

ORDINANCE NO. 2014-04-046

AN ORDINANCE APPROVING, AUTHORIZING ENTERING INTO AND EXECUTING A THIRD AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT PROVIDING FOR THE CREATION OF THE URBANA-CHAMPAIGN BIG BROADBAND CONSORTIUM

(Authorizing Amendment to Intergovernmental Agreement Providing for Continued Consortium Financial Support of UC2B NFP through October 2014.)

WHEREAS, the City of Urbana (“Urbana”) is an Illinois Municipal Corporation pursuant to the Illinois Constitution of 1970 and the Statutes of the State of Illinois;

WHEREAS, the University of Illinois (“University”) applied for and obtained a grant from the National Telecommunications and Information Administration (“NTIA”) for the purpose of developing, building out, and offering a broadband open access fiber optic network to certain areas of Urbana and the City of Champaign (“Champaign”), including the University, which are deemed underserved areas and to certain institutions identified as “anchor institutions”;

WHEREAS, Urbana, Champaign and the University, in order to create, implement and operate a community-wide open access broadband fiber optic network (hereinafter, “UC2B”) following the University’s receipt of a federal grant for the development and build-out of such broadband network entered into an Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium;

WHEREAS, Urbana, Champaign and the University have amended the aforesaid initial intergovernmental agreement with a letter of understanding which, subsequent thereto, was more formally memorialized in a First Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium;

WHEREAS, as part of the process of developing, implementing and operating UC2B, Urbana, Champaign and the University created a consortium known as the Urbana-Champaign Big Broadband Consortium to which Urbana, Champaign and the University were members;

WHEREAS, Urbana, Champaign and the University have approved a business plan which, *inter alia*, provides for the creation of a not-for-profit corporation to acquire, take possession of, maintain, operate, and repair the assets which have been created, developed and obtained for UC2B through the moneys received in connection with the NTIA grant;

WHEREAS, the NTIA grant has an expiration date of September 30, 2013 by which time a formal legal structure to take over the continuing build-out, operation, maintenance, and repair of the UC2B open access fiber optic network must be created and in place to accept the assets which were developed and/or acquired for, by and on behalf of UC2B in connection with the community-wide build-out of the open access fiber optic broadband network;

WHEREAS, Urbana, Champaign and the University seek to expand the UC2B network to reach additional anchor institutions and the remaining residents of Urbana and Champaign and University-based users;

WHEREAS, in order to undertake the next phase of the UC2B project and because of the expiration of the federal grant, it is necessary for Urbana, Champaign, and the University to approve, enter into and execute a second amendment to their intergovernmental agreement concerning UC2B; and

WHEREAS, the federal government will retain an ownership and/or lien interest in those assets which were created, developed and/or obtained through the moneys received in connection with the for the life expectancy of those assets; and

WHEREAS, a not-for-profit corporation known as Urbana Champaign Big Broadband NFP (“UC2B NFP”) has been created and organized to which rights to use the Consortium’s assets have been transferred; and

WHEREAS, UC2B NFP has or will enter into an arrangement with a third person to undertake an expansion of the fiber optic network which was created and installed with the aforesaid federal grant moneys; and

WHEREAS, the City of Urbana, the City of Champaign, and the Board of Trustees for the University of Illinois (which comprise the UC2B Consortium heretofore created) have entered into a Second Amended And Restated Intergovernmental Agreement Providing For The Creation Of The Urbana-Champaign Big Broadband Consortium which, *inter alia*, provided for support of the fledgling UC2B NFP through April 30, 2014; and

WHEREAS, Urbana deems it necessary and appropriate to commit to providing and extend providing certain financial support for UC2B NFP through October 31, 2014; and

WHEREAS, the exhibit appended hereto provides for such aforesaid extension of support.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

A Third Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium in substantially the form attached hereto and hereby incorporated herein by reference, including attachments and exhibits thereto (hereinafter, the “Third Amended UC2B IGA”), be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver to the City Clerk of the City of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of the Third Amended UC2B IGA as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED BY THE CITY COUNCIL this _____ Day of _____, 2014.

Phyllis D. Clark, City Clerk.

APPROVED BY THE MAYOR OF THE CITY OF URBANA, ILLINOIS this ____ Day of _____, 2014.

Laurel Lunt Prussing, Mayor.

**SECOND-THIRD AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT PROVIDING
FOR THE CREATION OF THE
URBANA-CHAMPAIGN BIG BROADBAND CONSORTIUM**

THIS ~~SECOND-THIRD~~ AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Agreement” or “IGA”) is made and entered into by and between the City of Champaign, a municipal corporation (“Champaign”), the City of Urbana, a municipal corporation (“Urbana”) (collectively “Cities”), and the Board of Trustees of the University of Illinois (“University”), a body corporate and politic of the State of Illinois, all with offices in Champaign County, Illinois, and collectively referred to as “Parties.”

