

**MERRIAM CITY COUNCIL AGENDA
CITY HALL
9001 WEST 62ND STREET
May 9, 2016
7:00 P.M.**

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

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. PUBLIC ITEMS

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

IV. CONSENT AGENDA

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

1. Consider approval of the minutes of the City Council meeting held April 25, 2016.
2. Consider approval of an interlocal agreement with KDOT for Shawnee Mission Parkway Bridge over BNSF railroad.
3. Consider approval of an interlocal agreement with Johnson County CARS (County Assisted Road System) for Antioch Rd from 67th to Johnson Dr.

V. MAYOR'S REPORT

1. Swearing in of Police Officer Austin Twite.
2. Confirm the appointment of Nicole Proulex Aiken as City Attorney.

VI. PUBLIC HEARING - Public Hearing regarding the City's grant application submittal for 2017 Community Development Block Grant (CDBG) funding.

VII. COUNCIL ITEMS

A. Finance and Administration

1. Acknowledge receipt of the City's 2015 Financial Statement Audit.
2. Fire Department Annual Report.
3. Consider approval of a Charter Ordinance regarding elections, repealing Charter Ordinance No. 25. (first reading).
4. Consider approval of an Ordinance amending section 2-28 of the Merriam Code of Ordinances, revising the election date for council president and vice-president. (first reading)
5. Consider approval of an Ordinance amending section 2-61 of the Merriam Code of Ordinances, revising the dates for the terms of appointed officers. (first reading)
6. Consider approval of a Charter Ordinance related to the filling of Governing Body vacancies. (first reading)
7. Consider approval of an ordinance amending section 2-27 of the Merriam Code of Ordinances related to filling City Council vacancies. (first reading)
8. Monthly Finance Report. (included in packet)

B. Community Development/Public Works/CIP

1. Consider approval of a Professional Services Agreement (PSA) with George Butler & Associates (GBA) for engineering services for City wide sidewalk in-fill project.
2. Consider approval of a Professional Services Agreement (PSA) with Affinis for engineering services for Residential Street Group V (51st Street, Merriam Lane, Campbell Street).
3. 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
CITY HALL
9001 WEST 62ND STREET
APRIL 25, 2016
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Scott Diebold
Al Frisby
Chris Evans Hands
Nancy Hupp
Bob Pape
Cheryl Moore
Robert Weems
Jim Wymer

Staff present: Phil Lammers, City Administrator; Mike Daniels, Police Chief; Cindy Ehart, Finance Director; Chris Engel, Assistant City Administrator; Gerry Vernon, CIP Director; Anna Slocum, Parks and Recreation Director; Bryan Dyer, Community Development Director; Kevin Bruemmer, Public Works Director and Juli Pinnick, City Clerk.

III. PUBLIC ITEMS

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

William Young, 10200 W. 62nd St. addressed the council regarding the JoCo Special Edition transportation service. This service was advertised in a city publication recently. Mr. Young and many of the residents in his building have had numerous problems with the service such as a 3 day waiting period, being late to take residents for appointments, and not showing up at all. Mr. Young suggested the City participate in the 10-10 Taxi voucher program as other surrounding cities have done. It appears that the Special Edition service is too busy to handle all the requests for service.

Jordan Gomez, 9100 W. 70th St. addressed the council concerning the proposed improvements to Farley Ave. Ms. Gomez indicated that she supports the improvements but has concerns over the increased traffic and safety on 70th St. Having attended the public meetings and listening to the 3 goals presented for

the project, safety was not one of those goals presented. Her concerns are the removal of the speed tables on Farley will likely increase traffic speeds in her neighborhood. Her block of W. 70th St. has no sidewalks. There have been three accidents at the intersection of W. 70th St and 70th Terr. in the two years she has lived at her address. A few other neighbors have come to council meetings and it appears that the city is taking a wait and see approach to the concerns raised.

Mayor Sissom commented that the intersection at 69th and Farley has been two-way traffic for many years and it will be again once it is reopened. Making Farley a one-way has caused traffic increases in other neighborhoods and unfortunately that is going to happen when changes occur to roads. Sidewalks are going to be installed in the blocks of 70th St. where none currently exist as they are needed in that area.

Regarding increased traffic, Mayor Sissom commented that according to the traffic study, it does not appear that folks will be going down 70th St. as it is more efficient for drivers to go down Farley, take 69th St. straight west toward Shawnee. Therefore, there is no reason to believe that traffic will increase on 70th St. Speed tables have only been discussed on Farley, not on 70th St. In addition, speed tables can cause their own set of problems and are not typically installed simply because someone requests them. There needs to be a real need for the speed tables and currently there is no evidence that there is a need at this time. If that changes after the street improvements are completed, then that will be considered.

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 a final plat (P-2-16) located at 8910 W. 62nd Ter.
2. Consider approval of the purchase of Mobile Column Lifts in the amount \$46,489.79 for Public Works.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEMS 1-2. COUNCILMEMBER PAPE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

V. MAYOR'S REPORT

- VI. PUBLIC HEARING** - Public Hearing regarding possible City improvement projects to submit for 2016 Community Development Block Grant (CDBG) funding.

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

Previously, the City of Merriam has been allocated federal funds through the Johnson County Community Development Block Grant (CDBG) program. The City has used CDBG funding for street reconstruction projects including Goodman Street north of Johnson Drive (2003); Mastin Street from 53rd to 55th Street (2005); and Farley Street from 53rd to 55th Street (2007). The City has also received CDBG funds for the installation of streetlights in the West Vernon Place (2009 CDBG Recovery) subdivision, in the general area of 51st and Knox Street (2009) and the Forest Park (2014) subdivision. The city has also applied for, but did not receive, CDBG funds for 2010, 2011, and 2012. In 2015, the city received \$70,000 in CDBG funding for the installation of streetlights in an area generally bounded by W. 53rd St., Knox Ave., W. 51st St., and Switzer Rd. For this year, the city has been approved to receive \$100,000 in CDBG funding for the installation of streetlights in the Antioch Hills neighborhood.

Johnson County has requested proposals for 2017 CDBG funds. The maximum one-year request for a public improvement is \$100,000.

If the City Council wishes to submit an application for 2017 funding, the first step in the process is to conduct a Public Hearing. Johnson County recommends conducting two Public Hearings. The first hearing is to receive input from the public on possible projects. The second hearing is to receive public input on the City's 2017 CDBG application. This evening's hearing is the first recommended Public Hearing.

The CDBG program requires that CDBG funded activities be used to principally benefit low and moderate income persons, aid in the prevention or elimination of slums or blight, or meet a community development need having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet that need. When CDBG funds are proposed for public improvements, 51 percent of the residents within the census block group, where the improvement is to occur, must be at or below the area's moderate income level. Moderate income level is considered to be an income level that is at 80 percent of the area's median income.

Because Johnson County has a low number of census block groups that qualify for CDBG funds, the federal government has modified the criteria for CDBG eligible block groups in Johnson County. For Johnson County, all block groups in which 33.92 percent of the population has an income equal or less than 80 percent of the area's median income, as estimated by HUD's Office of Community Planning and Development, are eligible for CDBG funds.

The City has seven block groups within the city limits that meet the 33.92 percent threshold.

Staff recommends that the City submit a request for 2017 CDBG funding for the installation of 30 streetlights in an area bounded by W. 69th St., W. 70th St., W. 70th Ter., and Switzer Rd.

This will be a project with a funding scope similar to this year's project with a budget of \$179,000. Staff recommends requesting \$100,000 in CDBG funds with CIP funding the remaining portion of the project. If directed by Council, staff will prepare a CDBG application for the streetlight project and any additional projects. The application will be on the Council's May 9, 2016 agenda for the second Public Hearing.

Mayor Sissom opened the Public Hearing at 7:20 pm. There were no public comments. Mayor Sissom closed the Public Hearing at 7:21 pm.

COUNCILMEMBER HUPP MOVED THAT THE COUNCIL DIRECT THE PUBLIC WORKS DIRECTOR TO FORWARD THE CITY'S APPLICATION FOR CDBG FUNDING. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

VII. PLANNING COMMISSION

VIII. COUNCIL ITEMS

1. Consider approval of the minutes of the City Council meeting held April 11, 2016.

COUNCILMEMBER MOORE MOVED THAT THE COUNCIL APPROVE THE MINUTES OF THE CITY COUNCIL MEETING HELD APRIL 11, 2016. COUNCILMEMBER WEEMS SECONDED AND THE MOTION WAS APPROVED. COUNCILMEMBERS WYMER AND FRISBY ABSTAINED.

A. Finance and Administration

1. Police Department Annual Report.

Police Chief Mike Daniels presented the Police Department Annual Report for 2015.

2. Consider approval of a change to the City's Compensation Plan adding the position of a Crime Analyst.

Police Chief Mike Daniels presented the background for this item.

With the retirement of one of our police records clerks the Police Department would like to reorganize some positions in the department. Currently the department has three records clerks, one of those clerks will be retiring at the end of June. In looking at the workloads and needs of the department, it was found that the department could use a Crime Analyst rather than replacing the records clerk position. The Crime Analyst would be a new civilian position. This reorganization would allow for two police records clerks and one crime analyst, all non-sworn positions. The change will not increase the number of police department employees. The Crime Analyst will help the department move forward with intelligence led/problem oriented policing. Many surrounding cities have Crime Analysts.

The salary range for the new crime analyst position would be \$42,556 -- \$63,833, which is the same salary range as a police officer.

A Crime Analyst collects, categorizes, and analyzes qualitative and quantitative data pertaining to past and current criminal activity; prepares and disseminates reports using various illustrative and statistical methods; and makes recommendations pertaining to existing and anticipated criminal activity to the Police Department Command Staff, the Patrol and Investigations Divisions, and external agencies as appropriate.

Crime analysis is key to effectively deploying law enforcement resources. By not having a Crime Analyst we believe that we diminish our ability to identify criminals and crime trends and, therefore, are less effective at fulfilling our mission. Inefficiencies in policing negatively affect Department and City operations, public perceptions and fiscal resources. The Department's Command Staff and other key members discuss crime trends, accident data, enforcement actions, investigative efforts, and other relevant information to better direct resources and manpower. The Crime Analyst will play a vital role in this effort by providing information about current criminal activity and trends.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A CHANGE TO THE CITY'S COMPENSATION PLAN, ADDING THE POSITION OF CRIME ANALYST AND REMOVING 1 RECORDS CLERK POSITION EFFECTIVE JULY 1, 2016. COUNCILMEMBER WEEMS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

B. Community Development/Public Works/CIP

1. Community Development Update.

Community Development Director Bryan Dyer provided the following updates:

The CitizenServe software implementation continues to move forward with good progress and will hopefully be up and running by summer.

Shawnee Mission Medical Center projects are moving along well.

Crestview Elementary School project is making good progress and you can easily see the progress from Shawnee Mission Parkway.

The Slater Retail project has been issued a grading permit and they will be connecting the new sanitary sewer line soon.

With the spring rains the grass is growing and Community Development staff has sent out 24 violation notices for tall weeds and grass last week.

IX. STAFF ITEMS

1. Discussion regarding request from Mr. & Mrs. Greene to allow non-conforming uses on property located at 8012 W. 55th Terrace.

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

At the April 11, 2016 City Council meeting, Robert and Joan Greene, owners of 8012 W. 55th Terrace, made comments during the Public Items portion of the meeting agenda. Specifically, they commented that they owned a single family residence at 8012 W. 55th Terrace that they had been renting out as two dwelling units, a main floor and basement unit. This had been occurring for as long as they have owned the property until the basement unit tenant, Robert Brewer, passed away. Following Mr. Brewer's death, the Greene's for a variety of family health reasons, were unable to renovate and rent out the basement unit.

Mr. Dyer displayed photos of the property and its structures.

In the latter part of March 2016, the Greene's visited City Hall to apply for a permit to renovate the basement unit. City staff communicated to the Greene's that because the basement unit had not been used for the past six months, the unit could no longer be leased as a separate unit.

The Greene's requested that the City Council revise the City Code to allow the basement unit to be considered a legal nonconforming use so it could be renovated and leased.

A structure or use that was permitted prior to the establishment of zoning regulations or a change in zoning regulations making the structure or use illegal, is termed a legal nonconforming structure or use. Merriam Code Chapter 74, Article XIV, Divisions 3 and 4 covers non-conforming uses and structures. Those sections state that a nonconformity may continue if a number of conditions are met. One of those conditions is that the nonconforming use not be abandoned for more than six (6) consecutive months.

The six (6) month time frame for the discontinuation of a nonconforming use is a typical time period and consistent with surrounding communities. The purpose of not allowing a nonconforming use to continue after it has been discontinued is to maintain the integrity of the property's zoning classification. The neighborhood in which a nonconforming use is located typically expects that when a use has been discontinued it will not be allowed to restart.

The Greene's property is zoned R-1 (Single Family) District. All of the properties surrounding the subject property are zoned R-1 District. Per the Johnson County Appraiser's records, the structures on the subject property were constructed prior to 1950, preceding Merriam's adoption of zoning regulations in 1952. The Greene's acquired the property in 1976.

There are two residential structures located on the subject property. Merriam zoning regulations allow only one single family structure on a single parcel of property zoned R-1 District; therefore, one of the single-family structures is not in compliance with the property's zoning classification. Additionally, in the past the front residential structure had been utilized as a two family dwelling with two residential units for lease. Two family dwelling uses are not permitted in R-1 Districts.

As stated earlier, Merriam Code requires that nonconforming uses not be allowed to continue if the use has been abandoned or discontinued for six (6) consecutive months. Based upon the Greene's statements and the city's 2014 inspection, the separate basement unit has not been leased for 29 consecutive months and, per Merriam Code, the use is considered to be discontinued.

The Greene's have requested that the City Council allow the basement unit to once again be utilized as a separate dwelling unit, creating three (3) residential units on a single parcel that is zoned R-1 (Single Family Residential) District and is surrounded by properties zoned single family residential.

To facilitate this request, the Planning Commission would have to consider, and City Council approve, increasing the length of time a nonconformity can be abandoned or discontinued from six months to 30 months or more.

Regarding the specific property owner's request; the subject property's structures and use are not in conformance with the property's R-1 District zoning. The elimination of the basement dwelling unit brings the property closer to being in conformance with the City Code and surrounding neighborhood single family uses.

Regarding the larger impact of the property owner's request; increasing the length of time a nonconformity can be abandoned could have a significant impact on neighborhoods. One of the purposes of zoning regulations is to provide property owners with some assurance that they know the allowable uses in their neighborhood. Elimination of nonconforming uses, as provided for in the Merriam Code, preserves the zoning integrity of neighborhoods.

Joan Greene, 5639 Flint St. Shawnee, address the council regarding some history of the property. When the front house was built the basement was equipped as a mother-in-law quarters. The Greene's purchased the home in 1976 and rented that out as a studio apartment. Due to family health issues, the Greene's were unable to renovate the space after the tenant passed away in November 2013. A family friend indicated interest in renting the basement unit for his son. He looked at the unit and decided that it was in disrepair but offered to renovate the space as he and his son are construction contractors. After coming to the City to obtain a permit for the renovation it was then that the Greene's learned that the use was no longer allowed as 6 months had passed since the unit had been functioning as a separate rental unit. The Greens were unaware of that limitation on non-conforming uses.

Councilmember Frisby indicated that he is a close friend of the Greens son, who has experienced some major health issues in the past couple of years. Councilmember Frisby asked if there was any way the city could excuse or exempt the time delay in this circumstance without changing the code.

City Attorney Michelle Daise commented that there really is no way for the city to excuse or exempt this situation. The zoning regulations in this case are very common in zoning laws across the country; this is not a unique regulation for Merriam. Most municipalities have these types of clauses in their zoning regulations in an effort to maintain standards in zoning districts.

These policies and regulations are in place to ensure that all people are treated equally. While the council may feel bad and have sympathy for this situation, all cases must be treated the same. It would be no different than if the council for some reason did not like the particular use of a property, even though it was a legal use, simply did not like the use and therefore would deny approvals. These regulations are put in place to ensure that everyone is treated fairly and equitable and that there is no discrimination from one case to another.

Unfortunately, there is nothing that can be done to excuse the circumstances. It is important to be consistent in these types of situations and to follow the laws and procedures in place. In this situation the use discontinued for 30 months which is almost 2 ½ years that this condition existed, then to then excuse it after 2 ½ years is contrary to typical zoning laws and policies nationwide which are in place to try to bring properties in conformance with the neighboring properties. The regulations have been in place for years when the city was first incorporated and it was not like the city suddenly decided to change the zoning regulations which then caused this property to be out of compliance.

Mrs. Greene asked if they could restore the basement unit with the mother-in-law type of quarters and then advertise as such when looking for a new tenant.

Mr. Dyer responded that the way the code treats dwelling units in regard to kitchens, if a unit has a kitchen it is considered a separate dwelling unit; he asked Mrs. Greene if the basement has a kitchen in it.

Mrs. Greene replied that the kitchen has been cleared out however, there are utilities adequate for a kitchen.

Mr. Dyer commented that because the code defines units having kitchens as a separate dwelling or rental unit, a kitchen in the basement would not be allowed.

