

MERRIAM CITY COUNCIL MINUTES
May 11, 2020
7:00 P.M.
Virtual meeting via zoom.

I. CALL TO ORDER

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

II. ROLL CALL

The following Councilmembers were present via Zoom meeting:

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

Staff present via Zoom meeting: Chris Engel, City Administrator; Ryan Denk, City Attorney; Meredith Hauck, Assistant City Administrator; Jim MacDonald, Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Anna Slocum, Parks and Recreation Director; Bryan Dyer, Community Development Director; Stephanie Thompson, HR Manager and Juli Pinnick, City Clerk.

III. PUBLIC ITEMS

In response to COVID-19, public comment that normally occurs during the City Council meeting has been temporarily suspended. Members of the public are still Encouraged to share comments about matters that may or may not appear on the agenda. **Please note: Public Comments will only be taken *via email* to the City Clerk at jpinnick@merriam.org prior to 6:00pm on the date of the meeting. Please include "Public Comments" in the subject line.**

There were no public comments.

IV. CONSENT AGENDA

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

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

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

V. MAYOR'S REPORT

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

Mayor Sissom read the Proclamation declaring May 17-23 Public Works Week. He thanked all members of the Merriam Public Works department for their dedicated service to the City of Merriam.

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

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

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

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

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

This project will complete the installation of city standard streetlight from W. 73rd Street to W. 69th Street between E. Frontage Road and Antioch Road. The completion of the street light system will provide residents with a lighted, pedestrian

connection to Quail Creek Park, E. Frontage Road, and Antioch Road. The project will serve approximately 469 residents.

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

Total project cost \$188,164

Funding Sources:

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

Mayor Sissom opened the Public Hearing at 7:14 pm. Members of the public were able to make public comments regarding the 2021 CDBG funding via email to the City Clerk at jpinnick@merriam.org prior to 6:00pm on the date of the meeting.

There were no public comments. The Public Hearing closed at 7:15 pm.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL AUTHORIZE THE MAYOR TO SIGN THE 2021 CDBG APPLICATION. COUNCILMEMBER KALDAHL SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

VII. COUNCIL ITEMS

A. Finance and Administration

1. Consider approval of a franchise ordinance with Evergy Metro Inc.

City Administrator Chris Engel provided the background for this item.

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

The agreement with Evergy has the same terms as the existing agreement. The duration of the agreement is 10 years. The agreement grants Evergy the nonexclusive right to utilize and construct within the public rights-of-way to provide electric energy. Evergy cannot provide additional services which require a

franchise agreement without first obtaining a separate franchise agreement with the City. Evergy does have the ability to allow attachments to its facilities if such attachments are covered in a separate pole attachment agreement with the City. In return, Evergy will pay the City a monthly franchise fee of 5% of total gross receipts. Evergy defines franchise fee as “the ‘rent’ that we pay a city to use the right-of-ways for our lines, poles, etc.” In 2019, this agreement generated \$853,071 for the General Fund. It is anticipated that the city will receive \$925,000 in 2020. 70% of these fees are paid by commercial users and 30% are residential.

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

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

There was a first reading of this Ordinance at the April 27 City Council meeting.

Mr. Engel displayed documents depicting a franchise ordinance from the 1950's which was prior to Merriam being an incorporated city. The rate at that time was 5%. The rate for the ordinance being considered is also 5%. From the total revenue in the General Fund, Franchise fees account for 8% of that revenue.

Councilmember Yadrich asked if Advent Health was exempt from this fee like they are for property tax.

Mr. Engel responded that Advent Health, although exempt from property tax, are not exempt from the electric franchise fee.

Councilmember Yadrich commented that many residents that have spoken with her about this fee claim that they maintain the right-of-way in front of their homes and not the city. She asked Mr. Engel to provide a couple of examples of how the franchise revenue is used to maintain the right-of-way.

Mr. Engel commented that while there is city right-of-way in residential neighborhoods, there are many other miles of city right-of-way that are not residential. Those areas are mowed and maintained by our Public Works department. Sidewalks are installed

and maintained by the city in the right-of-way as well as retaining walls and curbs.

Councilmember Yadrich commented that some residents feel that the city is double dipping on taxes and franchise fees by taxing them for the area of their property that is in the city right-of-way.

Mr. Engel explained that the area that all properties are taxed on is what is depicted on the plat. Typically, those plats end 10-15 feet before the roadway which is city right-of-way. While the residents do maintain that area, are allowed to use it, and mow it, that 10-15 is not actually the resident's property; it is city right-of-way.

