

2 The Lindon City Council held a Work Session on **Tuesday, January 15, 2014 at 4:00**  
3 **p.m.** in the Lindon City Center, City Council Chambers, 100 North State Street, Lindon,  
4 Utah.

6 **WORK SESSION** – 4:00 P.M.

8 Conducting: Jeff Acerson, Mayor

10 **PRESENT**

**ABSENT**

10 Jeff Acerson, Mayor  
11 Matt Bean, Councilmember  
12 Randi Powell, Councilmember  
13 Van Broderick, Councilmember  
14 Jacob Hoyt, Councilmember  
15 Adam Cowie, City Administrator  
16 Brian Haws, City Attorney  
17 Kathryn Moosman, City Recorder

18 **1. Call to Order/Roll Call** – The meeting was called to order at 4:05 p.m.

20 **CURRENT BUSINESS**

22 **2. Discussion Item** – *UTOPIA, Macquarie – public/private partnership*. The Lindon  
24 City Council will meet with City staff and UTOPIA representatives to review the  
25 public portions of the Pre-Development Agreement (PDA between UTOPIA and  
26 Macquarie Infrastructure developments LLC (Macquarie) and discuss Lindon’s  
27 potential participation and /or commitment in further development of the  
28 public/private partnership. No motions or decisions will be made. No public  
29 comment will be taken.

30  
31 Adam Cowie, City Administrator, opened the discussion by giving a brief  
32 summary of this discussion item. Mr. Cowie explained this issue is intended to be  
33 discussion item in a public setting to discuss a pre-development agreement (PDA)  
34 between UTOPIA and Macquarie Infrastructure developments LLC and discuss Lindon’s  
35 potential participation and /or commitment in further development of the public/private  
36 partnership. Mr. Cowie stated that Nick Hann (representing Macquarie) and Wayne Pyle  
37 (Utopia Chair) are in attendance to answer any questions. He noted that Jamie Davidson  
38 (Orem City Manager) was also in attendance. Mr. Cowie commented that he prepared a  
39 list of questions from the last discussion held with Todd Marriott and Dave Shaw and  
40 thought it would be beneficial to address those questions today. Mr. Cowie added that  
41 after the Utopia meeting this morning he thought it would be beneficial for Mr. Hann to  
42 open the discussion by giving a little background information on Macquarie and to  
43 explore that route to get to know them better as a potential owner/operator of the  
44 network.

2 Mr. Hann addressed the Council at this time. He thanked the Council for the  
3 opportunity to speak with them tonight. He commented that he is the Senior Managing  
4 Director for Macquarie Infrastructure Developments LLC. He explained that Macquarie  
5 is an Australian headquarters financial services group located in Australia. They are a  
6 management company and they have been in the United States for well over 20 years  
7 with over 15,000 Macquarie employees with 6,500 of those employees located in the  
8 United States and Canada. Mr. Hann further explained that Macquarie is a financial  
9 services firm that covers a wide variety of areas and they are publicly listed on the  
10 Australian Stock Exchange and are a very widely held institutional stock.

11 Mr. Hann went on to say that Macquarie is better known as an infrastructure  
12 investor of private investment in public infrastructure (PPP or P3). The Company started  
13 in that business over 20 years ago and they were the first financial institution to become a  
14 principle investor in public infrastructure assets, i.e., roads, airports, water, electric and  
15 gas utilities and telecommunications infrastructure. He added that increasingly around the  
16 world they have also invested in social infrastructures such as prisons, hospitals,  
17 courthouses and schools. Mr. Hann mentioned that around the world they now manage  
18 investments of 55 billion US dollars in those types of infrastructure and provide essential  
19 service infrastructure to 100 million people around the world daily, with the United States  
20 being the most significantly invested in. Mr. Hann explained the United States has a long  
21 history of private utilities, and Macquarie is the majority owner of utilities such as Puget  
22 Energy in Washington State and Dukaine Light & Power in Philadelphia, they also  
23 provide gas to residents of Hawaii and they provide water to several states in New  
24 England, these are things they do in the public utility space.