Background

- A. Section 10 of Article VII of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* enable the Parties to enter into agreements among themselves and provide authority for intergovernmental cooperation.
- B. The Parties are committed to the principles of intergovernmental cooperation.
- C. In August 2009, the University submitted a proposal (“Proposal”) to the U.S. Department of Commerce (“Commerce”) seeking financial assistance for the Urbana-Champaign Big Broadband project on behalf of the Cities and the University.
- D. In September 2009, the Parties entered into an “Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium” (“Agreement” or “IGA”). The Consortium may be referred to throughout as “UC2B”.
- E. The Parties desire that the Consortium be operated and managed with clear lines of authority for implementing policies to achieve its mission and goals as set forth in this Agreement and as articulated from time to time by the Parties.
- F. In February 2010, Commerce awarded the University a grant of up to \$22,534,776 for Project construction, conditioned on a local cost share of \$6,722,149 (“Federal Construction Grant”).
- G. In November 2010, the Illinois Department of Commerce and Economic Opportunity awarded the University a \$3.5 million grant for construction of the Project (“State Construction Grant”).
- H. In accordance with Section 6 of the First Amended and Restated IGA, the University has served as the Consortium’s Lead Agency for purposes of applying for, receiving, and administering the Federal and State Grants.
- I. In August 2011, the University entered into subawards with Champaign and Urbana as subrecipients that govern the award of a portion of the Federal Construction Grant.
- J. In September 2011, the Parties entered into a non-binding Letter of Understanding acknowledging their changing roles and responsibilities as the Project evolves, specifically as to operation of the constructed Project, with the intent to amend the IGA.

K. Effective June 5, 2012, the Parties amended and restated the IGA to incorporate the Letter of Understanding and to make other related changes.

L. Effective August 15, 2013, The Parties ~~now desire to~~ entered into ~~the this~~ Second Amended IGA to transition operations of the System to a not-for-profit corporation.

L.M. The Parties enter into this Third Amended IGA to extend the transition period in order to accommodate ongoing negotiations between the NFP and a potential third party System operator.

NOW, THEREFORE, the Parties agree as follows:

Terms of Agreement

SECTION 1. DEFINITIONS

“Business Plan” means the UC2B Business and Strategic Plan dated September, 2012 and approved by the Parties.

“Consortium” means the Urbana-Champaign Big Broadband Consortium (“UC2B”), consisting of the members, equipment, personnel, and programs established by and operating pursuant to this Agreement and created to perform the tasks necessary to establish and maintain the broadband System developed under this Agreement.

“Consortium Coordinator” is an employee of the Lead Agency – Operations charged by the Lead Agency – Operations with the responsibility of administering, supervising, managing and directing the activities, programs, and employees assigned to the Consortium in order to successfully maintain, and operate the System.

“Consortium Staff” means the staff of the Lead Agency - Operations assigned to work on Consortium activities under the direction of the Consortium Coordinator.

“Lead Agency” means the Party designated by the Parties as having overall responsibility for Consortium operations on an ongoing basis in accordance with the policies established by the Policy Committee and this Agreement. The Parties acknowledge that the “Lead Agency” may be different for different parts of the overall undertaking, for instance, Lead Agency - Operations.

“NFP” means the not-for-profit corporation provided for by this Agreement to operate the System following the Start-Up period.

“Party” means the City of Champaign, Illinois; the City of Urbana, Illinois; and the Board of Trustees of the University of Illinois as signatories to this Agreement. A Party is a member of the Consortium.

“Policy Committee” means the body created by this Agreement to approve the budget for the Consortium, to develop cooperative approaches regarding area wide broadband construction and operation and the concerns of each Party and to perform such other functions as are set forth in this Agreement.

“Program” or “Project” means the design, construction, and operation of a fiber optic system in Champaign-Urbana and adjacent areas designed and operated to serve unserved and underserved populations as required by the Federal Construction Grant.

“System” means a series of fiber optic rings constructed as an open network, and including all fiber connections to the rings and to any premises constructed, operated by, or controlled by the Consortium.

“Technical Committee” means the body created by this Agreement to provide technical advice and recommendations to the Policy Committee.

”Transfer” means the conveyance of rights to use and/or to access the System. In the case of other Consortium assets, “Transfer” includes the alienation and/or assignment of such rights or liabilities as the case may be.

SECTION 2. CONSORTIUM CREATED

2.1. The Parties hereby create the Urbana-Champaign Big Broadband Consortium, an undertaking created to construct, develop and operate a coordinated, communitywide broadband System. Service from Consortium and access to Consortium services shall be in accordance with this Agreement.

2.2. The Consortium shall be a unit of the Lead Agency - Operations, subject to the Lead Agency - Operations’ policies and procedures, except as otherwise specified in the Agreement. The Parties hereby authorize and direct the Lead Agency – Operations to operate pursuant to this Agreement, and the Lead Agency – Operations hereby agrees to operate pursuant to this Agreement.

