

RESOLUTION NO. 2012-05-028R

A RESOLUTION APPROVING A FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT WITH THE UNIVERSITY OF ILLINOIS AND THE CITY OF CHAMPAIGN REGARDING THE BIG BROADBAND CONSORTIUM

WHEREAS, the parties hereto did on the 1st of September 2009, pursuant to Resolution No. 2009-08-027R, enter into an Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband System Consortium; and

WHEREAS, the parties have determined that the best interests of all entities are served by making and entering into an amendment to said agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

A First Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband System Consortium between the Cities of Urbana and Champaign, Illinois, and the Board of Trustees of the University of Illinois, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, 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 and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Motion was made by Alderman _____, seconded by Alderman _____ that the Resolution be adopted.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

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

THIS FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Agreement” or “IGA”) is made and entered into by and between the City of Champaign, a municipal corporation, the City of Urbana, a municipal corporation, and the Board of Trustees of the University of Illinois (“University”), 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 to the U.S. Department of Commerce (“Commerce”) seeking financial assistance for the Urbana-Champaign Big Broadband project (“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 System Consortium” (“Agreement” or “IGA”). The Consortium may be referred to throughout as “UC2B”.
- E. The parties desire that the system be operated and managed and that there be clear lines of authority for implementing policies to achieve the mission and goals of a consortium 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 \$6,852,149 (“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 this 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 this IGA.

K. The parties now desire to amend and restate the IGA to incorporate the Letter of Understanding and to make other related changes.

NOW, THEREFORE, the parties agree as follows:

Terms of Agreement

SECTION 1. DEFINITIONS

“Consortium” means the Urbana-Champaign Big Broadband System 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 charged by the Lead Agency 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 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.

“Party” or “parties” means initially 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 and such other third parties that may later join the Consortium by becoming signatories to the Agreement. A party is a member of the Consortium.

“Party (or Member) in Good Standing” means a party that has not delivered a notice of its intent to withdraw from this Agreement or for which the Policy Committee has not issued a notice of payment default.

“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” means the design, construction, and operation of a fiber optic system in Champaign-Urbana and adjacent areas designed and operated to serve underserved, unserved and vulnerable 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 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.

“UC2B funds” means all resources of UC2B, including but not limited to the Federal and State Construction Grants, contributions of the parties and contributions of third parties.

SECTION 2. CONSORTIUM CREATED

2.1. The parties hereby create the Urbana-Champaign Big Broadband System Consortium, an undertaking to operate a communitywide broadband system. The Consortium is created to construct, develop and operate a coordinated 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, subject to the Lead Agency’s policies and procedures, except as otherwise specified in the Agreement. The parties hereby authorize and direct the Lead Agency to operate pursuant to this Agreement, and the Lead Agency 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 Program 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 project by February 2013;
- 3.12. Operate the system developed 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 accord 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 as related to the 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 two (2) representatives designated by the Chancellor of the University of Illinois and 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 parties shall be voting representatives. The University's representation on the Policy Committee shall end immediately upon the University's withdrawal as a party to this Agreement. 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-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.

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 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'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.

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, 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 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.

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 parties' 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.

SECTION 6. LEAD AGENCY DESIGNATED

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 June 30, 2013.

6.2. The parties agree to meet to determine the Lead Agency for the purposes of administering or performing the operational phases of the grant, and ultimately the Lead Agency for the administrative and continuation of the Consortium activities.

6.3. The Lead Agency for operations shall be Champaign, with the responsibilities set forth at Section 7 of the 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; and
- (d) Plan and manage operations during and after the construction period.

SECTION 7. LEAD AGENCY DUTIES

7.1. The Lead Agency for 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'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.
- (c) Incurring and paying, on the behalf of the parties and in accordance with this Agreement and 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, 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.
- (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.
- (g) Billing and collecting from each party its share of the cost of Consortium's operations as provided in this Agreement and the approved annual budget and work plan of 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 minutes for the Consortium Policy 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.

7.2. The Lead Agency 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.

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 June 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 June 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 John Kersh, by Intergovernmental Personnel Assignment or other appropriate mechanism, to Champaign to perform Lead Agency – Operations activities, including but not limited to marketing and outreach on a part-time basis through January 31, 2013.
- 9.6. The University shall not be responsible for Start-Up costs incurred after June 30, 2013.

9.7. On or before June 30, 2013, with consent of NTIA, the governance of UC2B will change. The University will at that time cease to be a party to UC2B and its representation on the UC2B Policy Board shall cease.

