

AMERICAN FORK CITY COUNCIL
SEPTEMBER 23, 2019
WORK SESSION MINUTES

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Staci Carroll	Council Member
Barbara Christiansen	Council Member
Rob Shelton	Council Member
Clark Taylor	Council Member

Staff Present:

David Bunker	City Administrator
Camden Bird	Admin Analyst
Terilyn Lurker	City Recorder
Kyle Maurer	Finance Officer
George Schade	IT Director

Also Present: Todd Marriott, Kathy Shaw, Camille Buhman, and Laura Lewis

WORK SESSION

The purpose of City Work Sessions is to prepare the City Council for upcoming agenda items on future City Council Meetings. The Work Session is not an action item meeting. No one attending the meeting should rely on any discussion or any perceived consensus as action or authorization. These come only from the City Council Meeting.

The American Fork City Council met in a work session on Monday, September 23, 2019, in the American Fork Administrative Offices, located at 51 E. Main Street, commencing at 5:00 p.m.

1. Discussion on a LightHub Communication Service contract

David Bunker, City Administrator, started by explaining that the contract with LightHub would open the door for American Fork to achieve efficiencies, as it addressed the operations of the network. As new members joined LightHub, each member would participate in the operational side of things.

Todd Marriott stated that LightHub currently had two participating cities, and hopefully more cities would join. The two board members were Mayor Brad Frost and Mayor Katie Witt. LightHub did three things that were important for American Fork. First, it provided operations, engineering, and customer service. Secondly, American Fork could utilize its NOC and Mid Mile fiber. This would be a separate agreement with LightHub, as it was not owned by LightHub. Third, projects in American Fork would be heard by and voted on by Mayor Frost, who was on the board. Mr. Marriott pointed out there were two ways bonding could occur: either through LightHub or the City. Regardless of how bonding took place, they needed to have LightHub in place. Costs could be reduced by one-fourth.

Mr. Bunker clarified that the project was a singular vote. Mr. Marriott stated there would be no indebtedness for a separate entity's debt. Additionally, there was an escape clause if for some reason this didn't work out efficiently. He felt this would make the contract mutually beneficial.

Council Member Barnes asked where the City itself was located. He thought LightHub and the City were two separate entities, and he sought clarification on the matter as they seemed synonymous in the documents. Mr. Marriott stated that American Fork was the City and when it moved forward with the contract, the City would have a say on operations and construction. Camille Buhman added that after a contract was signed with LightHub, the City would elect one member as a representative to serve on the board; that person would be Mayor Frost.

Council Member Shelton asked where Mayor Frost's fiduciary duty would lie: as the Mayor of American Fork or as a board member with LightHub. Ms. Buhman stated he would serve in both roles. Council Member Shelton explained that board members were meant to act in the best interest of the entity they served. However, they were making decisions as a Council right now. He was concerned that the rest of the Council would not be involved in the decision-making that would take place on LightHub's side. Mr. Marriott disagreed that this would be the case, stating that the City would have a vote with regards to operations. There was further deliberation on the matter of balance of control between the two entities in the long run.

Council Member Shelton felt that this contract was a bit premature, especially since they were still waiting for other cities to join LightHub. When the efficiencies existed as discussed, they could then move forward as a City, because at that point they would have direct accountability. He felt things would get messy during the three-year build out phase. He was concerned about potential complaints from the citizens as well as budgetary overages. As a City, they could not plan for everything; there would be conflict points that would come up. He didn't think this contract served the best interests of the City.

Ms. Buhman noted that Kaysville had already signed on as a participant of LightHub and under State statute, they had to have at least two participating members. Council Member Carroll asked if they signed a service contract that was the same as the one presented to the Council tonight, or if it was a different version of the contract. Ms. Buhman said it was substantially the same one, noting the only differences pertained to dates. She further explained that LightHub was a quasi-governmental agency that had to comply with the Open and Public Meetings Act.

Council Member Shelton said the complaints were watered down tremendously. He explained that the government closest to the people ran the most effectively. This was one step away, because most folks at LightHub did not live in American Fork.

Mr. Marriott said the contract was meant to alleviate concerns relating to ownership and control. Regarding organization, He explained that the City's leadership would remain the same for the next few years. If they moved forward with the project, they would have reports, dashboards, and monitoring of the project. This would operate just the way the City wanted it to through that construction phase. The entire process would be open and not take place behind closed doors.

Council Member Shelton said he wanted NOC and Mid Miles to be included in one agreement because they were negotiating two assets. Furthermore, he wanted the agreement to also include operations. Additionally, Council Member Shelton said the fee calculation was unclear. Council

Member Carroll agreed. She further added that while it would be nice to negotiate the NOC and Mid Mile contracts at the same time, they should be kept separate for clarity.

Council Member Shelton reiterated that he thought this agreement was premature. Mr. Marriott disagreed, explaining that the interlocal agreement and the service contract had to be in place in order to bond.

Laura Lewis explained that if they bonded through LightHub they would have the service agreement in place. If the City bonded on its own, then they would not need to have the agreement in place. The contract was paving a way for an option. In the meantime, they could adopt bonding parameters and the sooner they acted they would save on costs.

Council Member Shelton stated that the next step would be to decide how they were going to bond and under what entity. Mr. Marriott said they were trying to give them options down the road; it seemed prudent to put the service contract in place now.