SECTION 3. CONSORTIUM MISSION

The mission of the Consortium and its Parties is to:

- 3.1. Coordinate the construction of the System and implement connections as required by the Federal Construction Grant;
- 3.2. Lead development effort for connection to the System;
- 3.3. Establish standards for quality of all connections;
- 3.4. Maintain System records and make such records accessible to the Parties;
- 3.5. Provide to the Parties access to the System;
- 3.6. Properly and efficiently administer, operate and maintain the System for its estimated useful life in accordance with the Special Award Conditions of the Federal Construction Grant;
- 3.7. Build multiple backbone rings identified in the Proposal;
- 3.8. Build a Fiber to the Premise (FTTP) infrastructure in the eleven (11) “underserved” census block groups identified in the Proposal;
- 3.9. Provide fiber and develop options for providing Internet services to the FTTP customers;
- 3.10. Activate fiber services to the UC2B partners and investors;

- 3.11. Complete the construction of the physical elements of the System before October 1, 2013;
- 3.12. Operate the System pursuant to this Agreement for the benefit of the community;
- 3.13. Provide System administration and ongoing System support, upgrades, and maintenance for Consortium-controlled assets;
- 3.14. Provide services to the Parties in accordance with a work plan approved by the Policy Committee;
- 3.15. Promote use of the System; and
- 3.16. Establish operational, administrative, and procedural policy for System operations.

SECTION 4. POLICY COMMITTEE CREATED

The Policy Committee is hereby created in accordance with the following provisions:

4.1. Membership.

(a) Upon formation, the Policy Committee shall be composed of six (6) representatives: two (2) representatives designated by the chancellor of the University of Illinois and two (2) by each of the chief administrative officers of Urbana and Champaign. Additionally, the Chair of the Technical Committee shall be an ex officio voting representative of the Policy Committee. The designations shall be made in writing and sent to the chancellor and the chief administrative officers of Urbana and Champaign. All representatives of the Parties shall be voting representatives. Representatives may be removed by the appointing authority.

(b) Additionally, there shall be one (1) non-voting representative of the non-governmental sector, and one (1) non-voting representative of small or specialized governmental users. Each of these non-voting representatives shall be appointed by the Chair and approved by the Policy Committee and shall serve for a three (3) year term.

4.2. Voting. In those matters required by this Agreement to be decided by the Policy Committee, unless otherwise specified in this Agreement, the proposition voted upon shall not be considered approved unless it receives an affirmative vote from at least a majority of Policy Board representatives, or such greater percentage vote specified in this Agreement of all voting representatives of the Policy Committee in good standing at the time of the vote.

4.3. Quorum. A quorum shall consist of a majority of voting representatives of the Policy Committee members in good standing.

4.4. Unanimous Vote. In those matters required by this Agreement to be decided by a unanimous vote of the Policy Committee, a proposition shall not be considered adopted unless it receives an affirmative vote from the voting representative of each member that is in good standing at the time of the vote.

4.5. Representative's Substitute. A designated representative to the Policy Committee may select a substitute to serve in his or her absence. Such selection shall be communicated to the Consortium Coordinator and Policy Committee Chair prior to the commencement of the meeting.

4.6. Regularity of Meetings. The Policy Committee shall meet at least monthly. Other meetings may be called at the request of the Policy Committee Chair or any two (2) of the voting representatives of the Policy Committee.

4.7. Open Meetings Act. The Policy Committee shall adhere to the requirements of the State's Open Meetings Act.

SECTION 5. POLICY COMMITTEE FUNCTIONS AND RESPONSIBILITIES

The Policy Committee shall have the following functions and responsibilities:

5.1. Mission/By-Laws/Committees. The Policy Committee shall have the authority to adopt a mission statement, to enact procedural bylaws governing or directing the activities of the Consortium, provided such mission statement and bylaws do not conflict with the terms of this Agreement, and to create such committees as it deems advisable.

5.2. Officers. The Policy Committee shall elect a Chair and such officers as it deems advisable from among the voting representatives every two (2) years in June, unless a vacancy sooner occurs, in which case the election shall occur within thirty (30) days after the vacancy.

5.3. General Responsibilities. The Policy Committee is responsible for approving policy, priorities, budget, work plan, and technical standards.

5.4. Budget.

(a) The Policy Committee shall annually approve a budget and approve amendments to said budget and expenditures as from time to time deemed necessary by the Parties.

(b) The tentative budget for each year shall be submitted by the Lead Agency – Operations to the Policy Committee during March of each year.

(c) Unless a new budget is approved by July 1st of any year, the last previously approved budget shall continue from year to year.

(d) The format of the budget shall conform to the format of the Lead Agency - Operation's budget unless otherwise directed by vote of the Policy Committee.

5.5. Intergovernmental Agreement. The Policy Committee may approve contracts with other governmental entities to provide some or all of Consortium services on a contractual basis.

5.6. Purchases. The Policy Committee may approve contracts for the purchase of goods or services with units of federal, state and local units of government, private corporations, not-for-profit organizations, partners and individuals. All such purchases shall be made in accordance with the purchasing policies of the Lead Agency - Operations.

5.7. Gifts. The Policy Committee may approve the application for agreements for the receipt by the Consortium of grants, loans, gifts, bequests, funding, in-kind services from federal, state and local units of government, and from public and private sources.

5.8. Lead Agency. The Policy Committee may designate the Lead Agency by at least a two-thirds (2/3) affirmative vote of all voting representatives in good standing at the time of the vote,

provided that no Party shall be designated Lead Agency without its consent. Consent shall be given in writing to the other Parties by the chief administrative officer or chancellor of the Party. If the Lead Agency desires to withdraw as Lead Agency, it shall notify the other Parties at least 180 days prior to the beginning of the fiscal year, except that if the other Parties fail to pay their shares of the administrative costs within thirty (30) days after a request to do so, the Lead Agency may resign immediately and the Policy Committee may designate a new Lead Agency.