25 Mr. Hann went on to say that public/private partnerships are generally new assets  
26 where they take the responsibility of building a particular piece of infrastructure for the  
27 public sector, including the designing, maintaining, operating and financing for a  
28 concession term, after which they hand the asset back to the public sector. This  
29 public/private partnership has become common in the United States over the last decade  
30 and a common practice throughout the world over the past 20 years.

31 Mr. Hann further discussed that Macquarie has been one of the most significant  
32 investors in that field. He noted that projects in the United States, to date, have been  
33 predominantly in the road and mass transit space and Macquarie has been the investor in  
34 9 of 12 of those projects. Most recently they just closed the financing on replacing an old  
35 bridge for the state of New York, and a significant project on a tunnel in Norfolk, VA and  
36 a mass transit project (36 miles of new commuter rail) in Denver, CO. Mr. Hann  
37 explained that in the telecommunications space, Macquarie is a significant player in the  
38 United States, as they are the majority owner of the global towers portfolio which is a  
39 significant 4 billion dollar investment in cell phone towers. He added in the United  
40 Kingdom Macquarie is the trusted provider of the entire public safety communications  
41 network, i.e., police, fire, ambulance, coast guard and search and rescue. They all rely on  
42 a network provided by Macquarie, and the evidence is the amount of trust the public  
43 sector organizations place in Macquarie.

44 Mr. Hann clarified that Macquarie is primarily a developer and investor (equity  
45 investor) that brings the risk capital to transactions and they are experienced in taking the  
46 risks of the design, construction, and long term operation and maintenance of  
47 infrastructure assets; they know how to design, build, operate and maintain for the long

2 term. They also typically outsource, or contract, with a design/build firm to construct and  
3 build the network. They may also choose to operate and maintain all aspects of the  
4 system or they may out source the system, or elements of the system, but in every  
5 circumstance they take the responsibility for the performance. Mr. Hann stated that what  
6 this means is it is not the cities risk, it is Macquarie's risk. If they cannot operate and  
7 maintain the network to the adequate standards, it is Macquarie's risk. Mr. Hann stated  
8 Macquarie has an obligation to maintain the asset, regardless, whether the budget is right,  
9 if the budget is wrong and they run out of money, they cannot come back to the City or  
10 the taxpayer asking for more funds.

11 Mr. Hann stated that the strength of this model (public/private partnership) is that  
12 the City still controls the infrastructure, or network; they still own the network and decide  
13 what standards the network needs to be run to. The City controls what the infrastructure  
14 does, and still own it, but it is outsourced to Macquarie, and it is their responsibility for  
15 the delivery of those performance requirements, and if they can't perform or deliver for  
16 the agreed price, then that is Macquarie's risk not the City's risk.

17 Mr. Cowie inquired what is anticipated if the City reaches certain benchmarks and  
18 how it alleviates the City's risk if the City is still ultimately responsible. Mr. Hann gave  
19 an overview of how this transaction is being thought about. One of the attractions of the  
20 Utopia network to Macquarie is that Macquarie is not a service provider of  
21 telecommunications, they are a provider of infrastructure, and one of the principles or  
22 requirements of Utopia (by law), is that it needs to provide open access to the  
23 infrastructure. Mr. Hann went on to say the basic structure of the transaction is that  
24 Macquarie would build up the network to the full scale that is intended (153,000  
25 addresses), and then take the responsibility to build out the network, and fund the build  
26 out, using Macquarie's equity and debt on the balance sheets, and also take the risk of  
27 operating and maintaining that network to the required standards over a term of 30 years.  
28 In return the cities would make payments to them based on performance.

29 Mr. Hann explained that Macquarie would then go to the telecommunications  
30 service performance providers (i.e., Century Link) and offer them the opportunity to use  
31 the network, and in return they would pay wholesale fees for the use of the network,  
32 which Macquarie would effectively pay to the cities which would go to help defray the  
33 existing debt obligations. Mr. Hann further explained that the key to this transaction lies  
34 in the generally regarded thought that the main problem that Utopia is that it has not been  
35 built out to sufficient scale. By building out to sufficient scale, there would be a much  
36 greater confidence in the ability to attract service providers and to generate the revenues  
37 that can start to offset the costs of the asset of the infrastructure.

