, after receiving public comment and after due deliberation, finds that the amended redevelopment project plan for the Merriam Pointe Redevelopment Project should be adopted.

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

**SECTION ONE:** That the amended redevelopment project plan for the Merriam Pointe Redevelopment Project, which is currently on file with the City Clerk, is hereby adopted as the redevelopment project plan for the Merriam Pointe Redevelopment Project within the I-35 Redevelopment District. In accordance with the Act, following publication of this Ordinance, the City Clerk is authorized and directed to send a copy of the description of the land within the I-35 Redevelopment District, a copy of this Ordinance and a map indicating the boundaries of the I-35 Redevelopment District to the County Clerk, County Assessor, County Treasurer and Board

of County Commissioners of Johnson County, Kansas, and the Board of Education of Unified School District No. 512.

**SECTION TWO:** That this Ordinance shall be in full force and effect from and after its passage by a 2/3 vote of the Governing Body of the City and publication in the official City newspaper.

PASSED BY A TWO-THIRDS VOTE OF THE Governing Body the 23<sup>rd</sup> day of April, 2012.

APPROVED BY THE Mayor the 23<sup>rd</sup> day of April, 2012.



  
Ken Sissom, Mayor

ATTEST:

  
Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

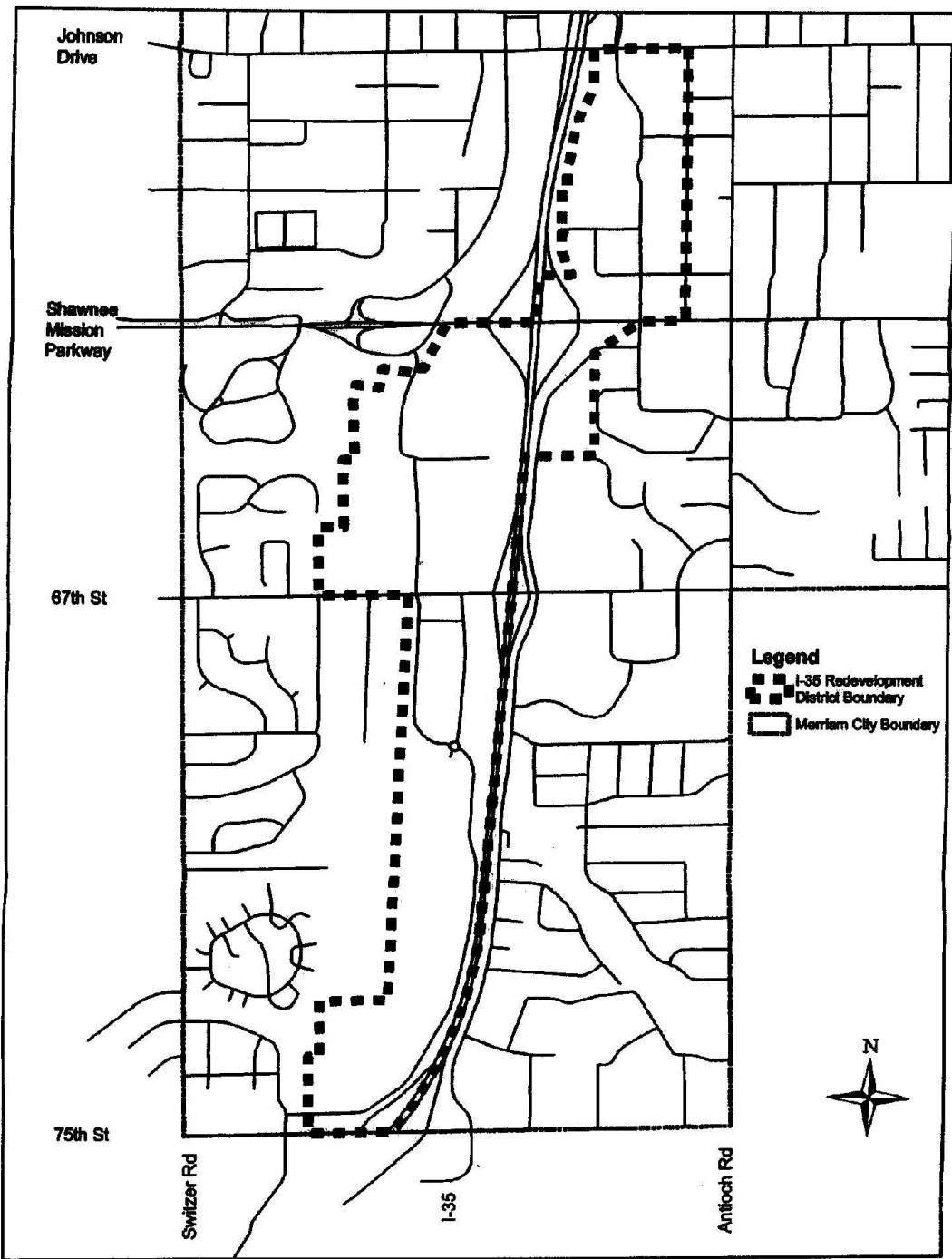
  
Michelle D. Daise, City Attorney

**EXHIBIT A**  
**BOUNDARIES OF I-35 REDEVELOPMENT DISTRICT**

Beginning at the intersection of Interstate Highway 35 and 75<sup>th</sup> Street; thence west along 75<sup>th</sup> Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad; thence north 800 feet; thence east 100 feet; thence north 540 feet; thence east approximately 690 feet to the centerline of the Burlington Northern Right-of-Way; thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67<sup>th</sup> Street; thence west along 67<sup>th</sup> Street to the west property line of Lot 5, Cunningham Gardens Subdivision; thence north along the west property line of Lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision; thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision; thence north to the north property line of said subdivision; thence east 100 feet along the boundary between the existing R-1 and I-1 zoning districts; thence north 750 feet along said zoning district boundary; thence easterly 230 feet along said zoning district boundary; thence northerly 200 feet along said zoning district boundary; thence easterly 253 feet along said zoning district boundary; thence northerly 50 feet along said zoning district boundary; thence easterly to the centerline of the Burlington Northern right-of-way; thence northerly along said railroad right-of-way to Shawnee Mission Parkway; thence east along said parkway to Interstate Highway 35; thence north along said highway to a point west of 62<sup>nd</sup> Terrace projected; thence easterly along 62<sup>nd</sup> Terrace to Slater Road; thence south along Slater Road to Shawnee Mission Parkway; thence west along said parkway to the intersection of the East Frontage Road; thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected; thence south along said line to a point east of 65<sup>th</sup> Street projected; thence west along said line and 65<sup>th</sup> Street to Interstate Highway 35; thence south along said highway to the point of beginning on 75<sup>th</sup> Street; and

Part of the Southeast  $\frac{1}{4}$  of Section 12, Township 12 South, Range 24 East in the City of Merriam, Johnson County, Kansas, more particularly described as follows: BEGINNING at the point of intersection of the Centerline of Slater Road and the Centerline of Johnson Drive, said centerline of Johnson Drive also being the North line of the Southeast  $\frac{1}{4}$ , of said Section 12; thence North 90° West along the centerline of Johnson Drive and the North line of said Southeast  $\frac{1}{4}$ , 918.48 feet to the point of intersection of said North Line of the Northeast  $\frac{1}{4}$  and the Northerly prolongation of the Westerly right of way line of Grandview Avenue, said point of the intersection also being a point on the Easterly right of way line of Interstate Highway No. I-35; thence Southerly along the Easterly right of way line of Interstate Highway No. I-35 to the point of intersection of said Easterly right of way line of Interstate Highway No. I-35 and the Westerly prolongation of the Centerline of 62<sup>nd</sup> Street Terrace; thence South 89° 49' 24" East along said centerline of 62<sup>nd</sup> Street Terrace, 1129.62' to the point of the intersection of said centerline of said 62<sup>nd</sup> Street Terrace and the centerline of Slater Road; thence North 00° 37' 19" East, along the centerline of Slater Road, 2206.37 feet to the POINT OF BEGINNING.  
Containing 307 acres of land, more or less

**Figure 1**  
**I-35 Redevelopment District**  
**TIF District Map**



**EXHIBIT C**

**PROJECT PLAN**

## **REDEVELOPMENT PROJECT PLAN (amended 2017)**

### **Merriam Pointe Redevelopment Project I-35 Redevelopment District Project Area F Merriam, Kansas**

#### **I. Introduction**

The Kansas Statutes, K.S.A. 12-1770, *et seq.* (as amended), permit cities to establish Redevelopment Districts and carry out Redevelopment Projects within such districts. Redevelopment Districts may be established in areas that have been found to be blighted in areas that were established as Kansas Enterprise Zones prior to July 1, 1992, or in certain other areas as defined by law.

U.S. Interstate 35 (I-35) traverses Merriam from the city's southern boundary at 75th Street to a point near the City's northeast corner at Antioch Road. Portions of the I-35 corridor within Merriam are undeveloped or underdeveloped. Responding to the need to encourage future development within the I-35 corridor, the City of Merriam established an Enterprise Zone in 1988. On August 22, 1994 the City of Merriam Governing Body adopted Ordinance No. 1222 establishing a Redevelopment District, commonly known as the I-35 Redevelopment District (the "District"), with boundaries identical to the Enterprise Zone and adopted the redevelopment district plan for the District (the "District Plan") by Resolution A-573 on July 25, 1994.

The District Plan identifies the potential redevelopment project areas within the District and the suitability of each area for redevelopment. The District Plan was amended by Ordinance 1412, adopted December 17, 2001, adding the vacant Water District No. 1 property at 6500 Carter and certain excess Kansas Department of Transportation I-35 right-of-way to the list of potential redevelopment project areas. The District Plan was further amended and the boundaries of the District were modified by the addition of area to the District by Ordinance No. 1464 passed by the Governing Body of the City on March 22, 2004. In 2006, the Governing Body passed Ordinance No. 1536 creating Project Area G with the District Plan area.

The most recent District Plan amendment was approved by the Governing Body on April 9, 2012 by Ordinance No. 1686. The ordinance amended the District Plan by revising the descriptions and boundaries of Project Areas J and K and consolidating Areas K and L into one area, Project Area K.

#### **II. Redevelopment Project Plan**

This is the Redevelopment Project Plan for the Merriam Pointe Redevelopment Project (the "Project Plan"), located within the I-35 Redevelopment District, as defined herein and amends the Project Plan originally adopted by Ordinance No. 1446 on July 28, 2003 by the Merriam Governing Body and subsequently amended by Ordinances No. 1485, 1667, and 1687. This Project Plan sets forth the information required by K.S.A. 12-1772, as amended, as follows:

## **A. Summary of the Feasibility Study**

K.S.A. 12-1770a (k) (as amended) requires that before any redevelopment project is undertaken a comprehensive feasibility study be performed to demonstrate that a redevelopment project's benefits and tax increment revenue and other available revenues under K.S.A. 12-1774 (a) (1) (as amended) are expected to exceed or be sufficient to pay for the redevelopment project's costs.

When this Redevelopment Project Plan was amended in March 2011 a feasibility study was completed at that time. The city's financial advisor, Columbia Capital, completed a new feasibility study. A summary of that study is attached (Exhibit A) to and made a part of this Project Plan.

The feasibility study found that the redevelopment project's benefits and tax increment revenue are expected to exceed the redevelopment's eligible project costs.

## **B. Redevelopment District Plan Established Under K.S.A. 12-1771**

In 1994, the Governing Body established the I-35 Redevelopment District. The Governing Body has subsequently amended the associated District Plan as summarized in the Introduction hereto.

The District Plan defines the City's goal to encourage sound development and redevelopment of the District to its highest potential. The District Plan identifies specific areas within the District that are either undeveloped or underdeveloped and further identifies key constraints that have hindered or inhibited the sound development thereof. The District Plan sets forth the City's intent to seek to establish redevelopment project areas within the District and to utilize the authority provided in K.S.A. 12-1770 *et seq.*, as amended, to promote and assist the redevelopment of the identified areas within the District.

The proposed site for the Merriam Pointe Redevelopment Project is identified as Project Area F in the District Plan.

## **C. Description and Map of the Redevelopment Project area to be Redeveloped**

The area proposed to be redeveloped is an approximate 35-acre tract of land located immediately west of Interstate 35, between 67th Street and 75th Street. The area extends approximately one-half mile south of W. 67th Street and lies between I-35 and the BNSF railroad tracks. Attached (Exhibit B) is a general legal description of the Redevelopment Project area. A map of the proposed Redevelopment Project Area is attached (Exhibit C) to this plan.