5.9. Technical Committee - Generally. The Policy Committee shall appoint the Technical Committee. Each voting Policy Committee member, except the ex-officio Technical Committee Chair, may appoint up to two (2) persons to the Technical Committee, one of whom shall be designated as the voting representative of the member. The Policy Committee member may authorize an alternate Technical Committee voting representative to vote when its regular member is absent for the Technical Committee meeting. The appointing Policy Committee member may remove the member of the Technical Committee appointed by that member.

5.10. Role of the Technical Committee.

- (a) The Technical Committee shall make recommendations to the Policy Committee concerning: (1) hardware requirements; (2) software requirements; (3) networking; (4) standards; and (5) other aspects of the System as requested by the Policy Committee.
- (b) Recommendations of the Technical Committee shall be by majority vote, though consensus of all voting participants is desirable.
- (c) Prior to the purchase of equipment related to the infrastructure, software or hardware or the adoption of technical standards that has the potential to impact the System operations or the overall operation of the infrastructure, the Technical Committee shall seek input from all of its participants, including nonvoting participants, prior to recommending the purchase, or recommending a technical standard.

5.11. Fee Policies. The Policy Committee shall have the authority to set fees for usage of the System by a majority vote of voting representatives.

5.12. The Policy Committee shall be dissolved as of the time and date that the governing board of the NFP convenes its first meeting.

SECTION 6. LEAD AGENCY DESIGNATIONS

6.1. The Lead Agency for the purposes of applying for, receiving, and administering the Federal and State Construction Grants shall be University. University will continue as the Lead Agency for grant financial administration and will be responsible for financial reporting until the later of September 30, 2013 or the date on which the Federal Construction Grant is closed.

6.2. RESERVED.

6.3. The Lead Agency for operations (“Lead Agency – Operations”) shall be Champaign, with the responsibilities set forth at Section 7 of this IGA, including:

- (a) Provide staff support to the Policy Committee;
- (b) Coordinate UC2B activities as directed by the Policy Committee;

- (c) Market UC2B services to the designated census areas, anchor institutions, and third parties (private and public) that might wish to use UC2B services;
- (d) Plan and manage operations during and after the construction period; and
- (e) Manage the construction process.

SECTION 7. LEAD AGENCY - OPERATIONS DUTIES

7.1. The Lead Agency – Operations shall be responsible for, and is hereby empowered to take, all actions to support the overall operation of Consortium and its affairs in accordance with this Agreement and the mission, goals and objectives approved by the Policy Committee. These duties include, but are not limited to:

- (a) Employing and supervising all personnel assigned to the Consortium in accordance with the Lead Agency - Operation's policies and procedures, including, but not limited to, hiring, firing, disciplining, establishing incentives, benefits, negotiations with unions, and all other employment decisions.
- (b) Directing the management and supervision of all employees assigned to Consortium duties in accordance with the policies and procedures of the Lead Agency - Operations.
- (c) Incurring and paying, on the behalf of the Parties and in accordance with this Agreement and the Consortium's approved budget, all Consortium expenses.
- (d) Entering into all contracts, lease and procurement agreements in accordance with this Agreement, the approved budget, and the policies and procedures of the Lead Agency - Operations, including the acquisition of interests in real property as necessary to complete the Project.
- (e) Expending funds in accordance with the Consortium's approved budget. Purchasing shall be conducted in accordance with the Consortium approved budget and the purchasing policies and procedures of the Lead Agency - Operations.
- (f) Providing all personnel administration, financial support staff, insurance, legal advice, and management support and services in accordance with this Agreement and the approved Consortium budget and the policies and procedures of the Lead Agency - Operations.
- (g) Billing and collecting from each Party its share of the cost of the Consortium's operations as provided in this Agreement and the approved annual budget and work plan of the Consortium.
- (h) Overseeing the establishment and implementation of policies and procedures at the Consortium staff level to implement the mission, goals, and work plan of the Consortium.
- (i) Developing a proposed annual budget and work plan and administering the approved budget, expenditures, and work plan in accordance with this Agreement.
- (j) Providing staff support, including the recording and distribution of the agenda and minutes for the Policy Committee and Technical Committee, and bringing policy/technical issues to the committees as appropriate.

- (k) Providing necessary office space, furnishings, equipment, hardware, software, and technical support for the Consortium to operate.
- (l) Providing generally for the audit, accounting for, receipt, and custody of Consortium funds.
- (m) Holding certain acquired property in trust for Consortium purposes.

7.2. The Lead Agency - Operations shall be entitled to reimbursement for the costs it incurs in performing these functions, which costs shall be included in Consortium's budget, as amended from time to time in accordance with this Agreement. The formula for cost reimbursement shall be established as part of the funding formula.

SECTION 8. PARTY RESPONSIBILITIES

Each Party shall:

- 8.1. Utilize the System only in accordance with Consortium policies;
- 8.2. Provide two (2) people to serve as active voting representatives on the Policy Committee;
- 8.3. Provide at least one (1) staff person to serve as an active voting representative for the Technical Committee;
- 8.4. Provide information on a regular or as needed basis to the Consortium in order to maintain current information necessary for the Consortium to fulfill its mission;
- 8.5. Pay for Consortium activities in accordance with this Agreement; and
- 8.6. Hold certain acquired property in trust for Consortium purposes.