38 Mr. Cowie then referenced the map depicting the current infrastructure build out  
39 in Lindon. He stressed that there are two important big picture questions the Council  
40 needs to consider and make decisions on in the future as follows:

- 41 1. Is there a desire to continue to build out and expand the network in Lindon?
- 42 2. If so, is this opportunity with Macquarie a solution?

43 Councilmember Broderick asked what happens if some cities say yes and some  
44 cities say no to this agreement and how does that affect Macquarie. Mr. Hann replied  
45 that they are hoping by the end of milestone one that they will be able to provide the  
46 cities with enough information to make a decision on whether to move forward or not,

2 and if enough cities decide to move forward, then Macquarie will proceed into  
3 subsequent milestones of the PDA with the cities. Mr. Hann noted what would happen to  
4 any city that chooses not to participate. He stated that Macquarie would not be building  
5 out in those cities, but those cities would receive the same level of service from Utopia  
6 that they are receiving today, and would be delivered either through Utopia itself or  
7 Macquarie would possibly take the responsibility for delivery of that same level of  
8 service, but they would not actually build out in those cities. And those cities would not  
take on any additional obligations than what they currently have.

10 Councilmember Powell asked if there would be an opportunity for those cities to  
buy in at a later date. Mr. Hann stated that they would try to maintain as much flexibility  
11 as possible to allow people to buy in at a later date, however, in practice they will be  
12 moving quite quickly towards detailed engineering in the cities that decide to go forward  
and move quickly to a financial close, so it is quite likely that a City that didn't choose to  
13 participate might have to wait until a subsequent financial close. Mr. Hann added that the  
reason for an accelerated timeline is not to squeeze cities or put pressure on them, it is  
14 simply because it would be cost effective to do a financial close quickly; but it is not their  
15 intention to compress the timelines or pressure the cities, but there is a need to do things  
16 in a fairly timely manner. Mr. Hann noted one thing they emphasize in the PPD is that  
they fix the price but they obviously cannot hold that price open indefinitely.

20 Councilmember Powell inquired if this model succeeds would Macquarie grow it  
outside of the principle member cities. Mr. Hann confirmed that statement and added  
21 that the additional new cities would have a premium. Councilmember Powell asked if  
the possible premium would go towards offsetting the initial bonds. Mr. Pyle confirmed  
22 that would be the idea but there would also be issues to work through. Mayor Acerson  
commented that what we are trying to do is just get a working model so people can have  
23 confidence that this is working and it is generating revenue and covering its costs and  
moving forward, which has not been the case. He added that he feels we are getting  
24 closer to that goal and he applauds everyone's efforts in doing that, so, whether a City  
participates going forward or not, ideally, what we need to do is get a working model and  
25 that is what Macquarie brings to the table.

26 Mr. Hann commented that they are confident they can bring a working model to  
the table, but there are issues that need to be worked through. He noted that in eight (8)  
27 weeks they will be at the end of milestone one, and they feel confident they can come  
back with a well-defined, effective model. Mr. Hann noted the circumstances,  
28 fundamentally, are that Macquarie thinks the model of an open access utility style  
infrastructure into every home is a good model, and they feel Utopia has the right  
29 technology approach, and there is a good business environment and demographics and  
high level of education in the area; there are a lot of very positive things (on the macro  
30 level) and they will offer the delivery under this PPP model.

32 Councilmember Bean inquired if the City were to move forward, based on the  
engineering studies, and do the concession agreement, would the agreement spell out the  
33 types of obligations the cities would have, and would it be as specific as addressing what  
types of potential revenues the cities need to collect to back up their guarantees. Mr.  
34 Hann replied with the current process there would be a lot of flexibility for each City to  
decide how to do this themselves, so it is not a "one size fits all" process. Mr. Hann  
35 added that there would be the levy of a utility fee, similar to a water or sewer fee, levied  
36

2 on the household and the cities would collect that utility fee and pass it on to Macquarie,  
3 provided that they are performing, and if not performing they would not get paid. The  
4 structure would be a flow through structure like any other utility. Councilmember Bean  
5 also inquired what would a City, as a member of Utopia, be called under this model. Mr.  
6 Hann stated that the City would be entering into a service agreement with Macquarie  
7 where they will commit to provide a service over the next 30 years, and if the service is  
8 not provided to satisfaction and the standards of the contract, the City does not pay and  
9 there are no obligations to the debt that Macquarie has incurred. Mr. Hann stated there is  
10 no reason why this obligation would be seen as a liability to the City in their books or  
11 accounts, the City would be a party to a long term concession agreement.