X. NEW BUSINESS

XI. EXECUTIVE SESSION

XII. ADJOURNMENT

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL,
COUNCILMEMBER HANDS MOVED TO ADJOURN AT 8:10 PM.
COUNCILMEMBER WEEMS SECONDED AND THE MOTION WAS
UNANIMOUSLY APPROVED.**

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk

DRAFT

AGENDA ITEM INFORMATION FORM

Agenda Item: Execute Inter-local Agreement with Kansas Department of Transportation (KDOT) for bridge rehabilitation on Shawnee Mission Pkwy over BNSF Railroad.
KDOT Project #: 46 N-0632-01, Agreement #:244-16

Department: Capital Improvement Program (CIP)/Public Works

Background/Description of Item:

The 2011 biennial bridge inspection report identified the Shawnee Mission Parkway Bridge over the Burlington Northern Santa Fe Railroad as a priority bridge for rehabilitation. The bridge was originally constructed by KDOT in the 1930's and appears to have been widened with new girders in the 1980's. It was annexed into the City of Merriam in the 1990's. This bridge carries more than 40,000 vehicles per day and plays a significant role in our transportation system.

The bridge qualified for Federal Surface Transportation Programs dollars so an application was made through the Mid-America Regional Council in 2012. In 2013 the City was awarded a grant of \$1,678,000 for rehabilitation. Staff also applied for Johnson County CARS funding.

A mill and overlay of SMP from the bridge to the west City limits was added to the bridge rehabilitation to take advantage of combining bids and traffic control devices. KDOT has also added maintenance work on SMP east of the bridge.

Approval of this agreement will allow the City to utilize federal funds for the bridge rehabilitation. Much like the recent Johnson Drive Bridge over Turkey Creek, KDOT will be the managing agency for the project.

The City Attorney is reviewing the inter-local agreement for approval.

Enclosures: KDOT Inter-local agreement

Related Ordinance(s) or Statute(s): None

Recommendation: Recommend that Council authorize the Mayor, and the City Clerk to execute the Inter-local Agreement with KDOT for bridge rehabilitation on the SMP Bridge over the BNSF Railroad.

Funding Source:	STP Federal Funds – Special Sales Tax	
	Total Project Cost	\$2,843,599
	CARS Eligible	\$2,543,599
	STP Funds	\$1,678,000
	CARS match (50%)	<u>\$449,875</u>
	Merriam Net Cost	\$715,742

Prepared by: Gerry Vernon, CIP Director
Date: May 9, 2016

PROJECT NO. 46 N-0632-01
STP-U023(301)
BRIDGE REHABILITATION
CITY OF MERRIAM, KANSAS

AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Merriam, Kansas** (“City”), **collectively**, the “Parties.”

RECITALS:

- A. The City has requested and Secretary has authorized a city street Project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing federal funds.
- C. The Secretary and the City desire to construct the Project.
- D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Merriam, Kansas, with its place of business at 9000 W 62nd Terrace, Merriam, KS 66202-2815.
- 3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
- 5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.

17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **Rehabilitation of bridge over BNSF Railway on Shawnee Mission Parkway in Merriam, Kansas**, and is the subject of this Agreement.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
24. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.
2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.

3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$1,678,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$2,097,500.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

4. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- (c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for

the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

8. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

9. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) **Right of Way Documentation.** The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) **Relocation Assistance.** The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) **Non-Highway Use of Right of Way.** Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way

or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. Intentionally deleted.

(f) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

10. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

11. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **Utilities.** The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

13. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

14. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all personnel performing Construction Engineering to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

15. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) **Parking Control.** The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

16. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

17. **Maintenance.** When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

18. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$2,097,500.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$2,097,500.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

19. **Cap Amount for Project Costs.** The City agrees that the “Not to Exceed” dollar amount above is subject to change as listed in the City’s MPO’s Transportation Improvement Plan (“TIP”). Final “Not to Exceed” dollar amounts will be determined by the Secretary at the time of Letting. Any necessary changes to the “Not to Exceed” amounts will be documented through a supplemental agreement.

20. **Remittance of Estimated Share.** The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

21. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary’s Chief of Fiscal Services.

22. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

23. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary’s statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.
2. **Civil Rights Act.** The “Special Attachment No. 1,” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.
4. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.
5. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.
6. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF MERRIAM, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

AGENDA ITEM INFORMATION FORM

Agenda Item: Execute an Inter-local Agreement with Johnson County for Johnson County's County Assistance Road System (CARS) funding of the mill and overlay of Antioch Road from 67th St. Johnson Drive. (CARS Project # 320001133.)

Department: Capital Improvement Program CIP/Public Works

Background/Description of Item:

Staff requested funding from Johnson County's County Assistance Road System (CARS) program for the Antioch Road Improvement between 67th Street and Johnson Drive. The Johnson County Board of County Commissioners adopted the project funding in the fall of 2015 for construction in 2016.

As submitted, the original engineer's estimate for total project costs was \$1,956,283.00. However, CARS eligible costs (construction and construction engineering only) were \$1,756,000. The CARS program will fund 50% of eligible costs up to \$878,000.00.

The project has actually been reduced from the original engineer's estimate due to the removal of the con-span bridge from the project. The reduction gives us extra contingency to cover unexpected costs. However, we will only be reimbursed for actual construction costs spent.

The City Attorney will review the Inter-local Agreement before execution.

Enclosure: CARS agreement

Related Ordinance(s) or Statute(s): None

Recommendation: Recommend that Council authorize the Mayor, City Clerk, and City Attorney to sign and execute the Inter-local Agreement with Johnson County for the County's CARS program on the Antioch Road – 67th to Johnson Drive Improvement Project. (CARS Project No. 320001133.)

Funding Source:	Updated Project Cost	\$1,492,359.00
	Est. CARS	<u>\$579,002.00</u>
	Net Cost – Specials Sales Tax	\$913,357.00

Prepared by: Gerry Vernon, CIP Director

Date: May 9, 2016

**Agreement between Johnson County, Kansas,
and the City of Merriam, Kansas, for the Public Improvement of
Antioch Road from Johnson Drive to 67th Street
(320001133)**

THIS AGREEMENT, made and entered into this _____ day of _____, 2015 by and between the Board of County Commissioners of Johnson County, Kansas ("Board") and the City of Merriam, Kansas, ("City").

WITNESSETH:

WHEREAS, the parties have determined that it is in the best interests of the general public in making certain public improvements to Antioch Road from Johnson Drive to 67th Street (the "Project"); and

WHEREAS, the laws of the State of Kansas authorize the parties to this Agreement to cooperate in undertaking the Project; and

WHEREAS, the governing bodies of each of the parties have determined to enter into this Agreement for the purpose of undertaking the Project, pursuant to K.S.A. 12-2908 and K.S.A. 68-169, and amendments thereto; and

WHEREAS, the Project has been approved, authorized, and budgeted by the Board as an eligible project under the County Assistance Road System ("CARS") Program; and

WHEREAS, the Board has, by County Resolution No. 106-90, authorized its Chairman to execute any and all Agreements for County participation in any CARS Program project which has been approved and authorized pursuant to the Policies and Guidelines adopted by the Board and for which funding has been authorized and budgeted therefore; and

WHEREAS, the governing body of the City did approve and authorize its Mayor to execute this Agreement by official vote on the _____ day of _____, 2015.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:

1. **Purpose of Agreement.** The parties enter into this Agreement for the purpose of undertaking the Project to assure a more adequate, safe and integrated roadway network in the developing and incorporated areas of Johnson County, Kansas.

2. **Estimated Cost and Funding of Project**

a. The estimated cost of the Project (“Project Costs”), a portion of which is reimbursable under this Agreement, is One Million Nine Hundred Fifty Six Thousand Two Hundred Eighty Three Dollars (\$1,956,283).

b. Project Costs include necessary costs and expenses of labor and material used in the construction of the Project and construction inspection and staking for the Project.

c. The Project Costs shall be allocated between the parties as follows:

i. The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Eight Hundred Seventy Eight Thousand Dollars (\$878,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the City may be reimbursed through any source other than the general residents or taxpayers of the City. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:

1. Land acquisition, right-of-way acquisition, or utility relocation;
2. Legal fees and expenses, design engineering services, Project administration, or financing costs;

3. Taxes, licensing or permit fees, title reports, insurance premiums, exactions, recording fees, or similar charges;
4. Project overruns;
5. Project scope modifications or major change orders which are not separately and specifically approved and authorized by the Board; and;
6. Minor change orders which are not separately and specifically approved and authorized by the Director of Public Works & Infrastructure of Johnson County, Kansas ("Public Works Director"). Minor change orders are those which do not significantly alter the scope of the Project and which are consistent with the CARS Program Policies and Guidelines and administrative procedures thereto adopted by the Board.

It is further understood and agreed that notwithstanding the designated amount of any expenditure authorization or fund appropriation, the Board shall only be obligated to pay for the authorized percentage of actual construction costs incurred or expended for the Project under appropriate, publicly bid, construction contracts. The Board will not be assessed for any improvement district created pursuant to K.S.A. 12-6a01 et seq., and amendments thereto, or any other improvement district created under the laws of the State of Kansas.

- ii. The City shall pay One Hundred Percent (100%) of all Project Costs not expressly the Board's obligation to pay as provided in this Agreement.

3. **Financing**

- a. The Board shall provide financial assistance, as provided in Paragraph 2.c. above, towards the cost of the Project with funds budgeted, authorized, and appropriated by the Board and which are unencumbered revenues that are on-hand in deposits of Johnson County, Kansas. This paragraph shall not be construed as limiting the ability of the Board to finance its portion of the costs and expenses of the Project through the issuance of bonds or any other legally authorized method.
- b. The City shall pay its portion of the Project Costs with funds budgeted, authorized, and appropriated by the governing body of the City.

4. **Administration of Project.** The Project shall be administered by the City, acting by and through its designated representative who shall be the City public official designated as Project Administrator. The Project Administrator shall assume and perform the following duties:

- a. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the Project Costs.
- b. Submit a copy of the plans and specifications for the Project to the Johnson County Public Works Director for review, prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Public Works Director or his designee shall review the copy of the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.
- c. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City. In the solicitation of bids, the appropriate combination of best bids shall be determined by the City.
- d. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.
- e. Submit to the Public Works Director a statement of actual costs and expenses in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the

month in which costs and expenses have been paid. The Public Works Director shall review the statement or payment request to determine whether the statement or payment request is properly submitted and documented and, upon concurrence with the Finance Director of Johnson County, Kansas, (“Finance Director”) cause payment to be made to the City of the Board's portion of the Project Costs within thirty (30) days after receipt of such payment request. In the event federal or state agencies require, as a condition to state or federal participation in the Project, that the Board make payment prior to construction or at times other than set forth in this subsection, the Public Works Director and the Finance Director may authorize such payment.

- f. Except when doing so would violate a state or federal rule or regulation, cause a sign to be erected in the immediate vicinity of the Project upon commencement of construction identifying the Project as part of the CARS Program. The form and location of the sign shall be subject to the review and approval of the Public Works Director.

Upon completion of the construction of the Project, the Project Administrator shall submit to each of the parties a final accounting of all Project Costs incurred in the Project for the purpose of apportioning the same among the parties as provided in this Agreement. It is expressly understood and agreed that in no event shall the final accounting obligate the parties for a greater proportion of financial participation than that set out in Paragraph 2.c. of this Agreement. The final accounting of Project Costs shall be submitted by the Project Administrator no later than sixty (60) days following the completion of the Project construction.

It is further understood and agreed by the City that to the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.

This agreement to indemnify shall not run in favor of or benefit any liability insurer or third party.

In addition, the City of Merriam shall, and hereby agree to, insert as a special provision of its contract with the general contractor ("Project Contractor") chosen to undertake the Project construction as contemplated by this Agreement the following paragraphs:

The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City of Merriam harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her sub-contractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

5. Acquisition of Real Property for the Project

- a. The Board shall not pay any costs for acquisition of real property in connection with the Project.
- b. The City shall be responsible for the acquisition of any real property, together with improvements thereon, located within the City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

- a. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.b. herein below. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The City shall provide a copy of the Project Administrator's certification to both the Public Works Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.
- b. It is understood and agreed that the Public Works Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project by the City. In the event that the Public Works Director determines that satisfactory progress is not being made on the Project due to the City's breach of this Agreement by not meeting the agreed upon project deadlines or otherwise not complying with the terms of this Agreement, the Public Works Director is authorized to notify the City that it shall have thirty (30) days from receipt of such notification to take steps to cure the breach (the "Cure Period"). It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Public Works Director, that satisfactory progress is not being made on the Project and that the City has not taken sufficient steps to cure the breach during the Cure Period. Should the Board exercise its option as provided herein, it shall send written notice of the same to the City and the Board shall have no further liability or obligation under this Agreement.

7. **Placing Agreement in Force.** The attorney for the City shall cause sufficient copies of this Agreement to be executed to provide each party with a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto and made effective on the day and year first above written.

**Board of County Commissioners of
Johnson County, Kansas**

City of Merriam, Kansas

Ed Eilert, Chairman

Ken Sissom, Mayor

Attest:

Attest:

Linda W. Barnes
Clerk of the Board

City Clerk

Approved as to form:

Approved as to form:

Robert A. Ford
Assistant County Counselor

City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Conduct a Public Hearing regarding the City’s grant application submittal for 2017 Community Development Block Grant (CDBG) funding

Department: Community Development

Background/Description of Item:

This is the second of two scheduled Public Hearings regarding the City’s application to Johnson County for 2017 CDBG funds. The first hearing occurred on April 25, 2016. The purpose of that hearing was to receive input from the public on which public improvement project the City should submit for funding. There was no public comment at the meeting. Following the conclusion of the Public Hearing, the City Council directed staff to work on a CDBG application for the installation of 30 streetlights in Meyer Estates neighborhood.

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

The City of Merriam’s 2017 CDBG application is for \$100,000 to be used for the removal of 20 KCPL “cobra head” streetlights and the installation of 30 City of Merriam standard streetlights in the southwest portion of the city. 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 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 a neighborhood.

Since the new lights are City owned and metered, the City only pays the actual cost of the electricity used.

Total project cost \$176,857

Funding -

CDBG \$100,000

CIP \$38,573

Public Works Labor \$38,284

Related Ordinance(s) or Statute(s): None.

Recommendation: Authorize the Mayor to sign the City’s 2017 CDBG application.

Prepared by: Bryan P. Dyer, Community Development Director

Date: May 9, 2015

**JOHNSON COUNTY/OLATHE 2017 CDBG APPLICATION
PUBLIC FACILITIES and IMPROVEMENTS
PART 1 - PROJECT SUMMARY**

For CDBG Staff Use Only.

Date Received: _____ Amount Requested: _____
Matrix Code: _____
Environmental Status: _____ Code Citation: 24 CFR 58. _____
National Objective Code: _____ Code Citation: 24 CFR 570.208 _____

The Project Summary may not exceed two (2) pages.

1. Applicant

Name: City of Merriam
Address: 9001 W. 62nd Street
City/ZIP: Merriam, Kansas 66202
Phone: 913-322-5520 WEB Site: www.merriam.org
DUNS #: 048143911

2. Contact person responsible for all communications concerning this proposed project.

Name: Bryan P. Dyer
Address: 9001 W. 62nd Street
City/ZIP: Merriam, Kansas 66202
Phone: 913-322-5527 E-mail: bdyer@merriam.org

3. Title of the proposed project:

Merriam Street Visibility Improvement Project – Meyers Estates

4. Address/location for the proposed project

(If the project is carried out at more than one location, provide complete addresses on a separate sheet. This is necessary for the Environmental Review required by HUD.)

See attached list of addresses within the project area (Attachment A).

5. Amount of CDBG funds being requested: \$100,000

Type and Amount of funds the applicant is committing to this project:

(These are your leveraged funds.)

<u>City of Merriam Capital Improvement Fund</u>	<u>\$38,573</u>
<u>City of Merriam Personnel</u>	<u>\$38,284</u>

6. **In TWO sentences provide a concise description of the project.**
*(This **MUST** be brief, clear and to the point.)*

The City of Merriam Public Works Department will remove 20 existing cobra head style streetlights that are spaced approximately 300 feet apart and are randomly scattered throughout the project area. The city will then strategically place 30 new brushed aluminum higher efficiency residential streetlights at an approximate spacing of 150-200 feet apart.

7. **If this Public Facility/Improvement project benefits an area, provide each Census 2000 Tract & Block Group for the entire service benefit area. Please provide the rational for your service area.**

Census Tract(s): 520.04
Block Group(s): 01

Boundaries of service area: See attached boundary map (Attachment B)

Rational for boundaries of benefit area listed above:

The proposed service area is in the Meyers Estates neighborhood. This neighborhood is in one of Merriam's census block groups with a higher percentage of moderate to low income households. Turkey Creek Streamway Trail is located on the eastern portion of this neighborhood. The installation of the streetlights in the neighborhood will provide a number of benefits including lighting for residents walking or biking to the Streamway Trail.

Income characteristics of the residents of the area:

This area has a variety of income levels. The neighborhood is primarily made up of working class families and retirees on a fixed income.