SECTION 9. INTERIM FUNDING AND SUPPORT DURING START-UP PERIOD

9.1. The Start-Up period is defined as beginning August 15, 2011 and ending September 30, 2013.

9.2. Planning for operations, and marketing UC2B services, will require expenditures that cannot be funded by either the Federal or State Construction Grants due to grant restrictions and lack of sufficient funds, and the Parties recognize that UC2B may run a deficit during the Start-Up period.

9.3. The Parties will share non-construction costs during the Start-Up period as follows: 33% - University; 42% - Champaign; 25% - Urbana. The Parties will cooperate in good faith to make sure all allowable and eligible costs (as defined by federal grants administration law) incurred by them in performing the Project are reimbursed by the Federal Construction Grant, or by any other third party funding that may later be secured. The funding formula shall take into account each Party's contribution to the Consortium of existing fiber or facilities already constructed by the Party.

9.4. **Attachment “A”** to this Agreement is a preliminary budget for Start-Up services through September 30, 2013. The Parties recognize that the budget is an estimate only. Each Party will make best efforts to include its share in its annual institutional budget.

9.5. Personnel assigned to the Project will provide support to the Lead Agencies and Policy Committee as reasonably requested. University will assign appropriate personnel to assist Champaign in performing Lead Agency – Operations activities through September 30, 2013.

9.6. **RESERVED.**

9.7. On or about September 30, 2013, with consent of the Department of Commerce’s National Telecommunications Information Administration (“NTIA”), the UC2B will transition System operations to the NFP in accordance with Section 9A.

SECTION 9A. TRANSITION TO NON-PROFIT CORPORATION

9A1. The Transition Period is defined as beginning July 1, 2013 and ending October 31, 2014 or on the date that the NFP enters into an agreement with a third party to operate the System, if sooner, the later of January 31, 2014 or six (6) months after formation of the NFP and the Transfer of System and other Consortium assets by UC2B to the NFP.

9A2. Consistent with the Business Plan, the Lead Agency - Operations shall form and cause to be lawfully organized an NFP to be known as “Urbana-Champaign Big Broadband” doing business as “UC2B” substantially in accord with the Bylaws attached hereto as Exhibit C. The NFP organizational documents shall provide that the NFP shall be responsible for the long-term operation of the System within the corporate limits of the Champaign, Urbana and the Village of Savoy, which shall also include such property owned or controlled by the University.

9A3. Upon the latter of the formation of the NFP and receipt of NTIA approval, if such approval is necessary, the Parties shall, in a timely manner, Transfer the System and other Consortium assets, contracts, and liabilities to the NFP as may be necessary to operate and maintain the System. All Transfers of the System shall provide for either their termination or a reversionary interest in Champaign as Trustee for the Consortium, as the case may require in the event of dissolution of the NFP. Notwithstanding the Transfer, the Parties shall remain the legal owners of the System.

9A4. The Parties shall, in a timely manner, grant to the NFP such rights of use of their respective public rights-of-way as are necessary for all purposes associated with the operation of the System. No Party shall charge the NFP any license fee for the use of any such rights-of-way until the NFP enters into a binding and enforceable contract with a third party for the operation of the System or part thereof, which operation may include expansion of the System. When the NFP becomes obligated to pay a fee for the use of the public rights-of-way, the NFP shall pay the fee to Champaign, on behalf of the Parties, determined as follows:

- (a) The license fee shall be determined by agreement of the City Manager of Champaign, the Mayor of Urbana, and the Chancellor of the University’s Urbana-Champaign campus, or their designees (“panel members”), within forty-five (45) days after the date of notice by the NFP of a need for such determination. If the panel members are unable to reach a unanimous decision within this time period, each member shall present relevant information to a third party to be selected by a majority vote of the panel members within fourteen (14) days after the expiration of the forty-five (45) days. The cost of the third party shall be shared equally by the Parties. The third party shall

determine the rate or formula within fourteen (14) days from presentation of the information. Such determination shall consider the rates currently charged for use of the rights-of-way by the Parties. Such rates shall be uniform for use of the rights-of-way in all jurisdictions. Such determination shall be binding on Champaign, Urbana, and the University.

- (b) Champaign shall distribute the license fee among the Parties according to the formula set forth in Section 9.3.

9A5. The Parties acknowledge that the NFP's role is to assume the Consortium's ongoing responsibilities for maintaining and operating the System for its useful life in accordance with the Federal Construction Grant. In order to facilitate creation of the NFP and the orderly and smooth Transfer of Consortium assets and the assignment of contracts, and obligations related thereto and their management, the Parties may continue to provide limited funding and staff support to the NFP according to the formula set forth in Section 9.3 consistent with the budget provided for in 9A6. Champaign shall contract with the NFP to provide such support for a limited period of time during the Transition Period.

9A6. **Attachment "B"** to this Agreement is a ~~preliminary~~ budget for the Transition Period. The Parties recognize that the budget is an estimate only. Each Party will make best efforts to include its share in its annual institutional budget.