SECTION 10. ADDITIONAL COMMITMENTS

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

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

10.3. On or before January 31, 2013 (the end of the Federal Grant), the University will transfer or license to UC2B, as permitted by law and the funding agencies, the installed infrastructure assets (such as fiber, conduit, splice cases, manholes, and associated electronics) funded by the Federal and State Construction Grants..

10.4. (a) With the beginning of retail services, UC2B will lease space for UC2B core network equipment from the University in Telecommunications Nodes 8 and 9 (Enterprise Works and the Siebel Center) at a rate of \$1,000 per month per Node. UC2B will pay electrical power usage and a charge for cooling based on the actual electrical power usage.

(b) UC2B may also have one rack for fiber termination, but not equipment, in Node 2 – Scott Hall, at no charge.

(c) UC2B personnel will have access to the UC2B spaces in Nodes 2, 8 and 9 twenty-four 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 commencement of UC2B retail services.

10.5. UC2B will enter into Indefeasible Rights of Use agreements (IRUs) with Champaign, Urbana and the University for their private use of specified strands of dark fiber on the seven UC2B rings. Those IRU agreements will have a term of 20 years. UC2B will enter into renewable five- year fiber maintenance agreements with Champaign, Urbana and the University 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 years starting from the 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. The electronics located at customer sites and the UC2B fiber infrastructure are specifically not supported by the University. UC2B and the University may contract for support of the core network electronics following the two-year period.

SECTION 11. GENERAL ADMINISTRATION

11.1. Contributions. Each party shall be responsible for contributing 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 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 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. 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 Urbana, Champaign, and the University.

(a) Urbana, Champaign and the University each agree that 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 for construction, but not including franchise or rental fees which would otherwise require a continuing annual fee for right-of-way usage.

(c) The Consortium must disclose all encumbrances of land, easements, and rights-of-way to the Department of Commerce's National Telecommunications Information Administration ("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 must 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.

(e) All interests in real property obtained by the Lead Agency, or by any party, for construction, maintenance or use of the system shall be held by the acquiring party in trust for the Consortium.

12.2. Construction. The parties shall cooperate to accomplish construction on right-of-way within each party's jurisdiction, or the Lead Agency 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. TERMINATION BY PARTIES

13.1. Withdrawal. A party may terminate its participation in this Agreement 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.

13.2. Failure to Budget. Notwithstanding any provision of this Agreement to the contrary, a party may withdraw by giving prior written notice thirty (30) days in advance to each of the other parties indicating its intent to terminate its participation in this Agreement as of the end of the month following the expiration of such thirty (30) days; provided, however, withdrawal under this section can only be invoked if the corporate authorities of the party, or the legislature in the case of the University, have failed or refused to authorize, appropriate or budget the funds necessary to pay party's share of the costs, as such costs are determined by the Policy Committee pursuant to this Agreement. Each party will utilize its best efforts to appropriate and budget sufficient funds to meet its obligations under this Agreement in full.

13.3. Default. If a party is in default of its payment obligations, the Policy Committee may so declare and terminate system services to that party thirty (30) days after the date of mailing of notice of default and termination of services to the defaulting party, unless the defaulting party cures the default in full prior to the expiration of the thirty (30) days set forth in the notice. The notice of the default declared by the Policy Committee shall be issued by the Lead Agency. The defaulting party shall continue to be responsible to pay its assigned share of the cost of

Consortium as determined in accordance with this Agreement for the nine (9) months following the termination of system services. If the defaulting party, within the nine (9)-month period, pays all amounts due and the costs incurred by the Consortium in updating the information in relevant databases, system services to the party shall be reinstated.

SECTION 14. DISSOLUTION

The parties intend to maintain Consortium as a continuing operation. However, should any party elect to withdraw its participation in and support of Consortium, then Consortium may continue in operation for the benefit of the remaining parties. .

SECTION 15. EQUIPMENT; USE AND OWNERSHIP; LOAN EQUIPMENT

15.1. All equipment purchased for Consortium shall be purchased, utilized and disposed of by the Lead Agency and held in trust for Consortium use, subject to the federal interest described in Section 12(d). It shall be recorded and identified by the Lead Agency as Consortium property, separate from other Lead Agency property. Prior to dissolution of Consortium, all proceeds from the sale of any Consortium property or data shall be devoted solely to the operation of Consortium. In the case of a change in Lead Agency, all right, title, and interest to Consortium property shall be transferred with the Lead Agency function to the new Lead Agency.

