MINUTES OF LAYTON CITY COUNCIL STRATEGIC PLANNING WORK MEETING — **APRIL 29, 2021; 5:21 P.M.**

MAYOR AND COUNCILMEMBERS PRESENT: **MAYOR JOY PETRO, ZACH BLOXHAM, TOM DAY, DAWN FITZPATRICK, CLINT MORRIS, AND DAVE THOMAS**

STAFF PRESENT: **ALEX JENSEN, GARY CRANE, MASON KJAR, STEPHEN JACKSON, WES ADAMS, TRACY PROBERT, AND KIM READ**

The meeting was held at Fire Station 51, 530 North 2200 West, Layton, Utah.

Mayor Petro opened the meeting and turned the time over to Staff.

KAYS CREEK IRRIGATION AGREEMENT

Gary Crane, City Attorney, explained the outline Staff would follow in presenting the agenda item and the discussion. He stated the City had a window of opportunity for the transfer of the Kays Creek Irrigation Company to be completed and reminded the Council, the Water Master Plan had included all available water resources, which included Kays Creek Irrigation, and explained the benefits to the City in managing these water sources.

Mason Kjar, Attorney, identified the categories which would lead the discussion:

- Opportunities and Choices
- Balanced Plan
- Assets
- Obligations
- Management and Decision Making
- Cost and Sustainability

He asked the Council if there were any initial questions and there were none.

He directed the Council to the Agreement and mentioned the City had identified a number of projects needing to be completed in the Plan. He also identified the water shares currently owned by Kays Creek and explained the contract currently in place with Weber Basin Water. He emphasized both of those facts: water rights and shares and the Weber Basin agreement were opportunities to the City.

Councilmember Fitzpatrick requested clarification about the number of acre feet of water included with the water rights currently owned by Kays Creek and Mr. Kjar responded the amount would vary, but the existing agreement authorized approximately 3,000 acre feet and a discussion followed. Alex Jensen, City Manager, also explained the benefits to the City for providing untreated water, secondary water, to its residents.

Councilmember Bloxham requested clarification whether there was anything which prohibited the City from acquiring all rights and benefits identified in the agreement in conjunction with the acquisition of Kays Creek Irrigation Company. Mr. Kjar responded that would be addressed during the discussion.

Mr. Kjar pointed out there were different categories of shareholders and explained the agriculture users of Kays Creek water received both ditch water and pressurized water. He explained there were both assets and management decisions associated with the System and explained what was meant by Termination of Kays Creek Member Shares and continued to identify other assets of the System. He also explained how the City would address additional shares owned by a shareholder with the System.

Councilmember Fitzpatrick asked whether the State Engineer was aware of this possible acquisition of water and Mr. Kjar didn’t believe so and a discussion followed specific to forfeiture of water. Mr. Kjar clarified this transaction would only change the ownership of Kays Creek Irrigation Company, but not the water rights.

Councilmember Day stated one of his concerns throughout these discussions was specific to ‘extra shares’ and inquired how a shareholder would continue to maintain the value of those shares, and used this year as an example those extra shares not normally used would be needed during the drought. Mr. Kjar pointed out the distinction between a ditch user and a pressurized user. He also referred to the three options and clarified the shareholder would have to select the third option if he wanted to use the water as Councilmember Day described. He pointed out the third option (option C of the contract) would allow the shareholder to use the water as it always had done in the past and a discussion took place. He emphasized it was the City’s desire to draft something fair and equitable to everyone and the discussion continued.

Mr. Kjar indicated the hypothetical situation was very specific and suggested today’s discussion be more general in nature. Mr. Jensen added the City would address these situations and treat these shareholders fairly. Councilmember Day also asked about assessments and expressed concern with Kays Creek’s previous practices and Mr. Jackson expressed agreement with Councilmember Day’s concern. He indicated Staff would also need to address that issue. Mr. Kjar emphasized assessments would not be made by the City; rather, the Board of Kays Creek would continue in operation during the transition and would continue to have that responsibility. He added, following the phasing of the transition the reservoirs would be included under the City’s umbrella as anticipated in the Water Master Plan.