9A7. The Lead Agency - Operations, when organizing the NFP, shall include within the NFP's organizational documents, including but not necessarily limited to its Articles of Incorporation and its Bylaws, an organizational structure and process substantially in accordance with the Bylaws attached as **Attachment "C"** and other elements of this Agreement.

9A8. The Parties agree to perform all acts attributed to the Parties under the Bylaws, including but not limited to providing transition support and making appointment to the NFP Board of Directors in a timely fashion, setting a license fee and arranging for use of rights-of-way in the respective jurisdictions, and generally fostering the efforts of the NFP.

SECTION 10. ADDITIONAL COMMITMENTS

10.1. The University will purchase for UC2B, up to 1 Gigabit per Second (Gbps) of Internet connectivity for five (5) years, starting with the August 15, 2012 commencement of UC2B retail services.

10.2. The University will offer up to 1 Gbps of data transport between Chicago and campus for five (5) years at no cost to UC2B starting with the August 15, 2012 commencement of UC2B retail services.

10.3. **RESERVED.**

10.4. (a) With the August 15, 2012 beginning of retail services, the University will lease space for UC2B core network equipment to UC2Bin Telecommunications Nodes 8 and 9 (Enterprise Works and the Siebel Center), beginning at a rate of \$1,000 per month per Node and for so long as needed for System operation. University may adjust the rate from time to time to reflect effects of inflation based on the Consumer Price Index. UC2Bwill pay electrical power usage and a charge for cooling based on the actual electrical power usage.

- (b) UC2B may use one rack for fiber termination, but not electronic equipment, in Node 2 – Scott Hall, at no charge so long as needed for System operation.
- (c) UC2B personnel will have access to the UC2B spaces in Nodes 2, 8 and 9 twenty-four (24) hours-a-day, every day of the year via proximity cards (prox cards) supplied by the University to UC2B personnel. Charges for the space in Nodes 8 and 9 will start with the August 15, 2012 commencement of UC2B retail services.

10.5. Each Party will enter into twenty (20) year Indefeasible Rights of Use agreements (IRUs) with UC2B for use of specified strands of dark fiber on the seven (7) UC2B rings and five (5) UC2B sub-rings. UC2B will enter into renewable five (5) year fiber maintenance agreements with the Parties for such regular maintenance expenses as utility locating and fiber repair.

10.6. The University will operate and maintain core network equipment and electronics for two (2) years starting from the August 15, 2012 commencement of UC2B retail operations. The core network electronics consist of all UC2B electronics located in University Nodes 8 and 9, as well as the electronics located in the 12 neighborhood cabinets. Neither the electronics located at customer sites nor the UC2B fiber infrastructure is supported by the University. UC2B and the University may contract for support of the core network electronics following the two (2) year period.

10.7. Construction. Whenever this Section 10 refers to UC2B, it shall include the successor NFP referred to in Section 9A or an entity affiliated with the UC2B NFP.

SECTION 11. GENERAL ADMINISTRATION

11.1. Contributions. Each Party shall contribute to the Consortium budget and expenses based on a cost-sharing formula established from time to time by the Parties. Any change in the formula may be made by a unanimous vote of the Policy Committee.

11.2. Records. The Lead Agency shall maintain financial records regarding Consortium operations and finances in accordance with generally accepted governmental accounting standards, which records shall be available at the Lead Agency's finance offices for inspection by any of the Parties during regular business hours.

11.3. Invoices. The Lead Agency – Operations shall invoice each Party on the first day of each quarter for the next quarter's service for its share of Consortium costs based on the approved cost sharing formula.

11.4. Payment. The Parties shall pay said bills within thirty (30) days of receipt of an invoice for the same.

11.5. Audit. Consortium financial records shall be audited on an annual basis by the outside accountant used by the Lead Agency – Operations for its other audits and the cost of such audit shall be considered an operating expense of Consortium.

11.6. University. All commitments by the University are subject to constitutional and statutory restrictions and limitations binding upon the University and to the availability of funds.

11.7. Fiscal Year. The Consortium's fiscal year shall be from July 1 to June 30.

SECTION 12. RIGHT-OF-WAY AND REAL PROPERTY ACCESS; CONSTRUCTION

12.1. Right-of-Way. Construction and the continued existence of the System network will require access to and a continuing presence on, over and under the public right-of-way and real property of the Parties.

