MINUTES OF MORGAN CITY COUNCIL MEETING — **December 11, 2018; 7:06 P.M.**

MAYOR AND COUNCILMEMBERS PRESENT: — **Mayor Ray W. Little, Tony London, Mike Kendell, Jeffery Richins and Eric Turner**

STAFF PRESENT: — **Ty Bailey, City Manager; Gary Crane, City Attorney; and Denise Woods**

EXCUSED: — **Jeff Wardell**

OTHERS PRESENT: — **Jeff Ambrose, Auditor – Christensen, Palmer & Ambrose, Josh Chandler, UTOPIA – Legal Counsel, Kimberly McKinley, UTOPIA – Sales, Roger Timmerman, UTOPIA, Laura Lewis, Lewis Young, Jack Walkenhorst, Allwest, Aaron Meacham, Kim Hurd, and Jaden Giles**

This meeting was held in the Council Conference Room of the Morgan City Offices, 90 West Young Street, Morgan, Utah.

This meeting was called to order by Mayor Ray W. Little.

The pledge of allegiance was led by Councilmember Turner.

The opening ceremony was presented by Councilmember London.

MINUTES AND WARRANTS

MOTION: Councilmember London moved to approve the minutes of the Morgan City Work Meeting on November 13, 2018 and the Morgan City Council Meeting on November 13, 2018, and one set of warrants.

SECOND: Councilmember Turner

The vote was unanimous to approve the minutes as written and one set of warrants.

CITIZEN COMMENTS

No comments were given.

NEW BUSINESS

2018 FINANCIAL REPORT – JEFF AMBROSE, AUDITOR

Jeff Ambrose, Auditor – Christensen, Palmer & Ambrose, provided a copy of the audit to the Mayor and Councilmembers. He acknowledged the City's helpful staff and Ryan Child's office for the job they did for the City on a monthly basis. He reviewed some highlights of the 2017 – 2018 Financial Report.

He said this audit was unmodified or a clean report – highest level of opinion the auditors can render; the financial statements were fairly stated in all material respects; no adjusted entries needed to be made. He mentioned the portion of the report regarding the financial statements, which compared 2018 numbers with 2017 and provided a summary. He explained the Statement of Net Position (Balance Sheet) which showed assets, liabilities, and the net difference (net position). The City spent a lot of money on capital expenditures during this fiscal year. He explained decreases in cash or large expenditure amounts in various funds revolved around capital outlay and there would be an increase in the capital assets. The report showed a decrease in Governmental Activities due to the capital outlays and an increase in cash in the Business Activities, due to the issuance of bonds and some of the bond money had not been spent as of the end of the fiscal year. He explained assets in the Governmental Activities increased by approximately $1.2 Million and assets in the Business-Type Activities (Enterprise Funds) increased by approximately $3 Million; the main area was infrastructure and utility systems.

Also, the City's long-term debt increased by approximately $2.8 Million due to the new bonds issued to finance some of the capital projects. The Statement of Activities report focused on the costs of providing services to the citizens; outlined the expenses and specific revenue applied to those expenses which showed a net cost for the service; most government services didn't pay for themselves. Governmental Activities expenses were down approximately $182,00000 from the prior year, General Fund revenues were up slightly and there was a change in net position of approximately $655,000.00, which included contributions from developers for improvements such as streets, waterlines, sewer lines, and sidewalks; those items became the City's property.

He pointed out the Balance Sheet which showed that the General Fund assets decreased by approximately $65,000.00 and total assets for the Governmental Funds decreased approximately $227,000.00; cash decreased and was reflected in the construction and expenditure of the capital outlay for the fiscal year. He reviewed the Statement of Revenues, Expenditures, and Changes in Fund Balance. He stated the overall revenue for the General Fund had decreased approximately $38,000.00; major change was in taxes which increased approximately $69,000.00; increase in sales tax; miscellaneous revenue decreased because of disposal of assets. The total expenditures for the fiscal year increased approximately $54,000.00; main increases were in capital outlay.

He discussed the increases and decreases in the Enterprise Funds. He explained the increase in the Proprietary Funds; slight increase in charges for services due to adjusting rates and growth within the community; operating expenses in the utility funds increased $187,000.00; net income of approximately $564,000.00. He stated it was important to generate net income in the enterprise funds, so they were self-sustaining and could pay for capital projects without incurring additional debt.