The rezoning of the property to Planning Unit Development General (PUD-G) occurred following the initial approval of this Redevelopment Project Plan. Additionally, a preliminary development plan, including a site plan, was approved. The preliminary development plan showed retail commercial uses for the subject property. Those retail commercial uses included inline and "big box" retail stores and retail pad sites. Over the years since its adoption the development was amended to include hotel uses.

The start of construction on the subject property included the significant project of removing the AT&T/Lucent building and re-grading the property. Additionally, all public infrastructure was installed and the utilities, including a major natural gas pipeline, were relocated. Following the initial construction activity, the Project Plan and preliminary development plan were revised a number of times to reflect the change in use for the area to retail commercial in the form of automobile dealerships.

Since the creation of this Redevelopment Project Plan, four commercial buildings have been constructed in the Project Area. All four buildings house automobile dealerships. There remains one developable lot (Merriam Pointe, Lot12) immediately north of the Hyundai automobile dealership. Additionally, there is a significant drainage area (Tract B) south of the existing Infiniti dealership. This drainage area is currently undevelopable, but the property owner plans to install a box culvert, fill the drainage area to make the property developable, and construct a commercial retail building.

#### **D. Relocation Assistance Plan**

There will be no persons or businesses displaced as a result of the Redevelopment Project. No relocation payments, damages to retailers or other assistance are necessary or planned as a part of this Project.

#### **E. Description of the Buildings and Facilities Proposed to be Constructed**

The Merriam Pointe Redevelopment Project is proposed to include five to eight commercial buildings. The commercial development will consist of the following: one building of approximately 22,000 square feet, one building of approximately 56,000 square feet, one building of approximately 63,000 square feet, one building of approximately 40,000 square feet and up to four (4) more commercial buildings between 5,000 to 80,000 gross square feet of floor area, in addition to all other infrastructure improvements associated with or incidental to such uses, including without limitation, grading and fill, utilities, streets, stormwater, and landscaping associated with the Redevelopment Project. The development will consist of automobile dealerships and other commercial uses.

## EXHIBIT A

### Feasibility Study Summary



#### MEMORANDUM

0 5 . 2 6 . 1 7

Chris Engel  
Cindy Ehart  
City of Merriam

The purpose of this memorandum is to convey the results of our modeling of the proposed expansion of the Merriam Pointe tax increment financing (TIF) project to include the construction of a new automobile dealership on Tract B. Our modeling is related to the Amended and Restated Application for Tax Increment Financing (the “Application”) submitted by the Developer dated April 12, 2017, and is supported by data provided by the City, the Developer, and Johnson County.

#### SUMMARY CONCLUSIONS

The Developer has requested a total amount of reimbursement not to exceed \$6 million (not including interest at a rate not to exceed 7%). The construction budget provided by the Developer identifies \$6,937,911 in TIF eligible costs. The Developer has requested that \$4 million be reimbursed from TIF revenue generated within the project area, and an additional \$2 million be reimbursed from the City’s I-35 TIF fund.

Existing TIF Project Cap	\$6,750,000
Funds Paid to Date	(\$3,854,692)
Certified but Unpaid Costs Under Existing Cap	(\$2,895,308)
Remaining Capacity Under Existing Cap	\$0
Projected Additional Available TIF Increment	\$5,087,976
Developer Requested Reimbursement	(\$4,000,000)
Projected Surplus/(Deficit)	\$1,087,976

The existing redevelopment agreement contains a cap of \$6.75 million on the reimbursement of TIF eligible expenses. At this time, the City has provided TIF reimbursements totaling \$3,854,692.30, and the City has certified additional expenditures totaling \$2,895,307.70. The Developer has requested an increase to the TIF cap to allow for the reimbursement of costs related to the project proposed in the Application.

Based upon our modeling, we forecast TIF revenue collections to exceed the current cap of \$6.75 million in 2020, the first year TIF revenues will be generated by the project proposed

in the Application. In total, we forecast the project area to produce TIF revenues of \$5,087,976 above the current cap of \$6.75 million, well in excess of the \$4 million requested by the Developer.

#### FUNDAMENTAL ASSUMPTIONS FOR THE ANALYSIS

A full analysis reporting set for the scenario described under Summary Conclusion above is included with this cover memorandum. Schedule 1 of the reporting details the assumptions used in our analysis, supported by the additional detail shown in Schedules 2 and 3. Certain key assumptions are described below, together with a discussion of key differences between our modeling and the Developer's.

#### Property Tax Assumptions

We based our assumptions of assessed valuation of the proposed automobile dealership upon actual tax valuations for other automobile dealerships in the area. Particularly, we pulled comparable tax value information from the Johnson County Appraiser's website for the assessment year 2016 for:

- Hendrick Toyota Merriam
- Hendrick Lexus Kansas City
- Infiniti of Kansas City
- Shawnee Mission Hyundai

These existing automobile dealerships, located within the project area, show market values of approximately \$173 per square foot. The existing dealerships include a variety of dealership finishes and dealership flags that range from economy to luxury. At this time, the Developer has not secured a dealership flag, and therefore, we have assumed a mid-range brand and dealership finish that would be valued at \$175 per square foot. The Developer has proposed a 45,500 square foot dealership, and this would result in market value of \$7,962,500. In order to capture expected growth in assessed valuation for the 2017 assessment period, we have also applied a growth rate of 3% to the market value, which results in a final expected market value of \$8,201,375. This value differs from the \$10,000,000 valuation assumed by the Developer.

The Developer has also assumed a mill levy of 117.799 to be applied to the completed project. Per Johnson County Records and Tax Administration records, as of November 2016, the applicable mill levy subject to TIF capture for the project area was 118.693.

Based on preliminary valuation data provided by the City, we have assumed a 6% growth in assessed valuation for the existing development for the 2017 assessment period. Each of the automobile dealerships, except Infiniti of Kansas City, is currently appealing its valuation, and therefore final values are not available. For the remaining years, we have assumed assessed valuation growth of 1% for both the existing development, and the proposed automobile dealership.

#### Developer's Capital Stack

Based upon information provided by the Developer and their lender, we expect that \$12.1 million of the proposed \$22.2 million construction cost will derive from bank financing with

the balance coming from Developer equity. This total differs from the \$12.2 million that was proposed in the Application, and is based on additional information provided by the Developer. The Developer has proposed a pay-as-you-go TIF, so TIF capture is not included in the construction capital stack. We found the Developer's assumptions on borrowing terms and cost to be reasonable.



CITY OF MERRIAM  
Merriam Pointe Addition, Tract B  
Modeling Set

Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
Last Updated: 5/26/17 15:18

**TIF Plan Financial Analysis**  
**Subject to Change**

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**Schedules**

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- 1 Inputs and Assumptions
- 2 Property Tax Comparables
- 3 TIF Incremental Revenue Calculations
- 4 Construction Budget
- 5 Sources and Uses

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**Disclaimers**

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- All figures herein are subject to change.
- This modeling is not to be construed as a feasibility study or as advice to bondholders.
- Columbia Capital Management, LLC prepared the modeling. Columbia Capital serves as a municipal advisor to the City of Merriam, Kansas, and has a fiduciary duty to provide advice to the City putting the City's interests first. Your interests may differ from the City's.
- This modeling may be used only by the City and its development partners. It may not be used for other purposes.





**CITY OF MERRIAM**  
Merriam Pointe Addition, Tract B  
**SCHEDULE 1: Inputs and Assumptions**

Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
**Subject to Change**

**General Assumptions**

TIF District Created	8/22/94
Vertical Construction Commences	6/1/17
Credit for Partial Valuation	0%
TIF Annual Admin Costs	15,000
TIF Plan Adopted	7/28/03
Maximum Final Bond Maturity	7/28/23
TIF District Base Value	1,002,950

**Assessment Ratios**

Commercial	25.00%
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**Annual Growth Rates**

AV	1.0%
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**Levy Rates (2016) (1)**

	Totals	TIF Capture
State of Kansas	1.500	0.000
Johnson County	19.590	19.590
JCCC	9.473	9.473
JCPRD	3.102	3.102
City of Merriam	27.673	27.673
USD 512 GF	27.502	27.502
USD 512 Bond	7.438	7.438
USD 512 Uniform	20.000	0.000
Library	3.915	3.915
<b>Totals</b>	<b>120.193</b>	<b>118.693</b>

(1) Source: Johnson County RTA, pulled 05/15/17. Confirmed by AP.



**CITY OF MERRIAM**  
Merriam Pointe Addition, Tract B  
**SCHEDULE 1: Inputs and Assumptions**

Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
**Subject to Change**

**Development Classes (2)**

Code	Class	Description	No. of Units/SF	Projected AV/Unit or SF	Projected Appraised Value	Assessment Ratio	Projected Assessed Value	Construction Timing (Months)	Completion Expected
Retail	Commercial	45,500 sf auto dealership	45,500	Calculated	8,201,375	25.00%	2,050,344	18	12/31/18

(2) Source: Developer Amended and Restated TIF application; projected appraised based upon JoCo market comps (see schedule herein)

**Incremental Revenue Capture Rates**

Property Tax	100%
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## CITY OF MERRIAM

Merriam Pointe Addition, Tract B  
SCHEDULE 2: Property Tax Comparables

Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
**Subject to Change**

### PROPERTY TAX COMPS

Parcel ID	Description	Property Value		Value Per SF
		Building sf (1)	Market Val (1)	
JP49000000 0017	Hendrick Toyota Merriam	70,258	11,894,900	169.30
JP49000000 0016	Hendrick Lexus Kansas City	66,773	12,494,110	187.11
JP49000000 0019	Infiniti of Kansas City	40,919	8,572,500	209.50
JP49000000 0013	Shawnee Mission Hyundai	27,445	3,493,170	127.28
MODELED VALUES(2)	Merriam Pointe Addition, Tract B	45,500	8,201,375	175.00

(1) Source: JoCo Appraiser's 2016 Annual Notice of Value. Verified by AP on 05/13/17.

(2) Includes an adjustment of 3% to capture expected growth in assessed valuation.



CITY OF MERRIAM  
Merriam Pointe Addition, Tract B  
SCHEDULE 3: Incremental Revenue Calculation

ASSESSED VALUATION(1)			0	1	2	3	4	5	6	7	8	
Property Class	Description	Partial?	Completion	2003	2004	2005	2006	2007	2008	2009	2010	2011
	Existing Development	No		1,175,000	1,224,878	732,057	738,541	984,822	2,683,736	2,226,314	1,770,927	
Retail	45,500 sf auto dealership	No	12/31/18	0	0	0	0	0	0	0	0	0
<b>Subtotal: Assessed Valuation</b>				0	1,175,000	1,224,878	732,057	738,541	984,822	2,683,736	2,226,314	1,770,927
Less: Base Year Valuation				(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	
<b>Total: Incremental Assessed Valuation</b>				0	172,050	221,928	0	0	0	1,680,786	1,223,364	767,977

TIF REVENUE CALCULATION(1)																		
	0	1	2	3	4	5	6	7	8	2003	2004	2005	2006	2007	2008	2009	2010	2011
Levy Rate	0	88.191	92.732	101.112	105.232	105.185	111.387	114.667	116.721									
Incremental Property Taxes	0	15,173	20,580	0	0	0	187,218	140,279	89,639									
<b>TOTAL INCREMENTAL REVENUES</b>	<b>0</b>	<b>15,173</b>	<b>20,580</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>187,218</b>	<b>140,279</b>	<b>89,639</b>									

(1) All historical data provided by City of Merriam.


**CITY OF MERRIAM**  
 Merriam Pointe Additi  
 SCHEDULE 3: Incremental Assessed Valuation

Version: Merriam P.

