CENTERVILLE CITY COUNCIL AGENDA

NOTICE IS HEREBY GIVEN THAT THE CENTERVILLE CITY COUNCIL WILL HOLD ITS WORK SESSION MEETING AT 6:00 P.M. ON FEBRUARY 13, 2014 AT THE CENTERVILLE CITY COMMUNITY CENTER AND CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Meetings of the City Council of Centerville City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Blaine Lutz, Centerville Finance Director, at 295-3477, giving at least 24 hours notice prior to the meeting.

A notebook containing supporting materials for the business agenda items is available for public inspection and review at City Hall and will be available for review at the meeting. Upon request, a citizen may obtain (without charge) the City Manager's memo summarizing the agenda business, **or may read this memo on the City's website: http://centervillepublic.novusagenda.com/.**

Tentative Time: - The times shown below are tentative and are subject to change during the meeting.

6:00 **A. ROLL CALL**

B. BUSINESS

1. **WORK SESSION** – Presentation from Macquarie representative regarding study of potential partnership with UTOPIA

C. ADJOURNMENT

Marsha L. Morrow, MMC
Centerville City Recorder

CENTERVILLE CITY COUNCIL

Staff Backup Report
2/13/2014

Item No. 1.

Short Title: Work Session

Initiated By:

Scheduled Time: 6:00

SUBJECT

1. Presentation from Macquarie representative regarding study of potential partnership with UTOPIA

RECOMMENDATION

Council members should review the attached Pre-Development Agreement and PowerPoint slide update as background for this work session.

BACKGROUND

In December 2013 UTOPIA and UIA executed the attached "Pre-Development Agreement" (PDA) with Macquarie Infrastructure Developments LLC ("Macquarie"), which initiated a process of investigating a potential partnership for the buildout and operation of a fiber optic network within UTOPIA cities. The process ultimately would involve several phases or "milestones" if pursued to the implementation phase. Macquarie is currently in the midst of the Milestone 1 phase. Selected municipal officials from UTOPIA cities are engaged with the work groups addressing various aspects of a very comprehensive analysis. A Steering Committee consisting of reps from UTOPIA cities also meets regularly with Macquarie reps for an update or briefing on the progress of the study. In addition, the Macquarie Project Director, Duncan Rumage, has been willing to meet with city councils of UTOPIA cities to give briefings and answer questions. Such a session has been set for Thursday, February 13 at 6 p.m. with the Centerville City Council.

ATTACHMENTS:

Description

- Macquarie Pre-Development Agreement
- Macquarie Update to UTOPIA Cities

Pre-Development Agreement

Among

Utah Telecommunication Open Infrastructure Agency ("UTOPIA"), Utah Infrastructure Agency ("UIA")

and

Macquarie Infrastructure Developments LLC ("Macquarie")

Dated December 9th, 2013

PRE-DEVELOPMENT AGREEMENT

This Pre-Development Agreement (this "**Agreement**") is made and entered into as of 9th, 2013 ("**Agreement Date**"), by and among Utah Telecommunication Open Infrastructure Agency ("UTOPIA") and Utah Infrastructure Agency ("**UIA**") (UTOPIA and UIA are collectively referred to as the "**Agencies**"), and Macquarie Infrastructure Developments LLC ("**Macquarie**"") (The Agencies and Macquarie are collectively referred to as the "**Parties**").

PURPOSE AND INTENT

The purpose and intent of this Agreement shall be to set forth, in a preliminary manner, the parameters for further investigation and negotiation in preparation of a permanent agreement between the parties at a future date. The method for accomplishing this is to establish, by the terms of this agreement, certain "off-ramps," duly termed "Milestones" that represent points at which the parties may decide to continue forward or to terminate further negotiation. Each of the Milestones involve gradual, mutual obligations of the parties. It is intended that the parties will move forward in good faith and as expeditiously as possible in proceeding to the next Milestone. Until the Milestones are successfully completed and a permanent agreement termed the "Concessions Agreement" is reached, the terms of this Agreement as it may be amended from time to time, shall govern the interaction and responsibilities of the parties.

RECITALS

A. WHEREAS, the Member Cities have devoted significant resources to the establishment of advanced technological infrastructure to further the prosperity and well-being of their respective communities; and

B. WHEREAS, the Agencies have established Network parameters and technical specifications which are state-of-the-art and among the finest networks in the country; and

C. WHEREAS, as one of the largest private partners with public entities toward the establishment of sound infrastructure projects, Macquarie has developed an internationally-renowned reputation of successful implementation of infrastructure projects similar to that contemplated herein; and

D. WHEREAS, Macquarie, as an international expert in infrastructure projects, has recognized the efforts of the Agencies and its Member Cities to deploy advanced technological infrastructure for the purpose of enhancing the economic development, quality of life, educational opportunities, and development of advanced jobs within the State of Utah toward the growth and progress of the participating communities, such that Macquarie now desires to further the original goals and aspirations of the Member Cities; and

E. WHEREAS, Macquarie Capital Group Limited, through its subsidiaries and funds (and similar vehicles) managed by such subsidiaries currently manages approximately $25 billion of infrastructure projects in the Americas, including assets developed as public private partnerships; and

F. WHEREAS, Macquarie has recognized the considerable efforts of the Member Cities which now makes possible the continuation of the most advanced communications system in the United States; and

G. WHEREAS, the Member Cities originally planned to invest significant resources to deploy the Network, which planning has made completion of the Network in partnership with Macquarie a definite option; and

H. WHEREAS, the infrastructure projects either owned or operated by or on behalf of Macquarie Group Limited's infrastructure business currently serve over 100 million people globally including management of the public safety communication system for the United Kingdom; and

I. WHEREAS, through the processes detailed in this Agreement the Parties will collectively review the feasibility, financial implications and risk impacts of delivering the Project through a public private partnership, with various Milestones to be able to ascertain such impacts and opportunities; and

J. WHEREAS on June 27, 2013 ("**Lock-Up Date**"), the Agencies and Macquarie entered into a Lock-Up Agreement, as subsequently amended on October 26, 2013, to induce the Parties to enter into negotiations toward a term sheet, a pre-development agreement and an agreement or a series of agreements whereby the Parties agree to a comprehensive mutual plan relative to financing, design, further construction, operations, maintenance, technology refresh and other comprehensive roles and responsibilities pertaining to the networks owned, controlled and/or operated by the Agencies (the "**Transaction**"). The Parties have agreed not to entertain or enter into any other discussions or offers concerning the Transaction with other parties for a period of ninety (90) days after the Lock-Up Date, including any extensions thereto ("**Exclusivity Period**"); and

K. WHEREAS, the relationship of the Parties is expected to proceed in phases. During the first phase ("**Pre-Development Phase**"), the Parties will work expeditiously to advance key elements of the Project, subject to the satisfaction of the Agencies, to ascertain the feasibility to finance and implement the Project; and.

L. WHEREAS, if the Project continues, the Parties intend to negotiate a new agreement or series of agreements (collectively, the "**Concession Agreement**") to govern the second phase ("**Implementation Phase**"). The Implementation Phase will cover financing, design, construction, operations, maintenance and technology refreshing work for the Project; and

M. WHEREAS, prior to the Implementation Phase, the Parties intend to proceed toward the completion of defined Milestones. The initial Work Plan will contain a detailed description of the first Milestone and partial descriptions of the subsequent Milestones. During each Milestone the Parties expect to agree on target assumptions. Upon Completion of each Milestone, the Parties will finalize the next Milestone and have the option to proceed to the next Milestone, in accordance herewith; and.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, including the appendices attached hereto and made a part hereof, the Parties agree as follows:

AGREEMENT:

1. Definitions

1.1 Definitions. As used herein, capitalized terms shall have the meanings set forth below, or as further defined in the Agreement:

a. "Access" in the context of accessing the Network is defined as a Member City Address that is either connected to the Network or is able to connect to the Network with the installation of an access point on the external surface of the address.

b. "Accounting and Tax Consultant" means a company selected by the Parties under an applicable Milestone for the purpose of provision specific accounting and tax advice relative to the Project.

c. "Agreement Date" has the meaning set forth in Article 3.1.

d. "Availability Payment" means a pre-agreed annual amount, subject to periodic indexation to a pre-agreed index and to pre-agreed performance deductions, payable monthly by the Agencies to Macquarie or ProjectCo, to repay the Capital Costs of the Project Network and the Operating and Maintenance Expenses of the Networks, all as more fully defined in the Concession Agreement.

f. "Brigham City Network" means the Network owned and/or controlled by Brigham City, Utah, and which either of the Agencies operate or maintain on a routine basis.

g. "Capital Costs" means the debt, equity and all other capital sources raised by Macquarie and/or ProjectCo to fund the construction of the Project Network, as fully disclosed to and agreed upon by the Agencies before the parties sign the Concession Agreements.

h. "Completion" means the substantial completion of a Milestone in accordance with the respective scope and deliverables for each Milestone outlined in this Agreement to the reasonable satisfaction of the Agencies.

i. "Confidential Information" has the meaning set forth in Article 7.

j. "Draft Proposal" has the meaning set forth in Article 4.2.

k. "Event of Default" means any of the following events:

(i) a payment required under this Agreement shall not be made by or on behalf of a Party when the same shall become due and payable; or

(ii) an order or decree shall be entered, with the consent or acquiescence of Macquarie, appointing a receiver or custodian for the Agencies or Macquarie, or approving a petition filed against Macquarie seeking reorganization of the debts of the Agencies or Macquarie under any country's bankruptcy laws or any other similar law or statute of the United States of America or any state thereof, or if any such order or decree, having been entered without the consent or acquiescence of Macquarie shall not be vacated or discharged or stayed on appeal within thirty (30) days after the entry thereof; or

(iii) any proceeding shall be instituted, with the consent or acquiescence of the Agencies or Macquarie, for the purpose of effecting a composition between Agencies or Macquarie, as the case may be, and its respective creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are or may be

under any circumstances payable from the Agencies or Macquarie, as the case may be; or

(iv) Macquarie is adjudged insolvent by a court of competent jurisdiction, or an order judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of Macquarie, as the case may be, a receiver, trustee, or custodian of Macquarie as the case may be, or of the Project or any party thereof, any of the aforesaid adjudications, orders, judgments, or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