15.2. Any party may, with approval of the Policy Committee, loan personal property or equipment to the Lead Agency for the use of Consortium. Such property shall continue to be owned by the party, and the Lead Agency 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 Director, the property is essential to Consortium and requires replacement to ensure consistency and proper functioning of Consortium, then such loaned equipment shall be withdrawn only after providing a reasonable notice of withdrawal to the other parties.

SECTION 16. RIGHTS OF TERMINATING PARTY TO CONSORTIUM ASSETS

A party terminating its participation in the Consortium shall have no financial interest in equipment purchased for the Consortium operation prior to the date of that party's termination. Such equipment or proceeds derived from the disposition of the equipment shall continue to be used for the continued operation of Consortium until Consortium is dissolved.

SECTION 17. DISPOSITION OF CONSORTIUM ASSETS UPON DISSOLUTION

Upon dissolution of Consortium, unless the parties otherwise agree:

17.1. Within 30 days after the last of the parties to agree to dissolve or when 2 or 3 parties terminate participation in the Consortium, the parties shall select a person technically qualified to evaluate the assets of the Consortium and suggest a manner and method of disposition in a written report. Said person shall, within sixty (60) days after the last of the parties to select a representative, suggest the manner and method of disposition of the assets to the parties in their written report. The person selected shall be guided, but not be restricted, by the following principles, unless otherwise required by law:

- (a) The location of the asset, if the location is important to the usefulness of the asset;
- (b) Whether an asset would be useful only when used in conjunction with another asset;
- (c) The impact on any user who is, or may be impacted, by the disposition;
- (d) The replacement value of the asset;
- (e) The population served by the asset;
- (f) Any federal regulations which govern the disposition of the assets.

17.2. If the chief administrative officer of any party is not evidenced agreement within twenty-eight (28) days after receipt of the report, by notifying the Chief Administrative Officer of the other parties in writing, the parties shall be deemed to have not agreed on the disposition by this method and proceed to Section 17.3 below.

17.3. All assets held in trust by the Lead Agency on behalf of the parties 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 parties in equal amounts.

17.4. Any one (1) or more of the parties 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 Policy Committee. If a party 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 right-of-way of a government unit, including the right-of-way of the parties, shall be required to enter into an agreement with that governmental unit for the use of the right-of-way, and there shall not be any continuing right to use the right-of-way of a governmental unit as an inherent aspect of the purchase.

SECTION 18. INSURANCE

The Lead Agency shall procure and maintain, during the term of this Agreement or any extension thereof, sufficient property insurance to cover the replacement value of the Consortium equipment and all equipment loaned to Consortium, against all direct loss or damage. The cost of any such insurance shall be a cost of operating Consortium, to be borne by the parties hereto in the same manner as other costs in accordance with this Agreement. The Lead Agency 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 hereto 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 participating in the Consortium, the parties will amend this Agreement accordingly.

SECTION 21. ADDITIONAL NON-VOTING MEMBERS

The Policy Committee may appoint non-voting governmental representatives to the Policy Committee if such appointment would assist the Committee in the conduct of its business.

SECTION 22. EFFECTIVE DATE

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

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 Officer of each party 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: _____

- Attachments:
1. UC2B Proposal
 2. Notice of Funds Availability Fact Sheet
 3. Notice of Funds Availability

FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT PROVIDING
FOR THE CREATION OF THE
URBANA-CHAMPAIGN BIG BROADBAND SYSTEM CONSORTIUM

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

~~WHEREAS, 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.* ~~enables~~enable the parties ~~here~~ to enter into agreements among themselves and provide authority for intergovernmental cooperation;~~and,~~

~~WHEREAS, the parties find it to be in the best interest to the City of Champaign, the City of Urbana, and the University of Illinois to develop and operate a coordinated countywide broadband system; and,~~

B. ~~WHEREAS, the~~The parties are committed to the principles of intergovernmental cooperation;~~and,~~

~~WHEREAS, the parties’ intention is to seek grants under the American Recovery and Reinvestment Act (“ARRA”) for the development and construction of a broadband project to serve “underserved” areas within the Champaign-Urbana community as generally described in the “Urbana-Champaign Big Broadband Proposal” dated July 21, 2009 (“UC2B Proposal”), attached hereto and incorporated by reference herein (“Proposal”); and consistent with the Broadband Technology Opportunities Program Project Categories as set forth in the “Notice of Funds Availability — Fact Sheet — July, 2009” and the Notice of Funds Availability issued by the Department of Commerce for the for the Broadband Technology Opportunities Program (both of which are attached hereto and incorporated by reference herein); and~~