Councilmember Fitzpatrick asked when that was anticipated to happen and Mr. Kjar responded that was negotiable; however, there was a ‘sunset provision’. Mr. Kjar also pointed out a new board would be constituted with half being appointed by the City with the remaining being appointed by voting shareholders (ditch users) and explained how decision making would occur to work together on joint issues. He directed the Council to the dispute resolution portion of the contract. Mr. Jensen pointed out the City was interested in demonstrating a level of cooperation with the Kays Creek Board and shareholders. Councilmember Day believed it wouldn’t be difficult for the City to also manage the operation of the open ditch system; additionally he also suggested the City assume responsibility for the reservoirs. He continued to express his opinion these users would be happy as long as they continued receiving the same amount of water. Mr. Jensen continued to explain the perspective of the Kays Creek Board and the discussion continued. Stephen Jackson, City Engineer, pointed out the reasons Kays Creek Irrigation needed to continue to exist and operate in some fashion. Mr. Crane stated City Staff would further explore this issue.

Mr. Kjar directed the Council to number 7, identified as “Option” and explained the “drag-along clause” in the contract as it applied to the phasing of the transition which reflected a date of January 2030. Councilmember Fitzpatrick asked why acquiring the system was so complicated and Mr. Jensen responded the company just couldn’t dissolve because shareholders owned a significant amount of water shares. He continued the City believed once development occurred over time, developers would purchase that water and the City would eventually own the system. Councilmember Fitzpatrick asked about a reasonable amount of time and the discussion continued. Mr. Jensen emphasized this would be the largest decision of this Council and explained how this opportunity could be lost to developers and the discussion continued regarding assets and liabilities. Mr. Crane and Mr. Jensen emphasized the City’s agreement with Kays Creek was subject to approval of the shareholders.

Councilmember Day pointed out there would be significant infrastructure costs to the City to access the water in the future and Mr. Jensen responded those costs had already been accounted for in the rate structure. Councilmember Day believed it would be difficult for the City to begin completing infrastructure improvements if it didn't own the entire Kays Creek system and Mr. Kjar disagreed with that statement and pointed out the language in the agreement which allowed the City to do that upon signing the agreement. The Council continued to discuss specifics within the agreement.

Mr. Kjar expressed his optimism that the City and Kays Creek could come to an agreement regarding the transition and believed the discussion was valuable to Staff. He indicated the City's legal team would reach out to Kays Creek for further negotiations. Mr. Jensen asked if there was anything specifically in this agreement, which the Council would be opposed to approving. Councilmember Day stated he was firm on the all or nothing approach for the system; which meant including the reservoirs and open ditches. He specifically inquired about those shareholders and the discussion continued. Mr. Jensen emphasized the City's approach would be to provide a copy to Scott Green, Kays Creek Board President, to allow its Board an opportunity to review the agreement prior to both entities meeting together to further discuss issues and concerns associated with the agreement. He pointed out the importance for the City and Kays Creek Board to be unified when the agreement was presented to its shareholders.

Councilmember Fitzpatrick pointed out her two concerns with the agreement as it was currently proposed. Mr. Crane believed the sooner the agreement was executed the better for everyone involved. Following input from each councilmember, the Council directed Staff to move forward with continuing to negotiate the agreement with Kays Creek.

Mr. Kjar, Mr. Jackson, and Mr. Adams left the meeting at 7:17 p.m.

DISCUSSION – COVID/AMERICAN RECOVERY MONEY

Mayor Petro informed the Council there were several ideas of how the City should appropriate the funding it will receive in the form of COVID/American Recovery funds and pointed out clarification on those parameters had not yet been identified. She indicated the Legislature would be convening in a Special Session for that purpose and other matters of consideration.

Mr. Jensen reminded the Council of the estimated amount of funds the City anticipated to receive and identified the ways in which the funds could be appropriated: infrastructure, support businesses impacted by the pandemic, and/or direct costs incurred during the pandemic. He pointed out there were no details associated with receiving the funding and reported no new information had been provided specific to limitations and stated there was significant uncertainty with how to proceed. He informed the Council, Staff's recommendation would be to appropriate funding for items which didn't already have other revenue streams or those projects which the City's wouldn't ordinarily be allowed to complete and shared an example. He suggested the Council consider this an opportunity for "one time" monies for projects and requested the Council provide some ideas to Staff.

Tracy Probert, Finance Director, informed the Council the State Auditor's Office was in the process of auditing how the original funding had been appropriated and suggested the City cautiously appropriate funds. He reminded the Council, the City had deferred the appropriation of these funds for public safety wages and benefits because of the potential repercussions from the State Auditor. He pointed out the United States Treasury had explicitly indicated this was a reasonable expenditure; however, it was distributed via the governor's office and the City was a sub-recipient and they wanted to identify how those funds were used.