Councilmember Yadrich asked about the rate structure for Evergy that is approved by the Kansas Corporation Commission (KCC) and if the city has any input on those rate structures.

City Attorney Ryan Denk commented that the city does not have any influence over those rates. However, when those rates are being considered by the KCC, there is a public hearing in which the City could provide input. This input can be provided by any citizen as well.

Councilmember Neal asked about the budgeted amounts for franchise revenues for 2019 vs. 2020 and if those budgeted amounts were higher for 2020 because of rate increases by the utility companies.

City Administrator Chris Engel responded that the amount budgeted for 2020 are higher, based on new users and businesses. Primarily those new users would be the additional car dealerships. Audi will have a full year of operation in 2020 and potentially there will be a new dealership north of the Hyundai dealership.

Councilmember Neal asked if the 5% rate in the agreement has any opportunity to be changed during the term of the agreement. As Evergy rates increase so does the city's revenue based on the 5% fee. If over the next ten years, Evergy dramatically increases their rates, could the city possibly lower their rate to offset the higher bills for customers.

City Attorney Ryan Denk commented that the city could not charge a higher rate than is in the agreement and the vast majority of municipalities charge the 5% fee which is the maximum rate that can be charged. He further commented that the reason why utilities are in the city's right-of-way is because they have a statutory right to use

the right-of-way, but the city fronts the initial costs for the right-of-way. Private land holders can ask for compensation if a utility wants to go through your property, but public rights-of-way have to allow the utilities use and the franchise fees are the only way the city can be compensated for that use. He personally has never had anyone amend a franchise agreement in the middle of the term, but any agreement can be renegotiated at any time. The utility company has no issue with a reduction in the franchise fee rate as it is simply a pass through fee.

He further commented that there are basically two rules when it comes to the utility franchise fees: the first is that a city cannot charge more than the 5% fee, and the other is that the fee cannot be discriminatory. What that means is that all utilities must be treated equitably as you would not want to charge a lower franchise fee rate for gas and a higher one for electricity. If we reduce Evergy's percentage then all the other utilities would want their percentage reduced and by law, we would have to comply.

City Administrator Chris Engel commented that Southern Star Gas Company has a large pipeline that runs through our community, we have no Southern Star customers in Merriam and Southern Star has no business presence in our city yet, we have to allow them to run that pipe through our property and the city receives no compensation for that.

He further commented that the Timber Ridge development has no gas service, they only have electrical service so those residents do not pay a gas franchise fee as they are not an end user for gas.

Councilmember Pape commented that it appears that the rate has been 5% since 1950 and asked if it has always been a 5% rate and would anything prohibit us from making the agreement for only 5 years.

Chris Engel responded that it appears that it has always been 5%. Statutorily the maximum term of 20 years but it does not appear that there is anything that would prohibit us from doing for a lesser term.

Councilmember Pape wanted to be sure everyone in the city understands that the city has a franchise fee rebate program for folks who meet certain income guidelines.

Mr. Engel added that the city has refunded franchise fees to approximately 200 residents last year. The average franchise fee on

a residential bill is about \$3 per month. The program information is listed on the city's website, it contains the application, income guidelines and an overview of the program.

Mr. Engel displayed the income guideline information from the city's website.

Councilmember Neal commented that with the current economic situation, and the uncertainty of our revenue streams that are paid largely by commercial customers, it may not be the best time to reduce this revenue source. The city has a mechanism in place to assist lower income folks with refunding the franchise fees and suggested that program be extended this year as many folks have been affected by the current economic situation.

Mayor Sissom reminded the council that anytime the city loses a revenue stream, that shortfall has to be made up somewhere. He asked Mr. Engel how many mills of property tax would be needed to make up the amount that would be lost from no longer having franchise fees. The Mayor further commented that he is in no way proposing an increase in property taxes, he just wanted it illustrated what the impact to property taxes might be if the city were to lose this revenue stream. He concluded by indicating that reducing the fee rate for Evergy would cause a domino effect for all franchisees; once the other utilities discover that there has been a reduction in franchise rates, the gas, telephone and others would want a reduction in their franchise rates and by law, we would have to comply. We are currently looking at ways to save money in light of the current situation so this may not be the time to give away a revenue source.

Mr. Engel indicated that it would take an increase of about 9 ¼ mills to make up the franchise fee revenue.