12 Mayor Acerson inquired if there will be points in this potential contract stating if  
13 that is the model that is followed, can we re-negotiate because costs go up. Mr. Hann  
14 stated that the interest rates would be fixed, so if interest rates go up that will be  
15 Macquarie's risk not the City's; there is no increase for any increases in financing or  
16 interest rates. Mr. Hann noted one of the attractions of fiber to Macquarie is that it is an  
17 asset that is put in the ground, and it is a long life infrastructure asset that doesn't need a  
18 lot of replacement. He added there are also electronics at either end of the fiber that will  
19 need maintenance and labor (3-5 year asses), but the labor is not a huge component, and  
20 they are happy to take the risk of operating costs, as they don't see any adjustment  
21 mechanisms where they would come back and ask for an increase. Mr. Hann further  
22 noted they are happy to take the risks of "refreshing" or upgrading the network, so, in 30  
23 years time, it provides the same service that it is intended to provide today.

24 Mayor Acerson mentioned Mr. Hann's statement that there will be certain  
25 responsibilities based on the build out of the network. Mayor Acerson stated that he sees  
26 this as more than just building a network, and once it is fully implemented in all of the  
27 cities there is the issue of using it. Mayor Acerson asked if Macquarie has taken any  
28 consideration, in certain thresholds, that somehow the City is totally responsible for  
29 subscriptions, and if they have weighed in on this issue at all to promote this. Mr. Pyle  
30 stated that they have weighed in on this issue. Mr. Hann added that they would be  
31 actively encouraging the taking of the network, but there is a dividing line between what  
32 Macquarie does and what the service provider does. Mr. Pyle noted that they will be  
33 working with the service providers to promote and market the network as to make it more  
34 attractive. Mayor Acerson asked Georganne Weidenback, Century Link representative  
35 who was in attendance, what it will take for Century Link to use the Utopia network. Ms.  
36 Weidenback commented that Century Link continues to discuss that issue and they have  
37 brought people to the table. She noted the service providers that have extensive fiber  
38 networks such as Century Link (formerly Qwest), can't differentiate their services and  
39 can't control the provisions and repairs. Ms. Weidenback noted that they can't maintain  
40 the network to the extent that they choose to, based on industry standards, which may not  
41 be equivalent to city standards. She added that these are issues that need to be considered.

42 Mayor Acerson commented that if this is the potential of the future, and it  
43 provides a resource that everyone can use and benefit from, at some point we need to  
44 work together and do what is best for the customers and move forward together. Mr.  
45 Hann noted they anticipate that in milestone two they will be talking very closely with  
46 potential service providers and to look at their service standards to meet the needs.

2 Councilmember Powell asked about the costs of connection through this PPP  
plan, and, if adopted, what will the connection costs be for every citizen. Mr. Hann  
4 stated that there would be no additional cost of the basic service and that would likely  
comprise the basic internet access and other services, with no liens against the property.  
Mr. Hann commented that he sees two potential models as follows:

- 6 1. Basic service is provided by Macquarie and any upgraded service is offered  
through service providers.
- 8 2. Service provider provides the basic service, and Macquarie provides the fiber  
optics to the home and the homeowner decides who they want for a service  
10 provider (preferred model).

12 Councilmember Bean inquired about the cost per month per household in the  
City. Mr. Hann stated that they will come back at the end of milestone one with a fairly  
detailed model and an estimated range of cost per household per month (pretty narrow  
14 range). Councilmember Bean asked if they anticipate an inflation factor built in over the  
30 years. Mr. Hann stated, in general, it is a more sensible structure for most parties if it  
16 is an inflation linked factor. He added that obviously, most costs go up over 30 years with  
some sort of inflation factor; perhaps every 5 years with various structures that will cap.