ASSESSED VALUATION(1)			TIF Year/Calendar Year									
Property Class	Description	Partial?	Completion	9	10	11	12	13	14	15	16	17
				2012	2013	2014	2015	2016	2017	2018	2019	2020
Retail	Existing Development 45,500 sf auto dealership	No	12/31/18	1,753,295	2,402,209	5,504,820	10,668,148	9,612,259	9,322,408	9,881,752	9,980,570	10,080,376
				0	0	0	0	0	0	Complete	Assess	2,050,344
<b>Subtotal: Assessed Valuation</b>				1,753,295	2,402,209	5,504,820	10,668,148	9,612,259	9,322,408	9,881,752	9,980,570	12,130,719
Less: Base Year Valuation				(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)	(1,002,950)
<b>Total: Incremental Assessed Valuation</b>				750,345	1,399,259	4,501,870	9,665,198	8,609,309	8,319,458	8,878,802	8,977,620	11,127,769

TIF REVENUE CALCULATION(1)			TIF Year/Calendar Year									
			9	10	11	12	13	14	15	16	17	
			2012	2013	2014	2015	2016	2017	2018	2019	2020	
Levy Rate	115.511	115.283	116.034	116.247	117.799	118.693	118.693	118.693	118.693	118.693	118.693	
Incremental Property Taxes	86,673	161,311	522,370	1,123,550	1,014,168	987,461	1,053,852	1,065,581	1,320,788			
<b>TOTAL INCREMENTAL REVENUES</b>	<b>86,673</b>	<b>161,311</b>	<b>522,370</b>	<b>1,123,550</b>	<b>1,014,168</b>	<b>987,461</b>	<b>1,053,852</b>	<b>1,065,581</b>	<b>1,320,788</b>			

(1) All historical data provided by City of Merriam.



CITY OF MERRIAM  
Merriam Pointe Additbinte Addition Tract B TIF Model-v2.xlsx  
SCHEDULE 3: Incremental Assessed Valuation  
Subject to Change

ASSESSED VALUATION(1)			18	19	20	
Property Class	Description	Partial?	Completion	2021	2022	2023
	Existing Development	No		10,181,179	10,282,991	10,385,821
Retail	45,500 sf auto dealership	No	12/31/18	2,070,847	2,091,556	2,112,471
<b>Subtotal: Assessed Valuation</b>				12,252,027	12,374,547	12,498,292
Less: Base Year Valuation				(1,002,950)	(1,002,950)	(1,002,950)
<b>Total: Incremental Assessed Valuation</b>				11,249,077	11,371,597	11,495,342

TIF REVENUE CALCULATION(1)			18	19	20
			2021	2022	2023
Levy Rate			118.693	118.693	118.693
Incremental Property Taxes			1,335,187	1,349,729	1,364,417
<b>TOTAL INCREMENTAL REVENUES</b>			1,335,187	1,349,729	1,364,417

(1) All historical data provided by City of Merriam.


**CITY OF MERRIAM**  
 Merriam Pointe Addition, Tract B  
 Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
**SCHEDULE 4: Construction Budget**
**Subject to Change**

<b>USES OF FUNDS</b>	<b>TIF ELIGIBLE</b>	<b>NON-TIF ELIGIBLE</b>	<b>OTHER</b>	<b>TOTALS</b>
	<b>PRIVATE FUNDS</b>	<b>PRIVATE FUNDS</b>		
<b>CONSTRUCTION BUDGET/AVAILABLE FUNDS</b>	<b>6,937,911</b>	<b>15,262,500</b>	<b>0</b>	<b>22,200,411</b>
<b>Land Acquisition</b>				
Land Cost	91,500	0	0	91,500
<b>Site Development/Public Improvements</b>				
Mobilization	35,000	0	0	35,000
Utility Demolition Costs	20,000	0	0	20,000
Construction Staking	40,000	0	0	40,000
Erosion Control	55,100	0	0	55,100
Site Preparation/Clearing and Grubbing	87,318	0	0	87,318
Earthwork Roadway only	1,586,673	0	0	1,586,673
Concrete Curb	76,000	0	0	76,000
Asphalt and Concrete Paving	761,080	0	0	761,080
Storm Water Management	1,255,750	0	0	1,255,750
Water and Sanitary Sewer	564,600	0	0	564,600
Street Lighting	271,600	0	0	271,600
Site Electrical Service	14,700	0	0	14,700
Telephone Service	13,200	0	0	13,200
Gas Service	3,750	0	0	3,750
Landscape and Irrigation	112,000	0	0	112,000
Fencing	50,000	0	0	50,000
Roadway Signage	15,000	0	0	15,000
Retaining Walls	125,875	0	0	125,875
Tree Removal	33,000	0	0	33,000
Wetland Mitigation	160,000	0	0	160,000
Signage	0	150,000	0	150,000
Change Order Contingency	528,065	0	0	528,065
<b>Building Costs</b>				
Auto Dealership	0	9,000,000	0	9,000,000
Equipment	0	4,000,000	0	4,000,000
Architectural Engineering Design	0	300,000	0	300,000
Design and Construction Admin	0	225,000	0	225,000
Change Order Contingency	0	1,352,500	0	1,352,500


**CITY OF MERRIAM**  
 Merriam Pointe Addition, Tract B  
 Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
**SCHEDULE 4: Construction Budget**
**Subject to Change**

**USES OF FUNDS**

CONSTRUCTION BUDGET/AVAILABLE FUNDS	TIF ELIGIBLE PRIVATE FUNDS	NON-TIF ELIGIBLE PRIVATE FUNDS	OTHER	TOTALS
	6,937,911	15,262,500	0	22,200,411
<b>Soft Costs</b>				
Survey	8,000	0	0	8,000
Schematic Design	2,500	0	0	2,500
Preliminary Plat/Preliminary Development Plan	27,250	0	0	27,250
Final Plat	5,000	0	0	5,000
Storm Water Drainage Study, BMP, SWPPP and Design	11,000	0	0	11,000
Wetland Delineation	4,850	0	0	4,850
USACE Permitting	15,000	0	0	15,000
Sanitary Sewer	9,500	0	0	9,500
Civil Construction Plans	141,500	0	0	141,500
SWPPP NOI	2,500	0	0	2,500
Geotechnical Evaluation	5,500	0	0	5,500
Site Construction Testing	85,000	0	0	85,000
Design and Construction Administration ( Monarch)	350,000	0	0	350,000
Interest Carry	200,000	200,000	0	400,000
Real Estate Taxes	0	35,000	0	35,000
Legal	100,000	0	0	100,000
Site Permit and Fees	70,100	0	0	70,100
<b>TOTAL USES</b>	<b>6,937,911</b>	<b>15,262,500</b>	<b>0</b>	<b>22,200,411</b>



**CITY OF MERRIAM**  
Merriam Pointe Addition, Tract B  
**SCHEDULE 5: Sources and Uses**

Version: Merriam Pointe Addition Tract B TIF Model-v2.xlsx  
**Subject to Change**

---

**SOURCES OF FUNDS**

Bank Financing	12,125,000
Developer Equity Contribution	10,075,411
<b>TOTAL SOURCES</b>	<b><u>22,200,411</u></b>

**USES OF FUNDS**

Land Acquisition	91,500
Site Development/Public Improvements	5,958,711
Building Costs	14,877,500
Soft Costs	1,272,700
<b>TOTAL USES</b>	<b><u>22,200,411</u></b>

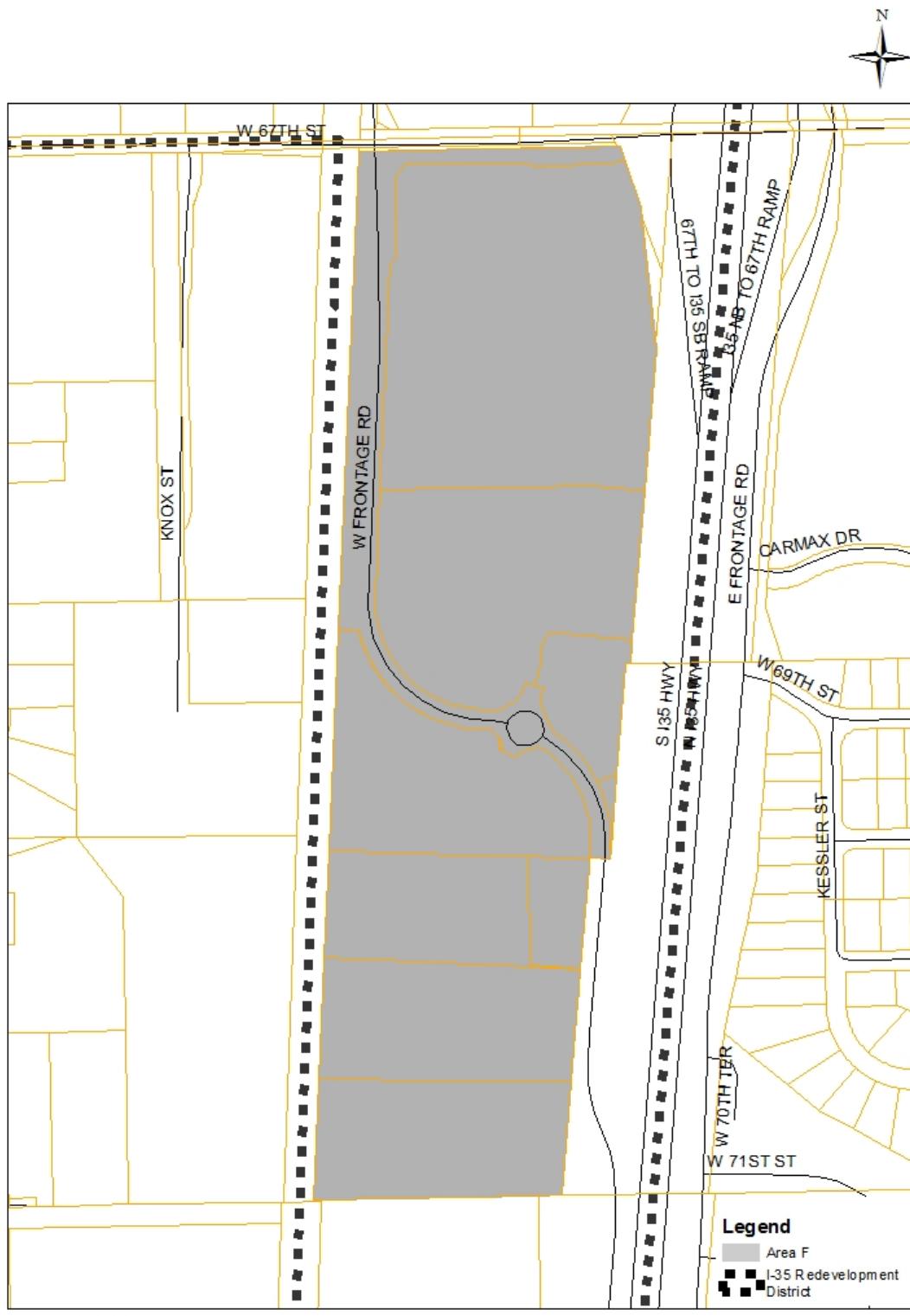
## **EXHIBIT B**

### **General Legal Description Project Area F**

That part in Section 13, Township South, Range 24 East, in the City of Merriam, Johnson County, Kansas as described below:

Final Plat of Merriam Pointe, Lots 1 thru 13, Tracts A and B and all rights-of-ways; and,  
Merriam Pointe Second Plat; and,  
Merriam Pointe Third Plat, Lots 16 thru 18 and all rights-of-ways and;  
Merriam Pointe Fourth Plat, Lot 19 and all rights-of-ways, and;  
13-12-24 BG 579.96' N SW CR SE1/4 N 281.18' TO PT 467.84' S NW CR S 1/2 SE1/4 E 154.28'  
S 280.04' W 128.91' TO POB EX .0273 AC .8827 ACS M/L MEC BOTA 07 552 TX; and,  
13-12-24 BG 572.81' N SW CR S 1/2 SE1/4 N 7.15' E 128.91' S 2.25' W 128.36' TO POB .0138  
ACS M/L MEC BOTA 07 553 TX.

**EXHIBIT C**  
**Project Area F Map**



BPD - 10/13/16

## EXHIBIT D

### Addendum #1



**MEMORANDUM**  
05.26.17  
**ADDENDUM #1**  
06.22.17

City of Merriam

#### UPDATED DATA AND INFORMATION

Since the submission of the memorandum dated May 26, 2017, additional data and information has become available that has changed the projections included within the memorandum. These changes include:

- Release by the Johnson County Appraiser of final 2017 appraised values for the comparable properties used to estimate the final expected market value of the proposed Project. Preliminary valuation data provided by the City estimated a 6% growth in assessed valuation for the comparable properties. The appraisal appeal process resulted in a decrease in valuation of 2.67% to 8.82% for the comparable properties.
- The Developer's Amended and Restated Application for Tax Increment Financing contemplated an 18-month construction period for the proposed Project. Based on further discussions with the Developer, the construction period has been extended to 36 months.