Percentage of low/mod income persons in the service area and data used for determining the percentage:

41.84%, 2010 Census and U.S. Department of Housing and Urban Development (HUD)

Please include a map with the service area circled and all census tract/block groups in the service area labeled.

See attached census tract/block map (Attachment C)

8. **How many PEOPLE will benefit from this project?** 491

Based upon the population estimates provided by Johnson County AIMS online mapping, there are 255 people in the immediate neighborhood and 236 additional persons to the north of the project area that will benefit from the streetlight installation.

**9. Citizen Participation
For Applications by Cities (not County Departments/Agencies)**

Cities must include documentation of public notice **at least 14 days** prior to the holding a public hearing. Further information in instructions (page 4) and handbook (page 16).

The City of Merriam held a public hearing on April 25, 2016 inviting the public to bring CDBG project ideas before the Governing Body. A copy of the minutes from the meeting are attached to this application (Attachment D).

The City of Merriam held a second public hearing on May 9, 2016 to hear final comments from the public and receive approval of the application from the governing body. A copy of the draft minutes from the meeting are attached to this application (Attachment E).

Both public hearings were advertised in the Legal Record on April 12, 2016 in addition to being advertised on the City's website. A copy of the notice of publication is included (Attachment F).

**10. Fair Housing Activities-must be completed by all applicants.
Describe what actions will be taken to further Fair Housing.**

On April 6, 2016, Mayor Ken Sissom signed a proclamation declaring April as Fair Housing Month. A copy of the proclamation is attached to this application (Attachment G).

In addition to the proclamation, the City of Merriam promotes fair housing efforts through our robust rental housing licensing and inspection program. This program consists of annual licensing of rental properties as well as biannual interior inspections of the properties to ensure they meet safety and maintenance standards as adopted by the City of Merriam.

**11. Does your project address any of Johnson County's strategic priorities? Yes
If yes, please briefly explain:** (see page 5 of application instructions for details)

This project addresses Johnson County Strategic Objective No. 2. The increased neighborhood lighting addresses priority No. 2 by improving lighting and safety for mobility options throughout the neighborhood. Physical fitness mobility for residents is improved throughout the neighborhood and a stronger connection is emphasized to Turkey Creek Streamway Park to the east, further connecting residents to other neighborhoods in the region.

12. SIGNATURE: _____ Date: _____

(Signature of Mayor)

Ken Sissom

Please Type/Print Name

**JOHNSON COUNTY/OLATHE 2017 CDBG APPLICATION
PUBLIC FACILITIES and IMPROVEMENTS
PART 2 - PROJECT NARRATIVE**

The Project Narrative may not exceed two (2) pages.

NEED the Project is addressing

1. Clearly describe the specific local need this project will address.

On April 18, 2008, the Merriam City Council received a petition from residents requesting additional residential street lighting in order to promote safer and more pedestrian friendly neighborhoods. Installation of new residential streetlights is a high priority of the Merriam City Council. As part of the five-year Capital Improvement Program, the Merriam City Council has adopted a residential streetlight program that includes the removal of all existing “cobra” streetlights and installation of new city standard residential streetlights.

The residential streetlight program increases the frequency and effectiveness of city streetlights. In addition, it aids in the beautification of our neighborhoods.

This project will not only increase the number of streetlights in the project neighborhood, but it will also connect the project area with the Forest Park neighborhood to the north, in which streetlights were previously installed utilizing Johnson County CDBG funds. This will provide both neighborhoods with a lighted walking route to the Turkey Creek Streamway Trail.

2. Describe the major local factors that contribute to the problem.

The existing streetlights within the project area consist of 20 cobra head streetlights originally provided by Kansas City Power and Light. The existing lights are spaced approximately 300 feet apart and the light heads sit approximately 30 feet above the ground. The height of the lights combined with the significant number of mature trees, the extreme distance between and overall height of the existing lights makes the cobra head lights highly inadequate for the purpose of creating safe, walkable streets. The low lighting levels in neighborhoods give pedestrians a feeling of being unsafe and discourage walking.

3. Provide current, up-to-date, county/city-specific data that substantiates the need.

The completion of this project would bring the neighborhood into compliance with the goals of the city’s residential streetlight program. Increased lighting will increase the safety of residents in the neighborhood and vehicular and pedestrian traffic. Increased light allows vehicles to better see pedestrians on the sidewalk, the turning movements of other cars especially in and out of driveways, and other traffic activity. The additionally lighting will also increase the visibility of any unwanted activity in the neighborhood.

The PROJECT – Performance Measurement

Summarize the following information using the chart on the next page:

- Clearly state the goal(s) of the 2017 project.
 - Identify the inputs of the project.
 - Specifically describe the activities you propose to conduct which will help achieve program goals.
 - Clearly state what will be the direct products/outputs of the project.
 - Clearly state the objectives/outcomes of the project.
1. Clearly state how and when the achievement/impact of program objectives will be measured.

The project will measure its success by increasing the amount of lighting in the neighborhood by adding 30 new street lights.

Please submit 2015 & 2016 forms from previous years' applications along with the actual results for 2015.
 (Not included in total pages allowed.)

2017 Project Narrative

Goal	Inputs	Activities	Measurable Outputs	Outcomes	Actual Results
Increase the residential street lighting Improve vehicular and pedestrian safety Beautify the neighborhood Maintain property values	Order materials Remove existing poles Installation of underground infrastructure (conduit for wire) Installation of new poles Energize system	20 existing street lights to be removed 30 new residential street lights with underground infrastructure to be installed	255 residents in the immediate area and 236 persons to the north of the project area will be provided with improved street lighting that will increase vehicular, resident, and pedestrian safety. For a total of 491 persons benefiting from the project	Increased street lighting that improves vehicular and pedestrian safety for neighborhood and traveling public	

2016 Project Narrative

Goal	Inputs	Activities	Measurable Outputs	Outcomes	Actual Results
<p>Increase the residential street lighting</p> <p>Improve vehicular and pedestrian safety</p> <p>Beautify the neighborhood</p> <p>Maintain property values</p>	<p>Order materials</p> <p>Remove existing poles</p> <p>Installation of underground infrastructure (conduit for wire)</p> <p>Installation of new poles</p> <p>Energize system</p>	<p>23 existing street lights to be removed</p> <p>38 new residential street lights with underground infrastructure to be installed</p>	<p>825 residents in the Antioch Hills and surrounding area were provided with improved street lighting that will increase vehicular, resident, and pedestrian safety</p>	<p>Increased street lighting that will improve vehicular and pedestrian safety for neighborhood and traveling public</p>	<p>The city is waiting for Johnson County to receive its CDBG funds before starting the project</p>

2015 Project Narrative

Goal	Inputs	Activities	Measurable Outputs	Outcomes	Actual Results
<p>Increase the residential street lighting</p> <p>Improve vehicular and pedestrian safety</p> <p>Beautify the neighborhood</p> <p>Maintain property values</p>	<p>Order materials</p> <p>Remove existing poles</p> <p>Installation of underground infrastructure (conduit for wire)</p> <p>Installation of new poles</p> <p>Energize system</p>	<p>23 existing street lights to be removed</p> <p>38 new residential street lights with underground infrastructure to be installed</p>	<p>868 residents will be provided with improved street lighting that will increase vehicular, resident, and pedestrian safety</p>	<p>Increased street lighting that will improve vehicular and pedestrian safety for neighborhood and traveling public</p>	<p>38 new city standard residential street light were installed in the northwest neighborhoods of Merriam</p>

**JOHNSON COUNTY/OLATHE 2017 CDBG APPLICATION
PUBLIC FACILITIES and IMPROVEMENTS
PART 3 - BUDGET and TIMELINESS**

The Budget & Timeliness Section may not exceed two (2) pages.

BUDGET NARRATIVE

The information to be provided below pertains only to the proposed project for which you are requesting CDBG funds.

1. **Project Title:** Merriam Street Visibility Improvement Project – Meyers Estates
2. **2017 Total Project Budget**

Revenues

(These funds must directly support and be essential to the implementation of this proposed project.)

List All Revenue Sources For This Project	Amount
Funds requested from:	
Johnson County CDBG:	\$100,000
Olathe CDBG:	
Overland Park CDBG:	
Shawnee CDBG:	
***Other Project Revenue:	
Other Federal Funds	
State/Local Funds – City of Merriam	\$76,857
Private Funds	
Other:	
Total Project Revenue	\$176,857

Expenses

Source	Amount
Personnel	\$38,284
Equipment	
Supplies	\$112,073
Space Rent/Utilities	
Other – Equipment Rental	\$16,500
Other – Pole Removal	\$10,000
Total Project Expenses	\$176,857

Total project revenue must equal total project expenses.
*****All other project revenue must be specified. Sources must be noted.**

3. Describe precisely what CDBG funds will be used to pay for.

CDBG funds will be used to reimburse the City of Merriam for costs associated with the removal 20 cobra head style streetlights and construction/installation of the 30 new, city standard, brushed aluminum streetlights (i.e. pole removal, boring of conduit for wire, purchase of lighting materials, etc).

Timeliness

HUD imposes a timeliness requirement for the expenditure of CDBG funds on the County.

1. Will this project be ready to proceed as of January 1, 2017?

Yes

2. If not ready, when will the project proceed?

N/A

3. When is this project scheduled to be completed?

45 days from the start of construction

4. Describe any circumstances that might prevent this activity from being completed by December 1, 2017.

Because of the short construction time and use of city forces, we do not anticipate any circumstance that would prevent the project from being completed by December 2016.

5. CDBG History

If your organization has received CDBG funding in the past, please provide the information below.

Program year	2014	2015	2016*
Award in Program Year	<u>\$79,522</u>	<u>\$70,000</u>	<u>\$100,000</u>
Expended in Program Year (Will agree to your reimbursement request forms.)	<u>\$79,522</u>	<u>\$70,000</u>	\$0
Number of PEOPLE served (Will agree to final project beneficiary form.)	<u>579</u>	<u>903</u>	<u>825</u>
Balance Remaining (if applicable)	<u>\$0</u>	<u>\$0</u>	<u>\$100,000</u>

*The city will undertake its 2016 CDBG project following the County receiving its CDBG fund allocation from the federal government. Once Johnson County has received the funds, the city will begin the project. The project will be completed by December 31, 2016.

**JOHNSON COUNTY/OLATHE 2017 CDBG APPLICATION
ALL PROJECTS
PART 4 – ENVIRONMENTAL QUESTIONS**

HUD requires that an Environmental Review be performed on any project supported by CDBG funds.

To assist us in determining the level of Environmental Review necessary for this proposed project.

Since this project is a **PUBLIC FACILITIES/IMPROVEMENTS** project:

1. Please provide the address or location of the project.

The project area is bounded by W. 69th Street, Turkey Creek Streamway Park, W. 70th Terrace, and Switzer Road. (Attachment A)

2. 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?

No, 20 existing streetlights are in place in the neighborhood. This project will remove the existing streetlights and install 30 new streetlights.

3. Is the project located in a flood zone area? No

4. Is the location in a primarily residential area?

Yes, the project area is 100 percent residential.

**JOHNSON COUNTY/OLATHE 2017 CDBG APPLICATION
PART 5 - CERTIFICATIONS**

The Applicant certifies that:

- (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 so as 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 a particular urgency because existing conditions 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 the 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.

 Signature
 Ken Sissom, Mayor
 City of Merriam

 Date

Ken Sissom, Mayor
 Please Print Name and Title

AGENDA ITEM INFORMATION FORM

Agenda Item: Acknowledge receipt of the City's 2015 financial audit report.

Department: Finance

Background/Description of Item:

Allen, Gibbs and Houlik, L.C. (AGH) has completed audit of the 2015 financial statements. Their audit opinion indicates the financial statements fairly present the financial position of the City in accordance with generally accepted accounting principles. AGH has provided a separate "Required Communications" letter (attached) which summarizes their audit responsibilities and observations.

The 2015 Comprehensive Annual Financial Report (CAFR) includes the Independent Auditor's Report on page 7, and Management's Discussion and Analysis on page 9. The CAFR may be viewed under the "City Council Worksession" link. Printed copies are available upon request and it will soon be available on our website at www.Merriam.org/finance.

This is the final year of an anticipated four-year engagement with AGH. Engagement officer Ben Hart will be present at the Council meeting to provide an overview of the report and answer questions.

Related Ordinance or Statutes: None

Recommendation: City Council acknowledges receipt of the City's 2015 financial audit report.

Prepared by: Cindy Ehart, Finance Director

Date: May 5, 2016

The Honorable Mayor and City Council Members
City of Merriam

We are pleased to present this report related to our audit of the financial statements of the City of Merriam, Kansas (City) for the year ended December 31, 2015. This report summarizes certain matters required by professional standards to be communicated to you in your oversight responsibility for the City's financial reporting process.

Generally accepted auditing standards require the auditor to promote effective two-way communication between the auditor and those charged with governance. Consistent with this requirement, the following summarizes our responsibilities regarding the financial statement audit as well as observations arising from our audit that are significant and relevant to your responsibility to oversee the financial reporting process.

Required Communications

Our Responsibilities with Regard to the Financial Statement Audit

Our responsibility under auditing standards generally accepted in the United States of America and the *Kansas Municipal Audit and Accounting Guide* has been described to you in our arrangement letter dated October 21, 2015. Our audit of the financial statements does not relieve management or those charged with governance of their responsibilities, which are also described in that letter.

Overview of the Planned Scope and Timing of the Financial Statement Audit

We have issued a separate communication regarding the planned scope and timing of our audit and timing of our audit and have discussed with you our identification of, and planned audit responses to, significant risks of material misstatement.

Accounting Policies and Practices

Adoption of, or Change in, Accounting Policies - Management has the ultimate responsibility for the appropriateness of the accounting policies used by the City. Significant accounting policies are disclosed in Note I to the financial statements.

For the year ended December 31, 2015 the City implemented the provisions of GASB Statement No. 68 *Accounting and Financial Reporting for Pensions*. This statement established accounting and financial reporting by state and local governments for pensions. Also, this statement establishes standards for measuring and recognizing liabilities, deferred outflows of resources, deferred inflows of resources, and expenses. The implementation of GASB 68 had a material impact on the December 31, 2015 financial statements as it required the City to record its proportionate share of KPERS' collective net pension liability. As a result, the City recognized a \$6,453,928 net pension liability, a \$1,406,756 of deferred inflows of resources and a \$455,275 of deferred outflow of resources as of December 31, 2015 and \$334,174 in pension expense for the fiscal year then ended.

Significant or Unusual Transactions - We did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Management's Judgments and Accounting Estimates - Accounting estimates are an integral part of the preparation of financial statements and are based upon management's current judgment. The process used by management encompasses their knowledge and experience about past and current events and certain assumptions about future events. You may wish to monitor throughout the year the process used to determine and record these accounting estimates. The following describes the significant accounting estimates reflected in the City's financial statements:

- *Compensated absences:* It is the City's policy to permit employees to accumulate certain amounts of vacation and sick leave. The City's policies are discussed in Note I.4. As a basis for our conclusions, we obtained a list of accumulated vacation and sick time through December 31, 2015 from the City's payroll system, and recalculated vacation and sick time per County policies for a sample of City employees. In addition, we reviewed total compensated absences by analytically comparing the current year results to prior year history.
- *Net Other Post-Employment Benefit (OPEB) Obligation:* The City implements the provisions of GASB 45 by hiring an external actuary to develop an estimate for annual OPEB cost. This amount was then reduced by actual claims paid for retirees, resulting in a net OPEB obligation at year-end to record as a liability. As a basis for our conclusions, we reviewed the actuarial report for reasonableness.
- *Net pension liability:* The City followed guidelines in GASB Statement No. 68 for reporting its proportionate share of KPERS' collective net pension liability. This included obtaining KPERS' report on Schedules of Employer and Nonemployer Allocations and Schedules of Pension Amounts by Employer and Nonemployer as of June 30, 2015, which was audited by other auditors. The City compared contributions made by the City to amounts included in this report. As a basis for our conclusions, we reviewed KPERS' report for reasonableness and verified and recalculated the City's information provided in the report.

Audit Adjustments

There were two audit adjustments made to the original trial balance presented to us to begin our audit: 1) to increase construction in process for one asset not previously included; and 2) to reduce the subordinate bond outstanding balance to the amount actually paid after year end.

Uncorrected Misstatements

We are not aware of any uncorrected misstatements other than misstatements that are clearly trivial.

Management Representations

In connection with our audit procedures, we have obtained a written management representation letter. This representation letter constitutes written acknowledgments by management that it has the primary responsibility for the fair presentation of the financial statements in conformity with generally accepted accounting principles. The representation letter also includes the more significant oral representations made by officers and employees during the course of the audit and includes specific representations, is intended to reduce the possibility of misunderstandings between us and the City and reminds the signing officers to consider seriously whether all material liabilities, commitments and contingencies or other important financial information have been brought to our attention.

Other Disclosures

- We encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on any significant matters, the scope of the audit, or significant disclosures to be included in the financial statements.
- We are not aware of any consultations management had with other accountants about accounting or auditing matters.
- No significant issues arising from the audit were discussed or were the subject of correspondence with management.
- We did not encounter any difficulties in dealing with management during the audit.