Councilmember Yadrich thanked all the residents who submitted public comment on this issue and it has provided a good opportunity for councilmembers to learn if the decision being made is in the best interest of everyone in the city. She further commented that some residents have made comments that the city was not considering folks affected by the COVID-19 pandemic, but many councilmembers have been personally affected by the COVID-19 pandemic with job furloughs as well. For her, the total amount of franchise fees paid on her electricity bill last year was about \$36.

Councilmember Pape wanted it clarified that this is not an increase on Evergy bills. He feels that some residents may be misinformed in that this would be a new additional fee on their electric bill. This is the same amount that has been on there in the past and is not a new or additional fee.

The city clerk read the following comments submitted:

Billy Croan, 6633 Wedd Street commented, simpler is better. It's transparent. It's fair. That is the basis of my argument tonight against franchise fees.

I will also note from the beginning that a franchise fee is but one of many pieces of the franchise agreement before you this evening. There are indeed multiple other fees paid by utilities to the city on a regular basis in addition to that flat percentage franchise fee. The agreement does not depend on a franchise fee being set, and everything permitted and required by the agreement can remain in the absence of the franchise fee. The franchise fee does not pay for damage and repairs to right of way, or for closures of streets. Those have always been charged for separately in our agreements, when they actually occur.

I am not writing in opposition to the agreement as a whole. I would ask you to approve the agreement tonight with the franchise fee removed, and to remove the franchise fees from other franchise agreements in the future.

Evergy defines franchise fees as rent paid for use of the 'right of way' land and our staff have said the same. I think most Merriam residents paying rent today, pay that rent to the owner of the thing they are renting.

Yet much of the right of way land that Evergy's lines use is owned privately, by the residents and businesses that already pay property and sales tax to the city. Right of way land is usually not owned by the city itself. The city doesn't mow it, or shovel it, or pay property tax on it. So why should the city collect rent for it?

While franchise fees have been standard for some time in this part of the country and this is not an issue unique to Merriam, Franchise fees are not universal. Three states in the US even forbid them.

Franchise fees on essential utilities are a duplication of property tax. They come from the same pool of taxpayers, and go into the same general fund. And they 'fly under the radar' when people try to understand how much tax they're actually paying because 'Franchise Fees' play a word game with the word 'tax' itself.

The Kansas Corporation Commission (KCC) in no way requires franchise fees to be part of a franchise agreement. If a Franchise Fee is not charged, Evergy cannot simply keep the money themselves as was said a month ago. If a Franchise Fee is charged however, KCC does require that the fee get passed transparently on to consumers. And consumers are property tax payers in this case. So in my mind, that changes it from a fee levied against Evergy, to a fee levied against residents and local businesses (and that sounds like a tax to me). But Evergy cannot legally collect taxes.

Today is May 11th, 2020. Our nation is weathering a crisis on a scale that none of us have ever seen before. Now is simply not an appropriate time to be taxing residents and local businesses whom have already suffered greatly due to recent events.

Franchise fees are essentially micro-taxes that nickel-and-time people in hard to track ways and they're the reason that when you go to sign up for a service advertised at \$30/mo. and it's just always more, isn't it?

Franchise fees cause mistrust of government that already has a clear and common, publicly approved taxing capability (that is property and sales tax) that are just more honest, better understood, transparent, and efficient.

Franchise fees are not a problem unique to Merriam. But that doesn't mean we have to perpetuate them. You have the opportunity tonight to lead our region in better government as we have before. Set ourselves apart and make a name for Merriam being no-nonsense on taxes.

This aligns with the council objective of providing support to existing businesses. And it provides support to existing Merriam Families, which, while not currently a stated council objective, I'm sure it's something you all value.

In closing, we should collect the money we need from our citizens and businesses to maintain government. I support taxation in general. But we should use Property and Sales tax, and leave this "Franchise tax" (or "fee" as some call it) out of it. And you can do this tonight by moving to accept the agreement before you without the 5% franchise fee.

Thank you for listening, and for your leadership in this matter.

Mark Lamendola, no address provided, commented, when considering whether to approve the 5% Use Tax, please consider the following.

The City put us in a very bad position by going deep into debt for an unnecessary and overbuilt replacement community center. The retail sales taxes were never going to be enough to pay for this project, but now with car sales collapsing (permanently, and worldwide) plus the effects of CV-19, we will require a massive tax hike on residents to service our debt.

The state and federal governments have already said they are not going to bail out cities that spent unwisely. And by any measure, that regretful community center fiasco was unwise. Now with so many people out of work it's doubtful that user fees will cover the costs of operations and maintenance, further compounding the financial stress.

