

Brigham City, Utah

November 5, 2009

The City Council (the "Council") of Brigham City, Utah (the "City"), met in regular session on November 5, 2009, in Brigham City, Utah, at 7:00 p.m. with the following members of the Council present:

Lou Ann Christensen	Mayor
Bruce Christensen	Councilmember
Ruth Jensen	Councilmember
Scott Ericson	Councilmember
Reese Jensen	Councilmember

Also present:

Mary Kate Christensen	City Recorder
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Absent:

Bob Marabella	Councilmember
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After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this November 5, 2009, meeting, a copy of which is attached hereto as Exhibit A.

The Mayor then noted that the City Council is now convened in this meeting for the purpose, among other things, to adopt an ordinance levying an assessment (the "Ordinance") for the Brigham City, Utah Voluntary Assessment Area No. 2009-1 (the "Voluntary Assessment Area"). The following Ordinance was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember Reese Jensen and seconded by Councilmember Christensen adopted by the following vote:

AYE: Councilmember Christensen
Councilmember Ericson
Councilmember Reese Jensen

NAY: Councilmember Ruth Jensen

The Ordinance was then signed by the Mayor in open meeting and recorded in the official records of Brigham City, Utah. The Ordinance is as follows:

ORDINANCE NO. 09-14

AN ORDINANCE CONFIRMING THE ASSESSMENT LIST AND LEVYING AN ASSESSMENT AGAINST CERTAIN PROPERTIES IN THE BRIGHAM CITY, UTAH VOLUNTARY ASSESSMENT AREA NO. 2009-1 (THE "VOLUNTARY ASSESSMENT AREA") TO FINANCE THE COSTS OF ACQUIRING AND CONSTRUCTING IMPROVEMENTS AND FACILITIES FOR THE PURPOSE OF CONNECTING PROPERTIES TO THE UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY ("UTOPIA") FIBER-OPTIC TELECOMMUNICATIONS NETWORK WITHIN THE ISSUER; AS WELL AS OTHER MISCELLANEOUS WORK NECESSARY TO COMPLETE THE IMPROVEMENTS (COLLECTIVELY, THE "IMPROVEMENTS"); ESTABLISHING A RESERVE FUND; PROVIDING FOR CERTAIN REMEDIES UPON DEFAULT IN THE PAYMENT OF ASSESSMENTS; ESTABLISHING THE EFFECTIVE DATE OF THIS ORDINANCE; AND RELATED MATTERS.

WHEREAS, the City Council (the "Council") of Brigham City, Utah (the "City"), pursuant to the Assessment Area Act, Title 11 Chapter 42, Utah Code Annotated 1953, as amended (the "Act"), and pursuant to a resolution adopted on November 5, 2009 (the "Designation Resolution"), designated the Voluntary Assessment Area after having obtained from each owner of properties to be assessed within the Voluntary Assessment Area an executed Acknowledgement, Waiver and Consent (the "Waiver and Consent") in the form attached to the Designation Resolution as Exhibit B; and

WHEREAS, the Council of the City has now determined the total cost of the Improvements and desire to assess the properties, the owners of which have executed a Waiver and Consent and have prepared an assessment list of the assessments to be levied to finance the cost of the Improvements; and

WHEREAS, the Council now desires to confirm the assessment list and to levy said assessments in accordance with this assessment ordinance:

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRIGHAM CITY, UTAH:

Section 1. Determination of Costs of the Improvements. The acquisition and construction cost of the Improvements described herein within the Voluntary Assessment Area have been determined and the Council has determined that the total acquisition and construction cost of Improvements within the Voluntary Assessment Area, including overhead costs is \$5,515,924, of which the City shall pay \$665,384 and \$50,000 shall be

paid from other sources and the remaining \$4,810,540 of which shall be levied against the properties benefited within the Voluntary Assessment Area.

Section 2. Approval of Assessment List; Findings. The Council confirms and adopts the assessment roll for the Voluntary Assessment Area, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the "Assessment List"). The Council has determined that the Assessment List is just and equitable; that each piece of property to be assessed within the Voluntary Assessment Area will be benefited in an amount not less than the assessment to be levied against said property; and that no piece of property listed in the Assessment List will bear more than its proportionate share of the cost of Improvements.