The updated data and information have been incorporated into Columbia's analysis, and are reflected in the final report submitted to the City dated June 22, 2017. The table below, which was found in the previously submitted memorandum, has been updated.

Existing TIF Project Cap	\$8,750,000
Funds Paid to Date	(\$4,344,156)
Certified but Unpaid Costs Under Existing Cap	(\$2,405,844)
Remaining Capacity Under Existing Cap	\$0
Projected Additional Available TIF Increment	\$3,697,661
Developer Requested Reimbursement	(\$4,000,000)
Projected Surplus/(Deficit)	(\$302,339)

Based upon information provided by the Developer and their lender, we expect that \$12.1 million of the proposed \$22.2 million construction cost will derive from bank financing with the balance coming from Developer equity. This total differs from the \$12.2 million that was proposed in the Application, and is based on additional information provided by the Developer. The Developer has proposed a pay-as-you-go TIF, so TIF capture is not included in the construction capital stack. We found the Developer's assumptions on borrowing terms and cost to be reasonable.

**UPDATED CONCLUSION**

Based on the updated data and information, and the assumptions made in the construction of the TIF Plan Financial Analysis, the projected property TIF revenues, the additional funds requested by the Developer, and developer contributions of the Merriam Pointe Project Area are sufficient to pay the projected costs.

**EXHIBIT D**

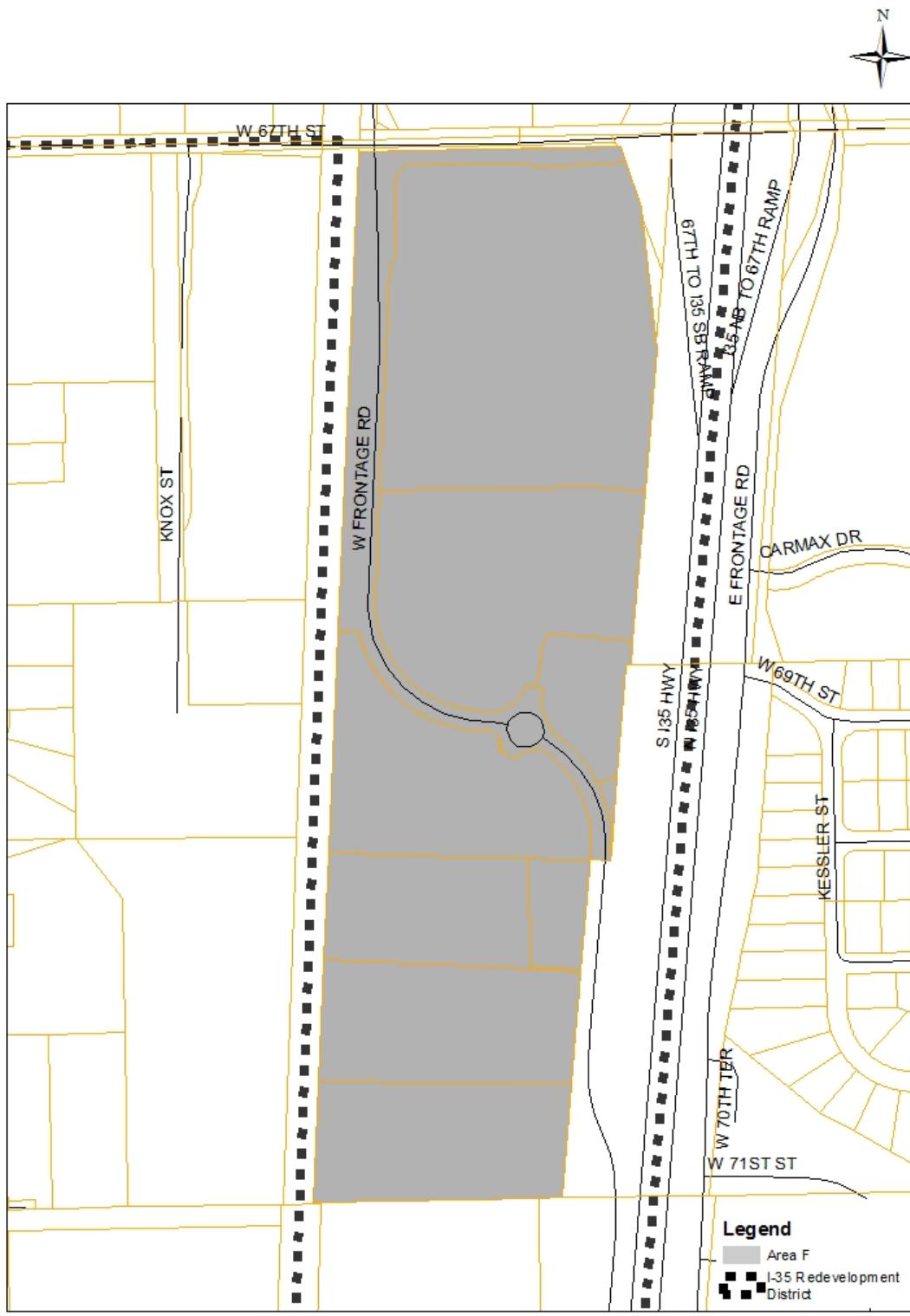
**PROJECT AREA**

**(legal description and map including delineation  
of area to be developed by each Developer)**

**PROJECT AREA**  
**(legal description and map including delineation  
of area to be developed by each Developer)**

That part in Section 13, Township South, Range 24 East, in the City of Merriam, Johnson County, Kansas as described below:

Final Plat of Merriam Pointe, Lots 1 thru 13, Tracts A and B and all rights-of-ways; and, Merriam Pointe Second Plat; and,  
Merriam Pointe Third Plat, Lots 16 thru 18 and all rights-of-ways and;  
Merriam Pointe Fourth Plat, Lot 19 and all rights-of-ways, and;  
13-12-24 BG 579.96' N SW CR SE1/4 N 281.18' TO PT 467.84' S NW CR S 1/2 SE1/4 E 154.28'  
S 280.04' W 128.91' TO POB EX .0273 AC .8827 ACS M/L MEC BOTA 07 552 TX; and,  
13-12-24 BG 572.81' N SW CR S 1/2 SE1/4 N 7.15' E 128.91' S 2.25' W 128.36' TO POB .0138  
ACS M/L MEC BOTA 07 553 TX.



BPD - 10/13/16

**EXHIBIT E**

**ELIGIBLE EXPENSES**  
**(including Existing Certified Expenses)**

**Merriam Pointe Project**  
**Existing Certified Expenses and TIF Reimbursements**  
**as of July 24, 2017**

Certifications:

		<u>Amount</u>
#1	09/16/04	Real estate purchases (Lucent and City of Merriam) \$ 7,274,946.50
#2	04/07/11	Site work (Holland Corporation) 1,475,053.50
Total Certifications		8,750,000.00

Less Prior TIF payment per 9/15/2004 Redevelopment Agreement, Recital F

(2,000,000.00)

Existing Certified Expenses

\$ 6,750,000.00

Less TIF Reimbursements to Date

Merriam Pointe, LLC	(363,250.00)
Merriam Investors, LLC	(2,980,906.30)
Hendrick Automotive Group	(1,000,000.00)
	(4,344,156.30)

Unreimbursed, Existing Certified Expenses

2,405,843.70

TIF Cap Computation:

Existing Certified Expenses	\$ 6,750,000.00
Tract B Eligible Expenses (Maximum Reimbursement Amount)	6,000,000.00
	12,750,000.00

Less Supplemental TIF Disbursement

(2,000,000.00)

TIF Cap (as amended)

\$ 10,750,000.00

**Merriam Pointe Project**  
**TIF Eligible Expenses**

<b>CONSTRUCTION BUDGET/AVAILABLE FUNDS</b>	<b>TIF ELIGIBLE</b>
	<b><u>6,937,911</u></b>
<hr/>	
<b>Land Acquisition</b>	
Land Cost	91,500
<hr/>	
<b>Site Development/Public Improvements</b>	
Mobilization	35,000
Utility Demolition Costs	20,000
Construction Staking	40,000
Erosion Control	55,100
Site Preparation/Clearing and Grubbing	87,318
Earthwork Roadway only	1,586,673
Concrete Curb	76,000
Asphalt and Concrete Paving	761,080
Storm Water Management	1,255,750
Water and Sanitary Sewer	564,600
Street Lighting	271,600
Site Electrical Service	14,700
Telephone Service	13,200
Gas Service	3,750
Landscape and Irrigation	112,000
Fencing	50,000
Roadway Signage	15,000
Retaining Walls	125,875
Tree Removal	33,000
Wetland Mitigation	160,000
Change Order Contingency	528,065
<hr/>	
<b>Soft Costs</b>	
Survey	8,000
Schematic Design	2,500
Preliminary Plat/Preliminary Development Plan	27,250
Final Plat	5,000
Storm Water Drainage Study, BMP, SWPPP and Design	11,000
Wetland Delineation	4,850
USACE Permitting	15,000
Sanitary Sewer	9,500

Civil Construction Plans	141,500
SWPPP NOI	2,500
Geotechnical Evaluation	5,500
Site Construction Testing	85,000
Design and Construction Administration ( Monarch)	350,000
Interest Carry	200,000
Legal	100,000
Site Permit and Fees	70,100
<b>TOTAL USES</b>	<b><u>6,937,911</u></b>

**EXHIBIT F**

**DEVELOPMENT TIMELINE**

## **DEVELOPMENT TIMELINE**

### **Completed:**

Merriam Pointe Plat, Lot 13 – Shawnee Mission Hyundai – Parcel ID No. JP49000000 0013

Merriam Pointe Third Plat, Lot 16 and Lot 18 – Hendrick Lexus of Kansas City – Parcel ID No. JP49000000 0016 and Parcel ID No. JP49000000 0018

Merriam Pointe Third Plat, Lot 17 – Hendrick Toyota Merriam - Parcel ID No. JP49000000 0017

Merriam Pointe Fourth Plat, Lot 19 – Infiniti of Kansas City – Parcel ID No. JP49000000 0019

### **December 31, 2021:**

Tract B Project Area as described in the Third Amended and Restated Redevelopment Agreement dated as of May 11, 2020

**EXHIBIT G**

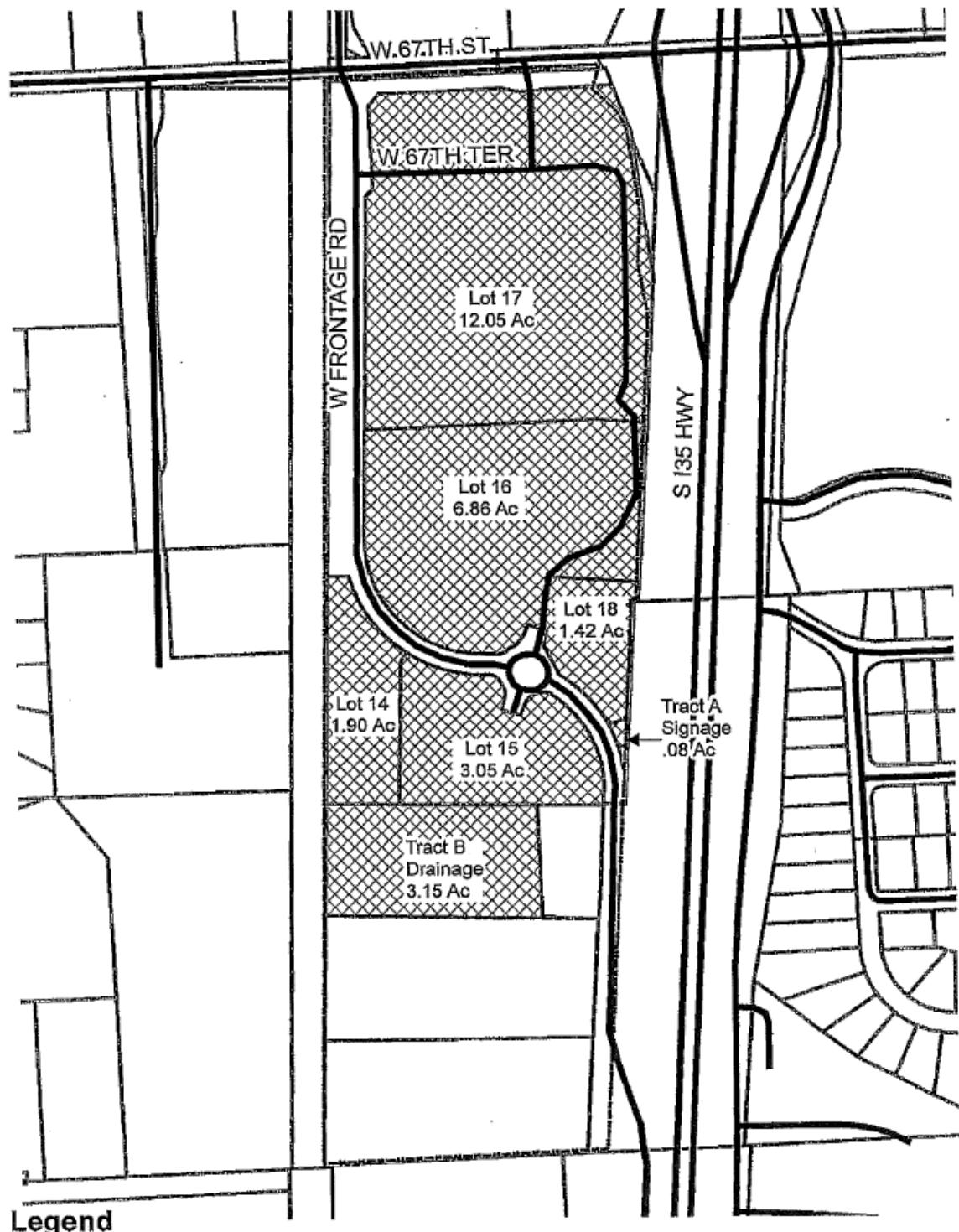
**ORIGINAL UNDEVELOPED PROJECT AREA**  
**(legal description and map)**