Mayor Petro requested each councilmember share and discuss suggestions regarding the funding:

- Councilmember Morris suggested investing the funds could be used toward water infrastructure in order to keep rates manageable for residents. He also suggested it could go toward maintenance of the sewer system.
- Councilmember Bloxham suggested the City could use its direct funding and collaborate with the State and asked about pre-payment for the UTOPIA bond. Mr. Jensen responded Staff was

exploring whether the funds could be used for that purpose as opposed to General Fund monies. Councilmember Bloxham expressed agreement with Mr. Jensen to identify those items which didn't have a revenue stream and could agree with the sewer infrastructure. He complimented City Staff and residents for the manner in which both had shouldered the pandemic.

- Councilmember Fitzpatrick expressed agreement with Councilmember Bloxham's suggestions especially appropriating the broadband funds for the UTOPIA debt, even just one year's worth. She asked if there were any one time projects, such as a trail, which had been delayed and would qualify for appropriation of the funding. She would also be in agreement for infrastructure improvements such as roads, water and/or sewer, etc. Mr. Jensen explained the challenges of appropriating funds for those purposes and mentioned the "smart" metering for water and the Council's direction was very helpful.
- Councilmember Day suggested the following: purchasing property for a park, develop parks, relocation of the fire station currently located on Fort Lane, the Parks and Recreation buildings, Hobbs and Holmes Creek connections to solve secondary water issues, Christmas lighting, and moving forward on a joint venture with the school district for a new pool.
- Councilmember Thomas expressed agreement with appropriating funds for projects which could free up General Fund revenue. He also believed developing a park would be a good idea.

Councilmember Fitzpatrick informed the Council of a possible collaboration with the State to appropriate funding for Communities that Care. Mr. Jensen informed the Council, the City had been approached by soccer clubs interested in developing park property. Mayor Petro appreciated comments shared by the councilmembers and was in favor of collaborating with either the County and/or State for projects. She indicated she would be in favor of a citizen center or senior center within the City.

DISCUSSION – SCOOTERS

Mayor Petro reported she had been approached by a second scooter company regarding allowing electric scooters within the City and requested direction from the Council. Councilmember Fitzpatrick shared her personal experience in observing users in Salt Lake City earlier today and announced she would be against it. Councilmember Bloxham also shared a personal experience and stated he couldn't vote for it. Councilmember Thomas responded he also wasn't in favor of the proposal. Councilmember Day believed the Council's responsibility wasn't to determine whether a business was allowed to operate within the City; but, rather to implement regulations for such businesses and a discussion followed. Mr. Jensen pointed out the City could put an ordinance in place but wouldn't be able to enforce regulations against users. Councilmember Morris expressed his opinion the City wasn't connected in such a way that the product was needed at this time. He also expressed concern with how they could be regulated and a discussion followed.

Mr. Probert suggested the City should identify a tax which would accommodate for the use of the City's infrastructure. Mr. Jensen pointed out there wasn't a tremendous benefit to the City for having this type of business and indicated Staff would convey the Council's current position to the interested businesses.

MIDTOWN TROLLEY

Mr. Jensen reminded the Council, the City would no longer be able to use CDBG funding for this purpose and informed the Council, Staff had reached out to UTA (Utah Transit Authority) to determine its willingness to contribute additional funding for this project, as well as Davis County. He inquired if the City's contribution was lowered, would the Council be willing to fund the project, until future development was recognized which needed this type of transportation. Councilmember Fitzpatrick suggested the FrontRunner readership was down and didn't know whether it was beneficial. Mr. Jensen reminded the Council the initial purpose was intended for Economic Development and agreed UTA ridership had significantly decreased due to the pandemic. Mr. Probert explained the City's current contribution was in effect until December and would be obligated for some funding.

JULY 4TH AND 24TH

Mayor Petro announced she had secured the popsicle contribution from Smith's for the Fourth of July celebration and suggested incorporating the volunteer commission members to assist in distributing popsicles along the parade route. A discussion took place regarding shirts for the volunteers.

Mayor Petro reminded the Council of the traditional Electric Light Parade for July 24th and asked the councilmembers if they wanted to be responsible for their own costume or whether she should provide costuming for the Council as a group. A discussion followed and it was determined to purchase additional glow sticks for the event.

The meeting adjourned at 8:43 p.m.

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Kimberly S Read, City Recorder