He explained the Statement of Cash Flow; significant outflows were for the acquisition and construction of capital assets; report showed the bond proceeds in the amount of $2.3 Million. He reviewed the Schedule of Revenues, Expenditures and Changes in Fund Balance which compared the actual results of the General Fund with the budget for the year; showed original budget and amendments. The expenditures showed all items were under budget except for Public Works; due to improvements being done to the park parking lot, which were scheduled for next year, but contractors were available, so work was completed, and funds were obligated in June.

He reviewed the Independent Auditor's Report which evaluated internal controls over financial reporting and compliance with certain laws and regulations; this was a clean report; didn't find any material weaknesses in the City's internal controls and no compliance issues were found. He stated while going through the budget one department was over budget and it was shown as a finding. He stated they did not have to change the planned scope of the audit; no difficulties in conducting the audit; no misstatements in

journal entries to correct; and no disagreements with management. He said they had issued a Management Letter which addressed a couple of minor suggestions for the City's consideration; monitoring the budget more closely and watching the compensated absences, which were the accrued vacation and sick leave hours. He suggested to allocate that amount throughout the enterprise funds instead of one fund; calculate the amounts attributable to each of the funds.

CODE ENFORCEMENT – NUISANCE CONDITIONS; CODE SECTION 4.04.100 – BASKETBALL STANDARD – RUSTY HURD

Kim Hurd, 294 Hound Street, stated she was here to understand the violation and the City's Code. She informed the Mayor and Council they have had a portable basketball standard in front of their home and in the street on Hound Street for a number of years. During that time, they were never informed that the basketball standard in the road was in violation of the City's Code. She stated that if they had been, they wouldn't have installed a permanent one in the park strip. The Code stated it was a nuisance because it was in the way of equipment, persons or vehicles passing by, but she didn't feel it was a nuisance because it was approximately 12 feet high. She stated she was issued a warning in October. She informed the Mayor and Council that all the portable basketball standards that were on her street have been removed.

Councilmember London asked where the kids were playing basketball. Kim informed him they were in the street. He stated his issue was the liability to the City because it was permanently concreted in the City's right-of-way.

Discussion regarding the safety issue and liability to the City. Several scenarios were discussed regarding children playing in the street. A permanently placed basketball standard in the City's right-of-way invited the game to be played in the public street.

Councilmember Turner explained that property from the road, the curb, park strip, sidewalk, and 1 foot inside the sidewalk were the City's. Therefore, the City decided what was allowed in that area. The basketball standard was still the Hurd's property, but the City could require them to remove it.

Ty Bailey, City Manager, informed Ms. Hurd that the company who installed the basketball standard did a Blue Stakes and Mark Schmid was notified by Blue Stakes; on May 22nd Mark Schmid sent an email to the company stating the installation of a permanent basketball standard was not allowed in the park strip. He explained the Council created the ordinances and interpreted the intent of the ordinance. The owners of the portable standards were informed they if they used them and then took them back in was acceptable because the owner had control.

Gary Crane, City Attorney, explained Ms. Hurd's personal liability in constructing a permanent basketball standard and the possibility of lawsuits if someone were to get hurt while playing/using the standard.

Councilmember Kendell stated he had been contacted by Rusty Hurd. He said he didn't agree with the issue of the pole and hoop being in the way, but he understood the risk of playing out in the street. He suggested the ordinance address the safety factor. He felt mixed messages were being given by allowing the movable standards and not a permanent one. He realized the risk and he was in favor of minimizing the risk. He suggested looking at the possibility of putting a basketball hoop at the Field Street Park so the kids had a place to play basketball.

Ty stated the City didn't take responsibility for people's action, but the City took responsibility for our facilities. That was the difference of the permanent basketball standard and the movable one.

MOTION: Councilmember London moved that Section 4.04.100 of the City Code remain as currently written regarding nuisance conditions.

SECOND: Councilmember Turner

Discussion on the Motion: Councilmember London agreed with Councilmember Kendell's suggestion to provide a basketball standard in the Field Street Park or somewhere on that side of town. Councilmember Kendell stated the basketball standard didn't obstruct, tend to obstruct, or render dangerous the passage of either person or vehicles. He suggested changing the language in the ordinance to address the safety issue. Discussed the procedure to amend an ordinance.