Taxing us another 5% when we are certainly going to see a tax hike to pay for the recklessness that resulted in this huge financial debt we cannot possibly service any other way is unpalatable.

The sooner the City makes the inevitable staff cuts, the better. We don't need an Assistant City Administrator, for example. Stop paying that wage ASAP, and we are that much less in the hole. Consider shutting off the street lights to save even more money; those were not here when I moved here and I totally hate them for several reasons (one of which is their severely negative impact on nocturnal wildlife). Stop the flower watering trucks and other stupid wastes of money now. What other waste does the City engage in? Make a list and insist it stops.

Don't forget, you live here too. Your own standard of living will be affected by what you do or fail to do in the next few months. It's going

to get bad, but how bad it gets depends on how soon you make the choices that must be made. Let's not try to put a spin on the bad decisions that got us here. Let's admit to the huge fail and figure out how to minimize the damage. I just told you how to get off to a good start on that. Please get started.

Susan Anstine, 5336 Farley Street, commented, I do not want to continue paying this fee

Fred Sweeney, 9716 Hocker Dr., since 1974 commented, Merriam receives a ton of tax it receives on rising real estate taxes, personal sales tax and who knows what else in the complex fees added to all our tax bills and utilities (to name a few). Even though IKEA seems to be the big company in town, it is clear all the car dealers in Merriam are the piggy bank that contributes massive amounts to the city's coffers. Let's stop buying piles of rocks posing as art, a chime at the corner no one hears and concentrate on helping our city remain a town with excellent public services and friendly towards those who live here. We could all use a break on money saved anywhere possible and not renewing the tax on the Evergy bill is a step in the right direction. I'm sure the city doesn't need to survive with the piles of money coming your way from just the few examples I mentioned above.

Albert & Ruth Terrones, 9931 Johnson Dr., commented, regarding the 5% tax on our electric bills, I don't think this tax is needed for the citizens of Merriam and it should not be renewed. We are already paying too much in taxes as it is. Anything that can be done to reduce our tax bill is needed. The city needs to consider the residents and those of us who are on fixed incomes.

Roxian Jarboe, 10017 W 68th Street since 1994, commented, I recently retired and since my income is going to be significantly reduced, I would like not to have to continue paying the 5% tax on my electric bill. I would rather have that money to use for necessities.

Kim Armstrong, 10024 W 70th Terrace, commented, I do not want to pay this tax. We pay enough taxes.

Ed Ruff, 8509 W 56th Terrace, commented, No, do not continue tax to Everygy.

Chae Scharf, 8501 W 61st St., commented, I am extremely against continuing the 5% franchise tax on the electric bill for yet another 10 years. Our electric bills are already high with many of our families out of work for COVID-19. No one wants to beg for relief. Not to mention the cost of paying someone for administrating that process. We need to consider the need for new sidewalks, street lamps and vehicles in a time when some of us are deciding if we can even reopen our businesses. Others don't know if they have jobs to go back to and health care is already stretching us to our limits. I ask that you please pass this on at the meeting tonight, May 11th, 2020. I will be tuned in to see the results of this vote.

Carol Leighton, 6334 Robin Hood Ln., commented, I am opposed to continuation of the 5% utility tax, as it adversely affects those of the lowest income.

Jeremiah Enna, 8501 W. 64th Ter., commented, I am a 22 year resident of Merriam at please record my opinion that we should completely eliminate the 5% tax on our electric bill called a Franchise Fee.

Harry Gianakon III, 10109 W 59th Ter., commented, I would love to see the 5% tax removed from our electrical bill. It is time for the residents of Merriam to see tax relief from their elected representatives. Any actual city expenses related to electrical lines should be able to be handled under the road maintenance tax that was just extended. The city already collects sales tax on electrical bills and they do not need the extra 5% Franchise Fee. Please let Merriam residents keep more of their hard-earned money.

Lina Moore, no address provided commented, I am not in favor of that tax. If the city of Merriam needs money perhaps they should stop spending so much on the frivolous art.

Marilyn Stephenson, 10125 Edelweiss Circle commented Merriam energy tax - Vote no.

Barbara Walsh, 9975 Edelweiss Circle, commented, I do not want the 5% Evergy tax continued. KS taxes are already too high.

Councilmember Silvers commented that he now understands how the franchise fee is calculated on his bill, and he will work to control the amount of his electric bill by unplugging unused appliances, switching to LED lights and other measures to control his electricity usage and bill.