- (a) The Consortium shall have a continuing license to utilize the right-of-way and real property of the Parties in order to effectuate the purposes of this Agreement. This license shall continue after a Party withdraws from the Consortium and for so long as the System is operated by the Consortium, or its successor.
- (b) Any use of the right-of-way shall be subject to all ordinances of general application concerning right-of-way, including right-of-way fees and to Section 9A4.
- (c) The Consortium shall disclose all encumbrances of land, easements, and rights-of-way to NTIA, which shall not accept any encumbrance that interferes with the construction, intended use, operation or maintenance of the System during its estimated useful life. When requested by NTIA, the Consortium shall furnish evidence satisfactory in form and substance to NTIA, that title to real property is vested in the Consortium or its Parties and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests.
- (d) The Consortium or the Parties, as the case may require, shall execute a security interest or other statement of NTIA's interest in real property including the broadband facilities and equipment acquired or improved with federal funds acceptable to NTIA, which must be perfected and placed on record in accordance with local law. The security interest will provide that, for the estimated useful life of the real property, facilities, or equipment, the Consortium or the Parties will not sell, transfer, convey or mortgage any interest in the real property, including broadband equipment acquired or improved, in whole or in part, with federal funds made available under the Federal Construction Grant, nor shall the Consortium or the Parties use the real property including the broadband facilities and equipment for purposes other than the purposes for which the Federal Construction Grant was made without the prior written approval of the NTIA grants officer. Such approval may be withheld until such time as the Consortium pays to NTIA the federal share of the real property, including broadband facilities and equipment as provided in 15 C.F.R. 14.32. The security interest shall be executed in advance of any sale or lease and not later than closeout of the Federal Construction Grant.

12.2. Construction. The Parties shall cooperate to accomplish construction on right-of-way within each Party's jurisdiction, or the Lead Agency – Operations shall, on behalf of the Consortium, contract directly with a third party to accomplish the construction.

- (a) All construction shall be subject to all federal and state laws applicable.
- (b) After the construction is completed, the conduits and fiber within the conduits, in addition to the license to utilize the right-of-way and real property for the operation of the System, shall be held by the acquiring Party in trust for the Consortium.

SECTION 13. WITHDRAWAL OF PARTY

13.1. Withdrawal.

(a) A Party may withdraw its participation in the Consortium as of July 1 of any year by giving written notice to each of the other Parties. Such notice shall be given prior to December 31 of the year before the desired termination date.

(b) If a Party withdraws its participation, its authority to appoint members to the NFP Board shall cease as of the effective date of withdrawal.

(c) A Party shall also be deemed to have withdrawn from participation in the Consortium if it fails to perform any act required to be performed by Article 9A if any of the other Parties has requested the Party to perform and such refusal to perform persists for twenty-eight (28) days without reasonable grounds. Failure to appoint a Board Member to the NFP Board within thirty (30) days of notice of vacancy shall be presumed to be an unreasonable failure to perform under this section.

SECTION 13A. DEFAULT

Default. If a Party defaults on any of its obligations, one or both of the non-defaulting Parties shall provide written notice to the defaulting party which notice shall specify the nature of the default. The defaulting Party shall have twenty-eight (28) days in which to either cure the noticed default or state why the said Party is not in default. In the event that the default is not cured to the satisfaction of the non-defaulting Parties the defaulting Party shall be deemed to have automatically withdrawn from the Consortium. Nothing herein shall be deemed as a waiver by the non-defaulting parties of any other remedy, whether in law or in equity, which any of the non-defaulting Parties may have against the defaulting Party.

SECTION 14. LIMITED CONTINUATION OF CONSORTIUM/DISSOLUTION

14.1. The Parties intend to maintain the Consortium for the limited purposes of recovery of assets in the event of dissolution of the NFP. However, should any Party elect to withdraw its participation in and support of the Consortium, then the Consortium may continue in operation for the benefit of the remaining Consortium members.

14.2. In the event of dissolution of the NFP, Champaign, as Trustee for the Consortium, shall accept distribution of NFP assets as provided by law and in accordance with Article XII of the Bylaws. The Consortium members shall meet within fourteen (14) days of such distribution to begin the process to determine how to best use the assets for the benefit of the community.

14.3. Where Champaign, as Trustee for the Consortium, is entitled to receive a distribution of assets upon dissolution of the NFP, Champaign shall, prior to accepting the distribution of those assets, promptly notify the other existing Consortium members of the proposed distribution.

14.4. Any costs attendant on the transfer of the lease and/or license rights and distribution of interests and other assets from the NFP to the Consortium and incurred by Champaign or any other Consortium member shall be shared equally by the existing Consortium members.

SECTION 15. PROPERTY; USE AND OWNERSHIP; LOAN EQUIPMENT

15.1. Unless otherwise prohibited or prescribed by law, title to all tangible and real property acquired by a Party for the Consortium shall vest in the acquiring Party, subject to any priority interest and the federal interest described in Section 12(d), and shall be held in trust by that Party for Consortium use for so long as the Consortium deems the property necessary for the Consortium or System operations. Each Party shall maintain an inventory of all property that it acquires for the Consortium as required by federal and state law. Such property may be used by the Consortium, including permitting the use by any other person or entity, for any purpose supporting the deployment of broadband assets in the community.

15.2. Any Party may, with approval of the Policy Committee, loan personal property or equipment to the Lead Agency - Operations for the use of the Consortium. Such property shall continue to be owned by the Party, and the Lead Agency – Operations shall keep written records of such loaned equipment. If the Party owning the loaned equipment wishes to withdraw it from Consortium service, that Party may do so provided that, if in the opinion of the Consortium Coordinator, the property is essential to the Consortium and requires replacement to ensure consistency and proper functioning of the Consortium, then such loaned equipment shall be withdrawn only after providing a reasonable notice of withdrawal to the other Parties.