Any representation or warranty made by Macquarie or the Agencies in this Agreement shall be materially inaccurate;

(vi) either Party shall default in the due and punctual performance of any other material covenant, condition, agreement, and/or provision contained in this Agreement, and such default shall continue for thirty (30) days after written notice specifying such Event of Default and requiring the same to be remedied shall have been given to the defaulting Party by the non-defaulting Party.

l. "External Costs" are costs incurred by either Party relating to discrete workstreams undertaken by third party consultants as required by the agreed workplan to achieve each Milestone, and as set forth in such Milestone's pre-agreed upon budget.

m. "Financial Close" means a date to be mutually agreed upon by the Parties when the Project financing shall be fully secured, the Parties shall have entered into the Concession Agreement, and the Project shall formally commence.

n. "Formal Notice" means any written notice required hereunder, which shall be delivered in accordance with the Notice requirements of this Agreement.

o. "Force Majeure Event" means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies and terrorists; orders or restraints of the Federal Government of the United States, or any of their departments, agencies or officials; insurrections; riots; landslides; earthquakes; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party and not due to their respective negligence.

p. "Governmental Action" means, without limitation, the following: orders or restraints of the local government institutions of the Member Cities, UTOPIA and UIA and any of their respective departments, agencies or officials (collectively, Government Bodies).

p. "GRAMA" has the meaning set forth in Article 7.

q. "Implementation Phase" has the meaning set forth in the Recitals.

r. "Internal Costs" are a Party's out-of-pocket expenses and pre-agreed lump sums for such Party's internal staff time cost incurred in connection with a Milestone on the Project, ***and*** which expenses are set forth in a Milestone's budget in advance and pre-agreed upon by all Parties in writing before the beginning of such Milestone. All Internal Costs are subject to the Internal Costs Liability Limitations.

s. "Internal Costs Liability Limitation" means the maximum amount any Party may recover for its Internal Costs in connection with a Milestone, which maximum amount shall be established by the Milestone budgets and pre-agreed upon by all Parties before the beginning of a Milestone. If such maximum amounts are not established by such budgets, or are not pre-agreed upon in writing before the beginning of a Milestone, the Internal Costs Liability Limitation shall be $0.00.

t. "Material Breach" means the occurrence of an Event of Default.

u. "Member City" shall mean a municipality listed in Exhibit A.

v. "Member City Address" is a physical address within the boundaries of the participating Member Cities, that is used for residential, multi-dwelling, commercial, municipal, educational, leisure or other activities as agreed by the Parties, or a separately-identifiable location which is connected to the Network, whether said location is identifiable by physical address, MAC address, IP address, or other methodology.

w. "Milestone" means a discrete subpart of the Project with deliverables, budgets, and deadlines, all as pre-agreed upon by the Parties in accordance with this Agreement, and following which there may exist certain opportunities for either Party to terminate this Agreement, subject to any applicable termination conditions.

x. "Models" has the meaning set forth in Article 7.

y. "Network" means, collectively, the UTOPIA Network, the UIA Network, the UTOPIA Stimulus Network the Brigham City Network and the Project Network, each of which is an advanced communications network including, without limitation, all cables, collocation space, conduits, innerducts, manholes, nodes, optical fiber strands, patch panels, splices, switches, transmitters, junctions, terminals, internal power sources, access portals, battery backups, fault alarm systems, structures, shelters, poles or pole line attachments, similar equipment, business and operations support systems, and all articles of personal property owned or leased by the applicable owner in connection with its fiber optics and/or wireless system, as any or all of the same may be updated, supplemented, replaced or expanded, from time to time, together with any additions, repairs, renewals, replacements, expansions, extensions, and improvements to said Network, or any part thereof, hereafter acquired or constructed, together with all lands, easements, interests in land leases, licenses, and rights of way of the network owner and all other works, property, structures, equipment of the network owner and contract rights and other tangible and intangible assets of the Issuer now or hereafter owned or used in connection with, or related to said Network.

z. "Operation and Maintenance Expenses" means all expenses reasonably incurred by the Agencies in connection with the operation and maintenance of the Network, whether incurred by the Agencies or paid to any other entity pursuant to contract or otherwise, necessary to keep the Network in efficient operating condition, including cost of audits, payment of promotional and marketing expenses and real estate brokerage fees, payment of premiums for the insurance required to be carried by the Agencies, Administsrative Costs (as defined in the Agencies' indentures) and, generally, all expenses, exclusive of depreciation (including depreciation relaqted expenses of any joint venture) which under generally acceptage accounting prctices are properly allocable to operation and maintenance; however, only such expenses as are reasonably and properly necessary to the efficient operation and maintenance of the Network shall be included.

aa. "Open Book Process" means full transparency for the Agencies into Macquarie's proposed models, financial vehicles, cost proposals, technical specifications, operational role and responsibilities, and any other aspect of the Project, such that the Agencies fully understand each aspect of the Project, include profit lines, and direct and indirect expenses. As between Macquarie and the Agencies, there shall be no aspect of or information related to the Project which is not shared, with the exception of proprietary information, information that consists of internal drafts or relates to Macquarie's internal approvals process required to arrange and potentially provide financing for the Project.

bb. "Payment Structure" means the mechanism by which the Utility Fees, up to the required Availability Payment and subject to ProjectCo not having breached its roles and responsibilities under the Concession Agreement, will be transferred from the Member Cities to ProjectCo.

cc. "Plan of Finance" means Macquarie's proposed plan to finance the Project under the Concession Agreement.

dd. "Pre-Development Phase" has the meaning set forth in the Recitals.

ee. "Proposal" means a Draft Proposal that is amended and finalized by Macquarie following comments provided by the Agencies on the conclusions from the Milestone Workplan, and the scope, deliverables and timeline provided for the subsequent Milestone.

ff. "Project" means and includes, without limitation, the financing, development, design, construction, operations, maintenance and technology refreshing of the Network, and assumption by Macquarie of responsibility for net operating deficits of the Agencies and the Network during the construction period.

gg. "ProjectCo" has the meaning set forth in Section 2.1.

hh. "Scope of Work" means the defined and pre-agreed upon scope of each Milestone all as set forth in writing between the Parties in advance of any Milestone.

ii. "State" means the State of Utah.

jj. "Termination for Agencies' Default" has the meaning set forth in Article 6.

kk. "Termination for Macquarie's Default" has the meaning set forth in Article 6.

ll. "UIA Network" means the Network owned and/or controlled by UIA.

mm. "UTOPIA Network" means the Network owned and/or controlled by UTOPIA.

nn. "UTOPIA Stimulus Network" means the Network owned and/or controlled by UTOPIA which was funded by federal stimulus monies. Any part of the Project, or any of the rights or duties of the Parties which impact the UTOPIA Stimulus Network are subject to and shall be superseded by any laws, rules, regulations or other provisions governing the UTOPIA Stimulus Network. The Agencies will be responsible for notifying Macquarie where it is reasonably foreseeable that the Transaction may be in breach of these laws, rules, regulations or provisions. In no event shall any action be undertaken in furtherance of this Project by any Party which would require the repayment of any federal stimulus monies.

oo. "Utility Fee" has the meaning set forth in Section 2.1.

pp. "Working Assumptions" has the meaning set forth in Article 4.

2. Project Description And Core Terms Of The Agreement

2.1 Description and Scope of the Project

The Project will connect the Network to Member City Addresses.

Subject to satisfactory completion of all appropriate due diligence, satisfactory completion of the Milestones outlined in this Agreement and the receipt of all required internal and external approvals of both parties, Macquarie will provide the equity and arrange the debt funding necessary to complete the Project. The Parties also currently anticipate that the Member Cities will enact a utility fee ("**Utility Fee**") on all Member City Addresses that have Access to the Network whether or not the owner of the property at the applicable Member City Address chooses to utilize the Network and/or to pay for additional services. It is anticipated that the Utility Fee will be used to fund the Availability Payments.

The Project will be undertaken by a newly established special purpose entity ("**ProjectCo**") to be formed by Macquarie, its affiliates and potentially one or more co-investors, which co-investors must be reasonably approved by the Agencies, and which approval shall not be unreasonably withheld, conditioned, or delayed. To the extent Macquarie's obligations referred to in this Agreement correspond to the Implementation Phase (after Financial Close) it is acknowledged by the parties that those obligations will be obligations of ProjectCo and will be more fully set out in a definitive Concession Agreement. To the extent the Agencies' obligations referred to in this Agreement correspond to the Implementation Phase (after Financial Close) it is acknowledged by the parties that those obligations will be obligations of either the Agencies, or their assignee, as will be more fully set out in a definitive Concession Agreement.

2.2 Project Plan and Roles of the Parties

a. The Project shall be developed and operated pursuant to the distinct Roles and Responsibilities of the Parties, as well as any other parties referred to herein. The Parties intend to pursue a cooperative and collaborative effort to engage each Party's capabilities to bring the Project to fruition. This Agreement does not establish, and shall not be construed as, a legal partnership between the Parties.

b. Provided Macquarie is not in Material Breach of this Agreement (and which breach has remained uncured for the applicable cure period), Macquarie shall be the exclusive developer of the Project. The final Scope of Work for the Project or any Phase, as applicable, shall be developed jointly by the Parties in accordance with the Plan of Finance for the Project or any Phase.

c. The Roles and Responsibilities of the Parties in furtherance of this Agreement shall be as follows

(i) The Agencies. One or more of the Agencies, as determined in the Agencies' sole discretion, shall be the owner of fee simple title, easement and/or other applicable property rights to the Project. The Agencies shall:

(1) Provide Macquarie with such development support as is mutually agreed upon and is reasonably necessary for Macquarie to progress the scope outlined herein including providing reasonable access to Agency staff and all required information on the existing Networks;

(2) Provide timely feedback on Agencies' and Member City objectives and on plans that are developed with respect to business model and division of Roles and Responsibilities upon implementation of the Project as a public private partnership; and

(3) In the event of termination as provided herein, pay to Macquarie such reimbursement amounts as may be stipulated in this Agreement or in the other subsequent Agreements, in accordance with the conditions and limitations on payment contained in such agreements.