Other Comments

AGHUniversity Resources

As part of AGH's ongoing commitment to serve as a trusted advisor, we offer these resources as a key part of the additional value AGH provides beyond the engagement itself:

- AGHUniversity.com - a full schedule of complimentary CPE or current and relevant topics and other updates to clients throughout the year. Free registration and webinars are available for the County's staff and board members at aghuniversity.com. A sample of recent topics include Management and Key Position Succession Planning; Destroying the Myths about Employee Engagement; Preventing Fraud in Small and Medium Sized Organizations; Measuring What Matters in Your 401K Plan to Recruitment, Retention and Reward; Planning The Transition: Taking Your Company To Market; and The How and Why of Business Valuations.
- AGH Alerts and newsletters - This includes periodic mailings or emails to alert clients to new accounting standards or regulatory changes.

Vulnerability Assessment

How long has it been since you identified and evaluated the security of your network? There are more than 71,000 known network vulnerabilities that can leave organizations open to significant risk. High-profile security breaches have become commonplace, and many companies are susceptible to the same failures. Once cybercriminals have breached a network, they can compromise the confidentiality, integrity and availability of your network, your systems and the sensitive information they contain. Such compromises can damage your reputation and brand; disrupt growth and sales; and result in legal fines and penalties.

- Network vulnerability assessments can help you identify and resolve your vulnerabilities before they are exploited by cybercriminals. AGH's experienced security professionals use network vulnerability assessments to discover and analyze known flaws and weaknesses. Using automated scanners - along with their experience and judgement - our security professionals will identify existing vulnerabilities, evaluate their severity and recommend steps for fixing the underlying problems.

Closing

This report is intended solely for the information and use of the City Council and management, and is not intended to be and should not be used by anyone other than these specified parties. It will be our pleasure to respond to any questions you have regarding this report. We appreciate the opportunity to continue to be of service to the City of Merriam, Kansas.

Allen, Gibbs & Houlik, L.L.C.
CERTIFIED PUBLIC ACCOUNTANTS

April 29, 2016
Wichita, KS

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of a Charter Ordinance relating to elections and subsequent Regular Ordinances on the same matter.

Department: Administration

Background/Description of Item:

During the 2015 Legislative Session changes were made to municipal elections. Those changes moved municipal elections from April of odd numbered years to November of odd numbered years. Cities must make changes to coincide with that schedule.

The **Charter Ordinance** for your consideration addresses elections, terms of office, primaries and the transition to the November General Election schedule.

The subsequent two (2) **regular ordinances** address matters related to appointments (Council President and Vice-President, Judge, Treasurer, City Attorney, and Prosecutor) made by the council that typically occur after an election.

Below is a summary of each:

Charter Ordinance related to General Elections:

- States that the **general election** for the office of Mayor and Councilmembers will take place on the first Tuesday in November (**Nov. 7, 2017**).
- The term for Mayor and Councilmember elected in **April 2013** will **expire** on the **second Monday of January 2018** when the individuals elected in the **November 2017** general election take office.
- Councilmember seats set to expire in **April 2019** will continue until the **second Monday of January 2020** when the individuals elected in the **November 2019** general election take office.
- **Primary elections** shall occur on the **first Tuesday in August of odd-numbered** years reducing candidates down to two for any one office.
- Filing for office with the City Clerk shall accompany a **\$20 filing fee**.
- States that all City elections are **nonpartisan**.

Regular Ordinance amending section 2-28

- Changes the timing of election of **Council President and Vice-President** from **April** of odd-numbered years to **January** of even-numbered years. This is needed to get in line with the November election schedule

Regular Ordinance amending section 2-61

- Changes the timing of appointments of City Attorney, Treasurer, Prosecutor and Judge from **July** of odd-numbered years to **March** of even-numbered years. This too is needed to get in line with the November election schedule.

Related Ordinance or Statutes: Charter Ordinance 25, K.S.A. 14-103, 14-201, 25-2107 (b) and 25-2108(b)

Recommendation: Staff recommends approval of a Charter Ordinance and two subsequent regular ordinances related to changes to city elections. (first reading)

Prepared by: Juliana Pinnick, City Clerk

Date: May 5, 2016

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE OF THE GOVERNING BODY OF THE CITY OF MERRIAM, KANSAS EXEMPTING THE CITY OF MERRIAM, KANSAS, FROM THE PROVISIONS OF SECTIONS 14-103, 14-201, 25-2107(b) AND 25-2108a OF THE KANSAS STATUTES ANNOTATED, RELATING TO THE GOVERNANCE BY THE MERRIAM, KANSAS GOVERNING BODY INCLUDING ELECTIONS, TERMS OF OFFICE, PRIMARIES, TRANSITIONS TO NOVEMBER GENERAL ELECTIONS, AND OTHER MATTERS RELATED THERETO, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND REPEALING CHARTER ORDINANCE NO. 25.

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

Section 1. Statutes Made Inapplicable; Substitute Provisions.

A. The City of Merriam, Kansas (the “City”), under the authority of Article 12, Section 5, of the Constitution of the State of Kansas, has previously elected by Charter Ordinance to exempt itself from and make inapplicable to it the provisions of K.S.A. 14-103, K.S.A. 14-201 and 25-2108a that apply to the City, but are parts of enactments that do not apply uniformly to all cities. The City, under said Constitutional authority, already has and/or desires to provide substitute and additional provisions regarding these matters herein or by ordinary ordinance.

B. The City, under the authority of Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it the provisions of Subsection (b) of K.S.A. 25-2107 that applies to the City, but is part of an enactment that does not apply uniformly to all cities. The City, under said Constitutional authority, already has and/or desires to provide substitute and additional provisions regarding these matters herein or by ordinary ordinance.

Section 2. Governing Body Composition and Eligibility.

A. Composition. The governing body shall consist of a mayor elected by the city residents as a whole and eight (8) council members elected by wards. Each of the wards shall be represented by two council members.

B. Mayor Eligibility. The mayor shall be a qualified elector of Merriam, Kansas and must be an actual resident of the city at the time of filing for election and thereafter for the duration of the term to which elected. If the mayor moves from the city, the office shall be deemed vacant and shall be filled as set forth by applicable state statute, charter ordinance and ordinary ordinance.

C. Council Member Eligibility. Each council member shall be a qualified elector of Merriam, Kansas and must be an actual resident of the ward from which elected at the time of

filing for election and thereafter for the duration of the term to which elected, subject to redistricting provisions which may be set forth by ordinary ordinance. If any council member moves from the ward from which elected, the office shall be deemed vacant and shall be filled as set forth by applicable state statute, charter ordinance and ordinary ordinance.

Section 3. **Governing Body Terms of Office; Time of General City Elections.**

A. Office of Mayor. A general election for the office of mayor shall take place on the Tuesday succeeding the first Monday in November 2017 for a term of four (4) years. Succeeding elections will be held every four (4) years and the term of office for the mayor shall be four (4) years. The term of the mayor elected in the April 2013 general election shall expire on the second Monday of January 2018 when the individual elected as mayor in the November 2017 general election takes office.

B. Office of Council Members.

A general election of city council members shall take place on the Tuesday succeeding the first Monday in November 2017 for those positions previously scheduled to expire in April 2017. The term of every council member whose term was previously scheduled to expire in April 2017 shall expire on the second Monday of January 2018 when the city council members elected in the November 2017 general election take office.

A general election of city council members shall take place on the Tuesday succeeding the first Monday in November 2019 for those positions previously scheduled to expire in April 2019. The term of every council member whose term was previously scheduled to expire in April 2019 shall expire on the second Monday of January 2020 when the city council members elected in the November 2019 general election take office.

Succeeding elections will be held every two (2) years for all such council member positions that have expired. One council member from each ward shall be elected at one election, and the other council member from that ward shall be elected at the succeeding election. The term of office for council members shall be four (4) years.

Section 4. **Time of Primary City Elections.**

A primary election shall be held on the first Tuesday in August of odd-numbered years if needed to reduce the number of candidates for each office in the general election to no more than two candidates. The two candidates receiving the greatest number of votes for each office shall advance to the general election. In the event there are not more than two candidates for any one office, there shall be no primary election and the names of such candidates shall be placed on the general City election ballot.

Section 5. **Filing for Election.**

In accordance with K.S.A. 25–205, and amendments thereto, any person who meets the qualifications for the office sought may become a candidate for mayor or council member by either filing with the proper officer a declaration of intent to become a candidate accompanied by a filing fee as set forth by State law, or by filing a nomination petition. The nomination petition must be signed by qualified electors equal in number to one percent (1%) of the ballots cast in the last general City election or fifty (50) qualified electors, whichever is less.

Section 6. Nonpartisan Elections.

All elections for the City shall be nonpartisan.

Section 7. Repeal.

Charter Ordinance No. 25 is hereby repealed.

Section 8. Publication. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 9. Take Effect. This Charter Ordinance shall take effect sixty-one (61) days after its final publication unless a sufficient petition for a referendum is filed as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by the majority of the electors voting at an election held thereon.

PASSED BY THE GOVERNING BODY, NOT LESS THAN TWO-THIRDS OF THE MEMBERS ELECT VOTING IN FAVOR THEREOF, THE ____ DAY OF _____, 2016.

APPROVED AND SIGNED BY THE MAYOR ON THE ____ DAY OF _____, 2016.

KEN SISSOM, Mayor

(SEAL)

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Michelle D. Daise, City Attorney

I hereby certify that the foregoing Charter Ordinance was published in the official City newspaper on the ____ day of _____, 2016, and again on the ____ day of _____, 2016.

Juliana Pinnick, City Clerk

No petition demanding that such Charter Ordinance be submitted to a vote of the electors was filed with the City Clerk within sixty-one (61) days of the final publication of said Charter Ordinance.

Juliana Pinnick, City Clerk

The undersigned, City Clerk of the City of Merriam, Kansas, does hereby certify that the above and foregoing is a true copy of Charter Ordinance No. ____ of the City of Merriam, Kansas, and of the statement of the manner of adoption thereof.

Dated this ____ day of _____, 2016.

Juliana Pinnick, City Clerk

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 2-28 OF THE CODE OF ORDINANCES, CITY OF MERRIAM, KANSAS REVISING THE ELECTION DATE FOR SELECTION OF COUNCIL PRESIDENT AND VICE-PRESIDENT.

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

SECTION 1. Section 2-28 of the Code of Ordinances of the City of Merriam, Kansas is hereby amended to read as follows:

Sec. 2-28. - Council president and vice-president.

- (a) *Elections by council; term.* The city council shall elect from its membership a council president and council vice-president. Such election shall take place at a regular meeting of the city council in January of even-numbered years for a two-year term.
- (b) *Temporary absence of mayor; responsibilities of council president.* The council president shall preside as mayor in the temporary absence or disability of the duly elected mayor; when so presiding as mayor, the council president shall have no power to sign or veto any ordinance, nor to appoint "appointed officers" pursuant to section 2-61(a). The council president, while temporarily presiding as mayor, shall retain all voting rights and other prerogatives of councilmember.
- (c) *Temporary absence of mayor and council president; responsibilities of council vice-president.* The council vice-president shall preside as mayor in the temporary absence or disability of the duly elected mayor and council president; when so presiding as mayor, the council vice-president shall have no power to sign or veto any ordinance, nor to appoint "appointed officers" pursuant to section 2-61(a). The council vice-president, while temporarily presiding as mayor, shall retain all voting rights and other prerogatives of councilmember.
- (d) *Vacancy in office of mayor.* Whenever the council president becomes mayor due to a vacancy in the office of mayor as set forth in section 2-26, the resulting vacancy in the position of council president shall be filled as set forth in subsection (e) of this section.
- (e) *Vacancy in office of council president.* If a vacancy occurs in the office of council president, other than a temporary absence or disability, the city council shall elect from its membership a new council president to serve the balance of the two-year term. In the event that the council vice-president is elected to serve the balance of the council president's term, the vacancy in the position of council vice-president shall be filled by the city council as set forth in subsection (f) of this section.
- (f) *Vacancy in office of council vice-president.* If a vacancy occurs in the office of council vice-president, other than a temporary absence or disability, the city council shall elect from its membership a new council vice-president to serve the balance of the existing term.
- (g) *Removal.* The city council may remove the council president or council vice-president from such positions by a two-thirds vote of the members of the city council

then in office. The positions of council president and council vice-president which are vacated by such removal shall be filled in the same manner as set forth in subsections (e) and (f) of this section.

SECTION 2. Existing Sections. Those sections of Chapter 2 of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed or repealed hereby shall remain in full force and effect.

SECTION 3. Repeal. Section 2-28 of the Code of Ordinances, City of Merriam, Kansas as it existed prior to the above amendment is hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the governing body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 5. Take Effect. This Ordinance shall be in full force and effect following the date of its final passage, approval, and publication in the official City newspaper, all as provided by law.

PASSED BY THE City Council the ___ day of _____, 2016

APPROVED BY THE Mayor the ___ day of _____, 2016.

Ken Sissom, Mayor

ATTEST:

APPROVED AS TO FORM:

Juliana Pinnick, City Clerk

Michelle D. Daise, City Attorney

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 2-61 OF THE CODE OF ORDINANCES, CITY OF MERRIAM, KANSAS REVISING THE DATES FOR TERMS OF APPOINTED OFFICERS.

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

SECTION 1. Section 2-61 of the Code of Ordinances of the City of Merriam, Kansas is hereby amended to read as follows:

Sec. 2-61. - Appointments.

- (a) *Appointed officers.* The mayor, by and with the consent of the council, shall appoint the following officers: municipal judge, city treasurer, city attorney and city prosecutor (hereinafter referred to as "appointed officers") as set forth in Charter Ordinance No. 20. The appointed officers shall hold office for a term of two years, from March 1 of even-numbered years, and until their successors are appointed and qualified. Vacancies shall be filled as set forth in Charter Ordinance No. 20.

- (b) *Department heads and other official staff positions.* The city administrator and mayor shall recommend appointment of all department heads and other official staff positions, including, but not limited to, the following:
 - (1) Finance director.
 - (2) City clerk.
 - (3) Assistant city administrator.
 - (4) Police chief.
 - (5) Fire chief.
 - (6) City engineer.
 - (7) Community development director.
 - (8) Public works director.
 - (9) Director of parks and recreation.
 - (10) Local freedom of information officer.

- (c) *Approval by council required.* Said appointed officers, department heads and staff officials shall be approved by a majority vote of the city council.

SECTION 2. Existing Sections. Those sections of Chapter 2 of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed or repealed hereby shall remain in full force and effect.

SECTION 3. Repeal. Section 2-61 of the Code of Ordinances, City of Merriam, Kansas as it existed prior to the above amendment is hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the governing body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 5. Take Effect. This Ordinance shall be in full force and effect following the date of its final passage, approval, and publication in the official City newspaper, all as provided by law.

PASSED BY THE City Council the ___ day of _____, 2016

APPROVED BY THE Mayor the ___ day of _____, 2016.

Ken Sissom, Mayor

ATTEST:

APPROVED AS TO FORM:

Juliana Pinnick, City Clerk

Michelle D. Daise, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of a Charter Ordinance relating to filling governing body vacancies and subsequent Regular Ordinance on the same matter.

Department: Administration

Background/Description of Item:

The charter ordinance exempting the City from K.S.A. 12-104(a) addresses filling governing body vacancies and is a new section arising out of the 2015 election legislation. The City has not chartered out of 14-204 or 14-308, both of which address filling vacancies in cities of the second class, but has enacted additional procedural provisions by regular ordinance, codified at 2-26 and 2-27. A regular ordinance making minor revisions to section 2-27 changes the term “city council” to “governing body.” While the City will be chartering out of K.S.A. 12-104a, the legislature indicated in that section that the mayor is included for voting purposes when filling vacancies. The City Attorney recommends the City be consistent with that aspect of the legislation.

The **Charter Ordinance** for your consideration exempts the City from the provisions of K.S.A. 12-104(a) related to filling vacancies

The subsequent **regular ordinance** changes the terms to Governing Body rather than the current language which states City Council. This change will then allow the Mayor to vote for the purposes of filling vacancies.

Related Ordinance or Statutes: K.S.A. 12-104(a); Ord 1730

Recommendation: Staff recommends approval of a Charter Ordinance and subsequent regular ordinances related to changes to filling Governing Body vacancies. (first reading)

Prepared by: Juliana Pinnick, City Clerk

Date: May 5, 2016

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE OF THE GOVERNING BODY OF THE CITY OF MERRIAM, KANSAS EXEMPTING THE CITY OF MERRIAM, KANSAS, FROM THE PROVISIONS OF SECTION 12-104a OF THE KANSAS STATUTES ANNOTATED, RELATING TO THE FILLING OF GOVERNING BODY VACANCIES.

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

Section 1. The City of Merriam, Kansas (the “City”), under the authority of Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 12-104a, relating to the filling of governing body vacancies, which applies to this city, but is part of an enactment that does not apply uniformly to all cities. The City, under said Constitutional authority, already has and/or desires to provide substitute and additional provisions regarding these matters herein or by ordinary ordinance.