SECTION 16. RIGHTS OF WITHDRAWING PARTY TO CONSORTIUM ASSETS

A Party that has withdrawn from participation in the Consortium shall have no ownership or financial interest in property acquired either by the NFP or by another Party for the Consortium. Such property or proceeds derived from the disposition of the property shall continue to be used for the continued operation of Consortium until Consortium is dissolved.

SECTION 17. DISPOSITION OF CONSORTIUM ASSETS UPON DISSOLUTION

17.1. In the event of dissolution of the Consortium, each Party shall retain possession and control over the property in which it holds title and that it acquired before the Transfer of assets to the NFP. With respect to all other NFP property distributed to Champaign as Trustee, and unless otherwise agreed by the then-Consortium members:

- a) Within 30 days after the distribution is effective, the Consortium members shall select a person (“Appraiser”) technically qualified to evaluate the assets and suggest a manner and method of disposition in a written report. The Appraiser shall, within sixty (60) days after being selected, suggest the manner and method of disposition of the assets to the Consortium members in a written report. The Appraiser selected shall be guided, but not be restricted, by the following principles, unless otherwise required by law:
 - (i) The location of the asset, if the location is important to the usefulness of the asset;
 - (ii) Whether an asset would be useful only when used in conjunction with another asset;
 - (iii) The impact on any user who is, or may be impacted, by the disposition;
 - (iv) The replacement value of the asset;
 - (v) The population served by the asset;
 - (vi) Any laws governing the disposition of the assets.

17.2 RESERVED.

17.3. If the City Manager of Champaign, Mayor of Urbana and the Chancellor of the University have not agreed to the recommendations in the Appraiser's written report within twenty-eight (28) days after receipt of the report, then the Consortium members shall be deemed to have not agreed on the recommended method of disposition and shall proceed to the procedures under Section 17.4.

17.4. All assets held in trust by Champaign on behalf of the Consortium shall be sold at a public sale, and the proceeds, after deducting all costs of sales and any unpaid obligations relating to such assets or operating expenses of the Consortium, shall be divided among the Consortium members in equal amounts.

17.5. Any one (1) or more of the Consortium members shall have the right to purchase such assets at their fair market value prior to any public sale. Such fair market value shall be determined by unanimous vote of the Consortium members. If a Consortium member wishes to purchase such assets or a particular asset for the fair market value, the matter will be decided by lot. Any persons purchasing assets in the rights-of-way of a government unit, including the rights-of-way of the Parties, shall be required to enter into an agreement with that Party for the use of the rights-of-way, and there shall not be any continuing right to use the rights-of-way of a governmental unit as an inherent aspect of the purchase.

SECTION 18. INSURANCE

The Lead Agency – Operations shall procure and maintain, during the term of this Agreement or any extension thereof, sufficient property insurance to cover the replacement value of Consortium equipment and all equipment loaned to the Consortium, against all direct loss or damage. The cost of any such insurance shall be a cost of operating the Consortium, to be borne by the Parties in the same manner as other costs in accordance with this Agreement. The Lead Agency – Operations shall procure and maintain liability and worker's compensation insurance for Consortium operations in accordance with insurance purchase standards for its other operating departments. The insurance shall name each Party as additional insured under the liability policy procured.

SECTION 19. LIMITATIONS OF PERSONNEL

No employee shall have authority to commit, obligate or bind any Party to any contract or obligation unless specifically authorized by said Party, except as provided for in this Agreement.

SECTION 20. AMENDMENTS

This Agreement may be amended in writing at any time by agreement of all Parties. Amendments shall refer back to this Agreement and to subsequent amendments, if any, on the same subject and shall specify the language to be changed or to be added. The execution of any amendment shall be authorized by passage of an appropriate ordinance or other proper and lawful corporate action by the corporate authorities of each Party. When a Party terminates its participation in the Consortium, the Parties will amend this Agreement accordingly.

SECTION 21. RESERVED

SECTION 22. EFFECTIVE DATE

This Agreement shall be effective on the date signed by the last Party to sign the Agreement.

SECTION 22A. EXPIRATION DATE AND SURVIVAL

All provisions of this Agreement shall be inoperative as of the date the Transition Period ends, provided however, that Sections 9A, 10 and 12.1, 13, 14, 15.1, 16, 17, 20, 22A, of this Agreement shall continue to be operative and binding according to their terms.

SECTION 23. NOTICES

Notices hereunder shall be provided personally or by first class mail to the Chancellor of the University and to the Chief Administrative Officers of each City and to the attorney representing each Party. The date of the notice shall be the date of receipt.

SECTION 24. APPLICABLE LAWS

On performing the obligations hereunder, the Parties shall comply with all applicable federal, state and local laws and the terms of any grant agreements.

SECTION 25. COUNTERPARTS

This Agreement may be signed in several counterparts, each of which shall be considered an originally executed agreement for all purposes.

CITY OF CHAMPAIGN

CITY OF URBANA

By: _____
City Manager

By: _____
Mayor

Date: _____

Date: _____

ATTEST: _____
City Clerk

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney

**THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS**

By: _____
Comptroller

Date: _____

Approved by:

Chancellor

Business Office

- Attachments:**
- A. Preliminary Startup Budget (Section 9.4)**
 - B. Transition Budget**
 - C. Proposed NFP Bylaws (Section 9A6)**

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