(ii) Macquarie. Macquarie shall use commercially reasonable efforts to achieve each Milestone in accordance with the budgets and schedules agreed among the Parties and otherwise develop, build and/or operate the Project (or any Phase and Milestone, as applicable), in accordance with all applicable laws, regulations and ordinances and shall have such further obligations as may be set forth in this Agreement and other subsequent Agreements. In the event of budgetary or scheduling overruns, Macquarie will be responsible for costs associated with such overruns only if such items are included in the scope outlined in this Agreement. In the event that such overruns are the result of items not included in the scope, the Parties agree to negotiate a revised budget. Macquarie will engage all necessary consultants to achieve all applicable Milestones to refine current financial modeling assumptions, subject to the consultant being reasonably acceptable to Agencies, and shall be responsible for paying such consultants to the extent set out in the budget applicable to each Milestone.

2.3 The foregoing descriptions of the roles and responsibilities of each of the Parties are indicative only, and are subject to further discussion and negotiation as will be further detailed in the Concession Agreement. Concession Agreement

As outlined in the Scope of Work of the different Milestones established in this Agreement, the Agencies and Macquarie shall negotiate in good faith with the objective of agreeing on the terms of a Concession Agreement for the Project. The Agencies agree to provide Macquarie the exclusive right of negotiation for the Concession Agreement during the term of this Agreement. The Concession Agreement shall among other things: (a) establish the structure and arrangements for implementing the Project; (b) define the rights and responsibilities of the Parties respecting the Project; (c) provide for development, finance, construction, operations, maintenance and refresh of the Project in a manner based, to the extent possible, on precedent availability based public private partnership transactions that are considered mutually acceptable and agreed upon by the Parties, including, without limitation, budgetary, completion and performance guarantees made by Macquarie; and (e) incorporate by reference any other Project Agreements related to the Project. Except as specifically may be provided in the Concession Agreement, this Agreement shall be superseded once the Concession Agreement is executed.

The Parties agree that the preferred structure for the Transaction will be an Availability Payment based public private partnership.

2.4 Existing UTOPIA and UIA Indebtedness

The Transaction, as currently contemplated, will not include servicing of existing debt incurred with respect to any network which is backed by sales tax and other revenue streams. However, the Parties will continue to explore options for including the existing debt in the Transaction as outlined in the Milestone 1 Scope of Work herein and may decide to do so in the future. In all cases, the Project will be planned in such a manner as to maintain the operational revenue and debt covenants of the Agencies with ProjectCo's obligations in this regard fully set out in the Concession Agreement. Nothing in this

Agreement shall restrict the ability of the Member Cities to implement a Utility Fee which contributes to or completely covers the Agencies' existing debt obligations provided, however, that in no event shall Macquarie, or ProjectCo have any claim on such Utility Fees

2.5 Parity

The Parties will work co-operatively to structure the Project in a way which to the greatest extent possible achieves parity between the financial contributions made by the Member Cities and the level of Network build out and service those Member Cities enjoy.

3. Project Stages and Milestones

The Parties shall cooperate to achieve the following milestones ("**Milestones**") by the dates set forth herein. Successful completion of the Milestones will move the Parties toward the execution of definitive documentation, financial close and the subsequent Implementation Phase. The Parties acknowledge that the scope, key deliverables and timeline of all subsequent Milestones may require clarification or alteration as a result of the analysis undertaken to achieve Milestone 1. Indicative scope and deliverables for each of Milestones 2, 3 and 4 are detailed in Appendix A.

3.1 Milestone 1 - Business Case Analysis

Milestone 1 Scope

- Parties will collaboratively develop a clearly defined Project scope including, without limitation:
  - Scope of the network infrastructure buildout
    - Scale of the buildout to Member Cities, which shall provide network connectivity to a defined percentage of Member City Addresses
    - Approach to curb-to-home construction
    - Inclusion of licensed wireless tower network, including negotiation of appropriate capacity, cost and revenue arrangements
    - Potential inclusion of licensed and/or unlicensed wireless mesh overlay above the fiber network and negotiation of appropriate commercial arrangements
    - Approach to ensuring inter-operability with existing infrastructure
  - Scope of operational role and responsibilities between Macquarie, the Agencies and any Wholesale Service Provider that may created as part of the Transaction
    - Operational functions to be determined and defined in the Concession Agreement
    - Division of operations, maintenance and refresh functions between Macquarie, the Wholesale Service Provider and the Agencies
    - Division of marketing and customer support functions between Macquarie, the Wholesale Service Provider and the Agencies
    - Role of ISPs in marketing and provision of basic service
    - Investigation of potential advantages and approaches to securing anchor tenant(s) to provide services on the Networks
  - Parties will negotiate and agree on key commercial terms for the Project including a draft term sheet that will form the basis for negotiating the Concession Agreement
  - Finance and Structuring
    - Investigation of opportunities to refinance the existing UTOPIA indebtedness
    - Approaches to preserve the tax-exempt status of the existing indebtedness and potentially to access tax-exempt debt for the new network buildout

- Macquarie will engage all necessary consultants, as set forth below, to reasonably progress the commercial, technical and legal workstreams for the Project, subject to the consultant being acceptable to Agencies
    - Technical Consultant to review the technical specifications of the existing Networks and collaborate with the Parties to define the baseline technical requirements for the construction and operation of the Project Network;
    - Feasibility consultant to conduct a preliminary study to increase the Parties' understanding of the potential customer market for the Project, anticipated take rates and customer incentives that may be required to increase take rates;
    - Government relations consultant(s) to develop and execute a communications strategy to maximize support for the Project;
    - Public opinion polling firm to conduct consumer market research including but not limited to the Public Survey;
    - Law firm to act as Bond Counsel; and
    - Law firm to advise on the Payment Structure;
- In addition to the general responsibilities outlined in Article 2.2(c)(i), the Agencies will:
    - Provide a detailed description of the proposed Payment Structure including associated remedies
    - Coordinate discussion and negotiate with ISPs to ascertain the ISPs' level of interest in and terms required for providing the basic service
    - Provide documentation regarding and assist with all necessary due diligence related to Interlocal agreements, relationships between governmental entities, the Agencies' legal powers and restrictions concerning the Project, if any, and local governmental affairs issues.

- Consultants' fees for work engaged under this Milestone 1 shall be paid at cost and without any additional markup by any Party.
- Identification of potential Payment Structures and the key risks of such structures for all Parties
- Subject to independent review by the Agencies and to the terms of this Agreement, Macquarie will further refine financial modeling based on inputs provided by the engaged consultants or under various scenarios as determined by Macquarie and the Agencies toward:
    - Quantification of the maximum utility fee required
    - Net financial impact to Member Cities

Milestone 1 Deliverables

The expected timing for all Milestone 1 deliverables will be measured from a mutually agreed start date not more than three (3) weeks ("**Start Date**") after the execution of this Agreement ("**Agreement Date**"). At the Agreement Date, Macquarie will be obligated to proceed with the following deliverables:

Deliverable	Expected Timing	Responsibility
Engage consultants to conduct preliminary studies	Within 1 week of Start Date	Macquarie
Preliminary reports provided by consultants	Within 4-6 weeks of Start Date	Macquarie
Preliminary Concession Agreement Term Sheet	Within 6 weeks of Start Date	Agencies/ Macquarie
Financial modeling results showing "base case" approach to the Project as well as mutually agreed alternatives and sensitivities	Within 6 weeks of Start Date	Macquarie
Scope, Deliverables and Timeline for the subsequent Milestone	Within 6 weeks of Start Date	Agencies/ Macquarie
Updated budget for the subsequent Milestone	Within 6 weeks of Start Date	Agencies/ Macquarie
Draft Proposal to the Member Cities • Proposed scope and business model • Revised financial modeling assumptions • Estimated Utility Fee required • Proposed Payment Structure • Mutually agreed upon Scope, Deliverables, Budget (including source of funds for any required reimbursement) and Timeline for the subsequent Milestone should the Parties and the Member Cities decide collectively to proceed	Within 7 weeks of Start Date	All Parties

4. Milestone Management

4.1 Reporting and Communications Process

Macquarie will schedule a standing weekly conference call to provide the Agencies with ongoing updates on the progress of the applicable Milestone scope and discuss any mutually agreed upon items in the agenda prior to the call. The Parties agree to collectively hold in-person meetings at a mutually agreed upon location as may be required but at least at the beginning and at the conclusion of each Milestone.

The Agencies will be primary Party responsible for reporting and communications with the Member Cities; provided, however, failure to do so shall not serve as the basis for termination or any other

recourse by Macquarie. Such reporting and communication shall be at the Agencies' sole discretion, however, coordination and discussion regarding the same will occur amongst the Parties, as reasonably determined to be necessary by the Chairs of the Agencies. The Agencies agree to exercise commercially reasonable efforts to co-ordinate conference calls or in-person meetings with appropriate officials of the Member Cities as may be required for the advancement of the Project.

4.2 Procedures and Notices to Proceed with Milestones

The Parties agree to work collaboratively to finalize and agree to the scope, budget, deliverables and timeline for each of the Milestones outlined in this Agreement. This Agreement will set out the initial mutually agreed upon indicative scopes, budgets and deliverables for all the Milestones outlined and the proposed timeline for the first Milestone.

Macquarie will be responsible for presenting a Draft Proposal to the Agencies at the completion of the agreed Workplan for each Milestone. The Draft Proposal will provide the Agencies with the conclusions from the Milestone Workplan and outline the proposed scope, budget, deliverables and timeline for the subsequent Milestone. The Agencies will have the opportunity to comment on the Draft Proposals and Macquarie and the Agencies will work collectively to incorporate any agreed amendments to the Draft Proposal so that it may be submitted to the Agencies as a Proposal. In the event the Parties cannot agree on amendments to the Draft Proposal, including but not limited to the conclusions from the Milestone Workplan or the scope, budget, deliverables or timeline for the subsequent Milestone at the conclusion of each Milestone, a Draft Proposal will be considered a Proposal after 30 days.