18 Mr. Cowie asked Mr. Pyle if it is anticipated, after the first milestone, if they will  
be providing, on behalf of Utopia, a financial outlook, or an evaluation from someone  
20 within the organization that says this is a good or a bad agreement. Mr. Pyle confirmed  
that will be part of the first milestone and may be done outside of the organization.

22 Councilmember Hoyt asked for confirmation that Lindon has a 60% build out and  
if any portion will be prorated because of Lindon's high build out rate or a set fee. Mr.  
24 Pyle stated that it would be set fee. Councilmember Hoyt commented that requiring a  
utility fee from the citizens will be a hard sell. He also asked Mr. Hann how he feels  
26 about the fiber, and if it is core infrastructure and absolutely necessary. Mr. Hann  
commented that he does see the fiber as core infrastructure and is becoming ubiquitous  
28 and everyone uses it for something; they think there is a ubiquitous element to this that  
makes this core infrastructure. Mr. Hann commented that as he looks around the world,  
30 every government in the world is facing the same problem that broadband connectivity is  
not being rolled out as quickly as they would like because of regulations to require  
32 providers to provide better connectivity, and many cities and states around the world are  
doing it for themselves. He further noted that they think Utopia is a good model because  
34 the City is providing the core infrastructure but still letting private sector service  
providers provide the service.

36 Councilmember Hoyt commented that he had the opportunity to speak with Todd  
Marriott and together they discussed the possibility of putting the utility fee to a vote. He  
38 noted that Mr. Marriott thought Macquarie was a good opportunity; however, there is a  
timeline to put it to a citizen vote for the utility model. Mr. Cowie noted that there is a 90  
40 day notice that would need to be given to the county before the next election (November).  
Brian Haws, City Attorney, commented that a special election could be held, but there are  
42 certain steps that would have to be taken. He added at the earliest it would be the 4<sup>th</sup>  
Tuesday in June to get it on the ballot, and if not it would have to wait until November.  
44 Mr. Hann noted that they will be hiring an professional external polling firm (during  
milestone one) that will be doing both polling and focus groups in the communities to be  
46 able to inform the cities on what the public thinks.

2 Councilmember Bean asked Mr. Pyle what the estimated build out of the four (4)  
largest member cities are. Mr. Pyle replied that West Valley City is at around 16% with a  
4 take rate of about 5-6%, Orem City is at 33 % build out and 30% take rate, Layton almost  
no build out and Murray is at about 40% build out. Councilmember Bean suggested  
6 doing due diligence on behalf of Utopia and the Cities by Century Link etc. after seeing  
what happen with milestone one.

8 Councilmember Bean commented that whoever did the modeling on this project  
assumed that Utopia's own revenues could handle the debt service and provide a profit  
10 without the cities having to provide funds as guarantors. He noted that he would like to  
have seen that modeling because he does not believe it was ever financially feasible, but  
12 to bond right now would cost an estimated 3% or 4% . Councilmember Bean added that  
he expects that it will be potentially 4 plus times the cost of bonding to go with  
14 Macquarie, however, this is a long term deal so it may be a little lower. Mr. Hann replied  
that their cost of financing, or capital, is more expensive than a general obligation bond,  
16 however, they have a lot of confidence that their cost of capital would be equivalent or  
lower than a revenue bond issue. Mr. Hann noted the experience of PPP's, typically, is  
18 that they are able to build a project and operate and maintain it for 20-30% less than what  
it would cost the City, which outweighs the cost of capital difference because they have  
20 the ability to mobilize capital where it is needed to build out quickly and to gain  
efficiencies. Mr. Hann further noted the City could probably bond at 4% from the general  
22 fund, but Macquarie could expect to finance at close to the 5.5 or 6% range, but there  
would also be significant capital costs and operating cost efficiencies that would offset  
that cost of the capital difference.