Mayor Frost remarked that these were big, heavy documents. He asked Ms. Lewis to detail the pros and cons of both directions. Ms. Lewis explained that with the interest rate, there were two rating agencies. Both entities would want to know sales and franchise fees, as this would affect the issued bond rating. At worst, the rating would be an A+ to AA- rating. Ms. Lewis stated that one benefit of bonding through LightHub was that the debt would not show up on the City's books which could be politically beneficial.

Mayor Frost asked if everyone was clear on the control of the project. Council Member Carroll inquired as to the definition of network, noting that she read this would belong to LightHub. Mr. Marriott said it wasn't that they own it, but LightHub would have the obligation of paying off the bond. Ms. Lewis added that the City could extract itself from the contract with a year's notice; however, the debt would follow the City. Both entities would vote separately on their own projects, but they would all vote on operations. Ms. Lewis explained what would happen if the City pulled out of the contract early, noting that there may be an additional cost.

Council Member Carroll said she understood that the only entity who could make the decision was American Fork. However, it would take the decision out of the City's hands if the network was owned by LightHub. Ms. Buhman clarified that it meant American Fork was relinquishing its network to LightHub. She explained that Council Member Carroll's question was answered by two separate agreements for NOC and Mid Mile, and the terms in those agreements. Those agreements would dictate the terms by which American Fork was allowing LightHub to use the asset. The NOC and Mid Mile were two very different assets and therefore it'd be hard to combine them into one agreement.

Council Member Carroll asked who would own the fiber after the bond was paid off. Ms. Lewis said her understanding was that if they decided to issue the bonds through LightHub, then LightHub would own those assets as collateral.

Council Member Shelton asked when they were voting on the debt and how they were issuing the bonds. Staff indicated that they did not know at this point. The Mayor stated he was comfortable waiting until November to decide on this item. Council Member Shelton stated that if they were not willing to bond under LightHub, they would be looking at another agreement.

He said he would rather get rid of the dual path; he wanted clear language indicating how American Fork was establishing its service contract with LightHub. Council Member Christiansen said the City need to know what its options were before making the decision.

Council Member Carroll stated that a contract bound them to do something in a certain way. Ms. Lewis said LightHub would have to issue the parameters to go into debt, which was another step LightHub would have to do before bonding. This charted a course; up until they marketed the bonds, they could decide not to move forward with the deal. Ms. Buhman said this did not mean they couldn't bond through the City; it just provided the option of bonding through LightHub if so desired. There was further deliberation on the matter.

Ms. Lewis stated that if they decide five years down the road to bond for another project, the bonding companies would look at the fiber bonds to determine how much they could bond. Ms. Buhman asked if there was a time advantage to signing the agreement with LightHub in order to capture a specific interest rate. Ms. Lewis said the market rates were low right now and could potentially change.

Mr. Marriott agreed there were several factors at play in this decision. His opinion was that there was no possible way to know what the best route was; however, he suggested they keep options open. Kathy Shaw explained that in speaking with bond counsel, they were keeping both options open and the costs would be the same.

Council Member Carroll asked if it would be wise to put other safeguards in place so that the Council could have more say in the matter. Ms. Buhman stated that under the State statute, this agreement had to follow State law, meaning they must appoint someone to the board. Council Member Shelton said they ran the risk of one person having too much power.

Council Member Christiansen said she would like to keep both paths open. Council Member Barnes said he did not know why they couldn't start to make some decisions. He asked what would change in the next five weeks that would make them choose one path over another. Council Member Taylor agreed, adding that they would still be accountable for the debt.

Council Member Shelton said he didn't understand the need for the promissory note. Ms. Lewis said notwithstanding the City would be responsible for its own debt, they were thinking of what could happen on the operational side. For example, if operational expenses were higher and LightHub went to American Fork and Kaysville asking for more funding, they could loan money to LightHub. Council Member Shelton asked if there was an automatic trigger for getting a line of credit, to which it was noted this was a decision of LightHub. Council Member Shelton was concerned about extending lines of credit. Ms. Lewis stated that LightHub could not force the City to make payment. If both American Fork and Kaysville issued bonds through LightHub, she wanted to ensure that it was crystal clear that the bond came first.

Mr. Merrill said whenever he reviewed a contract, he viewed it with a covenant of good faith. However, if they didn't trust their partner, they needed to have an out; he liked that there was a one-year exit strategy. Ms. Buhman said they could make sure that an exit clause was included with the bylaws.

There was discussion regarding potential amendments to the articles of incorporation. Ms. Buhman said that amendments could take place, but only with non-substantive changes. Any major changes would be subject to review.

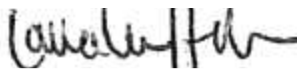
Council Member Shelton noted a discrepancy on the promissory note regarding the interest rate. He said he would like for it to be tied to an index because rates would be unknown in the future. Ms. Lewis said they can look at the PTIF and add a percentage. That was agreeable to the Council.

Council Member Shelton read through the contract and noted concerns regarding loan repayment. Ms. Lewis said she didn't know what assets the City had as collateral. She further noted that the language in question was not critical and could therefore be deleted from the document.

The group discussed areas throughout the proposed contract that needed to be modified, including details pertaining to default rates, calculating payments, collecting service fees, revenue requirement, bond certificate, and operational expenses.

2. Adjournment

The work session adjourned at 7:15 p.m.

A handwritten signature in black ink, appearing to read "Lauralee Hill", written in a cursive style.

Lauralee Hill, Deputy Recorder