Section 3. Levy of Assessments. The Council does hereby levy an assessment against the real properties identified in the Assessment List. Said assessments levied upon each parcel of property therein described shall be in the amount set forth in the Assessment List. The assessments are levied upon the parcels of land in the Voluntary Assessment Area in accordance with the benefit received from the Improvements.

Section 4. Amount of Total Assessments. The assessments do not exceed in the aggregate the sum of: (a) the acquisition and construction price of the Improvements; (b) the reasonable cost of utility services, maintenance, operation, labor, materials, or equipment supplied by the City, if any; (c) the property price or estimated property price; (d) overhead costs not to exceed fifteen percent (15%) of the sum of (a) and (b); and (e) the costs of funding a reserve fund.

Section 5. Method and Rate. Benefited properties will be assessed on a per connection basis as follows:

<u>Residential Property</u>	<u>Estimated not to Exceed Assessment⁽¹⁾</u>	<u>Method of Assessment</u>
All above-described Improvements	\$3,000	Per connection
<u>Multi-Family Property</u>	<u>Estimated not to Exceed Assessment</u>	<u>Method of Assessment</u>
All above-described Improvements		
Having 2 dwelling units	\$2,650	Per connection
Having 3 dwelling units	2,434	Per connection
Having 4 dwelling units	2,250	Per connection

⁽¹⁾ The assessments will be assessed against properties in monthly payments over a not to exceed 20-year term, which payment will include interest on the outstanding balance. For Residential Property the monthly payment would be not more than \$25, for multi-family property, the monthly payment would be not more than \$23, \$21, or \$19 respectively, and for nonresidential property the monthly payment would be not more than \$100 per month.

<u>Nonresidential Property</u> ⁽²⁾	<u>Estimated not to Exceed Assessment</u>	<u>Method of Assessment</u>
All above-described Improvements	\$12,000 ⁽³⁾	Per connection

Section 6. Payment of Assessments.

(a) The whole or any part of the assessments for the Voluntary Assessment Area may be paid without interest within twenty-five (25) days after this Ordinance becomes effective. Any part of the assessment not paid within such twenty-five (25) day period shall be payable over a period of not more than twenty (20) years from the effective date of this Ordinance in not more than two hundred forty (240) equal monthly principal installments, including interest accruing thereon. Interest on the unpaid balance of the assessments shall accrue at the same rate or rates as shall be borne by the assessment bonds anticipated to be issued by the City for the Voluntary Assessment Area (the "Assessment Bonds"), plus an administration cost incurred by the City. The first monthly assessment installment payment date shall be in the month of June, 2010, and monthly thereafter until paid in full. Interest shall accrue from the effective date of this Ordinance, as set forth in Section 17 herein.

(b) After the above-referenced twenty-five (25) day period, all unpaid installments of an assessment levied against any piece of property may be paid prior to the dates on which they become due, but any such prepayment must include an additional amount equal to the interest which would accrue on the assessment to the next succeeding date on which interest is payable on the Assessment Bonds plus such additional amount as, in the opinion of the City Treasurer, is necessary to assure the availability of money to pay interest on the Assessment Bonds as interest becomes due and payable, plus any premiums required to redeem the Assessment Bonds on their first call date.

Section 7. Default in Payment. If a default occurs in the payment of any assessment when due, the City Treasurer, on behalf of the Council, may declare the unpaid amount to be immediately due and payable and subject to collection as provided herein. In addition, the City Treasurer, on behalf of the Council, may accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest then due to be immediately due and payable. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable at the same rate or rates of interest as are applied to delinquent real property taxes for the year in which the assessment payment becomes delinquent (the "Delinquent

⁽²⁾ Nonresidential property includes business properties, commercial properties, churches, multi-family facilities having more than four dwelling units, and other nonresidential properties that may be connected to the UTOPIA network.

