

MINUTES OF UTOPIA REGULAR BOARD MEETING - APRIL 21, 2003

THE UTOPIA BOARD OF DIRECTORS HELD A REGULAR MEETING ON MONDAY, APRIL 21, 2003, AT *THE NAGANO ROOM, E CENTER OF WEST VALLEY CITY, 3200 DECKER LAKE DRIVE*. THE MEETING WAS CALLED TO ORDER BY CHAIR DAN SNARR.

MEMBERS PRESENT: Paul Larsen, Brigham City  
Joe Melling, Cedar City  
David Gill, Centerville  
Alex Jensen, Layton  
Ott Dameron, Lindon  
Lee King - Midvale  
Dan Snarr - Murray  
Jim Reams - Orem  
Todd Wilson, Payson  
Ed Skrobiszewski, Perry  
Christopher Davis, Roy  
Rocky Fluhart, Salt Lake City  
Matt Shipp, South Jordan  
Janice Auger, Taylorsville  
Richard Woodworth, Tremonton

MEMBERS ABSENT: Brad Sears, Cedar Hills  
Mark Cram, Riverton  
Paul Isaac, West Valley City

OFFICERS PRESENT: Paul Morris, Executive Director  
David Shaw, Deputy Director

OFFICERS ABSENT: Dean Nickels, Treasurer  
Roger Black, Chief Operating Officer

1. Approval of March 10, 2003, Board Meeting Minutes. Executive Director Paul Morris presented draft minutes of the March 10, 2003 board meeting. Board Member Joe Melling motioned to approve the minutes as written. Board Member Alex Jensen seconded the motion. A vote was taken; it was unanimous.
2. Consideration of Resolution 03 - 12: A resolution welcoming Salt Lake City as a founding member of UTOPIA. Executive Director Paul Morris welcomed Salt Lake City into UTOPIA as a founding member, and specifically Rocky Fluhart as the representative. Mr. Morris stated that it has been an enjoyable experience to work with the competent people in Salt Lake. Salt Lake City has appropriated the funds to join, and they have adopted the

Interlocal Agreement that created UTOPIA. In the future, there will be some changes made to the Interlocal Agreement, one of which will be the deletion of the May 10<sup>th</sup> deadline for founding members to join. It will be replaced with an exhibit of all founding members, including Salt Lake City. These changes will be submitted to the board in the future and then presented to each city for approval. Board Member Christopher Davis made a motion to approve Resolution 03 - 12. Board Member Richard Woodworth seconded the motion. A vote was taken. It was unanimous.

3. Handout of Revised Voting Schedule. Paul Morris stated that the addition of Salt Lake City made changes to votes held by board members, which in turn changes the majority count and the 2/3 vote count. Each person's namecard states their number of votes. The directory includes a list of board members, their addresses, emails and the voting numbers. The directory is in today's packet.
4. Introduce Rob Wilkinson of CHR Solutions: The Executive Director introduced Rob Wilkinson to the board. He stated that there was some initial disappointment (that the loan would not fund wholesale projects), but Rob spoke with those involved and they will consider UTOPIA on its merits. The contract between UTOPIA and CHR will be signed while Rob is here. Rob will also spend time with DynamicCity and gather the information he needs from the three cities (Tremonton, Brigham City and Perry) to make the application ready for submission. The deadline is July 31, 2003, but the earliest we can apply is April 30<sup>th</sup>.

Rob stated that the RUS is founded under the Department of Agriculture, and he is molding a program to make UTOPIA fit. Farm Bill 2002 makes available 1.4 billion dollars in loan money for rural communities of less than 20,000 in population, and located outside a metropolitan statistical area. Any excess money this year will rollover to next year, and it is allocated on a state basis. Under the formula used, Utah will have a low allocation. However, this year Utah has an advantage because the state allocation was waived, so there is equal opportunity to all the money.

Government entities must wait until April 30<sup>th</sup> to submit their applications and Mr. Wilkinson wants UTOPIA's submitted soon thereafter. He added that 30 applications have been turned in, but 20 were rejected as "incomplete." The RUS is watching the money very closely. They have never defaulted on a loan.

The application process is detailed and requires such things as an environmental study. The acquired loan money will fund construction and working capital. Paul Morris stated that it will be money at 4½ - 5% for construction and will pay to connect to other UTOPIA cities, and perhaps put in a head end as well.