Section 2. Publication. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 3. Take Effect. This Charter Ordinance shall take effect sixty-one (61) days after its final publication unless a sufficient petition for a referendum is filed as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by the majority of the electors voting at an election held thereon.

PASSED BY THE GOVERNING BODY, NOT LESS THAN TWO-THIRDS OF THE MEMBERS ELECT VOTING IN FAVOR THEREOF, THE ____ DAY OF _____, 2016.

APPROVED AND SIGNED BY THE MAYOR ON THE ____ DAY OF _____, 2016.

KEN SISSOM, Mayor

(SEAL)

ATTEST:

Juliana Pinnick, City Clerk

APPROVED AS TO FORM:

Michelle D. Daise, City Attorney

I hereby certify that the foregoing Charter Ordinance was published in the official City newspaper on the ____ day of _____, 2016, and again on the ____ day of _____, 2016.

Juliana Pinnick, City Clerk

No petition demanding that such Charter Ordinance be submitted to a vote of the electors was filed with the City Clerk within sixty-one (61) days of the final publication of said Charter Ordinance.

Juliana Pinnick, City Clerk

The undersigned, City Clerk of the City of Merriam, Kansas, does hereby certify that the above and foregoing is a true copy of Charter Ordinance No. ____ of the City of Merriam, Kansas, and of the statement of the manner of adoption thereof.

Dated this ____ day of _____, 2016.

Juliana Pinnick, City Clerk

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTION 2-27 OF THE CODE OF ORDINANCES,
CITY OF MERRIAM, KANSAS RELATING TO PROCEDURES FOR FILLING
VACANCIES ON THE MERRIAM CITY COUNCIL.**

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

SECTION 1. Section 2-27 of the Code of Ordinances of the City of Merriam, Kansas is hereby amended to read as follows:

Sec. 2-27. - Councilmember vacancy; procedure for filling.

Whenever a vacancy occurs in the position of councilmember, including when a councilmember moves from the ward from which elected, or whenever the council president becomes mayor leaving a vacancy in the office of councilmember, the governing body shall appoint an elector of the ward where the vacancy occurs to be councilmember for the balance of the unexpired term and a notice of vacancy shall be announced at the first regular council meeting following the occurrence of such vacancy. The vacancy shall be filled by the governing body pursuant to the following procedures:

- (1) The deadline for individuals to submit a letter of interest and statement of qualifications for the vacant council position shall be 30 days from the date the notice of vacancy is announced. If such 30th day is a weekend or holiday, the deadline shall be the next regular business day following the expiration of such 30-day period.
- (2) Letters of intent and statements of qualifications for the vacant council position shall only be considered by the governing body if submitted to the city clerk's office by 4:30 p.m. on the deadline specified by the governing body as set forth in subsection (1) of this section.
- (3) The governing body may use whatever publicity forum it chooses to disseminate information regarding the vacancy and the associated selection process.
- (4) All letters of intent and statements of qualifications and associated documents received for the vacant council position shall be treated as open records pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq.
- (5) The governing body shall interview all qualified candidates (electors of the ward where the vacancy occurred who have timely submitted letters of intent and statements of qualifications) within 30 days following the deadline specified by the governing body as set forth in subsection (1) of this section. Interviews shall be conducted as open meetings of the governing body according to the provisions of the Kansas Open Meetings Act, K.S.A. 45-215 et seq. Nothing herein shall be construed as to limit the number of interview sessions the governing body may conduct, so long as each

remaining candidate has the opportunity to be interviewed in each subsequent set of interview sessions.

- (6) In the event that eight or more candidates have submitted a letter of intent and statement of qualifications for the vacant council position, following the completion of candidate interviews, the governing body, in an open meeting and by written ballot, shall narrow the list of candidates to five. Each governing body member shall vote for not more than five candidates and may cast no more than one vote per candidate. Each ballot shall include the name of the governing body member casting such ballot and shall be considered an open record. The votes will be tabulated by the city clerk and announced at the open meeting at which the ballots are cast. Those five candidates receiving the greatest number of votes shall be considered as set forth in subsection (7) of this section at the same or a subsequent meeting.
- (7) Whenever more than two, but less than eight, candidates have submitted a letter of intent and statement of qualifications for the vacant council position, or whenever the number of candidates has been reduced as set forth in subsection (6) of this section, the governing body, in an open meeting and by written ballot, shall narrow the list of candidates to two. Each governing body member shall vote for not more than two candidates and may cast no more than one vote per candidate. Each ballot shall include the name of the governing body member casting such ballot and shall be considered an open record. The votes will be tabulated by the city clerk and announced at the open meeting at which the ballots are cast. Those two candidates receiving the greatest number of votes shall be considered as set forth in subsection (h) of this section at the same or a subsequent meeting.
- (8) Whenever two or fewer candidates have submitted a letter of intent and statement of qualifications for the vacant council position, or whenever the number of candidates has been reduced to two as set forth in subsection (7) of this section, each governing body member shall, in an open meeting and by written ballot, cast not more than one vote for the purpose of selecting a candidate to fill the vacant council position. Each ballot shall include the name of the governing body member casting such ballot and shall be considered an open record. The votes will be tabulated by the city clerk and announced at the open meeting at which the ballots are cast. The candidate receiving a majority vote of the governing body shall be appointed as councilmember for the balance of the unexpired term.

SECTION 2. Existing Sections. Those sections of Chapter 2 of the Code of Ordinances, City of Merriam, Kansas not heretofore repealed or repealed hereby shall remain in full force and effect.

SECTION 3. Repeal. Section 2-27 of the Code of Ordinances, City of Merriam, Kansas as it existed prior to the above amendment is hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the

remaining portions of this Ordinance and the governing body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 5. Take Effect. This Ordinance shall be in full force and effect following the date of its final passage, approval, and publication in the official City newspaper, all as provided by law.

PASSED BY THE City Council the ___ day of _____, 2015.

APPROVED BY THE Mayor the ___ day of _____, 2015.

Ken Sissom, Mayor

ATTEST:

APPROVED AS TO FORM:

Juliana Pinnick, City Clerk

Michelle D. Daise, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Authorize professional engineering services contract for the programming of the city-wide sidewalk infill program to GBA Inc. for an amount not to exceed \$34,569.00.

Department: Capital Improvement Projects

Background/Description of Item:

Staff recently conducted a Request for Qualifications (RFQ) process for 2016/2017 capital projects engineering. There were four project categories for which engineering firms could submit their interest and qualifications for one or more categories. Ten firms responded to the RFQ and provided twenty nine statements of interests. Please see the following spread sheet detailing the response.

An engineering selection team comprised of Kevin Bruemmer, Carl Sanders, and Gerry Vernon rated each statement of interest on the following criteria: 1.) Project Understanding; 2.) Project Approach; 3.) Relevant Experience; 4.) Staff and Availability; and 5.) Communication/Public Relations. The highest rated firm was selected by the committee and a project scoping meeting was held. The firm then developed a design services cost proposal once the scope was determined. Each firm also provided their current salary schedule for comparison.

Staff determined the best course of action was to first “program” the sidewalk project by importing GIS data into a design file, review and analyze the numerous sidewalk segments, and develop an annual program based on a best case strategy following the three year completion schedule.

The engineering services agreement for programming the project is based upon time and expenses and not to exceed \$34,569.00. The professional services agreement for the actual design of the three-year project will occur in 2017 after the programming phase.

Attachments: Professional Services Agreement for programming – GBA, Inc.

Related Ordinance(s) or Statute(s): None

Recommendation: Recommend that the Council authorize the Mayor to execute the design services contract to GBA, Inc. for programming the citywide sidewalk infill project for an amount not to exceed \$34,569.00.

Funding Source: General Sales Tax

Prepared by: Gerry Vernon, Capital Improvements Director
Date: May 9, 2016

2016 - 2017 Capitial Projects RFQ Response

Project 1	West Frontage Road
Project 2	Residential In-fill
Project 3	CMP Pipe Repair/Replacement
Project 4	Sidewalks - City wide

Firm	Project 1	Project 2	Project 3	Project 4
Affinis		1		1
Benesch		1		
BHC-Rhodes	1	1	1	1
GBA	1	1	1	1
Larkin/Lam/Ryn	1	1	1	1
PEI	1	1		1
PY	1	1	1	1
SK Design	1	1	1	1
SKW	1			
WSP-PB	1		1	
TOTALS	8	8	6	7
			Total Responses	29

2016/2017 CIP Engineering Selection

Project	1. West Frontatge Rd	2. Residential Infill	3. CMP Repair	4. Sidewalk
Selected	SKW	Affinis	BHC-Rhodes	GBA
Runner Up	GBA	BHC-Rhodes	Larkin/Lamp/Ryn	Affinis

QBS process

- 1 Discuss scope of services with engineer
- 2 Receive design estimate from engineer
- 3 Receive hourly rate sheet engineer
- 4 Negotiate or go to runner up
- 5 Make recommendation to City Council



PROFESSIONAL SERVICES AGREEMENT

CITY WIDE - SIDEWALK IN-FILL PROJECT

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter the "Agreement") made as of this day of , 2016, by and between the **CITY OF MERRIAM, KANSAS**, a Kansas Municipal Corporation (hereinafter the "City"), and the undersigned professional firm (hereinafter the "Consultant").

WHEREAS, the City is in need of professional assistance in a technical field to prepare plans and specifications for the Project more fully described on Exhibit A attached hereto (hereinafter the "Project");

WHEREAS, the Consultant represents that it has sufficient experience and qualified personnel to perform, and the City desires the Consultant to perform, the professional services herein described; and

WHEREAS, the City has determined, based upon information provided by the Consultant, that Consultant is qualified to provide the professional services described herein.

NOW, THEREFORE, the City and the Consultant, in consideration of their mutual covenants herein, agree in respect to the performance of professional services by the Consultant and the payment for those services by the City as set forth below.

ARTICLE I

Scope of Services

The Consultant shall provide for the City professional services listed in attached Exhibit B, Basic Services and Related Matters.

The City will request additional services to extend this Agreement to include a subsequent phase of Project design or to provide Project related services not anticipated at the time of this Agreement. At the City's request, the Consultant shall submit a written scope of the additional work including an estimate of additional costs for the performance of such additional work. No change in scope shall be effective nor shall additional compensation be paid except on the basis of the provisions of a written supplemental agreement or an amendment hereto which may be duly entered into by the parties of this Agreement.

ARTICLE II

Compensation

The City shall pay Consultant for services performed as outlined in Article I as set forth on Exhibit C attached hereto.

ARTICLE III

Time

The Consultant agrees to complete the services outlined in Article I within times listed in Exhibit B, Basic Services and Related Matters. In absence of written directions to the contrary, receipt of the executed Agreement shall be the Consultant's Notice to Proceed. The contract time includes reasonable review time by the City, and any other applicable governmental agencies.

Solely at the discretion of the City, an extension in time may be granted to the Consultant for delays determined by the City as unavoidable. Consultant may request extension of time stating fully the reasons for such request. Extensions for unavoidable delays shall be made in accordance with Article VI, Section 5.3 herein.



CITY OF MERRIAM

ARTICLE IV
City's Responsibilities

City shall perform the following in a timely manner so as not to unreasonably delay the services of the Consultant:

1. provide design objectives and constraints, capacity and performance requirements, and budgetary limitations for the Project;
2. furnish reports, plans and surveys in its possession that pertain to the Project. Except for reports and surveys prepared specifically for this Project, the Consultant shall have an obligation to independently verify the information contained in reports, plans, surveys and maps, which are furnished by the City;
3. furnish design and construction standards;
4. review Consultant's draft submittals;
5. attend design review meetings, pre-bid and pre-construction conferences, and construction meetings;
6. negotiate and pay for rights of way and easements necessary to complete the Project;
7. advertise the Project for construction bids, distribute bidding documents and receive and open construction bids; and
8. identify, in writing, a primary point of contact through whom all communications to the Consultant shall be issued.

ARTICLE V
Consultant's Responsibilities

In addition to the basic services identified in Article I "Scope of Services" the Consultant shall do the following:

1. comply with local, state and federal rules, regulations and laws pertaining to this Agreement that are applicable at the time the Consultant designs the Project, regardless of whether such requirements are specifically referred to in this Agreement. Consultant shall indemnify the City and its officers and agents against any claims or liability arising from or based on any violation of the same;
2. submit interim drafts and coordinate and attend draft review meetings as needed to meet Project requirements and City's design standards, and prepare final plans and specifications as required in Exhibit B, "Basic Services and Related Matters;"
3. immediately upon expiration or termination of the Agreement, return to the City all of the studies, maps, and other data furnished to the Consultant by the City pursuant to this Agreement;
4. indemnify and hold harmless the City, its elected officials, officers, employees, and agents, from all claims, damages, losses and expenses, excluding attorneys' fees, arising out of or resulting from the performance of Consultant's services, provided that any such claim, damage, loss, or expense is caused in whole or in part by a negligent act, willful misconduct, error or omission of the Consultant, its subcontractors, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Consultant's services;
5. maintain throughout the duration of this Agreement insurance in the following amounts and will,



CITY OF MERRIAM

4. Reuse of Information. Consultant shall retain ownership of information, including reports, surveys, designs, presentation graphics and creative products, furnished under this Agreement. Provided, however, City's right of reuse shall be unlimited in frequency and quantity and may be for completion of the Project, an extension of the Project by parties other than the Consultant, or for uses unrelated to the Project. When information is subject to third party royalties or license agreements, City shall pay such royalties and license fees associated with the reuse of the documents. City's reuse of the information without verification or adaptation by the Consultant shall be at the City's sole risk without liability or legal exposure to the Consultant. No additional compensation shall be due the Consultant for City's reuse of the information.

5. Termination for Default.

5.1 Default. If the Consultant refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or commits any other substantial breach of this Agreement, the City may notify the Consultant in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the City, the City may terminate the Consultant's rights to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

5.2 Compensation. The City shall pay the Consultant the costs, expenses, and reasonable profit for services performed by the Consultant prior to receipt of the notice of termination; however, the City may withhold from amounts due the Consultant such sums as the City deems to be necessary to protect the City against loss caused by the Consultant because of the default.

5.3 Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Consultant shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms if the Consultant has notified the City within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the City or any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of the causes set forth above, the Consultant shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Consultant to meet the terms of the Agreement. Upon request of the Consultant, the City shall ascertain the facts and extent of such failure, and, if the City determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Consultant's progress and performance would have met the terms of the Agreement, the time for completion of the Agreement shall be revised accordingly, subject to the rights of the City under the clause entitled "Termination for Convenience."

5.4 Erroneous Termination for Default. If, after notice of termination of the Consultant's right to proceed under the provisions of this Section, it is determined for any reason that the Consultant was not in default under the provisions of this Section, or that the delay was excusable under the provision of Subsection 5.3, and both the City and the Consultant agree, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. Otherwise, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Section entitled "Termination for Convenience."

6. Termination for Convenience.

6.1 Termination. The City may, when the interests of the City so require, terminate this Agreement in whole or in part, for the convenience of the City. The City shall give written notice of the termination to the Consultant specifying the part of the Agreement terminated and when termination becomes effective.



CITY OF MERRIAM

6.2 Consultant's Obligations. The Consultant shall incur no further obligations in connection with the terminated services and on the date set in the notice of termination the Consultant will stop work to the extent specified.

6.3 Compensation. The City shall pay the Consultant the following amounts:

- (a) All costs and expenses incurred by the Consultant for work accepted by the City prior to the Consultant's receipt of the notice of termination, plus a reasonable profit for said work.
- (b) All costs and expenses incurred by the Consultant for work not yet accepted by the City but performed by the Consultant prior to receipt of the notice of termination, plus a reasonable profit for said work.

Anticipatory profit for work and service not performed by the Consultant shall not be allowed or paid.

7. Disputes.

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

8. Representations. The Consultant certifies that:

8.1 The price submitted and the costs comprising same are independently arrived at without collusion.

8.2 The Consultant has not knowingly influenced and promises that it will not knowingly influence a City employee or former City employee to breach any ethical standard.

8.3 The Consultant has not violated, is not violating, and promises that it will not violate the City's policy of prohibition against gratuities and kickbacks.

8.4 The Consultant represents that it has not retained and will not retain a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

9. Equal Employment Opportunity. During the performance of this Agreement, the Consultant agrees as follows:

9.1 The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, age, national origin, or ancestry. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, disability, age, national origin, or ancestry. Such action shall include, but not be limited, to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.



CITY OF MERRIAM

9.2 The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, disability, age, national origin, or ancestry, and shall include the phrase "equal opportunity employer" or similar phrase approved by the Kansas Human Rights Commission.

9.3 The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

9.4 The Consultant shall assure that it and all subcontractors will comply with this Section 9.

9.5 If the Consultant shall fail, refuse or neglect to comply with the terms of these contractual conditions, such failure shall be deemed a total breach of the Agreement and such Agreement may be terminated, canceled or suspended, in whole or in part, and the Consultant may be declared ineligible for any further City contract for a period of up to one year. Provided, that if an Agreement is terminated, canceled or suspended for failure to comply with this Section, the Consultant shall have no claims for damages against the City on account of such termination, cancellation or suspension or declaration of ineligibility.