⁽³⁾ The estimated not to exceed assessment is based on the established average assessment for nonresidential property but may vary from property to property based upon the actual cost incurred in connecting the property to the UTOPIA network.

Rate”). In addition to interest charges at the Delinquent Rate, costs of collection, as approved by the City Treasurer on behalf of the Council, including, without limitation, attorneys’ fees, trustee’s fees, and court costs, incurred by the City or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

Upon any default, the City Treasurer shall give notice in writing of the default to the owner of the property in default, as shown by the last available equalized assessment list of the City. Notice shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid, and addressed to the owner as shown on the last equalized assessment rolls of Box Elder County. The notice shall provide for a period of fifteen (15) days in which the owner shall pay the installments then due and owing, after which the City Treasurer, on behalf of the City, may immediately initiate a sale of the property as provided in Title 59, Chapter 2, Part 13, Utah Code Annotated 1953, as amended or sale the property pursuant to Section 11-42-502(1)(c) and related pertinent provisions of the Act, in the manner provided for actions to foreclose trust deeds. The City hereby designates a trustee to carry out such foreclosure, and said trustee shall be deemed to have a power of sale and all other rights, power, and authority necessary to legally and lawfully foreclose the lien for delinquent assessments. If for any reason the trustee cannot perform the powers and responsibilities herein provided, it may appoint, with the consent of the City, a qualified trustee to serve as trustee. If at the sale no person or entity shall bid and pay the City the amount due on the assessment plus interest and costs, the property shall be deemed sold to the City for these amounts. The City shall be permitted to bid at the sale. So long as the City retains ownership of the property, it shall pay all delinquent assessment installments and all assessment installments that become due, including the interest on them.

The remedies provided herein for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means or remedy of collection or enforcement available at law or in equity shall not deprive the City or the trustee on behalf of the City, of the use of any other method or means. The amounts of accrued interest and all costs of collection, trustee’s fees, attorneys’ fees, and costs, shall be added to the amount of the assessment up to, and including, the date of foreclosure sale.

Section 8. Remedy of Default. If prior to the final date payment may be legally made under a final sale or foreclosure of property to collect delinquent assessments, or prior to the end of the three month reinstatement period provided by Section 57-1-31 in the event the collection is enforced through the method of foreclosing trust deeds, the property owner pays the full amount of all unpaid installments of principal and interest which are past due and delinquent with interest on such installments at the rate or rates set forth in Section 7 herein to the payment date, plus all trustee’s fees, attorneys’ fees, and other costs of collection, the assessment of said owner shall be restored and the default removed, and thereafter the owner shall have the right to make the payments in installments as if the default had not occurred. Any payment made to cure a default shall be applied first, to the payment of attorneys’ fees and other costs incurred as a result of such default; second, to interest charged on past due installments,

as set forth above; third, to the interest portion of all past due assessments; and last, to the payment of outstanding principal.

Section 9. Lien of Assessment. An assessment or any part or installment of it, any interest accruing and the penalties, trustee's fees, attorneys' fees, and other costs of collection shall constitute a lien against the property upon which the assessment is levied on the effective date of this Ordinance. Said lien shall be superior to the lien of any trust deed, mortgage, mechanic's, or materialman's lien, or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall continue until the assessment and any interest, penalties, and costs on it are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, or other assessment or the issuance of tax deed, an assignment of interest by the governing entity or a sheriff's certificate of sale or deed.

Section 10. Reserve Fund. The City does hereby establish a reserve fund (the "Reserve Fund") in lieu of funding a special improvement guaranty fund, as additional security for the Assessment Bonds. The Reserve Fund shall be initially funded from proceeds of the Assessment Bonds in an amount not to exceed ten percent (10%) of the total principal amount of the Assessment Bonds issued by the City (the "Debt Service Reserve Requirement"). In addition, proceeds of the Assessment Bonds will be deposited in the Reserve Fund to pay interest on the Assessment Bonds during construction of the Improvements. The cost of initially funding the Reserve Fund is included in the assessments of the property owners. The Debt Service Reserve Requirement shall be adjusted as property owners prepay their assessments in full, all as provided in the proceedings to be executed by the Council to authorize the issuance and sale of the Assessment Bonds (the "Bond Resolution"). The moneys on deposit in the Reserve Fund shall, upon the final payment of the Assessment Bonds, be applied to the final assessment payment obligation of the assessed properties. If the amounts on deposit in the Reserve Fund exceed the final assessment obligation, any excess amounts shall be paid by the City to the owners whose properties were subject to the final assessment payment obligation, as an excess assessment payment.