5. Consideration of Resolution 03 - 13: A resolution approving a temporary waiver of the procurement process for "small purchase" of accounting and controller services from Morris and Dredge. The Executive Director excused Roger Black whose return flight was delayed

due to bad weather. Mr. Morris stated that this issue was a conflict of interest for him because the controller, Jeff Dredge, is his best friend. It was Roger Black who recommended the partnering with Morris and Dredge under these terms, that they would pay half M & D's fee at the first bond; then pay the other half only if financing came through. Because the total contract with the deferral included is \$63,000, it exceeds the \$50,000 threshold for professional services that can be awarded without seeking 3 proposals. It was Roger's plan to have this arrangement with Morris and Dredge for six months and no more, until the bond financing came through and UTOPIA either established its own finance department or did a full RFP process after the six month period.

The reason Roger Black was asking for the temporary waiver was because of critical time constraints and the need to have a sophisticated accounting control process in place as soon as possible. It is critical to the financing and will help with the preparation of the upcoming budget.

The board engaged in discussion on this issue. It was asked if this was the only CPA firm approached. Because of proximity to UTOPIA's office, it was. Board Member Janice Auger had serious objections to this plan. She realizes that there is not much time to go outside, but that the board has worked hard to establish the procurement policy, and this is a deviation from that. She insisted that policy be followed, that perhaps in six months there will still be no time for an RFP and this company will have a shoe in. Mr. Morris stated that since this policy has been in effect, this is the first deviation from that policy's provisions. Mr. Morris replied that the resolution language states it will go to RFP process in six months or come in-house. Laura Lewis and Jim Matsumori agreed that having the accounting controls in place is essential to bonding, but delaying it another month or so should not be a problem. Paul Morris stated that he was uncomfortable advocating for this resolution because of his relationship with Jeff Dredge. Roger desperately wanted the help now to help in budget preparation, but given the general feelings of the board, Paul Morris recommended that the resolution be withdrawn from consideration.

The discussion then proceeded to suggest it be a two step process, that professional help is needed soon, but a month wait would not be critical hindrance to the financing process. Board Member Janice Auger made motion to table this resolution indefinitely. It was seconded by Board Members Ott Dameron and Matt Shipp. No vote was taken.

6. Consideration of Resolution 03 - 14: A resolution installing Roger Black as UTOPIA Treasurer and releasing Dean Nickel. Paul Morris stated that it was John Parks' (former board member) desire to release Dean Nickel as Treasurer once Roger started receiving wages from UTOPIA. Roger is now getting paid. Board Member Ott Dameron asked if Roger would be both the COO and the Treasurer. Paul answered affirmatively. Board Member Lee King asked if there were internal controls in place. Paul explained that UTOPIA checks need two signatures, that he looks over Roger's shoulder and knows where the budget stands.

Board Member Lee King asked if the first bond will get UTOPIA a treasurer. Paul responded affirmatively. The first bond will separate Accounts Receivable from Accounts Payable and will happen around September. Board Member Jim Reams asked if the first bond will fund operations and Paul answered affirmatively. Board Member Janice Auger stated that all small companies face the challenge of internal controls and an accountant can get controls and divide tasks to fix the problem, even with a small company. Paul stated that Roger would like an outside auditor, different from the controller. Board Member Lee King stated that the resolution will be approved if there is a list on internal controls given out at the next board meeting. Board Member Alex Jensen made a motion to approve Resolution 03 - 14 with the clarification that controls will be brought back next month. Board Member Jim Reams seconded the motion. A vote was taken. It was unanimous.

7. Reimbursement Agreement: General Counsel David Shaw stated that the reimbursement agreement will go out to everyone soon. An impact fee reimbursement agreement was used as the model for this agreement that will reimburse member cities for their costs of fiber, materials, and labor on projects that will benefit UTOPIA later. This is all contingent upon funding. Board members were encouraged to look at each city's projects before UTOPIA comes, to see if conduit can be put in anywhere as the city does their ongoing maintenance projects, etc. For example, Salt Lake is planning on doing a street lighting project and will tear up streets, so then they could install conduit before closing the road. UTOPIA would pay for that expense after bonding. Board Member Jim Reams asked how the amount of repayment is determined. Mr. Shaw stated that it will be determined ahead of time and the cost would be stated in the agreement. Reimbursement will come when UTOPIA construction reaches that area. Jim Matsumori asked if bond counsel has approved this agreement. The answer is not yet. It will be adopted as the standard. Mr. Shaw stated that the incentive behind this is to keep costs down. Dennis Vrooman asked if there is an ordinance to lay conduit. Yes, Gary Crane drafted one and it was previously distributed. Some members have already adopted it. Brigham City substitute board member, Paul Larsen, stated he had some minor concerns about this ordinance. Paul Morris suggested that he and Gary Crane talk to see if any changes need to be made. Board Member Jim Reams asked if the revised ordinance can be emailed to all board members. Paul agreed.
8. UTOPIA Financial Report: Mr. Morris stated that Roger Black will email the financial report out to all board members in advance of May's board meeting. There are considerations being made, such as how much expertise do we hire out or do we have it in-house? Roger is getting salary surveys and will present a proposed budget in May.
9. UTOPIA Status Report:
  - *Electronics RFP* - The electronics RFP is due May 2<sup>nd</sup>. It attracted 47 potential bidders. The TAC and Board Members will be called upon to assist in the review. Decisions such as active vs. passive must be considered. The proposals will need to be read; the competition narrowed and then presentations given from each remaining group.