**ORIGINAL UNDEVELOPED PROJECT AREA  
(legal description and map)**

Tracts A and B Merriam Pointe; and,

Lots 14 and 15, Merriam Pointe Second Plat; and,

Lots 16, 17, and 18 Merriam Pointe Third Plat as shown in Merriam Planning Commission application **P-1-11-Final Plat**.



**Legend**

- Merriam Pointe Project Area
- Original Undeveloped Project Area

bpd - 03/07/2011

**EXHIBIT H**

**TRACT B PROJECT AREA**  
**(legal description and map)**

**TRACT B PROJECT AREA  
(legal description and map)**

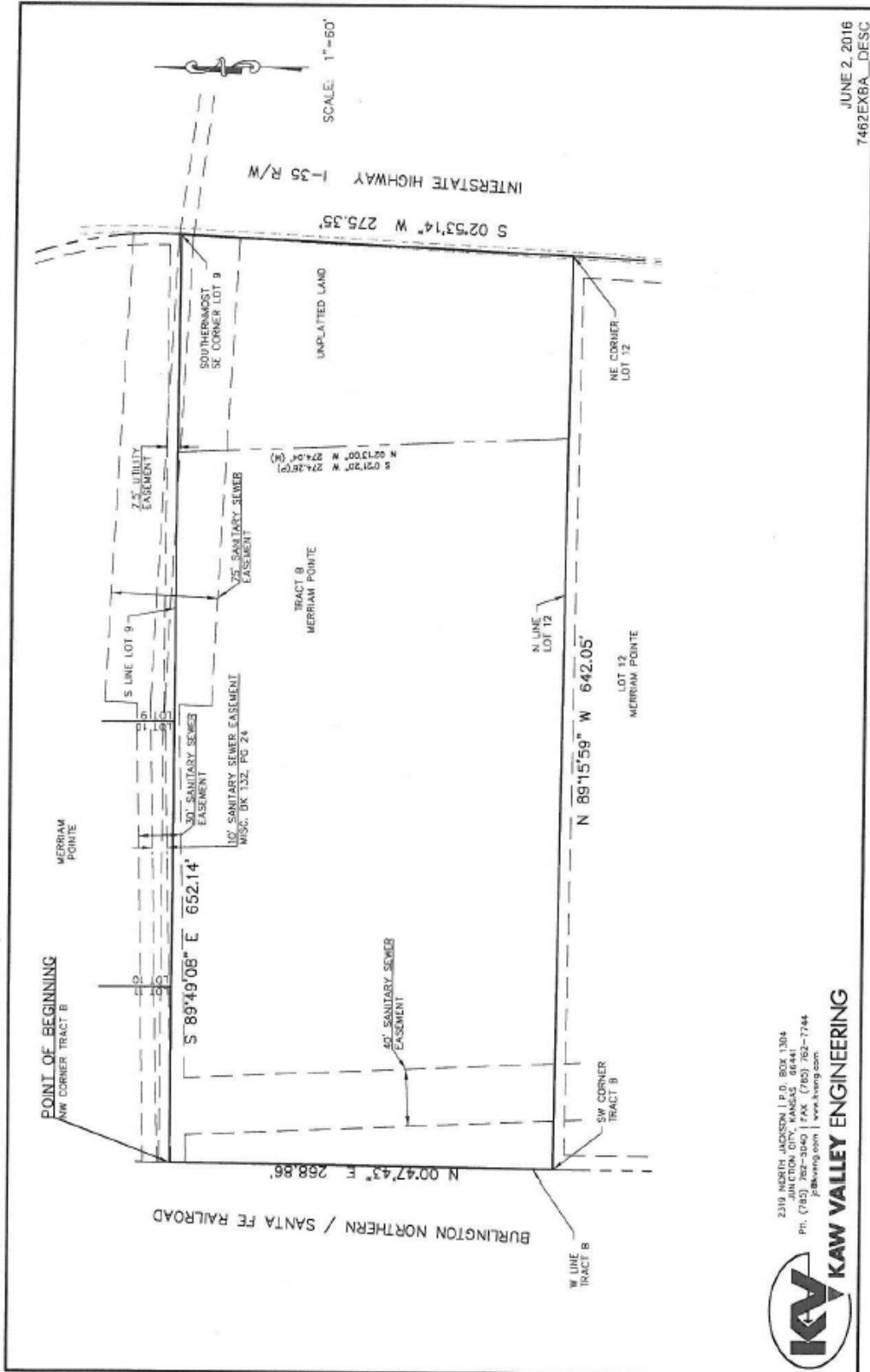
ALL OF TRACT B, MERRIAM POINTE RECORDED IN BOOK 200512, PAGE 9611 AND THAT PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 12 SOUTH, RANGE 24 EAST, CITY OF MERRIAM, COUNTY OF JOHNSON, STATE OF KANSAS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT B; THENCE WITH AN ASSUMED BEARING ON THE NORTH LINE OF SAID TRACT B AND THE SOUTH LINE OF LOT 9 SAID MERRIAM POINTE, S 89°49'08" E 652.14 FEET TO THE MOST SOUTHERLY SOUTHEASTERN CORNER OF SAID LOT 9; THENCE S 02°53'14" W 275.35 FEET TO THE NORTHEAST CORNER OF LOT 12 SAID MERRIAM POINTE; THENCE ON THE NORTH LINE OF SAID LOT 12, N 89°15'59" W 642.05 FEET TO THE SOUTHWEST CORNER OF SAID TRACT B; THENCE ON THE WEST LINE OF SAID TRACT B, N 00°47'43" E 268.86 FEET TO THE POINT OF BEGINNING.

CONTAINS 4.04 ACRES, MORE OR LESS.

END OF DESCRIPTION

BASIS OF BEARINGS FOR THIS DESCRIPTION IS AN ASSUMED BEARING OF N 89°15'59" W ON THE NORTH LINE OF LOT 12, MERRIAM POINTE.



**EXHIBIT I**  
**CERTIFICATION OF EXPENDITURE FORM**

**CERTIFICATION OF EXPENDITURES**  
**MERRIAM POINTE REDEVELOPMENT PROJECT**

Date: \_\_\_\_\_  
Certification # \_\_\_\_\_

Governing Body of the  
City of Merriam, Kansas

In accordance with the Third Amended and Restated Redevelopment Agreement dated \_\_\_\_\_, 2020 (the “Agreement”), between the city of Merriam, Kansas (the “City”), Merriam Investors LLC, and Merriam Luxury Imports, LLC, the [insert Merriam Investors LLC, or Merriam Luxury Imports, LLC, as applicable] (the “Developer”) hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developers (as defined in the Agreement) as provided in the Agreement, as follows:

1. To the best of my knowledge, all amounts are Eligible Expenses that are reimbursable to the Developers pursuant to the Agreement.
2. All amounts have been advanced by the Developer for Redevelopment Project Costs in accordance with the Agreement and represent the fair value of work, materials or expenses.
3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that all insurance policies which are required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is \$ \_\_\_\_\_ which amount is itemized on Exhibit A attached hereto and which Exhibit A includes \_\_\_\_ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

Payment to the undersigned Developer of the Eligible Expenses requested by this Certificate are to be paid to the Developer in accordance with the following instructions (insert check and address check for receipt of check or wire transfer instructions):

---

---

Developer’s Name: \_\_\_\_\_

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

**EXHIBIT A**

**TO CERTIFICATION OF EXPENDITURES  
MERRIAM POINTE REDEVELOPMENT PROJECT  
(MERRIAM POINTE TIF PROJECT)  
PAGE \_\_\_\_ OF \_\_\_\_**

Date: \_\_\_\_\_  
Certification # \_\_\_\_\_

<b>Description of Expense (attach additional supporting documentation)</b>	<b>Amount of Expense</b>
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
<b>Total Expenses</b>	<b>\$</b>

\_\_\_\_\_  
**Initials of Developer**

**EXHIBIT J**

**ASSIGNMENT OF TIF RIGHTS AND**  
**FIRST AMENDMENT TO ASSIGNMENT OF TIF RIGHTS**

## ASSIGNMENT OF TIF RIGHTS

JAN. 31st, 2011 THIS ASSIGNMENT OF TIF RIGHTS ("Agreement") is made as of JAN. 31st, 2011 by and between MERRIAM POINTE, LLC ("Seller") and MERRIAM INVESTORS LLC ("Buyer").

### RECITALS

A. Seller is the "Developer" under that certain Redevelopment Agreement dated September 15, 2004 with the City of Merriam, Kansas (the "City"), as amended by agreement dated September 11, 2009 (the "Redevelopment Agreement") and is the owner and holder of all of the rights and entitlements thereunder.

B. Buyer desires to purchase all of Seller's rights and entitlements under the Redevelopment Agreement and Seller is willing to sell and assign the same to Buyer on the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of Seller and Buyer, parties agree as follows:

1. Assignment and Assumption. Seller hereby sells, assigns, grants, conveys, and transfers to Buyer, and Buyer hereby accepts and assumes, Seller's entire right, title and interest of every kind and nature (a) as Developer in and under the Redevelopment Agreement and (b) in, under and in respect to the Redevelopment Agreement, including but not limited to, the right to receive reimbursement payments to be made pursuant to the Redevelopment Agreement and all of the other rights and entitlements under the Redevelopment Agreement.

2. Buyer's Rights. Buyer acknowledges that the foregoing assignment by Seller is subject to the consent and approval by the City. Buyer agrees to promptly apply to the City for such approval and consent and to pursue obtaining the same in good faith at its sole cost and expense. Upon request by Buyer, Seller agrees to cooperate with Buyer in obtaining such approval

and consent, but shall not be obligated to incur any expense in connection therewith.

3. Buyer's Efforts. Buyer agrees to use commercially reasonable best efforts to cause the City to defer taking any action to terminate the Redevelopment Agreement for any reason prior to the Closing Date provided for below.

4. Seller Agreement. Seller agrees that if Buyer desires to request approval of this Agreement from the bankruptcy court in the Chapter 11 bankruptcy proceeding concerning Seller in Case No. 09-23186-11-rdb in the United States Bankruptcy Court for the District of Kansas, Kansas City Division ("Seller's Bankruptcy"), Seller agrees to cooperate with Buyer, and support, agree to and sign all reasonable applications, requests, consents and joinders in connection with such request, but Seller shall not be obligated to incur any expense in connection therewith. In the event Seller incurs any such expense, Buyer will, upon billing by Seller, reimburse Seller for its actual reasonable expenses incurred in providing said cooperation including, but not limited to Seller's attorneys' fees. Seller's obligations under this paragraph shall survive the within assignment and the Closing provided for below.