9.6 The Consultant shall assure that it is in compliance with and shall maintain sufficient records to document that, under all aspects of this Agreement, it has acted in a manner which is in full compliance with all applicable sections of the Equal Employment section of this Agreement and the following, as applicable: Title VI of the Civil Rights Act of 1964 (as amended) (42 USCS § 2000d et seq.); Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.); Title VIII of the Civil Rights Act of 1968 (42 USCS § 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, and amendments thereto); the Kansas Act Against Discrimination (KSA § 44-1001 through 1004, 1992 Supp. and amendments thereto); the City's Affirmative Action ordinances and policies, and amendments thereto. Such records shall at all times remain open to inspection by an individual designated by the City for such purpose.

9.7 The Consultant, in carrying out this Agreement, shall also comply with all other applicable existing federal, state and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made part of this Agreement.

9.8 The Consultant will be required to conform to Affirmative Action and Equal Employment Opportunity Requirements prior to the execution of this Agreement.

10. Independent Contractor. It is agreed that Consultant is an independent contractor to the City and shall not be considered an employee. Consultant shall be responsible for and pay all taxes and withholdings required by law upon the compensation paid under this Agreement, and shall indemnify and hold harmless the City from liability in connection therewith.

11. Notice. Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if said notice is personally delivered or sent by First Class mail, postage prepaid, to the party to whom said notice is to be given. Notices delivered in person shall be deemed to be served effective as of the date the notice is delivered. Notices sent by First Class mail shall be deemed to be served seventy-two (72) hours after the date said notice is postmarked to the addressee, postage prepaid.

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



CITY OF MERRIAM

The City of Merriam
6200 Eby Street
Merriam, KS 66202
Attn: Gerry Vernon, Capital Improvements Director

12. Phraseology. In this Agreement, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
13. Descriptive Headings. The descriptive headings of the provisions of this Agreement are formulated and used for convenience only and shall not be deemed to affect the meaning and construction of any such provision.
14. Amendments. This Agreement may not be amended unless such amendment is in writing and signed by both parties hereto.
15. Invalidity. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.
16. Waiver. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.
17. Merger. This Agreement and the documents incorporated by reference constitute the entire agreement between the parties with respect to the professional services set forth herein. There are no verbal understandings, agreements, representations or warranties between the parties, which are not expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.
18. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this Agreement shall supersede all verbal statements of any and every official and/or other representative of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement.
19. Survivorship. Notwithstanding the termination of this Agreement, Consultant's obligations with respect to indemnification (Article V, Section 4) and insurance (Article V, Section 5), and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Agreement.

ARTICLE VII

Exhibits & Attachments

The following Exhibits and Attachments are attached to and made a part of this Agreement:

- Exhibit A "Description of Project" consisting of 1 page.
- Exhibit B "Basic Services and Related Matters" consisting of 1 page.
- Exhibit C "Compensation" consisting of 1 page.
- Attachment 1. "Scope of Services Spreadsheet and Fee" consisting of 1 page.
- Attachment 1A. "Standard Hourly Rates" consisting of 1 page.
- Attachment 2. "GBA Certificate of Insurance" consisting of 2 pages



CITY OF MERRIAM

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

CITY OF MERRIAM, KANSAS

By: _____
Ken Sissom, Mayor

Attest:

Juliana Pinnick, City Clerk

Approved as to form by:

Michelle D. Daise, City Attorney

CONSULTANT

GEORGE BUTLER ASSOCIATES, Inc

By: George C. Clark
George C. Clark, P.E.
Title: Senior Associate / Municipal Group Leader

Address:
George Butler Associates, Inc.
9801 Renner Boulevard
Lenexa, KS 66219-9745



EXHIBIT A

DESCRIPTION OF PROJECT

City-wide Sidewalk Infill Program. – A three-year program across various locations.

This project fills in approximately 27,000 feet of sidewalk in areas that have either no sidewalks or have partial sidewalks that need connected.

This contract is to provide the programming portion of the project.

At a later date, a supplemental agreement will be executed to provide the design and construction period services for the project.

It is proposed to construct the project in three phases to accommodate available funding and lower citywide impact on residents.

Programming: 2016

Design: Late 2016/2017

Construction: 2017, 2018, 2019



EXHIBIT B

BASIC SERVICES AND RELATED MATTERS

The PROJECT for City Wide – Sidewalk In-Fill shall be performed in accordance with the requirements of the City of Merriam Municipal Code and pertinent APWA specifications and as described in GBA’s fee and scope proposal. The following documents are incorporated herein by reference to this Agreement.

- Attachment 1: Scope of Services spreadsheet and fee from GBA dated May 3, 2016
- Attachment 1A: GBA Standard Hourly Rates Table

Consultant agrees to perform all the tasks itemized for the fee as attached above. In the event of a conflict between this Agreement and the documents incorporated herein by reference, the terms of the Agreement shall govern unless otherwise agreed to in writing by the parties hereto.

COMPLETION TIME

The Consultant hereby agrees to meet the following schedule for programming deliverables. The dates noted below are “complete task by” the end of the specified month.

<u>Complete by</u>	<u>Task</u>
September, 2016	Programming Deliverables

EXHIBIT C
COMPENSATION

The City shall compensate the Consultant for services rendered and expenses incurred as described in this Agreement a maximum of \$ 34,569 detailed below. The maximum compensation shall not be exceeded without further authorization by Supplemental Agreement as approved by the City.

Compensation to the Consultant by the City shall be based on actual hours worked plus direct expenses in accordance with the Standard Hourly Chargeout Rates schedule as shown in Attachment 1A.

It is hereby agreed that said Attachment 1A is subject to adjustment on July 1st of each year by the Consultant to reflect increase in salaries and overhead costs.

1. BASIC SERVICES AS SET FORTH IN EXHIBIT B:

Phase	Description	Fee
1	Programming Services	\$34,569
2	Preliminary Engineering Design	\$TBD
3	Final Design	\$TBD
4	Bidding Services	\$TBD
	Total Engineering Design Services	\$TBD
5	Engineering Services During Construction	\$TBD
	Total Professional Services Fee	\$34,569

2. **ADDITIONAL SERVICES:** Compensation for additional services, as requested in writing by the City, which are not specified in Exhibit B shall be separately negotiated and/or otherwise agreed to in writing by the City and the Consultant.

ATTACHMENT 1

GBA SCOPE AND FEE

Attachment 1: Scope of Services spreadsheet and fee from GBA dated May 3, 2016

Attachment 1A: GBA Standard Hourly Rates Table

CLASSIFICATION	Cory	Bryan	Leslie	Karen	TOTAL HOURS	Additional Expenses	TOTAL EXPENSES	TOTAL COST
Programming Services	215.00	150.00	95.00	87.00				
Project Set up (Accounting and CAD)		4	2		6		\$0.00	\$790.00
Delineate and request AIMS information for each sidewalk segment from the City		4	4		8		\$0.00	\$980.00
Import AIMS information into CAD			4		4		\$0.00	\$380.00
Develop matrix to estimate design complexity of each sidewalk segment	1	4			5		\$0.00	\$815.00
Visit each segment to collect matrix information	2	24	24		50	\$100.00	\$100.00	\$6,410.00
Analyze segments for utility complexity		2	2		4		\$0.00	\$490.00
Analyze segments for right of way complexity		2	2		4		\$0.00	\$490.00
Analyze segments for ADA compliance		2	2		4		\$0.00	\$490.00
Analyze segments for driveway complexity		2	2		4		\$0.00	\$490.00
Analyze segments for obstruction complexity (trees, landscaping, storm sewer...)		2	2		4		\$0.00	\$490.00
Develop matrix to estimate construction cost of each sidewalk segment		4			4		\$0.00	\$600.00
Estimate sidewalk costs		4	6		10		\$0.00	\$1,170.00
Estimate driveway costs		4	6		10		\$0.00	\$1,170.00
Estimate curb costs		4	6		10		\$0.00	\$1,170.00
Estimate utility cost		4	6		10		\$0.00	\$1,170.00
Estimate R/W costs		4	6		10		\$0.00	\$1,170.00
Develop annual programming recommendations	2	8	2		12		\$0.00	\$1,820.00
Prepare memo and display to communicate matrix findings		40	40		80		\$0.00	\$9,800.00
Progress Meetings with the City (2)	3	4	3		10	\$40.00	\$40.00	\$1,570.00
QA/QC	4	4			8		\$0.00	\$1,460.00
Contract Administration		2		2	4		\$0.00	\$474.00
Grand Total for Programming Services					271	\$140.00	\$140.00	\$34,569.00
Assumptions								
Design phase contract to commence after programming phase completion								
Projects to be programmed at \$500k/year								
Annual project programming may be revised through design and construction phases								
No field surveys will be completed for programming phase								
ROW information will be based solely on AIMS information during the programming phase								
Utility information will be based solely on field observations during the programming phase								
No ROW or utility coordination will be conducted during the programming phase								
Programming costs are conceptual and may be revised during the design phase								

**ATTACHMENT 1A
 GEORGE BUTLER ASSOCIATES, INC.
 ENGINEERS / ARCHITECTS
 STANDARD HOURLY RATES**

Employment Classification	Hourly Rate
Principal	\$ 265.00
Senior Associate	215.00
Associate	185.00
Senior Architect / Civil Engineer / Specialist	150.00
Senior Mechanical / Electrical Engineer	160.00
Architect / Civil Engineer / Specialist 1	125.00
Mechanical / Electrical Engineer 1	130.00
Architect / Civil Engineer / Specialist 2	100.00
Mechanical / Electrical Engineer 2	105.00
Architect / Civil Engineer / Specialist 3	95.00
Mechanical / Electrical Engineer 3	102.00
Senior Arch / Civil / Specialist Technician	125.00
Senior Mechanical / Electrical Technician	140.00
Design Technician 1	95.00
Design Technician 2	75.00
Design Technician 3	65.00
Senior Construction Observer	130.00
Construction Observer 1	105.00
Construction Observer 2	96.00
Construction Observer 3	86.00
Construction Observer 4	80.00
Senior Field Technician	102.00
Field Technician 1	85.00
Field Technician 2	72.00
Field Technician 3	58.00
Administrative Assistant 1	87.00
Administrative Assistant 2	65.00
General Office 1	62.00
General Office 2	52.00
Senior Professional Land Surveyor	125.00
Professional Land Surveyor	115.00
Survey Technician 1	95.00
Survey Technician 2	65.00
Survey Technician 3	50.00
2-Man Survey Party	160.00

Equipment

(CAD and Total Station Survey Equipment expenses are included in the above hourly rates unless otherwise stipulated by contract).

Global Positioning System Equipment	20.00	per hour
Real Time Kinematic Global Positioning System Equipment (RTK)	60.00	per hour
Nuclear Density/Soil Testing Equipment	50.00	per day
Traffic Counters	20.00	per day

Expenses

Reimbursable expenses (travel, vehicle mileage, vehicle rental, printing and plotting, subsistence, long distance telephone, etc.) incurred will be charged at cost plus 10% to cover administrative overhead.

The following items will be charged as shown:

Personal and Company Vehicles	0.54	per mile
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Effective Date: January 1, 2016

ATTACHMENT 2

GBA Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

9/15/2016

DATE (MM/DD/YYYY)

5/3/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

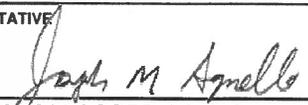
PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME: _____	
	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
E-MAIL ADDRESS: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Hartford Fire Insurance Company		19682
INSURER B : Hartford Casualty Insurance Company		29424
INSURER c : Navigators Insurance Company		42307
INSURER D :		
INSURER E :		
INSURER F :		

COVERAGES * CERTIFICATE NUMBER: 14037079 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER: _____	Y	N	37UENQI0398	10/15/2015	9/15/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Y	N	37UENQI0525	10/15/2015	9/15/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	N	CH15EXC857230IV	10/15/2015	9/15/2016	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$ XXXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in Nh) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	37WEQI0524	10/15/2015	9/15/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: CITY WIDE SIDEWALK IN-FILL PROJECT. CITY OF MERRIAM IS NAMED AS AN ADDITIONAL INSURED AS RESPECTS LIABILITY AND AS REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER 14037079 CITY OF MERRIAM 9001 W. 62ND STREET MERRIAM KS 66202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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AGENDA ITEM INFORMATION FORM

Agenda Item: Authorize professional engineering services contract for the design of Residential Street Group V – Affinis, Corp. for an amount not to exceed \$228,570.00.

Department: Capital Improvement Projects

Background/Description of Item:

Staff recently conducted a Request for Qualifications (RFQ) process for 2016/2017 capital projects engineering. There were four project categories for which engineering firms could submit their interest and qualifications for one or more categories. Ten firms responded to the RFQ and provided twenty nine statements of interests. Please see the following sheet detailing the responses.

An engineering selection team comprised of Kevin Bruemmer, Carl Sanders, and Gerry Vernon rated each statement of interest on the following criteria: 1.) Project Understanding; 2.) Project Approach; 3.) Relevant Experience; 4.) Staff and Availability; and 5.) Communication/Public Relations. The highest rated firm was selected by the committee and a project scoping meeting was held. The firm then developed a design services cost proposal once the scope was determined. Each firm also provided their current salary schedule for comparison.

Following comments taken from the Council, the scope for RSG V was reduced to the following for each project:

West 51st Street – Street-width reduction while adding sidewalk, storm sewer, curb/gutter, and street lights. A sanitary sewer feasibility study will be completed to ascertain feasibility.

Campbell Street – Remove of existing street section and replacement with new local service road classification. Design shall consider impact of future Turkey Creek Improvement

Merriam Lane – Improvement of existing “rural section” road to new local service road classification. Ribbon curb and minimal stormwater improvements will be installed to improve drainage. Existing parking and access will remain the same.

The engineering services agreement is based upon time and expenses and not to exceed \$228,570.00.

Attachments: Design Services Contract – Affinis Corp.

Related Ordinance(s) or Statute(s): None

Recommendation: Recommend that the Council authorize the Mayor to execute the design services contract to Affinis Corporation for Residential Group V for an amount not to exceed 228,570.00.

Funding Source: Merriam Special Sales Tax (¼-cent Street and Stormwater)

Budgeted Costs:	Engineering -	\$201,017
	Total Project -	\$2,326,500

Prepared by: Gerry Vernon, Capital Improvements Director

Date: May 9, 2016

PROFESSIONAL SERVICES AGREEMENT
Residential Streets Group V
Street & Storm Drainage Improvements

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter the "Agreement") made as of this ____ day of _____, 2016, by and between the **CITY OF MERRIAM, KANSAS**, a Kansas Municipal Corporation (hereinafter the "City"), and the undersigned professional firm (hereinafter the "Consultant").

WHEREAS, the City is in need of professional assistance in a technical field to prepare plans and specifications for the Project more fully described on Exhibit A attached hereto (hereinafter the "Project");

WHEREAS, the Consultant represents that it has sufficient experience and qualified personnel to perform, and the City desires the Consultant to perform, the professional services herein described; and

WHEREAS, the City has determined, based upon information provided by the Consultant that Consultant is qualified to provide the professional services described herein.

NOW, THEREFORE, the City and the Consultant, in consideration of their mutual covenants herein, agree in respect to the performance of professional services by the Consultant and the payment for those services by the City as set forth below.

ARTICLE I
Scope of Services

The Consultant shall provide for the City professional services listed in attached Exhibit B, Basic Services and Related Matters.

The City may request additional services to extend this Agreement to include a subsequent phase of Project design or to provide Project related services not anticipated at the time of this Agreement. At the City's request the Consultant shall submit a written scope of the additional work including an estimate of additional costs for the performance of such additional work. No change in scope shall be effective nor shall additional compensation be paid except on the basis of the provisions of a written supplemental agreement or an amendment hereto which may be duly entered into by the parties of this Agreement.

ARTICLE II
Compensation

The City shall pay the Consultant for services performed as outlined in Article I as set forth on Exhibit C attached hereto.

ARTICLE III
Time

The Consultant agrees to complete the services outlined in Article I within times listed in Exhibit B, Basic Services and Related Matters. In absence of written directions to the contrary, receipt of the executed Agreement shall be the Consultant's Notice to Proceed. The contract time includes reasonable review time by the City, and any other applicable governmental agencies.

Solely at the discretion of the City, an extension in time may be granted to the Consultant for delays determined by the City as unavoidable. Consultant may request extension of time stating fully the reasons for such request. Extensions for unavoidable delays shall be made in accordance with Article VI, Section 5.3 herein.

ARTICLE IV

City's Responsibilities

City shall perform the following in a timely manner so as not to unreasonably delay the services of the Consultant:

1. provide design objectives and constraints, capacity and performance requirements, and budgetary limitations for the Project;
2. furnish reports, plans and surveys in its possession that pertain to the Project. Except for reports and surveys prepared specifically for this Project, the Consultant shall have an obligation to independently verify the information contained in reports, plans, surveys and maps, which are furnished by the City;
3. furnish design and construction standards;
4. review Consultant's draft submittals;
5. sign and submit permits required by the Kansas Department of Transportation and the Kansas Division of Water Resources;
6. attend design review meetings, pre-bid and pre-construction conferences, and construction meetings;
7. negotiate and pay for rights of way and easements necessary to complete the Project;
8. identify, in writing, a primary point of contact through whom all communications to the Consultant shall be issued.