24 Councilmember Bean asked if there will be a point when the organization,  
because of the cost of this proposal, would say no and if this had been discussed. Mr.  
26 Pyle confirmed that this has been discussed, but added they have not seen the final  
numbers yet. Mr. Pyle stated that he feels the actual discussion is the range where that  
28 number will be. Councilmember Bean noted that it seems that Utopia has found a  
potential good partner, and is it fair to say, that in the end, the decision will hinge on the  
30 appetite of households to accept a certain number (fee); but what will help to make the  
decision on what that range will be. Mr. Pyle stated that there have been discussions and  
32 they have had this same conversation with the larger member cities. And he can say that  
there is some excitement at this prospect, but that does not translate that they will jump  
34 into it.

36 Jamie Davidson, Orem City Manager, commented that they are interested in the  
concept and can see the demand for the increase in service, and Orem City (and Lindon  
City) could be uniquely positioned to the neighbor to the south (Provo), who has  
38 developed a model that their community is very excited about. He doesn't see the  
demand for service decreasing as this infrastructure is not a luxury but a utility and a need  
40 in the homes of customers and residents. Mr. Davidson noted that Orem City sees this is  
as an important and critical infrastructure moving forward, and they recognize what  
42 residents are paying for today and even with an assessed fee it would provide an  
competitive alternative.

44 Mr. Pyle noted that the City of Orem has made a decision to move forward with  
the first milestone of this endeavor, and they have approached it from a perspective that  
46 this is information is needed as an organization to move forward, regardless of who the

2 partner is. He noted that much of what is being done today i.e., marketing, engineering,  
3 financing, is all information that will benefit the cities prospectively. Mr. Pyle stated they  
4 do not necessarily see it as a stranded investment, but as a benefit as outlined in the PDA;  
5 it is information that can be accessed and have ownership of moving forward as well. Mr.  
6 Pyle stated it is not like taking the money and rolling the dice; whether we stay or go, we  
7 will walk away with something substantive in our hands as we move forward and  
8 evaluate this opportunity into the future. Councilmember Bean asked which cities have  
9 given an oral commitment. Mr. Pyle stated that West Valley, Orem, Layton, Midvale,  
10 Centerville, and perhaps Perry have given oral commitments.

11 Councilmember Powell expressed her thanks for the information and discussion  
12 tonight and noted that she feels confident of what Macquarie will bring to this venture  
13 and for what they have to offer for this project. She noted that she feels the utility fee  
14 could work within a defined range. Her biggest concern is milestone one and what the  
15 City will ultimately be responsible for and if there will be tight enough points in the  
16 PDA.

17 Councilmember Bean asked what the timeline is for milestones two, three and  
18 four. Mr. Hann stated milestone one (1) is around 8 weeks from now to provide  
19 sufficient information for the cities to make a decision. He noted the obligations of both  
20 sides to each other increase as we go through the milestones. Milestone two (2) would  
21 define the final level of detail on the model and refine the numbers down, and they would  
22 anticipate a little shorter timeline (6 to 8 week timeframe). Milestone three (3) they will  
23 be locking in a concession agreement and locking in a design build contract (4 to 6 week  
24 timeframe). Mr. Hann noted at the end they will be going to the market and getting  
25 ratings and lining up lenders etc., and at that stage they will press the go button followed  
26 by a closing period of 6 weeks (late spring early summer, approximately 26 weeks total),  
27 assuming enough cities sign up at the end of milestone one to move forward relatively  
28 quickly.

29 Mr. Cowie stated that official action to appropriate funds will come as an agenda  
30 item at the next meeting. Mayor Acerson thanked Mr. Hann and Mr. Pyle for the valuable  
31 information and discussion and called for any further comments or questions from the  
32 Council. Hearing none he called for a motion to adjourn.

33 **Adjourn** –

34  
35 COUNCILMEMBER HOYT MOVED TO ADJOURN THE MEETING AT 6:00  
36 P.M. COUNCILMEMBER BRODERICK SECONDED THE MOTION. ALL  
37 PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

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39 Approved – February 4, 2014

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42 Kathryn A. Moosman, City Recorder

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45 Jeff Acerson, Mayor