5. Closing. Buyer, along with David J Christie and David M. Block, has or will enter into a separate agreement (the "Claims Agreement") with Ross Stiner, Jess J. Davis, Jr., John E. Davidson and Phillip Holcomb to purchase their entire right, title and interest as creditors in Seller's Bankruptcy, including but not limited to, their entire right, title and interest as Class 2 Creditors therein, all as more fully set forth or to be set forth in the Claims Agreement. The closing of such purchase (the "Closing") will be held within five (5) business days after the City approves or consents to the assignment of TIF rights as herein set forth and executes an amendment or restatement of the Redevelopment Agreement or an agreement replacing the Redevelopment Agreement (collectively, a "New Redevelopment Agreement") providing for payment of the TIF Funds referred to in Seller's Bankruptcy to Buyer (the "Closing Date"). If (i) Buyer does not obtain approval and consent to the within assignment by the City or if the City does not execute a New Redevelopment Agreement on or before April 30, 2011, or such later date as is hereafter agreed to by the parties, this Agreement shall terminate in which event the rights

and entitlements herein assigned shall be deemed automatically reassigned to Seller by Buyer. Promptly upon request by Seller, Buyer agrees to execute, acknowledge (if appropriate) and deliver all such further and other documents as shall be necessary to effect the terms and understanding set forth in this paragraph, all such documents and actions to be deemed effective as of the date of termination of this Agreement. Buyer's obligations under this paragraph shall survive termination of this Agreement.

6. Seller's Representations and Warranties. To induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer as follows:

A. Seller is the Developer under the Redevelopment Agreement and is the owner and holder of all of the rights and entitlements of Developer thereunder. Seller has full right, power and authority, subject to the right of the City to approve the assignment of the Redevelopment Agreement, to sell and assign the rights and entitlements hereby conveyed to Buyer and to enter into and otherwise perform and comply with the terms of this Agreement.

B. This Agreement is duly authorized, executed and delivered by Seller and is the legal, valid and binding obligation of Seller.

7. Miscellaneous. This Agreement:

A. constitutes the entire agreement between the parties hereto with respect to the subject matter hereof;

B. shall be construed and governed by the laws of the State of Kansas;

C. shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns;

D. may not be amended except by written agreement of the parties hereto; and

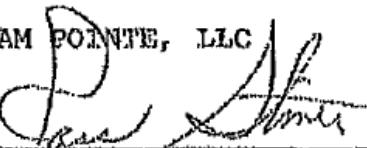
E. may be executed in multiple counterparts, whether of the entire agreement or of the signature page, or both, all of which counterparts taken together shall constitute the complete Agreement.

8. Facsimile Execution. Facsimile and/or electronic counterpart copies of this Agreement shall be considered as originals for all purposes, including execution and delivery.

IN WITNESS WHEREOF the parties have duly executed this Assignment of TIF Rights as of the date first set forth above.

SELLER:

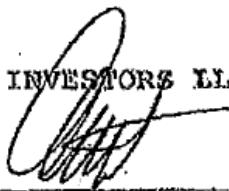
MERRIAM POINTE, LLC

By: 

Ross Stiner, Manager

BUYER:

MERRIAM INVESTORS LLC

By: 

David J. Christie, Manager

By: 

David M. Block, Manager

FIRST AMENDMENT  
TO  
ASSIGNMENT OF TIF RIGHTS

THIS FIRST AMENDMENT TO ASSIGNMENT OF TIF RIGHTS ("Agreement") is executed the dates set forth below effective as of January 31, 2011 by and between MERRIAM POINTE, LLC ("Seller") and MERRIAM INVESTORS LLC ("Buyer") who hereby amend that certain Assignment of TIF Rights dated January 31, 2011 (the "Assignment") as follows:

1. Buyer's acceptance and assumption set forth in paragraph 1 of the Assignment is for itself and its successors and assigns and specifically includes the duties and obligations of Seller as Developer in and under the Redevelopment Agreement and under and in respect to the Redevelopment Agreement.

2. The Assignment and this Agreement are not effective unless and until the City of Merriam, Kansas consents to and approves of the assignment of the Redevelopment Agreement to Buyer.

3. Except as expressly provided herein, the Assignment is unamended and the parties hereby ratify the same as herein modified. In the event of conflict or ambiguity between the terms of the Assignment and the provisions of this Agreement, the provisions of this Agreement shall govern and control.

IN WITNESS WHEREOF the parties have duly executed this First Amendment to Assignment of TIF Rights.

SELLER:

MERRIAM POINTE, LLC

By:

Ross Stiner, Manager

Date:

2/21/11

BUYER:

MERRIAM INVESTORS LLC

By:

David J. Christie, Manager

By:

David M. Block, Manager

Date:

2/21/11

**EXHIBIT K**

**ACKNOWLEDGEMENT AND RELEASE**

## ACKNOWLEDGEMENT AND RELEASE

THIS ACKNOWLEDGEMENT AND RELEASE (the "Acknowledgement") is made effective as of the 12 day of August, 2016 (the "Effective Date"), by Hendrick Automotive Group, a New York general partnership ("Co-Developer").

### RECITALS

A. Hendricks is the Co-Developer under that certain Amended and Restated Redevelopment Agreement for the Merriam Pointe Redevelopment Project dated March 28, 2011 (the "Redevelopment Agreement") by and between the City of Merriam, Kansas, a municipal corporation duly organized under the laws of the State of Kansas ("City"), the Co-Developer and Merriam Investors, LLC, a Kansas limited liability company (the "Lead Developer"), which Redevelopment Agreement was filed of record on March 30, 2011 with the Register of Deeds of Johnson County, Kansas, as Document No. 201103300007813, Book 201103, Page 007813 and which Redevelopment Agreement is incorporated herein for all purposes by this reference.

B. The Redevelopment Agreement affects real property located in Merriam, Johnson County, Kansas, as more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

C. Pursuant to Section 401 of the Redevelopment Agreement, upon completion of its development responsibilities under the Redevelopment Agreement, the Co-Developer is to receive a maximum of One Million and 00/100<sup>th</sup> Dollars (\$1,000,000.00) (the "Payment") from the Incremental Real Property Taxes (as that term is defined in the Redevelopment Agreement) generated by the Property.

D. The City has acknowledged that the Co-Developer has completed the development of its Project Portion in compliance with the Redevelopment Agreement.

E. The Co-Developer has received in full the Payment under the Redevelopment Agreement.

F. The City has requested that the Co-Developer acknowledge receipt in full of the Payment and as a result, release any and all of its rights and interests under the Redevelopment Agreement.

NOW, THEREFORE, in consideration of the agreements herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Co-Developer hereby states as follows:

1. Recitals. The Recitals are incorporated herein as true and correct.
2. Payment. The Co-Developer hereby acknowledges receipt of the Payment in the amount of One Million and 00/100<sup>th</sup> Dollars (\$1,000,000.00) pursuant to Article IV, Section 6 of

{30037 / 66172; 705502. }  
4845-4838-3028.2

the Redevelopment Agreement and further acknowledges that there are no other outstanding obligations owed to the Co-Developer by the City under the Redevelopment Agreement.

3. Release. The Co-Developer hereby releases all of its rights and interests as Co-Developer under the Redevelopment Agreement intending that the Lead Developer become the sole Developer thereunder, including any rights to consent to an amendment of the Redevelopment Agreement under Section 905.

4. Recording. This Assignment amends the Redevelopment Agreement shall be recorded in the Office of the Recorder of Deeds in Johnson County, Kansas.

5. Authority. The individual executing this Acknowledgement and Release on behalf of the Co-Developer represents that he/she has the full power and authority to execute this Acknowledgement and Release.

*(Remainder of page intentionally left blank. Signature page to follow.)*

*Signature Page*

IN WITNESS WHEREOF, Hendrick Automotive Group has caused this instrument to be executed this 19 day of September, 2016.

HENDRICK AUTOMOTIVE GROUP,  
a New York general partnership

By: A. Scott Ennis  
Name: A. Scott Ennis  
Title: Vice President

STATE OF North Carolina )  
 ) ss.  
COUNTY OF Mecklenburg )

On this 19<sup>th</sup> day of September, 2016, before me, the undersigned Notary Public, in and for said state, personally appeared A. Scott Ennis, to me personally known, who, being by me and duly sworn did say that he/she is the Vice President of Hendrick Automotive Group, a New York general partnership, and that said instrument was signed on behalf of said general partnership, and said person acknowledged said instrument to be the free act and deed of said general partnership.

Subscribed and sworn to me the day and year above written.

Deanna Milito  
Notary Public:

My commission expires:

3-22-2019



*Signature Page*

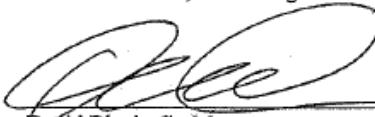
Merriam Investors LLC hereby acknowledges and consents to the Acknowledgement and Release described herein.

MERRIAM INVESTORS LLC,  
a Kansas limited liability company

By:

  
David J. Christie, Co-Manager

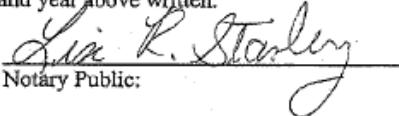
By:

  
David Block, Co-Manager

STATE OF Kansas )  
COUNTY OF Jackson ) ss.  
12t

On this 12 day of July/August, 2016, before me, the undersigned Notary Public, in and for said state, personally appeared David Block and David J. Christie, to me personally known, who, being by me and duly sworn did say that they are co-managing members of Merriam Investors LLC, a Kansas limited liability company, and that said instrument was signed on behalf of said limited liability company, and said person acknowledged said instrument to be the free act and deed of said limited liability company.

Subscribed and sworn to me the day and year above written.

  
Lisa R. Stanley  
Notary Public

My commission expires:

11/16/16

LISA R. STANLEY  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI  
JACKSON COUNTY  
MY COMMISSION EXPIRES NOV. 16, 2016  
MY COMMISSION # 12402622

**EXHIBIT A  
TIF DISTRICT  
LEGAL DESCRIPTION**

Beginning at the intersection of Interstate Highway 35 and 75<sup>th</sup> Street; thence west along 75<sup>th</sup> Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad; thence north 800 feet; thence east 100 feet; thence north 540 feet; thence east approximately 690 feet to the centerline of the Burlington Northern Right-of-Way; thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67<sup>th</sup> Street; thence west along 67<sup>th</sup> Street to the west property line of Lot 5, Cunningham Gardens Subdivision; thence north along the west property line of Lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision; thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision; thence north to the north property line of said subdivision; thence east 100 feet along the boundary between the existing R-1 and I-1 zoning districts; thence north 750 feet along said zoning district boundary; thence easterly 230 feet along said zoning district boundary; thence northerly 200 feet along said zoning district boundary; thence northerly 50 feet along said zoning district boundary; thence easterly to the centerline of the Burlington Northern right-of-way; thence northerly along said railroad right-of-way to Shawnee Mission Parkway; thence east along said parkway to Interstate Highway 35; thence north along said highway to a point west of 62<sup>nd</sup> Terrace projected; thence easterly along 62<sup>nd</sup> Terrace to Slater Road; thence south along Slater Road to Shawnee Mission Parkway; thence west along said parkway to the intersection of the East Frontage Road; thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected; thence south along said line to a point east of 65<sup>th</sup> Street projected; thence west along said line and 65<sup>th</sup> Street to Interstate Highway 35; thence south along said highway to the point of beginning on 75<sup>th</sup> Street, and;

Part of the Southeast 1/4 of Section 12, Township 12 South, Range 24 East in the City of Merriam, Johnson County, Kansas, more particularly described as follows: BEGINNING at the point of intersection of the Centerline of Slater Road and the Centerline of Johnson Drive, said centerline of Johnson Drive also being the North line of the Southeast1/4, of

said Section 12; thence North 90° West along the centerline of Johnson Drive and the North line of said Southeast  $\frac{1}{4}$ , 918.48 feet to the point of intersection of said North Line of the Northeast  $\frac{1}{4}$  and the Northerly prolongation of the Westerly right of way line of Grandview Avenue, said point of the intersection also being a point on the Easterly right of way line of Interstate Highway No. I-35; thence Southerly along the Easterly right of way line of Interstate Highway No. I-35 to the point of intersection of said Easterly right of way line of Interstate Highway No. I-35 and the Westerly prolongation of the Centerline of 62<sup>nd</sup> Street Terrace; thence South 89° 49' 24" East along said centerline of 62<sup>nd</sup> Street Terrace, 1129.62' to the point of the intersection of said centerline of said 62<sup>nd</sup> Street Terrace and the centerline of Slater Road; thence North 00° 37'19"East, along the centerline of Slater Road, 2206.37 feet to the POINT OF BEGINNING. Containing 307 acres of land, more or less

## ASSIGNMENT OF DEVELOPER RIGHTS

THIS ASSIGNMENT OF DEVELOPER RIGHTS (the "Assignment") is made effective as of the 13<sup>th</sup> day of March, 2018 (the "Effective Date"), from Merriam Luxury Imports, LLC, a Kansas limited liability company ("Assignor") to MLI, Inc., a Kansas corporation ("Assignee").