~~WHEREAS, in order to develop and operate a coordinated broadband system, it is necessary to establish a system consortium; and,~~

~~WHEREAS, the mission of such a consortium is to:~~

C. 4In August 2009, the University submitted a proposal to the U.S. Department of Commerce (“Commerce”) seeking financial assistance for the Urbana-Champaign Big Broadband project (“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 System Consortium” (“Agreement” or “IGA”). The Consortium may be referred to throughout as “UC2B”.

~~The. —Build multiple backbone rings identified in the Proposal;~~

~~2. —Build a Fiber to the Premise (FTTP) infrastructure in the thirty-five (35) “underserved” census block groups identified in the Proposal;~~

- ~~3. Provide fiber and develop options for providing e-Internet services to the FTTP customers;~~
- ~~4. Build the lateral fiber connections to schools, fire stations, senior living facilities, community technology centers and other private fiber locations;~~
- ~~5. Activate fiber services to the UC2B partners and investors;~~
- ~~6. Complete the construction of the physical elements of the project by November of 2012;~~
- ~~7. Operate the system developed pursuant to this Agreement for the benefit of the community.~~

~~WHEREAS, it is necessary to provide generally for structure, operations and joint funding of the consortium; and,~~

~~E. WHEREAS, the parties desire that the system be operated and managed with and that there be clear lines of authority for implementing policies to achieve the mission and goals of a consortium as set forth in this Agreement and as articulated from time to time by the parties; ~~and,~~~~

~~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 \$6,852,149 ("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 this 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 this IGA.~~

~~K. The parties now desire to amend and restate the IGA to incorporate the Letter of Understanding and to make other related changes.~~

NOW, THEREFORE, the parties agree as follows:

Terms of Agreement

SECTION 1. DEFINITIONS

- ~~a) "Consortium" means the Urbana-Champaign Big Broadband System 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.~~
- ~~b) "Consortium Coordinator" is an employee of the Lead Agency charged by the Lead Agency with the responsibility of administering, supervising, managing and directing the activities, programs,~~

and employees assigned to the Consortium in order to successfully ~~construct~~, maintain, and operate the system.

e) "Consortium Staff" means the staff of the Lead Agency ~~who are~~ assigned to work on Consortium activities under the direction of the Consortium Coordinator.

~~d) "Grant Agreements" means those agreements entered into pursuant to the ARRA grants made available under the general terms of the "Notice of Funds Availability — Fact Sheet — July, 2009", attached hereto.~~

e) "Lead Agency" means the party designated by the ~~members, pursuant to this Agreement~~ parties as ~~the party~~ 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.

f) ~~"Members" mean~~ "Party" or "parties" means initially the City of Champaign, Illinois; ~~the City of Urbana, Illinois;~~ and the Board of Trustees of the University of Illinois at Urbana-Champaign; ~~and such other members who become~~ as signatories to ~~the~~ this Agreement and such other third parties that may later join the Consortium by becoming signatories to the Agreement. A party is a member of the Consortium.

g) "Party (or Member) in Good Standing" means a ~~member~~ party that has not delivered a notice of its intent to withdraw from this Agreement or for which the Policy Committee has not issued a notice of payment default.

h) "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.

i) "Program" means the design, construction, and operation of a fiber optic system in ~~the Bradley-Avenue Corridor~~ Champaign-Urbana and adjacent areas designed and operated to serve underserved, unserved and vulnerable populations as required by the ~~terms of the ARRA grant~~ Federal Construction Grant.

j) "System" means a series of fiber optic rings constructed as an open network, and including all fiber connections to the premises constructed, operated by, or controlled by the Consortium; ~~and includes broadband infrastructure, public computer center projects that expand computer center capacity at entities that permit public use of computer assets, and sustainable broadband projects that promote broadband demand.~~

k) "Technical Committee" means the body created by this Agreement to provide technical advice and recommendations to the Policy Committee.

"UC2B funds" means all resources of UC2B, including but not limited to the Federal and State Construction Grants, contributions of the parties and contributions of third parties.