The submission of a Proposal by Macquarie to the Agencies will require the Agencies to respond with a Formal Notice to Proceed within 60 days. If Macquarie and/or ProjectCo does not receive such notice within 60 days, it will be considered a deemed termination by the Agencies as provided for in clause 6.1(c).

4.3 Compensation for Services

- Macquarie will be responsible to pay the budgeted External Costs until either Financial Close or the termination or expiry of this Agreement
- All costs (External and Internal) would be budgeted, pre-approved and only incurred through the mechanism outlined in this Agreement. For the avoidance of doubt each Party shall bear its own Internal Costs, except to the extent they are expressly included in the applicable budget of a particular Milestone, in which case the Parties shall have also agreed any reimbursement of such Internal Costs shall not exceed a pre-negotiated maximum amount ("Internal Costs Liability Limitation").

4.4 Limitation of Liability and Waiver of Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT, OR ANY OTHER AGREEMENT OR WRITING BETWEEN THE PARTIES, NO PARTY, NOR THEIR RESPECTIVE AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, WHETHER INDIVIDUALLY OR COLLECTIVELY, SHALL BE LIABLE TO ANY PARTY OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, EXPECTATION DAMAGES, OR LOSS OF REPUTATION, ARISING OUT OF THIS AGREEMENT OR ANY OTHER AGREEMENT OR WRITING RELATED TO THE PROJECT, WHETHER BY REASON OF CONTRACT, INDEMNITY, STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, BREACH OF THIS AGREEMENT OR ANY OTHER AGREEMENT OR WRITING RELATED TO THE PROJECT, OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF

THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT, EACH PARTY HEREBY RELEASES THE OTHER PARTY OF AND FROM SUCH CLAIMS.

4.4 Obligation to Achieve Milestone Completion

Macquarie shall use commercially reasonable and diligent efforts to complete all scope and deliverables required under each Milestone in accordance with this Agreement.

As a condition precedent to Formal Notice to proceed to the next Milestone, a list of major conclusions as part of the preceding Milestone will be agreed ("**Working Assumptions**"). The Parties recognize that these Working Assumptions will form the basis for the subsequent Milestones and commit to carry those Working Assumptions forward into subsequent Milestones or the Concession Agreement and promptly highlight any foreseeable barriers. For the avoidance of doubt, the Working Assumptions do not include the indicative utility fee presented in Draft Proposals or Proposals, which will be ascertained during the Milestone process. For purposes of workload planning, the Agencies shall use good faith efforts to accommodate and adapt to Macquarie's proposed Milestone plan, within the practical limitations on availability of the Agencies' personnel appropriate for performing the types of services in question. Macquarie shall accommodate and adapt its proposed Milestone plan to the practical limitations on availability of personnel of the Agencies.

5. Delivery Approach, Open Book Process

The Parties contemplate that the Availability Payments shall constitute legally enforceable contractual payment obligations of the Agencies, paid from Utility Fees of the Member Cities, however it is the intent of the Parties that the Availability Payments shall be structured such that it does not constitute indebtedness of the Agencies or the Member Cities under applicable law. It is further contemplated that Macquarie will raise the debt and equity financing required for the Project without recourse to the Agencies or Member Cities other than through enforcement of the contractual payment and other obligations set out in the Concession Agreement. It is the intent of the Agencies that the sole and exclusive recourse against the Member Cities for Macquarie and/or ProjectCo, in the event of non-payment of the Availability Payments, will be the enforcement, as a third party beneficiary, of the contractual payment of the Utility Fees between the Member Cities and the Agencies on terms to be set forth in the Concession Agreement. The obligations of the Member Cities to pay such utility fees shall be several and not joint and several. The Parties acknowledge that the Payment Structure to be established in the Concession Agreement will be subject to completion of satisfactory due diligence of the enforceability of the Payment Structure and mutual agreement of both Parties.The Utility Fees will be imposed on a footprint by footprint basis as each construction footprint is certified as completed by an independent engineer and released for services. Parties agree to negotiate in good faith revenue allocation before any Utility Fees are imposed on or collected from any address within any footprint to replace existing revenue which may be lost through the enactment of the Utility Fees, which may include a deferral of the Agencies obligation to pay Utility Fees to Macquarie for a period of time in exchange for an extension of the Term of the Concession Agreement by an agreed-upon period of time or such other mechanism as agreed by the Parties. As part of ensuring that the Agencies and the Member Cities achieve competitive pricing for the Project, the Parties commit to an Open Book Process for developing the costs and financing terms for the Project. Macquarie will share the proposals it receives from third parties and will provide the Agencies the opportunity to review, comment on and reasonably approve all External Costs and Internal Costs. Macquarie intends to run competitive best value processes for selection of sub-contractors and for selection of lenders or other debt providers, in this way the major cost components of the Project will be selected through a competitive best value process with transparency for the Agencies and the Member Cities.

The appointment of sub-contractors will be based on Macquarie providing a written justification acceptable to the Agencies as to why the recommended Subcontractor represents the most advantageous offer to the Agencies, considering qualifications, financial strength, cost or price factors as may be appropriate. Notwithstanding the foregoing, the Agencies shall have the right to remove any subcontractor from the Project in certain circumstances such as risk to health and safety and other circumstances to be agreed between the Parties and more fully set forth in the Concession Agreement ("**Subcontractor Default**"). Such removal for health and safety, emergency conditions, or other circumstances giving rise to immediate and/or imminent harm or danger to persons or property shall be immediate. Otherwise, such removal can only occur if the Agencies have first notified Macquarie and the Subcontractor of the Subcontractor Default and the same has remained uncured for a period of thirty (30) days or more; provided, however, in the event such Subcontractor Default poses an immediate hazard to any person or entity, the Agencies may exercise such removal right immediately upon written notice to Macquarie and the Subcontractor of such hazard.

6. Termination

6.1 Termination Events and Associated Compensation

Notwithstanding anything to the contrary in this Agreement, no Party's Internal Costs shall be subject to reimbursement except to the extent they are expressly included in the applicable budget of a particular Milestone, in which case the Parties shall have also agreed any reimbursement of such Internal Costs shall not exceed an Internal Costs Liability Limitation for such a Milestone.

The Agencies acknowledge that compensation due to Macquarie under this agreement shall be considered to be an Operations and Maintenance Expense of the Agencies. The obligation to pay such compensation due to Macquarie shall be a joint and several obligation of UTOPIA and UIA.

a. **Termination for Convenience or Public Interest by the Agencies.** The Agencies may terminate this Agreement if the Agencies determine, in their sole discretion, that such action is in the best interests of the public. In such case, the Agencies will be responsible for full compensation to Macquarie for all External and Internal Costs (subject to the Internal Costs Liability Limitation) incurred in accordance with the budgets.

b. **Termination after Completion of Milestone 1.** Each Party will have the right to terminate this Agreement after Completion of Milestone 1.

(i) If the Agencies exercise their right to terminate then the Agencies will be responsible for full compensation to Macquarie for all External Costs incurred in accordance with the budgets

(ii) If Macquarie exercises its right to terminate then the Agencies will compensate Macquarie only for those External Costs which have been pre-agreed to result in work product with commensurate ongoing value to the Agencies, as further set out in Appendix C.

c. **Termination by the Agencies after the Completion of a Milestone**. The Agencies may choose not to proceed to the next Milestone and terminate this Agreement after completion of each Milestone as follows:

(i) If the Milestone was successfully completed and the Proposal for moving to the next Milestone submitted by Macquarie was in accordance with previously agreed Working Assumptions and the subsequent development under an Open Book Process but the Agencies elect not to proceed, the Agencies will be responsible for full compensation

to Macquarie for all External and Internal Costs (subject to the Internal Costs Liability Limitation) incurred in accordance with the budgets

(ii) Otherwise, the Agencies will be responsible for compensation to Macquarie for only the External Costs incurred in accordance with the budgets.

The Agencies will be deemed to exercise their right to not proceed and terminate if they do not provide an affirmative notice to proceed to the next Milestone after 60 days from successful completion of the current Milestone and presentation of a Proposal to the Agencies in accordance with Section 4.2.

d. Termination by the Agencies Arising from Default of Macquarie. If there is an Event of Default by Macquarie under this Agreement, the Agencies shall have the right to terminate this Agreement for default, after affording Macquarie at least thirty (30) days to cure the Event of Default. Such termination shall be referred to as a "**Termination for Macquarie's Default**." In addition to the events listed in the definition of "Event of Default", each of the following shall constitute an Event of Default by Macquarie:

(i) Failure to undertake reasonable efforts to work towards the Milestones in good faith, where Macquarie is notified by the Agencies of such failure and provided at least thirty (30) days time to cure;

(ii) Failure by Macquarie to achieve a Milestone in accordance with this Agreement other than for a Force Majeure Event;

In the event of a Termination for Macquarie's Default, the Agencies will not be responsible to pay any compensation to Macquarie.

e. Termination by Macquarie Arising from the Agencies' Default. If there is an Event of Default by the Agencies under this Agreement, Macquarie shall have the right to terminate this Agreement for default, after affording the Agencies the opportunity to cure the default. Such termination shall be referred to as a "**Termination for Agencies' Default**." In the event of a Termination for Agencies' Default, the Agencies will be responsible for full compensation to Macquarie for all External and Internal Costs (subject to the Internal Costs Liability Limitation) incurred in accordance with the budgets.

f. Termination due to External Events.

(i) Either Party may terminate this Agreement due to a Force Majeure Event that inhibits the Project from proceeding for an extended period of time of more than 45 calendar days. The Agencies will be responsible for compensation to Macquarie for External costs incurred in accordance with the budgets.

(ii) Either Party may terminate this Agreement due to a Governmental Action that renders it impossible or commercially impractical for the Project to proceed in accordance with the agreed terms and understanding of the Parties as reflected in the work already completed as of that time the Agencies will be responsible for full compensation to Macquarie for all External and Internal costs incurred in accordance with the budgets

(iii) In the event the Agreement is terminated under the external events listed above, the Agencies will reimburse Macquarie for the following costs incurred in accordance with the budgets:

(1) All External Costs actually incurred for Milestones that have reached Completion or are in progress; and

(2) In the case of termination due to Governmental Action, all Internal Costs (subject to the Internal Costs Liability Limitation) for the Milestones that have reached Completion.