ARTICLE V

Consultant's Responsibilities

In addition to the basic services identified in Article I "Scope of Services" the Consultant shall do the following:

1. comply with local, state and federal rules, regulations and laws pertaining to this Agreement that are applicable at the time the Consultant designs the Project, regardless of whether such requirements are specifically referred to in this Agreement. Consultant shall protect and indemnify the City and its officers and agents against any claims or liability arising from or based on any violation of the same;
2. submit interim drafts and coordinate and attend draft review meetings as needed to meet Project requirements and City's design standards, and prepare final plans and specifications as required in Exhibit B, "Basic Services and Related Matters;"
3. immediately upon expiration or termination of the Agreement, return to the City all of the studies, maps, and other data furnished to the Consultant by the City pursuant to this Agreement;
4. indemnify and hold harmless the City, its elected officials, officers, employees, and agents, from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of Consultant's services, provided that any such claim, damage, loss, or expense is caused in whole or in part by a negligent or intentional act, error or omission of the Consultant, its subcontractors, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Consultant's services;
5. maintain throughout the duration of this Agreement insurance in the following amounts and will, upon request of the City, furnish copy of certification thereof:
 - (a) Workers' Compensation and Employers' Liability

Worker's Compensation Employers' Liability	Statutory \$500,000 each accident \$500,000 disease-policy limit \$500,000 disease- each employee
(b) Comprehensive Automobile Liability Bodily Injury & Property Damage	\$1,000,000 combined single limit per occurrence
(c) Comprehensive General Liability Bodily Injury & Property Damage	\$1,000,000 combined Single Limit per occurrence \$2,000,000 annual aggregate
Fire Damage Liability	\$100,000
Medical Payments	\$5,000

Maintain coverage for 2 years following completion of project

City of Merriam shall be named Additional Insured for General Liability including Products and Completed Operations

(d) Umbrella Liability: \$1,000,000

Consultant shall maintain Professional Liability Insurance in an amount of no less than \$1,000,000, and provide City with certification thereof upon request. All general liability and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed by the City in writing. All insurance carriers must be licensed to do business in the State of Kansas; carry a Best's policyholder rating of "A" or better and/or that is acceptable to the City; and carry at least a Class X financial rating;

6. employ persons qualified to efficiently perform the obligations and duties of the Consultant under this Agreement. If the City shall so direct, the Consultant shall remove from the Project any engineer, architect, surveyor, appraiser or other person employed by the Consultant in connection with the work; and
7. furnish right-of-way and easement descriptions for eminent domain proceedings, and maps and sketches as required by City.

ARTICLE VI Miscellaneous

1. Controlling law. This Agreement is to be governed by the laws of the State of Kansas.
2. Assignment. None of the obligations of the Consultant under this Agreement shall be assigned without the approval in writing of the City.
3. Binding on Successors. This Agreement is binding upon and fully enforceable against the successors and assigns of the Consultant, whether or not consented to by the City.
4. Reuse of Information. Consultant shall retain ownership of information, including reports, surveys, designs, presentation graphics and creative products, furnished under this Agreement. Provided, however, City's right of reuse shall be unlimited in frequency and quantity and may be for completion of the Project, an extension of the Project by parties other than the Consultant, or for uses unrelated to the Project. When information is subject to third party royalties or license agreements, City shall pay such royalties and license fees associated with the reuse of the documents. City's reuse of the information without verification or adaptation by the Consultant shall be at the City's sole risk without

liability or legal exposure to the Consultant. No additional compensation shall be due the Consultant for City's reuse of the information.

5. Termination for Default.

5.1 Default. If the Consultant refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or commits any other substantial breach of this Agreement, the City may notify the Consultant in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the City, the City may terminate the Consultant's rights to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

5.2 Compensation. The City shall pay the Consultant the costs and expenses and reasonable profit for services performed by the Consultant prior to receipt of the notice of termination; however, the City may withhold from amounts due the Consultant such sums as the City deems to be necessary to protect the City against loss caused by the Consultant because of the default.

5.3 Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Consultant shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms if the Consultant has notified the City within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the City or any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of the causes set forth above, the Consultant shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Consultant to meet the terms of the Agreement. Upon request of the Consultant, the City shall ascertain the facts and extent of such failure, and, if the City determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Consultant's progress and performance would have met the terms of the Agreement, the time for completion of the Agreement shall be revised accordingly, subject to the rights of the City under the clause entitled "Termination for Convenience."

5.4 Erroneous Termination for Default. If, after notice of termination of the Consultant's right to proceed under the provisions of this Section, it is determined for any reason that the Consultant was not in default under the provisions of this Section, or that the delay was excusable under the provision of Subsection 5.3, and both the City and the Consultant agree, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. Otherwise, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Section entitled "Termination for Convenience."

6. Termination for Convenience.

6.1 Termination. The City may, when the interests of the City so require, terminate this Agreement in whole or in part, for the convenience of the City. The City shall give written notice of the termination to the Consultant specifying the part of the Agreement terminated and when termination becomes effective.

6.2 Consultant's Obligations. The Consultant shall incur no further obligations in connection with the terminated services and on the date set in the notice of termination the Consultant will stop work to the extent specified.

6.3 Compensation. The City shall pay the Consultant the following amounts:

- (a) All costs and expenses incurred by the Consultant for work accepted by the City prior to the Consultant's receipt of the notice of termination, plus a reasonable profit for said work.
- (b) All costs and expenses incurred by the Consultant for work not yet accepted by the City but performed by the Consultant prior to receipt of the notice of termination, plus a reasonable profit for said work.

Anticipatory profit for work and service not performed by the Consultant shall not be allowed or paid.

7. Disputes.

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

8. Representations. The Consultant certifies that:

8.1 The price submitted and the costs comprising same are independently arrived at without collusion.

8.2 The Consultant has not knowingly influenced and promises that it will not knowingly influence a City employee or former City employee to breach any ethical standard.

8.3 The Consultant has not violated, is not violating, and promises that it will not violate the City's policy of prohibition against gratuities and kickbacks.

8.4 The Consultant represents that it has not retained and will not retain a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

9. Equal Employment Opportunity. During the performance of this Agreement, the Consultant agrees as follows:

9.1 The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, age, national origin, or ancestry. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, disability, age, national origin, or ancestry. Such action shall include, but not be limited, to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

9.2 The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, disability, age, national origin, or ancestry, and shall include the phrase "equal opportunity employer" or similar phrase approved by the Kansas Human Rights Commission.

9.3 The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

9.4 The Consultant shall assure that it and all subcontractors will comply with this Section 9.

9.5 If the Consultant shall fail, refuse or neglect to comply with the terms of these contractual conditions, such failure shall be deemed a total breach of the Agreement and such Agreement may be terminated, canceled or suspended, in whole or in part, and the Consultant may be declared ineligible for any further City contract for a period of up to one year. Provided, that if an Agreement is terminated, canceled or suspended for failure to comply with this Section, the Consultant shall have no claims for damages against the City on account of such termination, cancellation or suspension or declaration of ineligibility.

9.6 The Consultant shall assure that it is in compliance with and shall maintain sufficient records to document that, under all aspects of this Agreement, it has acted in a manner which is in full compliance with all applicable sections of the Equal Employment section of this Agreement and the following, as applicable: Title VI of the Civil Rights Act of 1964 (as amended) (42 USCS § 2000d et seq.); Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.); Title VIII of the Civil Rights Act of 1968 (42 USCS § 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, and amendments thereto); the Kansas Act Against Discrimination (KSA § 44-1001 through 1004, 1992 Supp. and amendments thereto); the City's Affirmative Action ordinances and policies, and amendments thereto. Such records shall at all times remain open to inspection by an individual designated by the City for such purpose.

9.7 The Consultant, in carrying out this Agreement, shall also comply with all other applicable existing federal, state and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made part of this Agreement.

9.8 The Consultant will be required to conform to Affirmative Action and Equal Employment Opportunity Requirements prior to the execution of this Agreement.

10. Independent Contractor. It is agreed that Consultant is an independent contractor to the City and shall not be considered an employee. Consultant shall be responsible for and pay all taxes and withholdings required by law upon the compensation paid under this Agreement, and shall indemnify and hold harmless the City from liability in connection therewith.

11. Notice. Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if said notice is personally delivered or sent by First Class mail, postage prepaid, to the party to whom said notice is to be given. Notices delivered in person shall be deemed to be served effective as of the date the notice is delivered. Notices sent by First Class mail shall be deemed to be served seventy-two (72) hours after the date said notice is postmarked to the addressee, postage prepaid.

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

The City of Merriam
9001 W. 62nd Street
Merriam, KS 66202
Attn: Capital Improvements Director

12. Phraseology. In this Agreement, the singular includes the plural, the plural includes the singular and any gender includes the other gender.

13. Descriptive Headings. The descriptive headings of the provisions of this Agreement are formulated and used for convenience only and shall not be deemed to affect the meaning and construction of any such provision.
14. Amendments. This Agreement may not be amended unless such amendment is in writing and signed by both parties hereto.
15. Invalidity. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.
16. Waiver. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.
17. Merger. This Agreement and the documents incorporated by reference constitute the entire agreement between the parties with respect to the professional services set forth herein. There are no verbal understandings, agreements, representations or warranties between the parties which are not expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.
18. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this Agreement shall supersede all verbal statements of any and every official and/or other representative of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement.
19. Survivorship. Notwithstanding the termination of this Agreement, Consultant's obligations with respect to indemnification (Article V, Section 4) and insurance (Article V, Section 5), and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Agreement.

ARTICLE VII

Exhibits

The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A. "Description of Project" consisting of 1 page(s).
- Exhibit B. "Basic Services and Related Matters" consisting of 8 page(s).
- Exhibit C. "Compensation" consisting of 1 page(s).

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

CITY OF MERRIAM, KANSAS

By: _____
Ken Sissom, Mayor

Attest:

Juliana Pinnick, City Clerk

Approved as to form by:

Michelle D. Daise, City Attorney

CONSULTANT

Affinis Corp.

By: _____
Kristen E. Leathers
Title: Principal
Address: 8900 Indian Creek Parkway
Building 6, Suite 450
Overland Park, Kansas 66210

EXHIBIT A

DESCRIPTION OF PROJECT

The purpose of this project is to improve the existing infrastructure and reduce future maintenance costs.

Residential Streets Group V

West 51st Street (Switzer Road to Knox Avenue)

This project site shall include adding sidewalk, storm sewer, and curb and gutter to north side of the street. Driveways shall be replaced/reconstructed to accommodate the new sidewalk. Street lighting shall be installed. The existing pavement width shall be reduced to match the roadway section between Farley Lane and Knox Avenue. Sidewalk will be added on the south side of the street between Farley Lane and Knox Avenue to complete the pedestrian connection. Existing, non-compliant ADA ramps and sidewalk will be replaced. A geotechnical investigation will be performed to determine existing pavement thickness and condition, and the need for full-depth replacement.

Campbell Street (south of 60th Street)

This project site shall include removal/replacement of the existing rural section street with a local service road section, street lighting, and driveway replacement/reconstruction. The existing trail will be reconstructed as needed and storm sewer improvements will be minimal. Design of this street shall consider the impacts of future improvements planned for Turkey Creek.

Merriam Lane (Merriam Drive to 61st Street)

West 61st Street (west of Merriam Drive)

This project site shall include improving of the existing rural section street to an urban section. A geotechnical investigation will be performed to determine existing pavement thickness and condition, and the need for full-depth replacement. Street lighting shall be installed. Storm sewer improvements will be minimal. Existing parking and access/entrances will remain the same.

EXHIBIT B

BASIC SERVICES AND RELATED MATTERS

The Consulting Engineer shall furnish and perform the various professional duties and services required for the construction of the Project in accordance with all tasks listed in the current City standards.

General Design Requirements

The consultant shall design the Project in conformity with the applicable portions of the City of Merriam's specifications and standards, the current version of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Secretary, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions.

The Design plans shall be signed and sealed by the licensed professional engineer responsible for the preparation of the design plans. Geological investigations or studies shall be signed and sealed by the licensed Geologist responsible for the preparation of the geological investigations or studies. Rights of way descriptions shall be signed and sealed by the licensed land surveyor responsible for the preparation of the rights of way descriptions.

The project includes design and plans of residential streets, 24 to 27 feet back to back of curbs (unless alternate width is approved by City), with sidewalk on one side of the streets, storm sewer system, and street lighting conduit to provide a complete project for each street.

Construction documents for Residential Streets Group V Improvements shall be prepared as a single bid package. Preparing individual bid packages and providing independent bidding services for each project is NOT considered part of the Basic Scope of Services and shall be compensated as Extra Work as stipulated in Section II of this agreement.

General Survey Requirements:

Vertical Control:

Elevations for plans must be obtained from a benchmark on the Johnson County Vertical Control Network. Show the datum benchmark and elevation of the datum benchmark on the plans.

Horizontal Control:

Section Corner and quarter section corner locations must be referenced to the Johnson County Horizontal Control Network. As part of the design survey all Section Corners and Quarter Section Corners within the project area and others used for project control must be located, reference and state plane coordinates determined with GPS equipment. The coordinates and referenced ties shall be shown on the plans and the standard corner reference report submitted to the Kansas State Historical Society, the County Engineer, and cities project manager within 30 days of the survey as required by state law. If a Johnson County Horizontal Control marker may be damaged by construction the County public works department should be notified prior to the bid letting.

Plan Notes - Johnson County Control Bench Marks:

Any Johnson County Benchmarks, Johnson County Horizontal Control monuments and any Section Corner and Quarter Section Corners within the area surveyed for the project must be conspicuously indicated on the plans. All bench marks and section and quarter section corners and property pins within the construction limits shall include a note for the re-establishment of the monuments.

TASK 1. CONCEPT DEVELOPMENT

1.01. Data Collection.

- A. Attend pre-design meeting.
- B. Develop design criteria for the project; prepare design memorandum.
- C. Schedule and coordinate project activities with the City (where applicable).
- D. Schedule, attend and facilitate a pre-design utility coordination meeting. Inform the utility companies about the projects intent and schedule and solicit input about their facilities. Meeting minutes will be prepared.
- E. Field data collection for the project limits as defined previously:
 - 1. Establish land corners.
 - 2. Field surveys.
 - 3. Contact utilities and field locate all utilities.
 - 4. Low opening elevation of existing structures adjacent to storm sewer system and at low points on Campbell Street.
 - 5. Field locate visible irrigation systems.
- F. Ownership and abutting property information:
 - 1. Secure plats.
 - 2. Obtain ownership information from City or Johnson County AIMS. The Consulting Engineer shall contract with a City approved title company for ownership information investigations. The costs associated with ownership information investigations shall be paid by the Consulting Engineer to the title company. This cost shall be included in the contingency fee as outlined in Section II of the Engineering/Architectural Services Agreement.
 - 3. Collect record drawings and plans for existing improvements. Review all available plans, previous studies, and pertinent information regarding the Project.
- G. The Consulting Engineer shall contract with a City approved geotechnical firm for pavement investigation on 51st Street and Merriam Lane/61st Street project sites. The costs associated with the work shall be paid by the Consulting Engineer to the geotechnical firm and shall be included in the Basic Services of the Engineering/Architectural Services Agreement.
 - 1. Collect Ground Penetrating Radar (GPR) data along at least 3 lines in each traffic lane.
 - 2. Process and interpret the GPR data using GSSI's RADAN software.
 - 3. Return to the sites and core up to 4 holes at each site into the pavement at locations determined from the GPR data to verify the pavement thickness and composition. Holes will be filled in with concrete or asphalt patch.
 - 4. Prepare a data report that includes a description of the GPR method, GPR data acquisition procedures, core results, photographs of the cores, and a site plan showing the location of GPR lines, core hole locations, and pavement thickness within the survey limits.

1.02. Concept development.

A. Campbell Street:

- 1. Develop a standard typical section for the local service road street classification.

B. Merriam Lane and 61st Street:

1. Meet with stakeholders to identify how delivery vehicles access properties.
2. Evaluate one- or two-way traffic flow.
3. Evaluate alternative typical sections to best fit area.

TASK 2. PRELIMINARY DESIGN

2.01. Prepare preliminary plans and base map at a scale of 1"=20' showing contours at 2-foot intervals, property owner information and property and easement lines.

A. Cover sheet.

B. Typical sections.

C. Pavement design shall be the responsibility of the City.

D. Drainage design.

1. Analyze the storm drainage needs along the project.
2. Determine watershed areas for all streams and basins draining onto the proposed roadway.
3. Determine ultimate development land uses for all watershed and sub-basin areas draining onto project.
4. Evaluate existing storm sewer system and determine actual capacity. Determine storm sewer improvements needed to meet City standards.
5. Calculate capacity of existing swales and downstream pipe systems adjacent to streets/site.
6. Based on storm sewer system condition assessment performed by City, identify storm sewer structures and pipes needing replacement.