### RECITALS

A. Assignor is Co-Developer under that certain Second Amended and Restated Redevelopment Agreement for the Merriam Pointe Redevelopment Project dated July 24, 2017 (the "Redevelopment Agreement") by and between the City of Merriam, Kansas, a municipal corporation duly organized under the laws of the State of Kansas ("City"), Assignor and Merriam Investors, LLC, a Kansas limited liability company, which Redevelopment Agreement was filed of record on August 25, 2017 with the Register of Deeds of Johnson County, Kansas, as Document No. 20170825-0008983, Book 201708, Page 008983 and which Redevelopment Agreement is incorporated herein for all purposes by this reference.

B. The Redevelopment Agreement affects certain real property located in Merriam, Kansas more specifically described therein and described on Exhibit A attached hereto (the "Property").

C. Assignor has agreed to assign, transfer and convey to Assignee all of its continuing rights and obligations under the Redevelopment Agreement.

NOW, THEREFORE, in consideration of the agreements herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Recitals. The Recitals are incorporated herein as true and correct.

2. Assignment and Assumption of Assignable Rights. Assignor hereby assigns, transfers and conveys to Assignee as "Co-Developer" under the Redevelopment Agreement all of Assignor's rights and obligations under the Development Agreement as Co-Developer. Assignor hereby waives all rights and interest relating to the Property and otherwise under the Redevelopment Agreement effective as of the Effective Date.

3. No Prior Assignment of Assignable Rights. Assignor represents and warrants that Assignor has not previously assigned or conveyed its rights, interests, duties or obligations as Co-Developer under the Redevelopment Agreement to any other party.

4. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, successors and assigns.

5. Recording. This Assignment amends the Redevelopment Agreement to provide that the Assignee is the Co-Developer in the place of Assignor from and after the Effective Date

and this Assignment shall be recorded in order to give notice of the transfer of the rights to Assignee as Co-Developer.

6. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

7. Indemnification of the Assignor for Acts by Assignee After Effective Date. Assignee agrees to defend and hold the Assignor harmless from and against any and all claims arising out of Assignee's actions or performance or non-performance of the rights, obligations and duties of the Co-Developer under the Redevelopment Agreement from and after the date hereof.

8. Cooperation. Assignor agrees to cooperate with Assignee at Assignee's request and to accomplish any acts or transfers contemplated herein.

9. Authority. The individuals executing this Assignment on behalf of Assignor and Assignee each represent that they have the full power and authority to execute this Assignment and bind Assignor and Assignee to the terms hereof. Pursuant to Section 7.02(1) of the Redevelopment Agreement, the Assignor has the right to assign, in whole or in part, its rights and obligations under the Redevelopment Agreement to one or more Component Developers (as that term is defined in the Redevelopment Agreement), subject to the approval of the City Administrator following verification by the City Attorney that the assignment complies with the terms of the Redevelopment Agreement. The City hereby consents to the assignment contained herein evidenced by their execution below.

*(Remainder of page intentionally left blank. Signature page to follow.)*

*Signature Page to Assignment of Developer Rights*

IN WITNESS WHEREOF, the said Assignor and Assignee have caused this instrument to be executed this 9<sup>th</sup> day of March, 2018.

MERRIAM LUXURY IMPORTS, LLC,  
a Kansas limited liability company

By:

  
Richard Webb, Manager

STATE OF KANSAS )  
                        ) ss.  
COUNTY OF Johnson )

On this 9<sup>th</sup> day of March 2018, before me, the undersigned Notary Public, in and for said state, personally appeared Richard Webb, to me personally known, who, being by me and duly sworn did say that he is the Manager of Merriam Luxury Imports, LLC, a Kansas limited liability company, and that said instrument was signed on behalf of said limited liability company, and said person acknowledged said instrument to be the free act and deed of said limited liability company.

Subscribed and sworn to me the day and year above written.

  
\_\_\_\_\_  
Notary Public:

My commission expires:

4/27/2018



*Signature Page to Assignment of Developer Rights*

IN WITNESS WHEREOF, the said Assignor and Assignee have caused this instrument to be executed this 9<sup>th</sup> day of March, 2018.

MLI, INC.,  
a Kansas corporation

By: \_\_\_\_\_  
Name: Richard Webb  
Title: President

STATE OF Kansas )  
COUNTY OF Johnson ) ss.

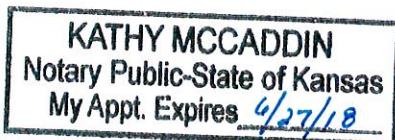
On this 9<sup>th</sup> day of MARCH, 2018, before me, the undersigned Notary Public, in and for said state, personally appeared Richard Webb, to me personally known, who, being by me and duly sworn did say that he/she is the \_\_\_\_\_ of MLI, Inc., a Kansas corporation, and that said instrument was signed on behalf of said corporation, and said person acknowledged said instrument to be the free act and deed of said corporation.

Subscribed and sworn to me the day and year above written.

Kathy McCaddin  
Notary Public:

My commission expires:

4/27/2018



*Signature Page to Assignment of Developer Rights*

The City Administrator hereby consents to the Assignment described herein under the Redevelopment Agreement.

CITY OF MERRIAM, KANSAS,  
a municipal corporation

By: *Christopher Engel*  
Name: *CHRISTOPHER ENGEL*  
Title: City Administrator

STATE OF Kansas )  
                        )  
                        ) ss.  
COUNTY OF Johnson )

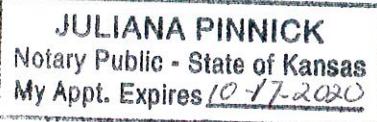
On this 12<sup>th</sup> day of March, 2018, before me, the undersigned Notary Public, in and for said state, came Christopher Engel, City Administrator of the City of Merriam, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, personally known to me to be the same person who executed the within instrument on behalf of said City, and duly acknowledged the execution of the same to be the act and deed on behalf of said City.

Subscribed and sworn to me the day and year above written.

*Juliana Pinnick*  
Notary Public:

My commission expires:

October 17, 2020



**EXHIBIT A**  
**Legal Description**

Beginning at the intersection of Interstate Highway 35 and 75<sup>th</sup> Street; thence west along 75<sup>th</sup> Street to a point 250 feet west of the west right-of-way line of the Burlington Northern Railroad; thence north 800 feet; thence east 100 feet; thence north 540 feet; thence east approximately 690 feet to the centerline of the Burlington Northern Right-of-Way; thence north along the centerline of the Burlington Northern right-of-way to the centerline of 67<sup>th</sup> Street; thence west along 67<sup>th</sup> Street to the west property line of Lot 5, Cunningham Gardens Subdivision; thence north along the west property line of Lot 5 to the south property line of West Vernon Place Unit No. 2 Subdivision; thence east along said south property line to the east property line of said West Vernon Place Unit No. 2 Subdivision; thence north to the north property line of said subdivision; thence east 100 feet along the boundary between the existing R-1 and I-1 zoning districts; thence north 750 feet along said zoning district boundary; thence easterly 230 feet along said zoning district boundary; thence northerly 200 feet along said zoning district boundary; thence easterly 253 feet along said zoning district boundary; thence northerly 50 feet along said zoning district boundary; thence easterly to the centerline of the Burlington Northern right-of-way; thence northerly along said railroad right-of-way to Shawnee Mission Parkway; thence east along said parkway to Interstate Highway 35; thence north along said highway to a point west of 62<sup>nd</sup> Terrace projected; thence easterly along 62<sup>nd</sup> Terrace to Slater Road; thence south along Slater Road to Shawnee Mission Parkway; thence west along said parkway to the intersection of the East Frontage Road; thence southwesterly along said frontage road to a point north of the west line of the Pinegate Subdivision projected; thence south along said line to a point east of 65<sup>th</sup> Street projected; thence west along said line and 65<sup>th</sup> Street to Interstate Highway 35; thence south along said highway to the point of beginning on 75<sup>th</sup> Street, and;

Part of the Southeast  $\frac{1}{4}$  of Section 12, Township 12 South, Range 24 East in the City of Merriam, Johnson County, Kansas, more particularly described as follows: BEGINNING at the point of intersection of the Centerline of Slater Road and the Centerline of Johnson Drive, said centerline of Johnson Drive also being the North line of the Southeast  $\frac{1}{4}$ , of said Section 12; thence North 90° West along the centerline of Johnson Drive and the North line of said Southeast  $\frac{1}{4}$ , 918.48 feet to the point of intersection of said North Line of the Northeast  $\frac{1}{4}$  and the Northerly prolongation of the Westerly right of way line of Grandview Avenue, said point of the intersection also being a point on the Easterly right of way line of Interstate Highway No. I-35; thence Southerly along the Easterly right of way line of Interstate Highway No. I-35 to the point of intersection of said Easterly right of way line of Interstate Highway No. I-35 and the Westerly prolongation of the Centerline of 62<sup>nd</sup> Street Terrace; thence South 89° 49' 24" East along said centerline of 62<sup>nd</sup> Street Terrace, 1129.62' to the point of the intersection of said centerline of said 62<sup>nd</sup> Street Terrace and the centerline of Slater Road; thence North 00° 37' 19" East, along the centerline of Slater Road, 2206.37 feet to the POINT OF BEGINNING. Containing 307 acres of land, more or less

# New Merriam Community Center City Council Update

May 11, 2020



**1<sup>st</sup> Meeting  
of the Month**

**City Council Project Updates  
(Available on the Website tomorrow!)**

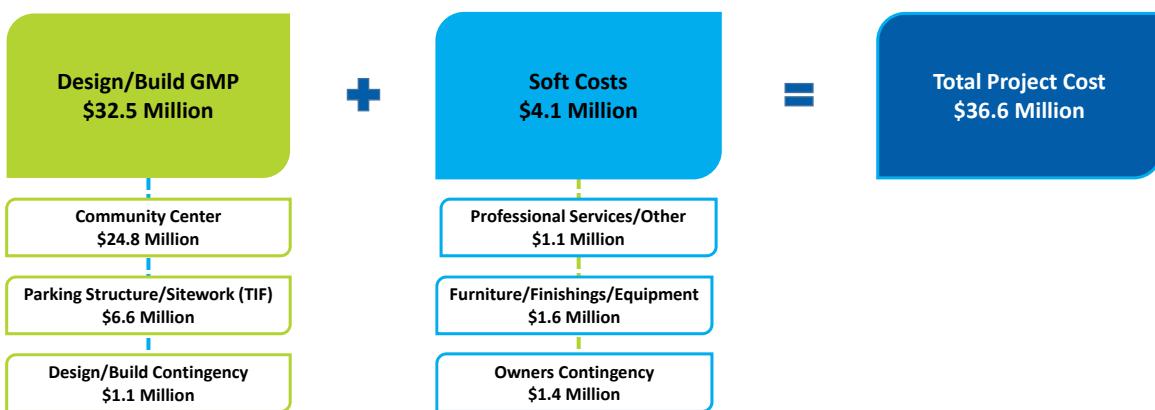


## C-19 IMPACT

- **Construction Continues:** Construction site continues to remain open, and additional health and safety measures have been implemented
- **Delayed Building Completion:** Staff announced at the April 27 City Council meeting that supply chain issues have delayed the completion of the construction by approximately three weeks.
- **Public Health Measures:** The building opening is also being impacted by the public health restrictions currently in place related to C-19. The impact on those is not fully known yet.
- **Tentative Opening Dates:** Assuming no changes to the current C19 phased re-opening plan and no additional construction delays, the building is tentatively set to open to charter members on June 22 and to the public on June 29.