In the event insufficient assessments are collected by the City to make the debt service payments on the Assessment Bonds, the City shall draw on the Reserve Fund to make up such deficiency. In the event the amount on deposit in the Reserve Fund is less than the Debt Service Reserve Requirement, adjusted from time to time, the City will replenish the Reserve Fund as provided in the proceedings authorizing the issuance of the Assessment Bonds. If the amount on deposit in the Reserve Fund exceeds the Debt Service Reserve Requirement adjusted from time to time, plus moneys on deposit to pay interest on the Assessment Bonds during construction of the Improvements, excess moneys shall be transferred to the Bond Fund established under the Bond Resolution to be applied pro rata toward the next assessment payment obligations coming due.

Section 11. Investment Earnings. Except as otherwise provided in Section 10, all investment earnings on the Reserve Fund shall be maintained in said Fund and applied in the same manner as the other moneys on deposit therein as provided in the Bond Resolution authorizing the issuance of the Assessment Bonds.

Section 12. Right of Rescission. Any owner of a property included in the Assessment List who has voluntarily consented to have said property assessed within the Voluntary Assessment Area to finance the Improvements by signing the Waiver and Consent, has the right to rescind and cancel said consent with or without cause at the owner's sole option until midnight of the third business day after the effective date of this Assessment Ordinance. Such notice of cancellation shall be considered made if by mail, when deposited in a mailbox properly addressed and postage paid, or if by hand delivery when the owner gives written notice of cancellation to the City at the address included herein, at which point such consent shall be null and void and the owner hereto shall be released from any further performance under the Voluntary Assessment Area. After said rescission period the City shall be entitled to rely on the Waivers and Consents of all property owners who have not rescinded their consents, and the property owners shall be bound by said Waivers and Consents.

Section 13. Contestability. No assessment shall be declared invalid or set aside in whole or in part in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. Any party who has not waived his objections to the same as provided by statute may commence a civil action in the Voluntary Assessment Area court with jurisdiction in the Brigham City against the City to enjoin the levy or collection of the assessment or to set aside and declare unlawful this Ordinance.

Such action must be commenced and summons must be served on the City not later than thirty (30) days after the effective date of this Ordinance. This action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make by statute but did not timely make or any complaint that does not go to the equity or justice of the assessment or proceeding.

After the expiration of the thirty (30) day period provided in this section:

(a) The Assessment Bonds issued or to be issued against the Voluntary Assessment Area and the assessments levied in the Voluntary Assessment Area shall become incontestable as to all persons who have not commenced the action and served a summons as provided for in this section; and

(b) No suit to enjoin the issuance or payment of the Voluntary Assessment Bonds, the levy, collection, or enforcement of the assessments, or in any other manner attacking or questioning the legality of the Assessment Bonds or assessments may be instituted in this state, and no court shall have authority to inquire into these matters.

Section 14. Notice to Property Owners. The City Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the Voluntary Assessment Area. Said notice shall, among other things, state the amount of the assessment and the terms of payment. A copy of the form of notice of assessment is available for examination upon request at the office of the City Recorder.

Section 15. All Necessary Action Approved. The officials of the City are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Ordinance.

Section 16. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

Section 17. Publication of Ordinances. Immediately after its adoption, this Ordinance shall be signed by the Mayor and City Recorder and shall be recorded in the ordinance book kept for that purpose. This Ordinance shall be published once in the Box Elder Journal, a newspaper published and having general circulation in the City, and shall take effect immediately upon its passage and approval and publication as required by law. A copy of this Ordinance shall also be posted on the Utah Public Notice Website (<http://pnn.utah.gov>).