Councilmember Neal commented that he will be voting in favor of the ordinance but only because, right now it does not make sense to change something that is already an existing fee in this time of uncertainty. Realizing there are some concerns raised by citizens however, the city does have a program to help provide some relief to those residents who may qualify and he suggested that maybe the program dates could be extended this year.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL APPROVE A FRANCHISE ORDINANCE WITH EVERGY METRO INC. AS PRESENTED. COUNCILMEMBER DIEBOLD SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

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

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

Merriam Drive Live debuted in 2018 as a new event in downtown Merriam. The goal of the event is to provide an opportunity to build

community among residents as well as provide an example of how the land at 5701 Merriam Drive could be utilized. Although weather has been less than desirable, event organizers implemented a weather plan that has proved successful for the enthusiastic attendees. This year, the event is scheduled for Saturday, October 3 from 11 am – 6 pm featuring the rescheduled Turkey Creek Festival 5K to start the day, a variety of musical performances, children's activities, cornhole tournament, yard games, food trucks and a Kansas licensed caterer serving beer and wine.

In order for beer and wine to be sold and participants not be confined to a specific space, an ordinance is required to allow the sale, consumption and possession of alcoholic liquor on streets and sidewalks within the boundaries permitted. The boundaries, outlined in Exhibit A, would be as follows: west edge of the Farmers' Market Pavilion; east edge of the Irene B. French Community Center; 57th Street on the north end and 58th Street on the south end. The boundaries of the area will be clearly marked by signs and a map of the area will be posted where the sale of alcohol occurs.

The first reading of this ordinance occurred at the April 27 City Council meeting.

COUNCILMEMBER DIEBOLD MOVED THAT THE COUNCIL APPROVE AN ORDINANCE AUTHORIZING THE SALE, CONSUMPTION AND POSSESSION OF ALCOHOLIC LIQUOR DURING THE MERRIAM DRIVE LIVE SPECIAL EVENT. COUNCILMEMBER YADRICH SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

3. Consider approval to waive the caterer's license fee for the Merriam Drive Live event.

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

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

within Merriam for other catering purposes, they are required to pay the license tax and receive an unrestricted caterer's license.

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

COUNCILMEMBER YADRICH MOVED THAT THE COUNCIL WAIVE THE CATERER'S LICENSE FEE FOR THE MERRIAM LIVE DRIVE EVENT. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of an amendment to the Merriam Pointe Redevelopment agreement.

City Administrator Chris Engel provided the background for this item

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

In March 2011 the City executed a Redevelopment Agreement for the Merriam Pointe project with Merriam Investors, LLC and Hendrick Automotive Group. Over the next several years, Merriam Pointe became the location of three new successful automobile dealerships. In 2016, Hendrick Automotive Group was released from that agreement after the successful completion of their development responsibilities leaving only the City of Merriam and Merriam Investors, LLC as participants. Beginning in early 2016, the City began additional conversations with Merriam Investors and Richard Webb about their desire to construct a new dealership south of Infiniti over a drainage area known as "Tract B." At that time, Mr. Webb indicated the cost to make the site pad-ready would be prohibitive without the assistance of tax increment financing (TIF), as well as the purchase of surplus city property located adjacent to the drainage parcel.

Over the following year city staff worked to negotiate the sale of the surplus property to Mr. Webb and draft an updated Second Amended and Restated Redevelopment Agreement with Merriam Investors and Merriam Luxury Imports granting up to \$6 million in TIF

funding for the construction of a \$22 million automotive dealership. The City Council approved the updated agreement on July 24, 2017. The agreement documents the legal obligations of the developer and the City throughout the development of the project and the life of the incentive revenue streams. Highlights of the Redevelopment Agreement include:

- The completed project will be an automobile dealership for the sale of new automobiles by a flagship brand that is not currently sold in the City.
- Project Plan Term (TIF term) is not being extended and will terminate on July 28, 2023.
- The City will receive an annual Administrative Fee of \$15,000 over the life of the agreement to cover the costs related to the administration of the project.
- Lead Developer (Merriam Investors) cannot assign rights, duties and obligations to the Co- Developer (Merriam Luxury Imports aka MLI) until the project is sufficiently pad-ready to the degree that vertical construction could begin.
- The total amount of public funds available for the Tract B Project is capped at \$6,000,000. This Maximum Reimbursement Amount will include a blended amount of two revenue sources-Up to \$4 million will be available from Incremental Real Property Taxes and \$2 million from the unallocated fund balance within the I-35 District Tax Increment Financing Project Fund.
- The \$2 million will be paid as follows: \$1 million once the dealership becomes operational; \$1 million after the dealership has been in operation for one year.
- The Maximum Reimbursable Amount will be reduced to \$0.00 (zero) if (a) the new dealership is not operational by July 24, 2020, (b) the Developers fail to address any violation of applicable local, state, or Federal law within 90 days, or (c) the new dealership becomes operational and then closes for more than three months withstanding conditions outside the Developers control, i.e. natural disasters, fires, performance failures by subcontractors, etc.