SECTION 2. CONSORTIUM CREATED

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

b) 2.2. The Consortium shall be a unit of the Lead Agency, subject to the Lead Agency's policies and procedures, except as otherwise specified in the Agreement. -The parties hereby authorize and direct the Lead Agency to operate pursuant to this Agreement, and the Lead Agency hereby agrees to operate pursuant to this Agreement.

SECTION 3. CONSORTIUM MISSION

The mission of the Consortium and its ~~members~~parties is to:

- a) 3.1. Coordinate the construction of the Program and implement connections as required by the Federal Construction Grant~~Agreements~~;
- b) 3.2. Lead development effort for connection to the system;
- e) ~~3.3.~~ Establish standards for quality of all connections;
- d) 3.4. Maintain system records and make such records accessible to ~~all members~~the parties;
- e) 3.5. Provide ~~all members~~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 project by February 2013;
- 3.12. Operate the system developed pursuant to this Agreement for the benefit of the community.
- f) ~~Establish and maintain the system, including an operational budget;~~
- g) 3.13. Provide system administration and ongoing system support, upgrades, and maintenance for Consortium-controlled assets;
- h) 3.14. Provide services to ~~members~~the parties in accord with a work plan approved by the Policy Committee;
- i) 3.15. Promote use of the system; and

- j) 3.16. Establish operational, administrative, and procedural policy as related to the system operations.

SECTION 4. POLICY COMMITTEE CREATED

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

~~a)~~ 4.1. Membership.

~~(i) The~~ (a) Upon formation, the Policy Committee shall be ~~comprised~~ composed of two (2) ~~members to be~~ representatives designated by the Chancellor of the University of Illinois and by each of the Chief Administrative Officers of ~~other members.~~ Urbana and Champaign. Additionally, the Chair of the Technical Committee shall be an ex officio voting ~~member~~ representative of the Policy Committee. The ~~designation~~ designations shall be made in writing and sent to the Chancellor and the Chief Administrative ~~Officer~~ Officers of ~~the other members.~~ These Urbana and Champaign. All representatives of parties shall be voting representatives. The University's representation on the Policy Committee shall end immediately upon the University's withdrawal as a party to this Agreement. Representatives may be removed by the appointing authority.

~~(ii)~~ (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. ~~Both~~ Each of these non-voting representatives shall be appointed by the Chair and approved by the Policy Committee and shall serve for a three-year term.

~~b)~~ 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 ~~members~~ representatives, or such greater percentage vote specified in this Agreement of all voting ~~members,~~ representatives of the Policy Committee in good standing.

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

~~d)~~ 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 ~~and every~~ member that is in good standing at the time of the vote.

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

~~f)~~ 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 ~~members'~~ representatives ~~on~~ of the Policy Committee.

~~g)~~ 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:

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

~~b) 5.2. Officers.~~ The Policy Committee shall elect a Chair and such officers as it deems advisable from among the voting representatives ~~of the members, said election to occur~~ 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.

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

~~d) 5.4. Budget.~~

~~i) (a)~~ The Policy Committee shall, ~~by an affirmative vote of five (5) of the seven (7) voting members:-~~

~~—1) annually approve a budget; and-~~

~~—2) approve amendments to said budget and expenditures as from time to time deemed necessary by the parties.~~

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

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

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

~~e) Funding Formula.~~ ~~The Policy Committee shall annually on or before February 1 of each year, by a unanimous vote, approve the funding formula to determine the parties' share of expenses for Consortium operations, provided, however, that the most recently approved cost-sharing formula shall continue unless amended by the unanimous vote of the parties. The funding formula shall take into account the contribution to the Consortium by a member of fiber or facilities already constructed by the member.~~

~~f) 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.

~~g) 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.

~~h)~~ 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.

~~i)~~ 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 ~~members~~representatives, provided that no ~~members~~party shall be designated Lead Agency without its consent, ~~and provided further that, unless the. Consent shall be given in writing to the other~~ parties ~~agree otherwise, no change in by the chief administrative officer of the party. If~~ the Lead Agency ~~shall take place without~~desires to withdraw as Lead Agency, it shall notify the other parties at least ~~one hundred and eighty (180) days' prior notice~~ days prior to the beginning of the ~~next~~ fiscal year ~~of the current, 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.

~~j)~~ 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.

~~k)~~ 5.10. *Role of the Technical Committee.*

~~i)~~ (a) The Technical Committee shall make recommendations to the Policy Committee concerning:

(1) ~~Hardware~~hardware requirements;

(2) ~~Software~~software requirements;

(3) ~~Networking;~~

networking; (4) ~~Standards;~~

standards; and (5) ~~Other~~other aspects of the system as requested by the Policy Committee.