6.2 Termination Notice

No termination of this Agreement is effective until written notice of such termination is provided by the terminating Party to the other Party including, if applicable, an opportunity and appropriate period to cure, and the Parties agree that no termination notice will be effective if the defaulting Party is working on an agreed remedial plan with respect to a particular default. Within 30 days of the effective date of termination, Macquarie shall deliver to the Agencies any Work Product of Macquarie as applicable relating to the Project.

7. Work Product

7.1 Ownership

All Work Product of Macquarie and its Subcontractors generated in the course of this Transaction and all copies thereof, shall become and remain the exclusive property of the Agencies upon Financial Close or upon the termination of this Agreement and payment by the Agencies of the applicable budget reimbursements. Macquarie shall be granted a non-exclusive license to use such Work Product after the transfer of ownership (subject to any lawful public disclosure requirements).

Prior to Financial Close or termination of this Agreement, all other Work Product, and all copies thereof, shall remain exclusively the property of Macquarie and its Subcontractors notwithstanding any delivery of copies thereof to the Agencies.

Macquarie may prepare one or more financial models in connection with this Agreement and/or the Project ("**Models**"). Such Models will be prepared solely for the Agencies' use in connection with the Project. The Model, by itself, does not create any legal obligation or commitment unless and until included expressly within the Concession Agreement. The information contained in the Models will not be independently verified by Macquarie. Macquarie will retain all of its intellectual property rights in relation to the Models, including copyright and rights to confidential information, but excluding any Agency or other third party intellectual property rights. However, Macquarie will grant the Agencies a royalty free, perpetual, irrevocable license to use the Models. In particular, the Agencies may insert other variables or assumptions to consider alternative scenarios or outcomes. However, Macquarie will not be responsible for failure of a Model or for output errors resulting from incorrect or inappropriate inputs by Agencies. The Agencies may not use, reproduce or adapt any Model other than in relation to the Project, including all expansions thereto, without Macquarie's prior written consent. In addition, data, outcomes and estimates and forecasts contained in or derived from Models shall only be disseminated beyond the Agencies' directors, officers, employees and advisors of the Project in accordance with a joint and collaborative plan derived by the mutual cooperation of the parties. Macquarie does not represent that estimates or forecasts derived from any Model will actually be achieved or that the assumptions, variables and other inputs used in any Model are reasonable, reliable or accurate.

While the Models will be prepared in good faith, unless and until expressly included within the Concession Agreement, neither Macquarie nor any of its affiliates, nor their respective directors, officers, employees, advisors or agents, nor any other person, have made, or are making, any representation or warranty as to the completeness, accuracy, reliability or appropriateness of the Models or any of their respective contents or outputs, and no legal or other commitments or obligations shall arise by reason of the provision of the Models or their respective contents, or any outputs derived. Accordingly, neither Macquarie nor any of its affiliates, nor their respective directors, officers, employees, advisors or agents, nor any other person, shall

be liable for any direct or indirect or consequential loss suffered by any person as a result of relying on any statement in or omission from the Model or any other information provided in connection herewith.

The Models may contain forward-looking statements, forecasts, estimates, projections and opinions ("Forward Statements"). No representation is made or will be made that any Forward Statements will be achieved or will prove correct. Actual future results and operations could vary materially from the Forward Statements. Similarly no representation is given that the assumptions disclosed in the Models upon which Forward Statements may be based are reasonable. The Agencies acknowledge that circumstances may change and the contents of the Models may become outdated as a result.

In further consideration of Macquarie allowing the Agencies access to the Models and the information contained therein, the Agencies agree that The Agencies will make no claim, other than under the termination provisions of this Agreement, against Macquarie, its partners, employees or affiliates (collectively, the "Macquarie Parties") that relates in any way to any Model, any information contained therein, or the Agencies' access to any Model.

7.2 Confidential Information

Macquarie acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to the Agencies. Any and all information marked confidential, or identified as confidential in a separate writing, that the Agencies provide to Macquarie, its agents or Subcontractors or their employees in the performance of this Agreement or which otherwise constitutes Proprietary Work Product shall be deemed to be confidential information of the Agencies ("**Confidential Information**"). The Agencies are governed by the Utah Government Records Access Management Act, Title 63G, Chapter 2, Utah Code Ann. 1953, as amended ("**GRAMA**"). Any requests by Macquarie or its Subcontractors to classify any records as "protected" shall comply with GRAMA. In the event a classification is challenged, the party claiming such protected status shall bear the responsibility of supporting such classification. Confidential Information shall not include information that (a) is or becomes (other than by disclosure by the other Party) publicly known, (b) is furnished by the Party to others without restrictions similar to those imposed by this Agreement, (c) is rightfully in the other Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement, (d) is obtained from a source other than the Party without the obligation of confidentiality, (e) is disclosed with the written consent of the Party or (f) is independently developed by employees or agents of the other Party who can be shown to have had no access to the Confidential Information. Any reports or other documents or items (including software) that result from the use of the Confidential Information by the other Party shall be treated with respect to confidentiality in the same manner as the Confidential Information.

7.3 Non-Disclosure

Macquarie agrees, and shall require its Subcontractors to agree, to hold Confidential Information in strict confidence, using at least the same degree of care that the Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than under this Agreement, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. The Agencies sole obligation shall be to properly classify records as "protected" under GRAMA when so requested and when a protected classification is warranted. Macquarie agrees, and shall require its Subcontractors to agree, that, except as directed by the Agencies, neither Macquarie nor its Subcontractors will at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at the Agencies' request, Macquarie, or its Subcontractors, will turn over to the Agencies all documents,

papers, and other matter in Macquarie's, or its Subcontractors, possession that embody Confidential Information; provided, however, the Agencies may not be able to return any documents unless permitted by GRAMA, applicable law and records retention policies and regulations and provided further that the Parties may retain Confidential Information as required by applicable law, regulation and the requirements of bona fide documentation policies.

8. Miscellaneous

8.1 Successors and Assigns

8.1.1 The Agreement may not be assigned by any Party except with the prior written consent of each other Party; provided that Macquarie may assign its rights and obligations hereunder to any affiliate of Macquarie that is participating in or formed for the purposes of participating in, the Project; provided, further that the obligations of the Agencies may be fulfilled through a separate legal entity or entities, as may be determined by legal counsel to best suit the Project. No Party may, except in accordance with the subcontracting provisions of this Agreement, delegate any of its obligations under this Agreement, without each other Party's prior written consent, and any attempt to do without such consent is null and void.

8.1.2 The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and their respective successors and permitted assigns, if any.

8.2 No Third Party Beneficiaries

Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

8.3 Jurisdiction and Venue

Each of the Parties hereby (a) irrevocably consents to personal jurisdiction in the District Court of the State of Utah in Salt Lake County, or any Federal court sitting in the District of Utah, for the purposes of any suit, action or other proceeding arising out of this Agreement or any of the agreements or transactions referred to herein or contemplated hereby, which is brought by or against Macquarie, (b) waives any objection to venue with respect thereto, and (c) agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court, and that such courts shall have jurisdiction over any claims arising out of or relating to the Agreement or such agreements or transactions, and agrees not to commence any suit, action or proceeding arising out of or relating to the Agreement except in such courts.

8.4 Entire Agreement

This Agreement and the attached Appendices to this Agreement constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

8.5 Counterparts

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

8.6 Amendments

This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

8.7 Governing Law

This Agreement is made and delivered in the State of Utah and shall be governed by and construed in accordance with Utah laws without regard to any applicable conflicts of law provisions.

8.8 Dispute Resolution and Attorney's Fees

All disputes between the parties that arise out of or in connection with this Agreement or its interpretation, operation, breach, termination or cancellation shall be settled by means of negotiation between the parties or nonbinding mediation. If the parties cannot amicably settle any such dispute, then such dispute shall be resolved through the courts. Either party may exercise any legal right and remedy available to it, whether at law or in equity, to enforce any provision of this Agreement. In the event either party commences legal action to enforce any term of this Agreement, the prevailing party in such proceeding will be entitled, in addition to any other rights and remedies it may have, to recover its reasonable costs and attorneys fees incurred in such proceeding from the other party.

8.9 Term

The term of this Agreement shall begin on the Agreement Date and remain in effect for a period of 30 months from the Agreement Date ("Term") unless terminated by either party as provided herein.

8.10 Authorization

The execution, delivery, and performance of this Agreement have been duly authorized by the persons required to give such authorization, and the undersigned has the complete and unrestricted power and authority to execute this Agreement on behalf of the Parties.

8.11 Severability

In the event that any provision of this Agreement is declared void, invalid or unenforceable by a regulatory agency, tribunal or court of competent jurisdiction, the remainder of the Agreement shall continue in full force and effect as if the offending provision were not contained herein, and the offending provision shall be replaced by a mutually acceptable and valid provision which comes closest to the intention of the parties underlying the offending provision. If the parties cannot reasonably agree on a replacement provision and the offending provision is material to the Agreement, either party may terminate the Agreement upon written Notice to the other party, without further obligation or liability.

8.12 Notice

All Notices or other communications given pursuant to this Agreement (herein, "**Notice**") shall be in writing. Notice shall be given by personal delivery with a signed acknowledgement of receipt; by United States mail or an established, commercial courier service, postage or delivery charge prepaid, return receipt requested; by electronic mail with confirmation copy sent by United States mail or an established courier service within 24 hours after the time and date of the electronic mail transmission; or by facsimile with a confirmation copy sent by United States mail or an established courier service within 24 hours after the time and date of the facsimile transmission. Notice shall be addressed to the person and address designated below:

If to UTOPIA:

Attention: Executive Director
Utah Telecommunication Open Infrastructure Agency
2175 South Redwood Road
West Valley City, Utah 84119

If to UIA:

Attention: CEO
Utah Infrastructure Agency
2175 South Redwood Road
West Valley City, Utah 84119

If sent to either of the Agencies, a copy (which shall not constitute Notice) shall also be sent to:

David J. Shaw
Kirton McConkie PC
2600 West Executive Parkway, Suite 400
Lehi, Utah 84043

If to Macquarie:

Nicholas Hann
Executive Director
Macquarie Capital Markets Canada Ltd.
Suite 2400, Bentall 5
550 Burrard Street, Box 38
Vancouver, BC V6C2B5 Canada

A Notice or other communication shall be deemed effective upon receipt or in the case of refusal to accept or inability to deliver the Notice or other communication, the earliest of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of Notice of refusal or Notice of non-delivery by the sending party. Either party may designate at any time any other address, e-mail or fax number in substitution of the foregoing by giving the other party ten (10) Days' written Notice, as provided herein, of the new address.

