



**FINANCE AND ADMINISTRATION
COMMITTEE MEETING
COUNCIL CHAMBERS
APRIL 9, 2007
7:00 P.M.**

The Finance and Administration Committee of the Merriam City Council met at 7:00 p.m. Monday, April 9, 2007. Councilmembers present included: Committee Chair, Bryan Burks, Councilmember Nancy Hupp, Councilmember Dan Leap and Councilmember Shawn McConnell. Staff present included Quinn Bennion, City Administrator; Maureen Rogers, Finance Director; Stephanie Dawkins, Assistant City Administrator and Juli Pinnick, Deputy City Clerk.

Finance Department – Maureen Rogers

1. Review of monthly financial report.

Finance Director Maureen Rogers presented the Financial Report for the month of March.

2. Consider approval of the payoff of an outstanding KP&F liability in the approximate amount of \$88,000.

Finance Director Maureen Rogers presented the background for this item.

Staff has recently become aware of a liability the City has owed to KP&F since becoming a part of the KP&F retirement system in 1979. At that time police officers and firefighters had been covered under KPERS. Since KP&F has a different funding structure than KPERS the City incurred an unfunded liability of \$239,000. The City has been slowly paying off this liability at an interest rate of 8% with the balance scheduled to be paid off in 2016. KP&F does not provide any statements or information about the liability except for an actuarial report from the liability incurred in 1979.

The liability is being paid down through an increased KP&F employer contribution rate over the “base rate”. For 2007 the total rate is 13.80% with the base rate of 13.32%. The approximate cost for 2007 for the addition 0.48% is \$27,600. Several

other Kansas cities are paying premium rates for KP&F, some as much as 3-5% over the base rate.

Staff is proposing that the City use the Risk Management Reserve dollars to payoff the remaining liability. The cost of funding the additional employer contribution rate is much more than the interest on the dollars used for the payoff. Council Policy No. 127 provides that reserves may be used for the purpose of taking advantage of a favorable opportunity, as long as the funds begin to be repaid by the next two budget years.

The current balance of the liability is \$ 87,572, calculated with a payoff as of April 24. The amount will change slightly due to the effect of the April 13 and April 27 payrolls.

There was some discussion over the concern that the City has not been made aware of this liability over the past 28 years. No statements reflecting the liability has been sent to the city nor were any previous Finance Directors or City Administrators aware of this liability. Councilmember Burks requested more information be obtained from KP&F specifically an amortization schedule showing all payments made toward this liability. The consensus of the committee was to require KPERS provide additional information to verify this liability.

COUNCILMEMBER HUPP MOVED THAT THE FINANCE AND ADMINISTRATION COMMITTEE FORWARD TO THE FULL COUNCIL CONSIDERATION OF THE PAYOFF OF AN OUTSTANDING KP&F LIABILITY IN THE APPROXIMATE AMOUNT OF \$88,000 WITHOUT RECOMMENDATION. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY COMMENTING THAT HE FEELS THIS ITEM SHOULD BE TABLED.

Administration - Stephanie Dawkins

3. Consider approval of a settlement agreement with American Fiber Systems, Inc.

Assistant City Administrator Stephanie Dawkins presented the background for this item.

American Fiber System's (AFS) franchise agreement became effective May 26, 2001 and ran through May 26, 2006. It thereafter continued in holdover status. AFS paid its annual fee of \$27,720 for both 2001 and 2002, but it did not pay in 2003, 2004, and 2005 (or in 2006 for the holdover period). AFS argued that the new 2002 franchise statute eliminated the City's ability to charge a fixed annual amount, but the City contended (and AFS did not dispute) that this position was dependent upon AFS' ability to prove it had a good faith intent to provide local exchange service during this period. The AFS franchise had a most favored nations clause that required the City to offer AFS a franchise revision if the City entered a more favorable franchise with another provider. Essentially, the City did just that when it entered into its franchise with AT&T in late 2004 (with a provision only charging a

franchise fee based on local exchange service), or when it entered into its settlement agreement with Above Net in early 2005. Therefore, the City would likely not be able to charge AFS for the full unpaid period. In light of the most favored nations provision and the uncertainty and expense of litigation, staff and special counsel negotiated a settlement amount with AFS of \$55,440 conditioned upon final approval by the Council. This amount is equivalent to two years franchise fee (which would technically cover the franchise period through May 2005).

The settlement agreement is very similar to the settlement agreement the City Council approved with AboveNet, whereby the franchisee agrees to pay a fixed settlement amount for past franchise fees under the old franchise agreement, and the agreement then acts as the franchisee's acceptance of the new franchise (Sprint and Xspedius also entered into similar settlement agreements).

COUNCILMEMBER MCCONNELL MOVED THAT THE FINANCE AND ADMINISTRATION COMMITTEE FORWARD TO THE FULL COUNCIL A RECOMMENDATION FOR APPROVAL OF A SETTLEMENT AGREEMENT WITH AMERICAN FIBER SYSTEMS, INC. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of a telecommunications franchise ordinance with American Fiber Systems, Inc.

Assistant City Administrator Stephanie Dawkins presented the background for this item.

The City has the authority and responsibility to administer and govern activities within the City's rights-of-way (ROW). As part of this responsibility, the City may grant franchises to telecommunication and utility companies for the purposes of constructing, operating and maintaining systems within the City's ROW.

AFS is requesting a new telecommunications franchise with the City (previous franchise expired in May 2006). The franchise ordinance was drafted by Steve Horner, outside counsel for the City, in coordination with Michelle Daise. Mr. Horner has negotiated similar agreements for several Johnson County cities and Merriam. The ordinance is drafted to comply with state legislation governing franchising authority and is consistent with other telecommunication franchises in Merriam.

It is customary for Ordinances to have two readings. It is anticipated that the first reading of the ordinance will occur at the April City Council meeting with the second and final reading at the May meeting.

COUNCILMEMBER MCCONNELL MOVED THAT THE FINANCE AND ADMINISTRATION COMMITTEE FORWARD TO THE FULL COUNCIL A RECOMMENDATION FOR APPROVAL OF A TELECOMMUNICATION FRANCHISE ORDINANCE WITH AMERICAN FIBER SYSTEMS, INC. AND TO

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PLACE THIS ITEM ON THE CONSENT AGENDA IF ALLOWED. THE MOTION WAS UNANIMOUSLY APPROVED.

Councilmember Burks addressed a parking issue regarding parking time limits in Downtown Merriam where the Dutchmaid Annex was. The parking area has vehicles parked overnight and for several days. Councilmember Burks suggested placement of parking limitation signage to regulate the parking to two hours.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMITTEE, THE MEETING ADJOURNED AT 7:35 P.M.

Respectfully submitted,

Juli Pinnick
Deputy City Clerk