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

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

This change could have been memorialized as a simple amendment to the existing agreement but staff determined it more useful to have a single controlling document. However, this created a large document because of the numerous attachments that are part of the agreement. The inclusion of the documents in the Council Agenda Packet memorialize the history and technical aspects (forms, maps, etc.) of the project. For the changes currently proposed, the substantive portion of the agreement was included as a redlined copy in the Agenda Packet.

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

Councilmember Neal asked if the deadline is not extended, what the chances are that the development will get completed are.

Chris Engel responded that site is pad ready and to meet the full obligations of the agreement, the developer must get a car dealership opened on the site. Extending the deadline affects certain TIF reimbursements back to the developer. Staff is recommending extending the agreement.

Mayor Sissom commented that the current circumstances may have affected the timeline set out by the development agreement, however, Mr. Webb has made a good faith effort and has made great improvements to the site. It was basically a piece of land, a big ditch that had little value in the state that it was. Now the property is a marketable piece of land that will generate revenue.

COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE THE THIRD AMENDED AND RESTATED MERRIAM POINTE REDEVELOPMENT AGREEMENT AND AUTHORIZE

THE MAYOR TO SIGN THE AGREEMENT. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

5. Community Center Update. (Included in packet)

The monthly Community Center Update was included in the agenda packet.

B. Community Development/Public Works/CIP

1. CIP Update. (Included in packet)

VIII. STAFF ITEMS

City Administrator Chris Engel stated that Mission, Roeland Park and Prairie Village have all closed their swimming pools for the season. Fairway is making their decision tonight. Overland Park has a committee recommendation to close all their pools and Shawnee is still considering opening only one of their pools. Mr. Engel believes that those decisions are 51% financial and 49% safety. Merriam will have to make some decisions regarding whether safety measures can be addressed for the pool. While we don't have a facility to operate yet, those decisions will need to be made in the near future. If Merriam is the only pool open in Johnson County there will be other decisions that will need to be made.

The Irene B. French Community Center will not reopen to the public. It will continue to be used as a base of operation for staff until the new center is open and will continue to facilitate Meals on Wheels. There may be a way to ceremonially close the building. Prior to the COVID-19 issue, a flag lowering ceremony was scheduled, but at this time, a plan is not yet confirmed.

Mr. Engel announced that there will be a Zoom Work Session to discuss the future of 5701 Merriam Dr. Last year, the citizen committee provided the council with a recommendation to save as much of the 1911 portion building as possible. After that, a structural analysis of the building was conducted to determine the cost a feasibility of saving the 1911 portion of the building. That analysis is complete and as part of the budget process, it is time to have that discussion. A packet will be out in the next few days and the information will be available for the public to view. While there will be no public comment during the work session, councilmembers might expect to receive comments from the public directly.

The re-opening of the city will begin Monday with all A and B shift employees returning to their work sites. While the doors at city facilities have been closed employees continue to work either at their worksites or from their homes.

Councilmember Neal commented that he has been working with the NLC (National League of Cities) to get the Senate to consider a relief package for state and local governments in response to the COVID-19 pandemic. They are requesting all local officials reach out to their federal representatives and encourage them to vote and include in the relief bill a reimbursement for revenue losses and provide a mechanism to get the funding to local governments.

Mayor Sissom thanked Councilmember Neal for his work with NLC and representing Merriam.

Councilmember Silvers thanked councilmember Neal for his work on this issue and asked if there was some standard language that can be provided to anyone who wants to contact their federal representatives on this matter.

Chris Engel commented that staff can help facilitate that by creating a news story or providing a standard letter for everyone.

Councilmember Hands suggested looking at the communications received from NLC as she believes they have some standard language or sample letters related to this issue that can be used.

IX. NEW BUSINESS

X. EXECUTIVE SESSION

XI. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER HANDS MOVED TO ADJOURN AT 9:20 PM. COUNCILMEMBER SILVERS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

APPROVED: June 8, 2020

Respectfully submitted,

Juliana Pinnick

Juliana Pinnick
City Clerk