8.13 No Joint Venture, Partnership or Alter Ego; Independent Contractor

Nothing contained in this Agreement, any document executed in connection herewith or any other Agreement with any other party shall be construed as making the Parties joint partners, joint venturers or

alter egos of each other or any other entity. Macquarie shall at all times remain an independent contractor.

8.14 Notice, Confirmation of Force Majeure; Suspension of Performance

a. Notice. Upon giving written notice to the other Party, a Party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, and its cause and possible consequences. The Party claiming Force Majeure shall promptly notify the other party of the termination of such event.

b. Confirmation. The Party invoking Force Majeure shall provide to the other Party confirmation of the existence of the circumstances constituting Force Majeure. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts claimed to constitute Force Majeure.

c. Suspension of Performance. During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other Party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first written above.

Utah Infrastructure Agency

By: _____
Name: Todd Marriott
Title: CEO

ATTEST:

_____
Secretary

APPROVED AS TO FINANCES:

_____
Treasurer

APPROVED AS TO FORM:

_____
UIA General Counsel

Utah Telecommunication Open Infrastructure Agency

By: _____
Name: Todd Marriott
Title: Executive Director

ATTEST:

_____
Secretary

APPROVED AS TO FINANCES:

_____
Chief Financial Officer

APPROVED AS TO FORM:

_____
UTOPIA General Counsel

Macquarie Infrastructure Developments, LLC ("Macquarie")

By: _____
Name: Christopher Voyce
Title: Attorney In Fact

By: _____
Name: Nick Butcher
Title: Attorney In Fact

EXHIBIT A

The Network is anticipated to pass approximately [153,000] addresses (including homes, businesses and other facilities) in all or a participating subset of the following Utah municipalities:

- Brigham City;
- Centerville;
- Layton;
- Lindon;
- Midvale;
- Murray;
- Orem;
- Payson;
- Perry;
- Tremonton; and
- West Valley City.

(collectively "**Member Cities**")

APPENDIX A
Milestone 2, 3 and 4

1.1 Milestone 2 – Negotiation of Terms

Milestone 2 Scope

- Parties will refine the scope undertaken in Milestone 1 and finalize the Project scope with respect to:
  - Scope of the network infrastructure buildout
    - Scale of the buildout to Member City Addresses which shall provide network connectivity to a defined percentage of Member City Addresses
    - Approach to curb-to-home construction
    - Inclusion or exclusion of a wireless licensed tower network and/or a licensed and/or unlicensed wireless mesh overlay above the fiber network
    - All Network technical specifications set forth to ensure compliance, at a minimum, with current Network service level agreements, interoperability and carrier class reliability (minimum 99.99% standard)
  - Scope of operational Role and Responsibilities for all Parties
    - Roles and Responsibilities to be clearly defined in draft Concession Agreement term sheet
    - Division of operations, maintenance and refresh functions between Macquarie, the Wholesale Service Provider and the Agencies
  - Coordination of qualifications-based design-build (DB) contractor process
    - Preparation of request for qualifications (RFQ) to solicit qualifications-based proposals from selected DB contractors
    - Identification of evaluation criteria and framework for RFQ responses
    - Selection of preferred DB contractor(s) to participate in best value process to deliver binding, fixed price DB Contract bids
  - Parties to negotiate and agree detailed commercial and legal Project terms
  - Macquarie will engage all necessary consultants to assist in reasonably progressing the commercial, technical and legal workstreams for the Project
    - Technical Consultant to assist in the preparation and evaluation of the RFQ and RFQ responses
    - Legal advisers to develop detailed term sheets for the Concession Agreement and, if required, advise potential capital providers on the financing plan for the Project;
- Macquarie will develop a complete financing plan for the Project and secure indications of interest and preliminary term sheets from prospective lenders
  - Net financial impact to Member Cities
- Macquarie will update its financial model to incorporate revised assumptions and inputs based on the conclusion from the Milestone 2 Workplan
  - Quantification of the maximum Utility Fee required
  - Net financial impact to the Agencies

Milestone 2 Deliverables

- Final Project scope and Roles & Responsibilities for all Parties
- Full Term Sheet for the Concession Agreement

- Selection of preferred DB contractor(s)
- Financing plan for the Project and term sheets from lenders
- Scope, deliverables and timeline for the subsequent Milestone
- Updated budget for the subsequent Milestone
- Draft Proposal with the proposed Utility Fee and a summary of the net financial impact on the Agencies

1.2 Milestone 3 – Commercial Close

Milestone 3 Scope

- Parties to work collaboratively with the preferred DB Contractor(s) to develop the commercial, legal and technical terms of the DB Contract, including, but not limited to:
  - Capital cost estimate and construction schedule
  - Final network design
  - Commercial and legal terms including security package and interface of the DB Contract with the Concession Agreement
- Evaluation of the DB Contract bids and execution of the DB Contract, subject to the Project reaching Financial Close
- Macquarie will engage all necessary consultants to assist in reasonably progressing the commercial, technical and legal workstreams for the Project
  - Legal, technical and insurance advisers if required by potential capital providers for the Project
  - Legal adviser to progress term sheets to full agreements
  - Accounting and tax adviser to review, develop and propose an appropriate structure for the Project
- Macquarie will update the financing plan for the Project and assist lenders with due diligence
  - If required, Macquarie will secure initial rating assessments from one or more rating agencies
- Macquarie will update its financial model to incorporate revised assumptions and inputs based on the 0conclusion from the Milestone 3 Workplan
  - Quantification of the maximum Utility Fee required
  - Net financial impact to the Agencies

Milestone 3 Deliverables

- Binding fixed price DB Contract bids
- Finalized DB Contract
- Initial audit of the financial model
- Final Proposal to the Agencies including detailed Concession Agreement term sheet and agreed committed Availability Payment, and corresponding required utility fee)
  - Note that the Availability Payment would be subject to adjustment for changes in market interest rates and potentially certain other pre-agreed adjustment factors)
- Debt financing commitment letters and term sheets (note that debt commitments at this stage may still have certain contingencies such as finalization of due diligence)
- Scope, deliverables and timeline for the subsequent Milestone
- Updated budget for the subsequent Milestone

1.3 Milestone 4 - Financial Close

Milestone 4 Scope

- Finalize and execute definitive agreement(s) with the Agencies
- Finalize Financial Model and undertake subsequent third-party Model Audit
- Completion of lender due diligence and definitive loan agreement (between ProjectCo and its lenders)

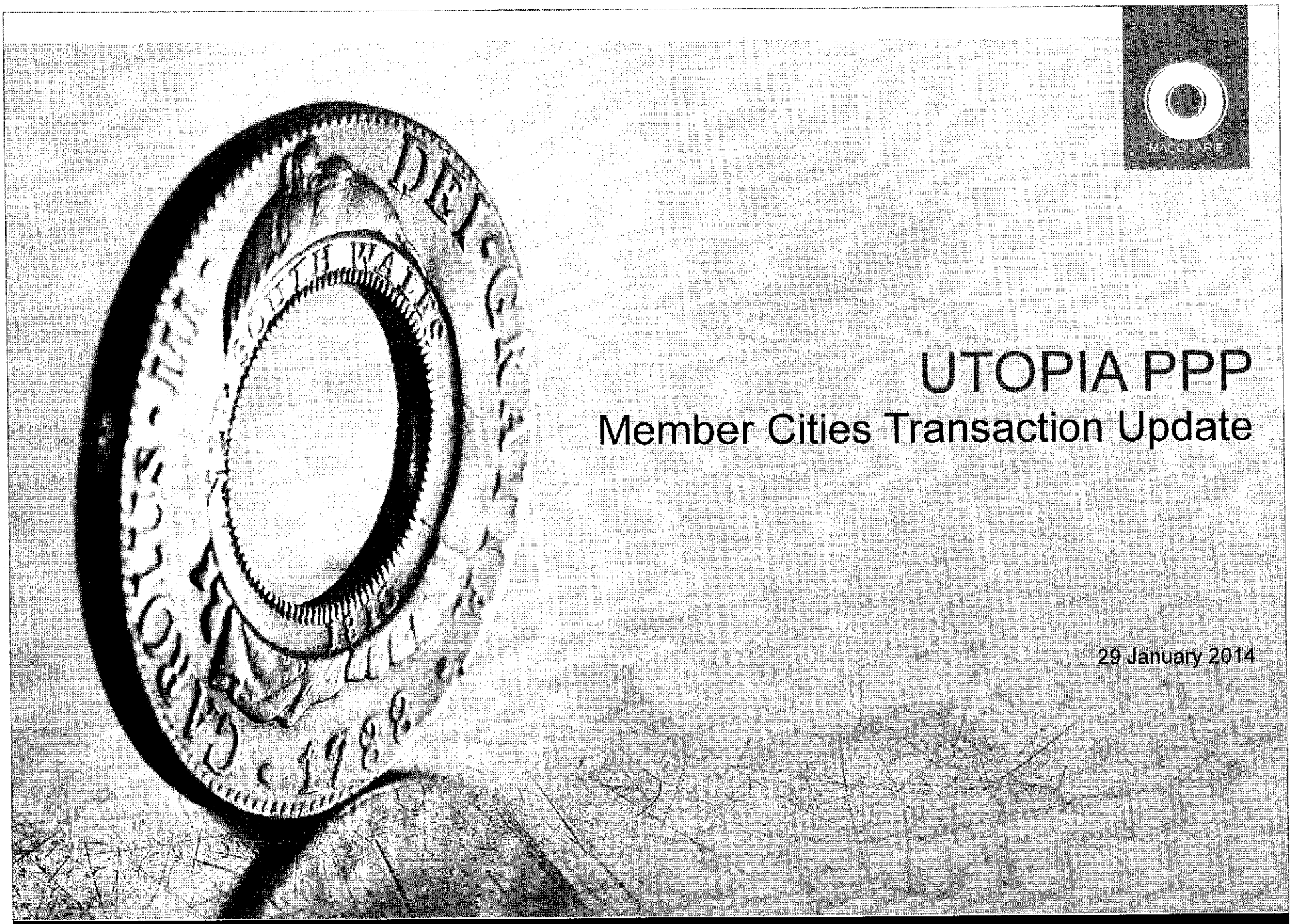
Milestone 4 Deliverables

- Fully executed Concession Agreement and associated documentation
- Fully executed Definitive Loan Agreement and associated documentation between ProjectCo and its lenders
- Third-party audited Financial Model