Vote was 2 ayes, 2 nayes; Mayor voted aye to break the tie; Motion passed that Section 4.04.100 of the City Code remain as currently written regarding nuisance conditions.

MOTION: Councilmember London moved to recess the Council meeting to begin the RDA meeting.

SECONDED: Councilmember Turner

Vote was 4 ayes; Motion passed unanimously to recess the Council meeting to begin the RDA meeting.

Discussion on Motion: Discussion regarding postponing the RDA meeting for another hour to continue the Council meeting to complete the items on the agenda.

Council meeting recessed at 8:07 p.m.

The meeting reconvened at 8:10 p.m. The Mayor called the council meeting to order.

CODE ENFORCEMENT – HOUSEHOLD PETS; CODE SECTION 10.16.080 – NUMBER OF DOGS ALLOWED – JADEN GILES

Jaden Giles, 586 North 700 East, addressed the Council regarding the number of pets allowed per household. He stated he lived in a duplex home, which had two residences, i.e. separate entrances, mailboxes, garbage cans, fenced yards, etc. There were two pets in the basement and two upstairs. He was informed by the Animal Control Officer that they had four pets for the residence because it was one residence. He gave several examples of other homes nearby and the number of pets per household. He had talked to the City regarding a kennel license and he was denied because it wasn't allowed in the current zone.

Councilmember Kendell asked for clarification regarding the City's Code regarding the number of pets allowed. Section 10.6.080 of the City Code allowed for two dogs.

Ty clarified the situation to the Council. Animal Control had reported there were five dogs at the residence, but one had been removed. The home was in a single-family zone and the zone didn't allow for multi-family. He explained the duplexes Mr. Giles mentioned in Mahogany Ridge were zoned multi-family.

Mayor said the home was in a single-family residential zone; one family can legally live in a home. The City's Code allows for family members to live in a "mother-in-law apartment," but didn't allow for two families to live in the single-family zone.

Gary clarified the issue by stating there couldn't be a duplex in a single-family zone. He stated that if the home was built as a legal duplex Mr. Giles would be allowed two dogs per unit, but if it was not a legal

duplex and was built as a single-family home and someone converted it into an apartment then only two dogs would be allowed.

Discussion regarding reviewing the ordinance and possibly changing it to allow more pets depending on the zone and the square footage of the lot. An agricultural zone allowed for a kennel license which would allow more pets.

No action was taken by Council; Section 10.16.080 of the City Code remain would remain as written.

RESOLUTION 18-45 – ADOPTING AND APPROVING A FIBER COMMUNICATIONS SERVICE AND ACQUISITION CONTRACT BETWEEN UTAH INFRASTRUCTURE AGENCY (UIA) AND MORGAN CITY

Laura Lewis, Lewis & Young, stated the service agreement would enable UIA to issue the bonds; these bonds would not be debt on the City's books. UIA would take on the indebtedness obligation in order to finance the "fiber to the home" build in Morgan City. She stated that everywhere UTOPIA went it was warmly embraced and the take-rates usually exceeded what was projected. The residents would have the choice of multiple service providers and the system was an open infrastructure. The City's potential risk was if the system was installed and no one used it. She stated if the take-rate was approximately 30% the risk to the City would be minimum. The debt would be financed over a period of 25 years.

Mayor asked regarding the timing of the bond. Laura explained if the contract was approved tonight, it would be taken before the UIA Board and the financing could be completed mid to late March.

Councilmember London asked regarding the amount of the bond.; $2.8 Million

Laura stated that $2.8 Million was the estimate; the bond would be approximately $2.5 Million to cover the actual construction of the project and acquisition of property and they would borrow for capitalized interest. The City would approve the service contract and everything else would be passed by UIA for the bond.

Councilmember London said the revenue requirement was not expected to exceed $175,085.00 annually. If user fees didn't cover that amount the shortfall would be taken from the electrical enterprise fund and sales tax; this would only happen if there were no end users signed up for service.

Roger Timmerman, UTOPIA, explained that would only happen if there was zero take rate. It would be calculated at $30.00 per end user short of achieving the minimum number of end users (474) required pursuant to the contract. The City would be obligated under the contract to pay that amount and it was done in the form of a Promissory Note. Then as revenues exceeded the minimum amount and continued to grow, the City would get that amount paid back. Any additional revenues collected from end users above the minimum requirement of 474 would be paid to UIA; they would be putting out the money to build out the infrastructure and the City would not be required to pay for the additional construction for the additional end users above the 474. The City's obligation was kept at the breakeven point.