- *Wireless RFP* - The wireless RFP attracted 17 potential bidders. It is due later in May. Several others will be called upon to evaluate them.
  - *Communications RFP* - The communications RFP just went out, and so far one respondent has acknowledged that it may bid. This is for the Public Relations work for UTOPIA. They are asked to submit a whole communications plan for internal communication, external communication and marketing of the UTOPIA network, but because of current funding, UTOPIA may only implement a part of the whole plan initially.
  - *Construction RFP* - The construction RFP needs to get out soon and it is a huge step. DynamicCity is working on it.
  - *Fiber RFP* - The fiber RFP is the next one up.
  - *City Council appearances* - It has been a good experience for Paul and Roger to visit the UTOPIA member city councils. More are calendared.
  - *Expenditures* - Miller & Van Eaton is a Washington DC firm that UTOPIA has retained for FCC work. Their professional services agreement will be for less than \$50,000 with some of it paid only contingent upon securing bond funds.
  - *Legal work* - Parsons Bahle and Latimer is doing some more legal work for UTOPIA. They are giving a tax opinion in regards to the Master Services Agreement, and assisting us on some anti-trust research. Ballard Spahr Ingersoll is working with us on the Service Provider Contract. Draft #4 is soon to become draft #5.
  - *Dean and Company fee* - A concern was raised by Rocky Fluhart that if a feasibility study fee was based on a contingency to bond, that presents a conflict of interest. To avoid this appearance, Dean and Company has agreed to take out the contingency clause and settle for payment of \$70,000 now. Their original fee was \$100,000. Mr. Morris said he could make that amount work for UTOPIA, and it saves \$30,000 since it appears that bonding will happen. Mr. Morris will re-write the agreement with Dean and Company, based on his conversation with Rich Christner on this issue and present it to the board at the next meeting.
10. Finance Team Status Report: Laura Lewis made the report that their meeting every other Monday has been a great aid to move forward and coordinate efforts with DynamicCity. The timing of the financing is tied to the service provider contracts and those negotiations are going well. She is positive about the bonding and is confident that proceeds can be delivered in September. The financing is done in pieces. One critical component is to ensure a lower interest rate on the loan. Working capital will be funded under the “start-up” business

approach and UTOPIA must build a business model showing cash flows. Being able to show a business pay for itself is the goal. Operating expenses are built in until UTOPIA can carry itself.

Jim Matsumori added his excitement with the approaching success of the bonding. The interest rates are the lowest in decades and they should hold for several months for UTOPIA's bonds. He is encouraged more every day. The Dean and Company report was good.

Laura then added that any conflict of interest in the Dean & Company contract should be eliminated as that will aid financing.

11. DynamicCity Status Report: Keith Wilson remarked that Paul had updated everyone on the RFP's that are currently in progress. He said that they spent 160 hours alone on clarification of the electronics RFP. The feasibility reports are the next big push and will be out the first two weeks in May. At next month's board meeting, DynamicCity will give the overall assessment of the cities and the part they each play in the whole picture.
12. Wireless White Paper: Jeff Fishburn of DynamicCity stated that the wireless paper was a good explanation of our position on the wireless issue. The white paper is a good format to outline the benefits and make a comparison and show the complimentary nature of wireless and fiber working together. If there are any questions, Mr. Fishburn will be happy to answer them.

Board Member Ott Dameron asked if wireless will be a part of UTOPIA's system, and if there was any other use for wireless other than public safety. Paul Morris stated that the system could provide the ability to have wireless service for more than public safety, but that initially UTOPIA will be funding wireless for public safety only because we are issuing tax exempt bonds. It will start with public safety, then could move into private sector uses. We are also hoping to get a public safety grant to help with the financing. We have an advantage because Jonathan Wesley, the TAC Chair from Layton also wrote the software that most Utah police departments are using.

Board member Janice Auger stated that Taylorsville is about to contract with the county for a 3 - 5 year term. Paul Morris said there was interest at the county level to become part of UTOPIA in the future. Board Member Lee King stated that the county is joining VECC. Janice Auger concluded that she will ask her city attorney to put in an option to use the UTOPIA wireless system in her contract with the county.

The meeting was adjourned.