APPENDIX C

PROTECTED RECORD UNDER GRAMA

REDACTED



UTOPIA PPP

Member Cities Transaction Update

29 January 2014

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Agenda

- Macquarie is pleased to provide an update on the progress of the UTOPIA PPP transaction, and an opportunity to address any questions or concerns committee members may have

- Key points we would like to cover today include:
  - —Working group and steering committee overview
  - —Business model overview
  - —Pre-Development Agreement overview
  - —Progress toward Milestone 1
  - —Government Relations update
  - —Immediate next steps

Executive Summary

The Macquarie team is continuing to develop and refine the business model as it progresses smoothly through Milestone 1

- UTOPIA and UIA (the Agencies) executed a pre-development agreement with Macquarie in mid-December 2013, which formalized a framework to develop the UTOPIA network buildout transaction from a detailed business case analysis to commercial and financial close
  - Four discrete milestones provide the Agencies specific evaluation points that must be satisfied for the transaction to continue

- Milestone 1 is focused on business model development, and Macquarie continues to make solid progress in developing one that satisfies the Agencies' key objectives of minimizing costs, maximizing end user take rates and aligning incentives of all parties
  - The network build will install an inactive access portal on the external surface of each address within the Member Cities
  - The detailed roles and responsibilities of each transaction entity (PPP, WSP, ISPs and the Agencies) remain a working assumption as further feedback is sought from network stakeholders
    - The Macquarie team is engaging with ISPs to ensure the model is refined to avoid historical issues / constraints

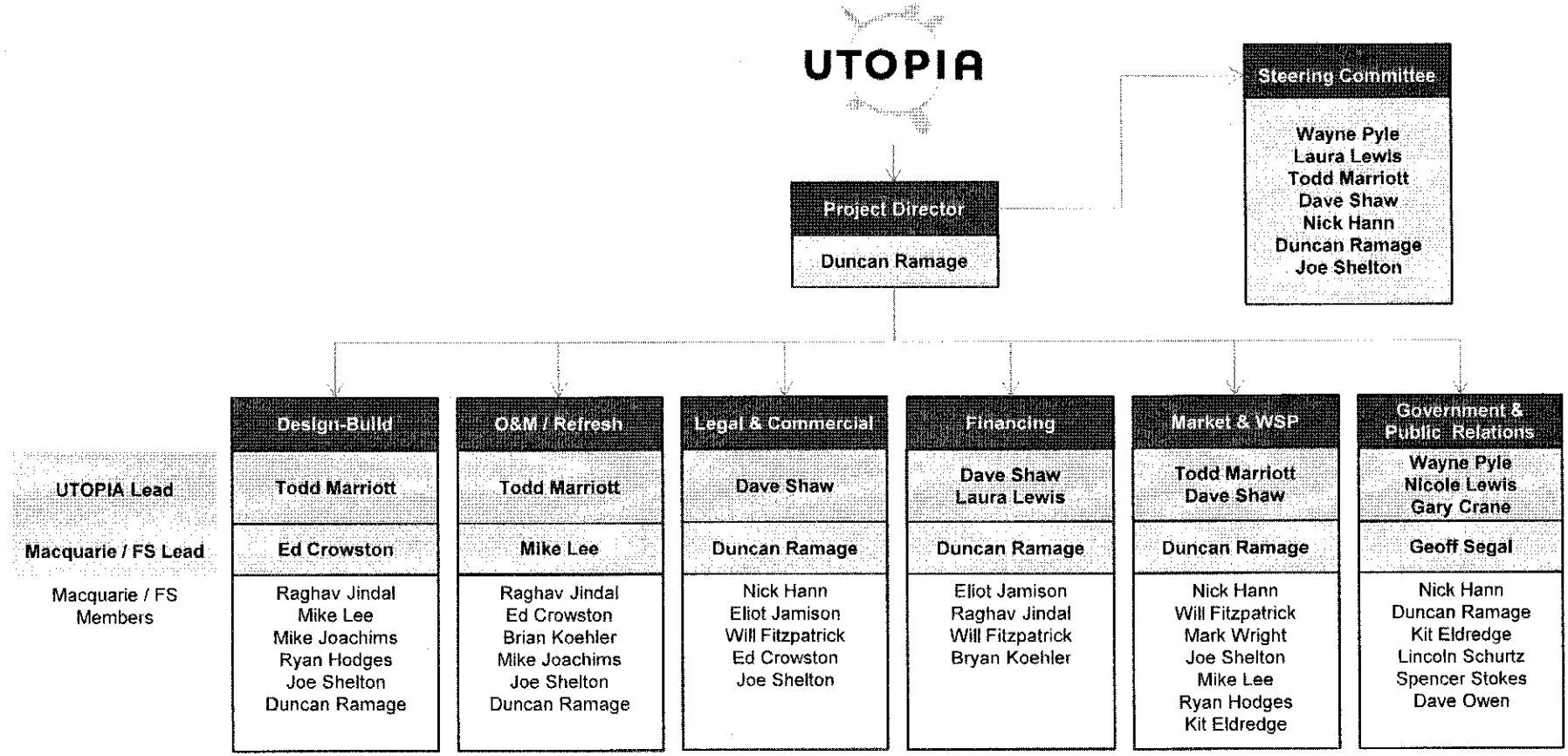
- Macquarie's timeline suggests an indicative business case analysis should be completed by end of February 2014
  - The model will continue to be refined as further feedback is received and commercial discussions with key network players such as potential anchor tenants progress
    - PDA provides for the business model to be finalized as part of Milestone 2

- In addition to the business model, the Macquarie team has also begun developing the commercial framework and terms of the transaction
  - An RFQ will likely be issued to a select group of design-build contractors within the next week to solicit proposals to deliver the network
    - Based on respondents' qualifications, Macquarie will shortlist up to 2 contractors to develop fixed-price, date-certain DB proposals
  - Specialist advisors have been engaged to assist with the availability payment structure, concession agreement terms and technical review

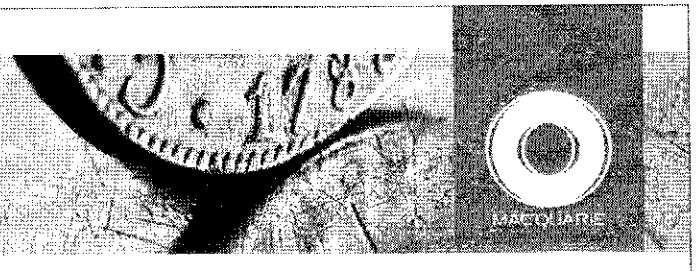
Working Groups

Each working group will report directly into the Project Director, Duncan Ramage

Direct contact with City representatives should be limited to Nick Hann, Duncan Ramage and Geoff Segal



Business Model
Overview



Proposed business model focuses on achieving the Agencies' key objectives and streamlining the existing operations with clear handoff points of responsibility

- Macquarie continues to work through the business model with the Agencies, and has reconfirmed with the Agencies that the key objectives to achieve from the transaction are to:
  - **Minimize the utility fee** required by the PPP;
  - **Maximize end user takeup** of the UTOPIA network relative to third party infrastructure providers;
  - Provide an **ongoing revenue stream** to assist with UTOPIA's current and future obligations; and
  - **Align incentives** between all parties to the transaction.

- Macquarie has consolidated these objectives and is seeking feedback on the business model approach from network stakeholders
  - The business model separates the transaction into its core elements
    - Network operations and maintenance, to be performed by the PPP in accordance with performance standards detailed in the Concession Agreement
      - Transaction will install a dark access portal on the outside of each address – ISPs will be responsible for connecting the service into the home
  - Managing relationships with ISPs and driving end user take rates, to be assumed by either the PPP or a wholesale service provider (WSP)
    - The scale and cost of this function will likely be heavily impacted by the presence of an anchor tenant on the network
  - Basic service and network marketing, which will become the responsibility of the ISPs
    - ISPs will be the main interface with the end user
    - ISPs to provide and incur the costs of the basic service
  - The Agencies will provide oversight throughout the concession term and may share network refresh obligations with the PPP to minimize the utility fee and maintain a level of control over the technology refresh process

Business Model
Roles & Responsibilities – DRAFT

The PPP will be the core entity of the transaction, supported by the ISPs and, potentially, the WSP. The Agencies will retain an oversight role

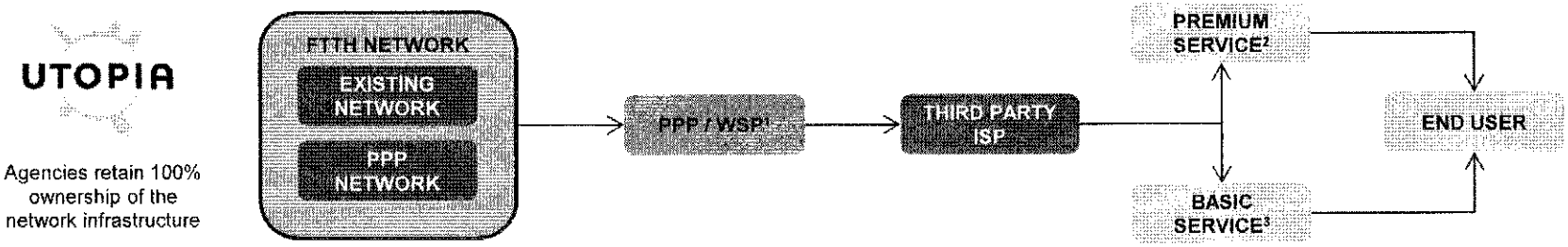
- The business model is designed to concisely allocate responsibilities across the transaction entities
  - — Model defines clear handoff points to allow smooth interface between workstreams
  - — Detailed roles and responsibilities continue to be refined, and will be subject to feedback from stakeholders such as ISPs
- Understanding UTOPIA's current operating processes in detail will assist in defining limits to the workstreams outlined at right
  - — Technical knowledge required and operating risk exposures
  - — Efficient cost allocation across entities
- Balance between PPP and WSP operating functions
  - — PPP requires greater control to meet performance standards
  - — WSP may have flexibility to capture upside revenue opportunities