## BUDGET UPDATE



## PROJECT LOOK AHEAD

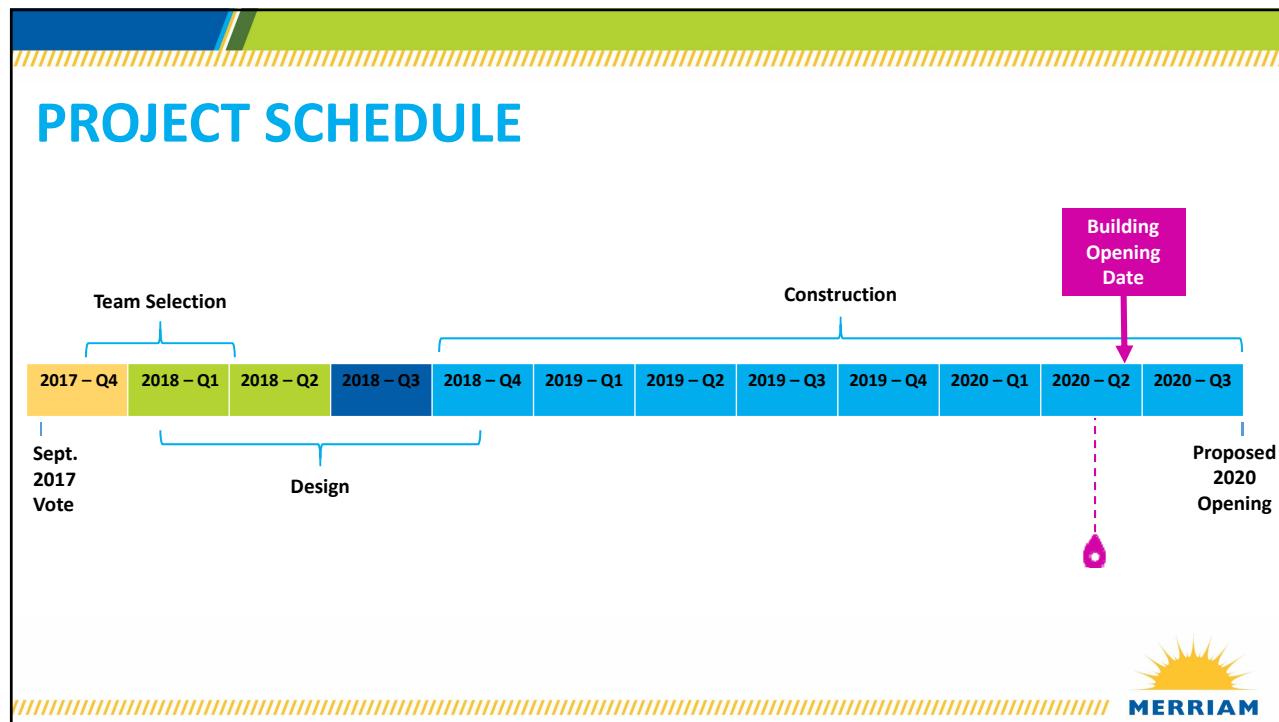
	May	June
Sitework and Utilities		
Parking Structure – Finishes		
Outdoor Pool		
Indoor Pool		
Community Center – Interior Finishes		
Gymnasium Fit Out		
Locker Room Area		
Hardscape/Landscape		



## CURRENT FOCUS AREAS

- **IT and AV**
- **FF&E**
- **Signage**
- **Moving and Opening Plan**







## INTEROFFICE MEMORANDUM

MERRIAM

**TO:** MAYOR AND CITY COUNCIL  
**FROM:** JIM MACDONALD, PUBLIC WORKS DIRECTOR  
**SUBJECT:** FEBRUARY UPDATE  
**DATE:** MAY 11 2020

### HIGHLIGHTS

#### 2019 Sidewalk In-Fill

- Sod has been placed, and the contractor continues to water for the required 20 days.
- Final payment to be issued as soon as sod is accepted.

#### 2020 Street & Storm Drainage - Johnson Dr. (BNSF to East City Limits)

#### Mastin St. Improvements (Johnson Drive to Shawnee Mission Parkway)

- Kansas Heavy Construction (KHC) is replacing storm drains on Mastin.
- KHC is replacing curbs on 65<sup>th</sup> St east of East Frontage.
- Water One is scheduled to begin replacing water main on Johnson Dr east of Antioch. May 12<sup>th</sup>. This work is anticipated to be complete May 29<sup>th</sup>.

#### 2020 Sidewalk In-Fill/2020 Sidewalk Maintenance

- Sidewalks have been placed on Perry Ave, 56<sup>th</sup> Ter between Perry Ave to Perry Ln, and 56<sup>th</sup> Ter east of Knox.
- Sod is anticipated to begin May 6<sup>th</sup>.
- Contractor has started replacing existing substandard sidewalks on 49<sup>th</sup> Pl, 49<sup>th</sup> Ter, and Farley west of Knox.

## Capital Improvement Active Project List

Last Updated 5/5/2020

PROJECT NAME	FUNDING SOURCES	BUDGETED CONSTRUCTION COST	ACTUAL CONSTRUCTION COST	STATUS	DESIGN CONSULTANT	PUBLIC MEETING #1	PUBLIC MEETING #2	PUBLIC MEETING #3	ENGINEER'S ESTIMATE	BID OPENING	AWARD AT COUNCIL	CONTRACTOR	CONTRACT AMOUNT	NOTICE TO PROCEED	PROJECTED SUBSTANT COMPLETION DATE
<b>2019</b>															
2019 Sidewalk In-Fill	Special Sales Tax Street/Stormwater	\$495,000		Construction	GBA	5/9/19			\$219,000.00	7/24/19	8/12/19	Phoenix Concrete	\$289,393.30	9/9/19	12/8/19
<b>2020</b>															
2020 Street & Storm Drainage Jo. Dr. (BNSF to East City Limits) Mastin St. (Jo. Dr. to SMP)	CARS/Sp. Sales Tax Street/Stormwater General CIP PW Mill & Overlay	\$2,654,728		Design	Affinis BHC Rhodes	1/22/20	3/11/20		\$2,840,162.50	2/19/20	3/9/20	Kansas Heavy Construction, LLC	\$2,425,180.00	4/13/20	
2020 Sidewalk In-Fill 2020 Sidewalk Maintenance	Special Sales Tax Street/Stormwater	\$245,000		Design	GBA/City Staff	2/5/20			\$265,008.40	2/26/20	3/9/20	Phoenix Concrete, LLC	\$237,184.26	4/8/20	



# CIP

## Capital Improvement Program



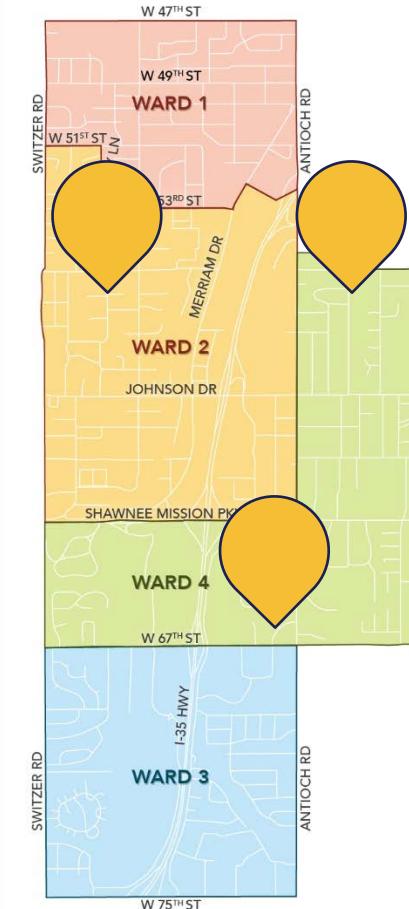
# Residential Sidewalk Infill

## TIMELINE 2019

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### UPDATES

- ▶ Contractor placed sod and continues to water for the required 20 days.
- ▶ Final payment will be issued as soon as sod accepted.



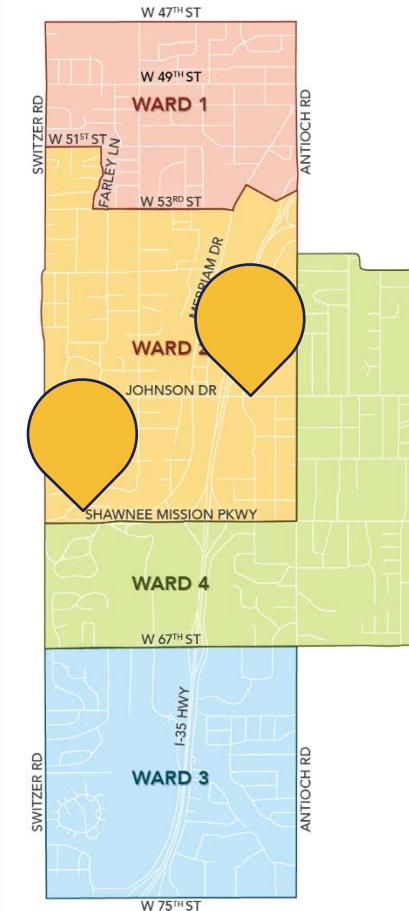
# 2020 CARS Johnson Drive/Mastin St.

## TIMELINE 2020

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### UPDATES

- ▶ Kansas Heavy Construction (KHC) is replacing storm drains on Mastin St.
- ▶ KHC is replacing curbs on 65<sup>th</sup> St. east of E. Frontage Rd.
- ▶ WaterOne is scheduled to replace water main on Johnson Dr. east of Antioch Rd. starting May 12. Anticipated to be completed by May 29.



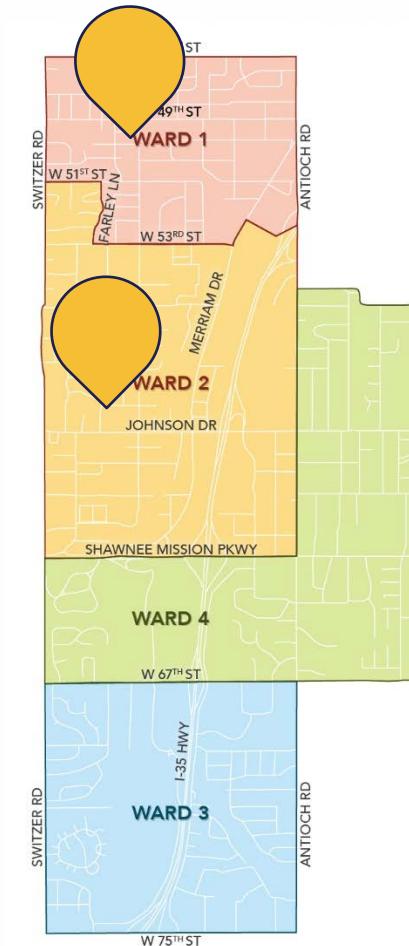
# 2020 Sidewalk Infill/Maintenance

## TIMELINE 2020

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### UPDATES

- ▶ Sidewalks were placed on Perry Ave., 56<sup>th</sup> Ter. between Perry Ave. to Perry Ln., and 56<sup>th</sup> Terrace east of Knox St.
- ▶ Sod placement started May 6.
- ▶ Contracted has started replacing sidewalks where needed on 49<sup>th</sup> Pl., 49<sup>th</sup> Ter. and Farley St. west of Knox St.



# Questions?

**Staff Contact:**

**Carl Sanders**

913-322-5521

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



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

### **CONSENT AGENDA**

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

### **MAYOR'S REPORT**

- 1. No motion.**

### **PUBLIC HEARING**

- 1. Move that the council authorize the Mayor to sign the 2021 CDBG application.**

### **FINANCE AND ADMINISTRATION**

- 1. Move that the council approve a franchise ordinance with Evergy Metro Inc.**
- 2. Move that the council approve an ordinance authorizing the sale, consumption and possession of alcoholic liquor during the Merriam drive Live Special Event.**
- 3. Move that the council waive the caterer's license fee for the Merriam Drive Live event.**
- 4. Move that the council approve the third Amended and Restated Merriam Pointe Redevelopment Agreement and authorize the Mayor to sign the agreement.**
- 5. No motion.**

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

- 1. No motion.**

### **STAFF ITEMS**

### **EXECUTIVE SESSION**