

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 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
11 buy in at a later date. Mr. Hann stated that they would try to maintain as much flexibility
12 as possible to allow people to buy in at a later date, however, in practice they will be
13 moving quite quickly towards detailed engineering in the cities that decide to go forward
14 and move quickly to a financial close, so it is quite likely that a City that didn't choose to
15 participate might have to wait until a subsequent financial close. Mr. Hann added that the
16 reason for an accelerated timeline is not to squeeze cities or put pressure on them, it is
17 simply because it would be cost effective to do a financial close quickly; but it is not their
18 intention to compress the timelines or pressure the cities, but there is a need to do things
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
21 outside of the principle member cities. Mr. Hann confirmed that statement and added
22 that the additional new cities would have a premium. Councilmember Powell asked if
23 the possible premium would go towards offsetting the initial bonds. Mr. Pyle confirmed
24 that would be the idea but there would also be issues to work through. Mayor Acerson
25 commented that what we are trying to do is just get a working model so people can have
26 confidence that this is working and it is generating revenue and covering its costs and
27 moving forward, which has not been the case. He added that he feels we are getting
28 closer to that goal and he applauds everyone's efforts in doing that, so, whether a City
29 participates going forward or not, ideally, what we need to do is get a working model and
30 that is what Macquarie brings to the table.

32 Mr. Hann commented that they are confident they can bring a working model to
33 the table, but there are issues that need to be worked through. He noted that in eight (8)
34 weeks they will be at the end of milestone one, and they feel confident they can come
35 back with a well-defined, effective model. Mr. Hann noted the circumstances,
36 fundamentally, are that Macquarie thinks the model of an open access utility style
37 infrastructure into every home is a good model, and they feel Utopia has the right
38 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
level) and they will offer the delivery under this PPP model.

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

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 4th
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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41 _____
42 Kathryn A. Moosman, City Recorder

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44 _____
45 Jeff Acerson, Mayor