E. Plan and Profile sheets.

1. Plan scale = 1"=20'
2. Profile scale H = 1"=20'; V = 1"=5'

F. Intersection and cul-de-sac layouts.

G. ADA Ramp Layouts. Ramp layouts do not include elevations or slopes. The intent is for the ramps to be constructed as specified in the standard details.

H. Driveway profiles, included in cross-sections.

I. Retaining wall layout.

J. Preliminary traffic control for construction plan sheets.

K. Preliminary street lighting.

1. Pole locations.
2. Define design parameters.

L. Preliminary pavement marking and signing.

M. Cross sections every 25 feet (approximately).

2.02. Perform quality assurance review.

- 2.03. Submit preliminary plans to utility companies for their use in preparing for relocations.
 - 2.04. Develop preliminary opinion of probable project costs itemized by unit of work, including right-of-way and contingency.
 - 2.05. Submit preliminary plans and opinion of probable cost to City for review.
 - 2.06. Meet with City as necessary in connection with such preliminary work. Three (3) meetings are budgeted.
 - 2.07. Field Check to be performed with representatives of the Consulting Engineer and the Cities at the project site with appropriate detailed plans.
 - 2.08. Right-of-entry documents.
 - A. Prepare right of entry documents for properties requiring temporary construction access.
 - 1. Maps and sketches as follows:
 - a. Individual drawings of improvements affecting each ownership including:
 - (1) *Title block.*
 - (2) *Ownership boundaries.*
 - (3) *Existing rights-of-ways and easements.*
 - (4) *Proposed impacts identified graphically.*
 - (5) *Legend.*
 - (6) *Graphical scale and north arrow.*
 - (7) *Ownership information.*
 - B. The Consulting Engineer shall prepare legal documents and descriptions for easements or rights-of-way as requested by the City. Legal documents and descriptions are NOT considered part of the Basic Scope of Services and shall be compensated as Extra Work as stipulated in Section II of this agreement.
 - C. The Consulting Engineer shall stake in the field the location of rights-of-way and/or easements prior to acquisition and construction as requested by the City, and shall meet with appraisers to identify easement and right-of-way locations. Easement staking, including temporary easements, permanent rights-of-way, and staking of structures or other items for utilities and eminent domain services are NOT considered part of the Basic Scope of Services and shall be compensated as Extra Work as stipulated in Section II of this agreement.
- 2.09. Stake in the field, the centerline of all streets at 100-foot intervals as a horizontal reference for utilities and other entities that may need this information.
- 2.10. Public Information: Prepare for and attend three neighborhood meetings to explain the project to residents of the project area, and to receive public comments at a time and place arranged for by the City.
 - A. Pre-design Meeting: This meeting will introduce the Consultant to the residents, explain the goals and objectives of the projects, solicit information about the project area, review the planned schedule for design, construction and subsequent opportunities that the residents will have to give their input on the projects.
 - B. Right-of-Way Meeting: This meeting will be held after field check and when right-of-way and easement requirements are known. At this meeting the project will be explained and the construction schedule reviewed. Written legal documents will

be available for the residents to sign to convey needed rights-of-way and construction easements.

- C. Pre-Construction Meeting: This meeting will be held after bidding and award of contract as stipulated under the Bidding Phase. For each meeting the Consulting Engineer will prepare all necessary exhibits, documents and plans and have persons available to explain the proposed work and to answer questions. The City will arrange for the time and place of the meetings and will distribute all notifications.
- D. The Consulting Engineer will be available to meet with City staff and concerned property owners as directed by the City to discuss the project at any time throughout the project.

2.11. Permitting.

- A. Prepare the necessary plans and applications for permit submission to and approval of:
 - 1. State including but not limited to:
 - a. Division of Water Resources.
 - 2. Federal including but not limited to.
 - a. US Army Corps of Engineers 404.
 - b. NPDES.

TASK 3. FINAL DESIGN

3.01. Prepare detailed plans and specifications.

- A. Cover sheet.
- B. Typical sections.
- C. Drainage design.
- D. Plan and Profile sheets
 - 1. Plan scale = 1"=20'
 - 2. Profile scale H = 1"=20'; V = 1'=5'
- E. Intersection details.
- F. ADA Ramp details.
- G. Driveway profiles included in cross-sections.
- H. Street lighting.
 - 1. Pole locations.
 - 2. Conduit and junction box locations.
- I. Pavement marking and signing.
- J. Cross sections every 25 feet (approximately).
- K. Retaining wall elevation views as required.
- L. Traffic control plan.
- M. Erosion control plan shall include a layout that specifies various erosion control devices to be used for each street. A phasing or sequencing plan and design

calculations of these erosion control devices is NOT considered part of the Basic Scope of Services and shall be compensated as Extra Work as stipulated in Section II of this agreement.

N. Standard and special details.

- 3.02. Prepare project manual including technical specifications and special provisions.
- 3.03. Perform quality assurance review.
- 3.04. Perform final plan quantity takeoffs.
- 3.05. Stormwater Pollution Prevention Plan (SWPPP), including erosion and sediment control plans. Plans shall conform to OP design checklists and requirements. SWPPP shall follow a standard template and conform to KDHE requirements. Provide 2 copies of SWPPP notebook to the City at time of bidding.
- 3.06. Utility coordination.
 - A. Schedule and attend three (3) utility coordination meetings. These meetings will include a preliminary plan review meeting, a final plan review meeting and a status meeting.
- 3.07. Prepare a detailed opinion of probable cost.
 - A. Include an appropriate contingency.
 - B. Estimate time required to complete construction.
 - C. Provide input to the City regarding forms for:
 1. Proposals.
 2. Construction contracts.
 3. Bonds.
- 3.08. At the completion of the project, furnish to the City the CAD drawings of the project in the Consulting Engineer's digital format and TIFF images in compressed CCITT, group 4 at 200 dpi format for the City's future use. The record contract documents for the project will be the original sealed drawings.
- 3.09. Furnish up to 12 copies of detailed plans and specifications to the City and utility companies.
 - A. Plan sets will be prepared in:
 1. Full size (22" x 34").
 2. Half size (11"x 17").
 - B. These plans are to be furnished at no additional cost, and are separate from those sold to prospective bidders.
- 3.10. Meet with City as necessary during preparation of detailed plans. Two (2) meetings are budgeted.

TASK 4. BIDDING

The construction documents for the project will be available through an electronic plan room. Plan rooms will receive a CD of the plans and specifications at no charge. Bidders will be able to purchase bid documents in PDF or hard copy formats.

- 4.01. Consult with and advise the City as to the acceptability of substitute materials and equipment when substitution prior to the award of the contract is allowed in the bidding documents.
- 4.02. Prepare written addenda to the bidding documents as required and or requested.

- 4.03. Attend bid letting.
- 4.04. Prepare a bid tabulation in printed and MS Excel format.
- 4.05. Assist the City in analyzing bids and making recommendation for award of the construction contract.
- 4.06. Prepare up to six (6) copies of contract documents for execution. Provide additional bid documents to the Contractor.
- 4.07. Arrange for, attend, and prepare meeting minutes for a pre-construction conference with City representatives, the successful bidder, and utility companies.

TASK 5. CONSTRUCTION SERVICES

- 5.01. Be available for discussion and consultation during the construction phase, but construction observation will be the responsibility of the City.
- 5.02. Review shop drawings and be available for consultation with the City during construction.
- 5.03. Prepare plan revisions as necessitated by conditions encountered in the field during construction, with the exception of traffic control plans.
- 5.04. Prepare final record drawings which reflect:
 - A. All change orders.
 - B. Minor design changes.
 - C. Changes made in the field by City representatives and are marked on the construction plan set.
- 5.05. Submit updated CAD drawings and TIFF images of the revised sheets.

COMPLETION TIME

The Consultant hereby agrees to complete the bid documents for Residential Streets Group V and be ready to advertise for bid by February 15, 2017.

SERVICES TO BE PROVIDED BY THE CITY:

- 1. Electronic copy of the Preliminary Engineering Studies, Storm Drainage Reports and plans of constructed improvements.
- 2. Copies of available plans.
- 3. GIS information from AIMS.
- 4. Notifications/letters for public meetings.
- 5. Processing payments for easements.
- 6. Assistance in obtaining approval from regulatory agencies.
- 7. Legal advertisement for public bids.
- 8. Contract management and construction inspection.
- 9. Coordination with property owners regarding conversion from septic to JCW sanitary sewer.

ADDITIONAL SERVICES COVERED BY CONTINGENCY FEE

A contingency amount is included in this Agreement to cover additional services that may be required but the scope of which cannot be defined prior to design. These services include but are not necessarily limited to:

- a. Additional or separate bid packages.
- b. Issue meeting notifications to residents.
- c. Preparation of legal documents and descriptions for permanent easement and rights-of-way.
- d. Surveys to stake easement, rights-of-way or for the use of the utilities in defining their relocation work.
- e. Enhanced photographs for displays to be used at public meetings.
- f. Engineering studies to be done in conjunction with the neighborhood approach to traffic management.
- g. Utility relocation plans for inclusion with construction documents.
- h. Geotechnical sub-surface investigations with an approved, professional geotechnical firm.
- i. Subsurface Utility Engineering (SUE). If agreed upon in writing this service will be provided by a mutually agreed upon sub-contractor.
- j. Purchase of easement certificates or last deeds of record.
- k. Assist with or perform easement acquisitions, including on-site meetings and various types of correspondence.
- l. Perform full-time or part-time construction observation services for any portion of the project.
- m. Perform post construction monumentation survey.
- n. Attend bi-weekly construction meetings at the request of the City.
- o. Prepare plans for sanitary sewer service connection (house to main) for individual property owners.
- p. Sanitary sewer main and/or services design on any of the project sites.

EXHIBIT C

COMPENSATION

The City agrees to pay the Consultant compensation for the services set forth in Exhibit B in accordance with the following:

1. **BASIC SERVICES – RESIDENTIAL STREETS GROUP V STREET & STORM DRAINAGE IMPROVEMENTS:** Compensation for Basic Services as set forth in Exhibit B shall be billed at hourly rates and equipment charges as set forth in the attached hourly billing rate schedule as may be adjusted annually, plus direct expenses. City agrees to pay Consultant/Architect an amount not to exceed Two hundred twenty-eight thousand, five hundred seventy and no/100 dollars (\$228,570.00), including reimbursables. The fee is based on the performance of the scope of services outlined in this Agreement. In addition, a contingency fee of Ten thousand and no/100 dollars (\$10,000.00) is included to cover items as listed in Section E of Exhibit B.

TOTAL CONTRACT AMOUNT: The total contract amount for Residential Streets Group V Street & Storm Drainage Improvements shall not exceed Two hundred thirty-eight thousand, five hundred seventy and no/100 dollars (\$238,570.00).

Payments shall be made no more frequently than monthly as the work of the Consultant progresses, upon the presentation of a proper invoice.

2. **ADDITIONAL SERVICES:** Compensation for additional services not specified in Exhibit B shall be paid in accordance with the Consultant's hourly billing rates as set forth in the Hourly Rate Schedule attached to this Agreement and as may be adjusted annually, or as otherwise agreed to in writing by the City and the Consultant.

Affinis Corp.
2016 Billing Rate Schedule

Professional Services

Billing Rate

Principal	\$230.00
Senior Project Manager	\$215.00
Project Manager	\$175.00
Senior Engineer II	\$165.00
Senior Engineer I	\$160.00
Engineer II	\$145.00
Engineer I	\$120.00
Intern Engineer (IE)	\$100.00
Construction Services Manager	\$140.00
Project Representative	\$95.00
Design Technician II	\$125.00
Design Technician I	\$95.00
CADD Technician II	\$85.00
CADD Technician I	\$80.00
Land Surveyor III	\$160.00
Land Surveyor II	\$105.00
Land Surveyor I	\$100.00
Survey Crew Member II	\$90.00
Survey Crew Member I	\$70.00
One-Person Survey Crew	\$125.00
Project Related Support Services II	\$95.00
Project Related Support Services I	\$75.00

Equipment Charges

Automobile Mileage	\$0.54/mile
Survey Vehicle Mileage	\$0.70/mile
Boat Rental	\$10.00/hour



**CITY OF MERRIAM
INTEROFFICE MEMORANDUM**

TO: MAYOR AND THE CITY COUNCIL
FROM: GERRY VERNON, CAPITAL IMPROVEMENTS DIRECTOR
SUBJECT: MAY CIP UPDATE
DATE: MAY 9, 2016

Highlights:

- **Farley Avenue** – To date, there remains one easement to be acquired. The District County petition is scheduled to be filed around May 24th. The current project schedule is as follows:
 - May 9, 2016 Open Bids
 - May 16, 2016 Provide City Bid Tab and Recommendation
 - May 23, 2016 Award Contract
 - June 9, 2016 Tentative 3rd public meeting
 - June 30, 2016 Notice to Proceed for Construction

- **Antioch Road from 67th Street to Johnson Drive** – The engineer is working on the final plan set. The project is scheduled to be advertised this month with award in June. If bids are favorable, construction should begin soon thereafter.

- **SMP Bridge over BNSF Railroad** – Design continues with an October, 2016 letting. Construction to begin and continue through Spring 2017

- As you are aware, this will be my last Council meeting. It has been a pleasure working for you and the City of Merriam. You are at the helm of a well run organization doing great things for its residents.

Capital Improvement Active Project List

Last Updated 5/5/2016

PROJECT NAME	FUNDING SOURCES	BUDGETED PROJECT COST	ACTUAL PROJECT 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
2015															
Residential Streets Group IV (54 St, 55 Ter/56 St, Garner, Hayes, Carter and Grant)	Special sales tax-Street/stormwater	\$2,705,000	\$2,540,561	Accepted 11/09/2015	Affinis	7/10/13	11/20/13	6/25/14	\$2,462,306.60	6/3/14	6/9/14	Kansas Heavy	\$2,161,517.55	7/7/14	10/30/15
Meyer Creek Improvement (Sherwood and Connell Dr.)	SMAC/Special Sales Tax	\$3,348,700		Substantially Complete	Affinis	11/12/13	4/15/14	2/24/15	\$3,408,621.00	2/3/15	2/9/15	VF Anderson	\$2,755,019.50	2/25/15	4/30/15
Antioch Street Overlay 67th to 75th Street	CARS/Special Sales Tax	\$280,000		Accepted 12/01/2015	Overland Park	N/A	N/A	N/A				O'Donnel & Sons		5/11/15	11/30/15
2016															
Farley Ave - 67th to 69th St	Special sales tax-Street/stormwater	\$1,872,500		Easement Acquisition	BHC-Rhodes	6/17/15	11/19/15								
SMP Bridge over BNSF Rail Road & Mill/Overlay West	Special sales tax-Street/stormwater	\$2,843,599		Design	GBA										
Antioch Road Improvement W. 67th Street to Johnson Drive	CARS/Special Sales Tax	\$1,095,487		Design	BHC-Rhodes	4/5/2016									
Corrugated Metal Pipe Replacement 47th/Eby/Antioch	General CIP	\$1,100,000		RFQ	TBD										
Residential Infill: 51st St., Merriam Lane, Campbell Lane	Special sales tax-Street/stormwater	\$2,326,500		RFQ	TBD										
West Frontage Road Improvements	I-35 Redevelopment	\$1,220,000		Delayed	TBD										
2017															
Sidewalk Infill	General CIP	\$1,815,000		RFQ	TBD										
Turkey Creek	General CIP/SMAC	\$5,740,750		TBD-Federal Funding	USACE	7/25/01	10/19/11	8/14/13							

CITY COUNCIL SUGGESTED MOTIONS FOR YOUR CONSIDERATION

CONSENT AGENDA

1. Move that the council approve Consent Agenda items 1-3.

MAYOR'S REPORT

1. No motion.
2. Move that the council concur with the recommendation of the Mayor and confirm the appointment of Nicole Proulex Aiken as City Attorney and authorize the Mayor to sign the associated Letter of Understanding.

PUBLIC HEARING

1. Move that the council authorize the Mayor to sign the 2017 CDBG application for the replacement of 30 streetlights in the Meyer Estates neighborhood.

FINANCE AND ADMINISTRATION

1. Move that the council acknowledge receipt of the City's 2015 Financial Statement Audit.
2. No motion.
3. No motion. (first reading)
4. No motion. (first reading)
5. No motion. (first reading)
6. No motion. (first reading)
7. No motion. (first reading)
8. No motion.

COMMUNITY DEVELOPMENT/PUBLIC WORKS

1. Move that the council approve a Professional Services Agreement (PSA) with George Butler & Associates (GBA) for engineering services for city wide sidewalk in-fill project and authorize the Mayor to execute the agreement.
2. Move that the council approve a Professional Services Agreement (PSA) with Affinis for engineering services for Residential Street Group V and authorize the Mayor to execute the agreement.
3. No motion

EXECUTIVE SESSION

1. Move that the council recess into Executive Session pursuant to the Kansas Open Meetings Act exception to discuss matters related to non-elected personnel, to protect the privacy of such personnel. Present will be the Governing Body and City Attorney. The meeting will reconvene in the Council Chambers at _____ pm.