Indicative Roles & Responsibilities – DRAFT

	Agencies	PPP	WSP	ISPs
Design-Build	✗	✓	✗	✗
O&M	✗	✓	✗	✗
Refresh	✓	✓	✗	✗
Network Mkting	✗	✗	✓	✓
Service Mkting	✗	✗	?	✓
Basic Service	✗	✗	✗	✓

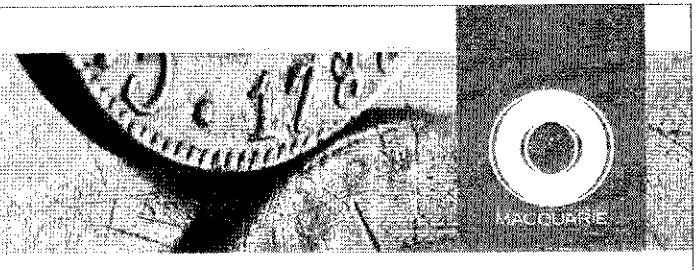
*Detailed division of roles and responsibilities shown in Appendix A

Flow of Fiber Capacity through the UTOPIA Network



1) PPP/WSP will effectively take over the Agencies' role as wholesaler to the ISPs, but will have limited direct interaction with end users (ISPs to provide customer service, tech crews, billing, etc.)
2) The premium service will be a product platform offering connectivity speeds materially above the basic service, and/or optional bundled phone, cable television and premium content packages
3) The basic service will provide a capped connectivity speed set at a level that incentivizes high frequency users such as businesses to upgrade their package

Pre-Development Agreement
Overview



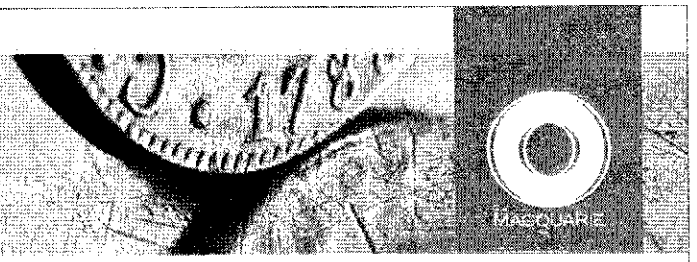
The milestone structure provides the Agencies discrete points at which to evaluate the financial, operational and political implications of the buildout

- The Agencies executed the PDA with Macquarie in mid-December 2013
  - PDA provides a framework to develop and evaluate the transaction as it evolves from a business case analysis to a final proposal capable of acceptance by the Cities
- The framework is outlined through four milestones
  - Each milestone acts as an evaluation point for the Agencies, detailing:
    - Maximum utility fee required
    - Financial impact on the Member Cities
    - Commercial terms of the transaction
  - Approval is required from the Agencies at each milestone to proceed with the transaction
- All costs to proceed through the milestones during the PDA term will be funded by Macquarie
  - Subject to reimbursement under certain termination conditions

Summary of the PDA Milestones

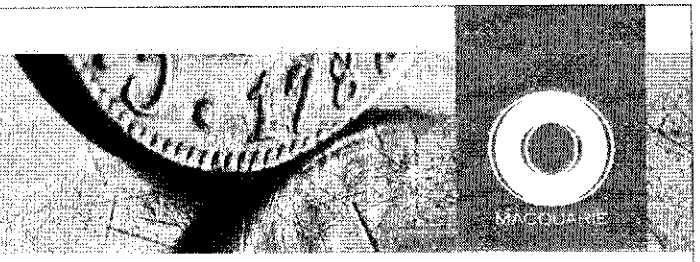
Milestone	Length	Description
Milestone 1	~2 months	▪ Focused analysis on business case — Technical review / transaction scope — Roles and responsibilities of all entities — Feedback from ISPs ▪ Begin framing commercial terms of the deal — Draft term sheet for concession agreement — Draft and issue design-build RFQ to solicit interest in the project
Milestone 2	2-3 months	▪ Finalize the business case ▪ Shortlist 2 RFQ respondents to develop proposals to deliver the network build — Collaborative process with the Agencies and Macquarie ▪ Develop financing plan
Milestone 3	3-4 months	▪ Develop design-build contract — Network design — Fixed price, date certain contract — Security package ▪ Develop concession agreement ▪ Final proposal to the Cities
Milestone 4	2-3 months	▪ Execution of key project agreements — Concession agreement — Design-build contract — Financing documentation

Pre-Development Agreement
Milestone One Progress



The Macquarie team continues to progress solidly through the Milestone 1 workplan

Workstream	Status	Comment
BUSINESS MODEL		
Scale of the network buildout	✓	▪ Access portal installed on the external surface of each address
Type of access portal	✓	▪ Dark box with no wireless additions – ISPs to connect the network into the home
Type of network to build	In Progress	▪ Balancing cost minimization and technical quality – cost analysis expected shortly
Creation of WSP to drive end user take rates	In Progress	▪ Securing an anchor tenant may significantly reduce the role and/or need for a WSP
Identify and approach potential anchor tenants	In Progress	▪ Positive initial discussions with DISH and CenturyLink about using the network
Feasibility study of completed network	Advisor Appointed	▪ Columbia to review indicative take rate and operating cost assumptions
COMMERCIAL FRAMEWORK		
Draft term sheet for the concession agreement	In Progress	▪ Working document that will continue to be reviewed and updated through Milestones 1 and 2
Include existing Agency debt in the transaction	In Progress	▪ High break costs of swap and potential impact on tax status suggest refinancing the existing debt agreements may be challenging
Design-build RFQ	Awaiting Agencies Comment	▪ Draft RFQ with Agencies for comment, Macquarie has identified a list of contractors to invite into the qualifications-based selection process
SUPPORT FUNCTIONS		
Appoint advisors to assist develop the framework	✓	▪ Macquarie is finalizing engagements with Holland & Hart, Arup, Columbia and Io Data
Data room to consolidate Agency information	✓	▪ Data room established, information request list with the Agencies
Steering committees	✓	▪ Steering committee and reporting structure finalized for the milestone process



Key Considerations

Detailed diligence and interaction with key network stakeholders is generating further confidence that potential risk areas for the buildout can be mitigated

Key Issue	Description	Comment
ISPs	▪ Business model requires significant buy-in from the ISPs — Connection into the home — Basic service ▪ Securing an anchor tenant may be critical to finalizing the business model	▪ Ongoing feedback process with ISPs — Meetings organized for January 30-31 ▪ Positive discussions with DISH and CenturyLink
PERFORMANCE STANDARDS	▪ How can the transaction protect against non-performance, by the PPP, WSP and/or ISPs, without materially impacting the Cities	▪ PPP structure provides significant risk transfer to the private sector – security packages to mitigate financial loss ▪ Securing an anchor tenant of scale may reduce the impact of ISP non-performance ▪ Potential for WSP to have step-in rights in certain circumstances, although this may be a costly strategy
PAYMENT STRUCTURE	▪ Concession Agreement may be signed with the Agencies rather than the Cities ▪ Payment structure will need to efficiently pass through the utility fee from the Cities to the PPP	▪ Dave Shaw and Macquarie's legal advisor Holland & Hart are working through an indicative structure ▪ Seeking to minimize impact on existing indentures and bond agreements
INTEROPERABILITY	▪ The network buildout will need to be interoperable with the existing infrastructure and equipment	▪ Macquarie's technical advisor Columbia will undertake a detailed review of the existing network's specifications ▪ DB contractors will develop their proposals collaboratively with the Agencies and Macquarie, and will have access to the Agencies' existing network design and equipment specs
PERMITTING	▪ Efficient permitting process for premises, structures, poles, etc will be essential to delivering the network in a timely manner	▪ Participation from the Cities, either directly or through the Agencies, will assist in expediting the network buildout
PUBLIC SUPPORT	▪ Premature disclosure of information on the business model and/or utility fee estimates may impact public support for the transaction	▪ Formal communications plan in place to understand key community reservations ▪ Polling data, focus groups and regular general updates may continue to build on current momentum for the buildout

Government Relations Update

Macquarie has assembled a team of government relations experts to help manage legislative issues and public opinion

- Team
  - Geoff Segal – Macquarie government relations lead
  - Dave Owen – messaging and communications specialist
  - Lincoln Schurtz – legislative and municipal relations
  - Spencer Stokes – legislative and municipal relations
  - IO Data – polling consultants

- Activity
  - Legislative leadership meetings in December
  - Legislative committee meetings next week
  - Opinion survey to be launched this week
  - Additional research planned including focus groups and additional surveys

- Introduced Legislation
  - Strategy

- Broader Strategy

Next Steps

Engagement with the ISPs, negotiations with potential anchor tenants, and traction with the design-build contractor community are essential short-term tasks

- Macquarie and the Agencies will continue to develop, update and refine the business model as further information is available
  - Engagement with the existing ISPs and potential anchor tenants is a critical step in understanding the landscape the model can operate in
  - The detailed definition of roles and responsibilities across the entities will have significant financial implications
    - WSP revenues and costs will sit outside the PPP and thus not have an impact on the utility fee

- RFQ process may create further momentum for the buildout and increase credibility in the market and community that a solution to the network's operational issues is being developed
  - High level discussions with large scale contractors suggest there is significant appetite for a project of this size and scope

- The commencement of steering committee meetings and a formalized reporting structure provide an ongoing forum in which to keep the Cities updated and engaged with the transaction
  - Macquarie's preference is to hold these Steering Committee meetings on Fridays, in the late morning or early afternoon (in time to catch a 3pm flight)