Councilmember London asked regarding cost over-runs. Josh Chandler, UTOPIA – Legal Counsel, explained that the cost over-runs were defined in the contract and would be UIA's obligation.

Councilmember Kendell asked how long it would take for the infrastructure to be installed in a new development. Roger said time requirements were not addressed in the contract, but UTOPIA would work with developers to get the infrastructure installed as they built out the properties.

Kim McKinley, UTOPIA – Sales, addressed the issue regarding the amount of time to service a new build. She said it was approximately two weeks to get connectivity after signing up for the service.

Councilmember Kendell mentioned Section 3.14, paragraph (b) which stated – For so long as UIA has available system capacity, UIA agrees to provide a minimum . . . . He asked what happened if UIA didn't have available system capacity. He was concerned with this clause in the contract.

Discussion regarding the language and Roger said there was 40 channels of 100 Gbps on the backbone and they had the ability to increase capacity. Councilmember Kendell requested that language be removed from the contract. Discussed what language needed to be removed from the contract. Section 3.14 (a) would be removed and then the words 'For so long as' would be removed from paragraph (b).

Mayor mentioned Section 2.3 – Acquisition, Date of Commencement and Substantial Completion. He asked for clarification of what substantial completion meant. He asked did the 150 days relate to substantial completion.

Roger meant the system was built and orderable by residents. Essentially it meant the hut, fiber, electronics were ready to go and installation could begin throughout the City pursuant to the map. Build-out completed within 150 days from the date of commencement.

Josh stated the "start date" would be upon execution of the contract by both parties, but there was a provision in the contract to extend the start date if necessary.

Roger explained that the entire system would be built out before hooking anyone onto the system.

Mayor clarified that the $2,280,468 covered substantial completion; included fiber to 474 homes plus the build-out of the line through the community. He asked when the first loan payment was due.

Laura stated the first loan payment was technically due 6 months after issuance. Would capitalize interest for two years. The first debt payment would be October 2021.

Mayor stated the 474 end users needed to be reached by March 2021.

Roger explained the process to sign-up for the service once it was available. He said UTOPIA would assist in informing and educating the residents, i.e. event at City Hall, send out fliers, etc. He explained that the providers set their own pricing and it was market competition. He encouraged the businesses in Morgan to contact UTOPIA and they would be their advocate and help them select options from different providers to pick the right solution for their needs.

Ty said the City had an obligation under the contract to provide property to UTOPIA. He had done some research and it could cost up to $160,000.00 for property. The amount could be added to the amount of the bond and UTOPIA would negotiate the price for the property. The increase to the bond for the property would require more subscribers. The final numbers would be based on the cost of the property.

Discussion regarding the size of property necessary for the fiber hut and also storage of materials. The property needed to be closer to the main roads.

Councilmember Kendell asked Jack Walkenhorst, Allwest, if he was solicited by Morgan County and the City to bring fiber to Morgan. He said the end objective was to provide better fiber for the citizens and businesses of the City.

Jack Walkenhorst, Allwest, said Allwest was solicited by the County and the City to come to Morgan about five or six years ago. He explained some of the issues they had encountered getting the fiber to Morgan.

MOTION: Councilmember Turner moved to table Resolution 18-45.

SECOND: Councilmember Kendell

Discussion on the Motion: Discussion regarding what the Council needed to move forward with the decision. Items discussed were more time to review the contract, needed additional time to research and gather information, the amendments to the contract that were discussed this evening needed to be made to the contract, and a better understanding of the amount of the bond and the obligation to the City regarding the number of end users. Decision was made to hold a special meeting.

ROLL CALL VOTE: Jeffery Richins – aye
Mike Kendell – aye
Jeff Wardell – absent
Tony London – aye
Eric Turner – aye

Vote was 4 ayes; Motion passed unanimously to table Resolution 18-45. The reason being to gather further information regarding the size and financing of the project.

A Special Meeting was scheduled for January 2nd at 6:00 p.m., and UTOPIA representatives will be available for questions

This meeting was adjourned at 9:40 p.m.

Denise Woods

Denise Woods, City Recorder

These minutes were approved at the January 8, 2019 meeting.