~~ii)~~ (b) Recommendations of the Technical Committee shall be by majority vote, though consensus of all voting participants is desirable.

~~iii)~~ (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 ~~members'~~parties' operations or the overall operation of the infrastructure, the Technical Committee shall seek input ~~and concurrence~~ from all ~~members~~of its participants, including nonvoting participants, prior to recommending the purchase, or recommending a technical standard.

~~l)~~ 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 ~~members~~representatives.

SECTION 6. LEAD AGENCY DESIGNATED

6.1. ~~The initial~~ Lead Agency for the purposes of applying for, receiving and administering ~~any grant under ARRA~~the Federal and State Construction Grants shall be ~~the~~ University of Illinois.

University will continue as the Lead Agency for grant financial administration and will be responsible for financial reporting until June 30, 2013.

6.2. The parties agree to meet to determine the Lead Agency for the purposes of administering or performing the operational phases of the grant, and ultimately the Lead Agency for the administrative and continuation of the Consortium activities.

6.3. The Lead Agency for operations shall be Champaign, with the responsibilities set forth at Section 7 of the 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; and

(d) Plan and manage operations during and after the construction period.

SECTION 7. LEAD AGENCY DUTIES

7.1. The Lead Agency for 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'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.

(c) Incurring and paying, on the behalf of the membersparties and in accordance with this Agreement and 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, 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.

(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.

- | (g) Billing and collecting from each ~~member~~party its share of the cost of Consortium's operations as provided in this Agreement and the approved annual budget and work plan of 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 minutes for the Consortium Policy 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.

| 7.2. The Lead Agency 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. ~~MEMBER~~PARTY RESPONSIBILITIES**

| Each ~~member~~party shall:

- | ~~a)~~ 8.1. Utilize the system only in accordance with Consortium policies;
- | ~~b)~~ 8.2. Provide two (2) people to serve as active voting representatives on the Policy — Committee;
- | ~~c)~~ 8.3. Provide at least one (1) staff person to serve as an active voting representative for —the Technical Committee.
- | ~~d)~~ 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;
- | ~~e)~~ 8.5. Pay for Consortium activities in accordance with this Agreement.

| **SECTION 9. ~~FINANCES~~**
INTERIM FUNDING AND SUPPORT DURING START-UP PERIOD

- | ~~a)~~
9.1. The Start-Up period is defined as beginning August 15, 2011 and ending June 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 June 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 John Kersh, by Intergovernmental Personnel Assignment or other appropriate mechanism, to Champaign to perform Lead Agency – Operations activities, including but not limited to marketing and outreach on a part-time basis through January 31, 2013.

9.6. The University shall not be responsible for Start-Up costs incurred after June 30, 2013.

9.7. On or before June 30, 2013, with consent of NTIA, the governance of UC2B will change. The University will at that time cease to be a party to UC2B and its representation on the UC2B Policy Board shall cease.

SECTION 10. ADDITIONAL COMMITMENTS

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

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

10.3. On or before January 31, 2013 (the end of the Federal Grant), the University will transfer or license to UC2B, as permitted by law and the funding agencies, the installed infrastructure assets (such as fiber, conduit, splice cases, manholes, and associated electronics) funded by the Federal and State Construction Grants..

10.4. (a) With the beginning of retail services, UC2B will lease space for UC2B core network equipment from the University in Telecommunications Nodes 8 and 9 (Enterprise Works and the Siebel Center) at a rate of \$1,000 per month per Node. UC2B will pay electrical power usage and a charge for cooling based on the actual electrical power usage.

(b) UC2B may also have one rack for fiber termination, but not equipment, in Node 2 – Scott Hall, at no charge.

(c) UC2B personnel will have access to the UC2B spaces in Nodes 2, 8 and 9 twenty-four 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 commencement of UC2B retail services.

10.5. UC2B will enter into Indefeasible Rights of Use agreements (IRUs) with Champaign, Urbana and the University for their private use of specified strands of dark fiber on the seven UC2B rings. Those IRU agreements will have a term of 20 years. UC2B will enter into renewable five- year fiber maintenance agreements with Champaign, Urbana and the University 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 years starting from the 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. The electronics located at customer sites and the UC2B fiber infrastructure are specifically not supported by the University. UC2B and the University may contract for support of the core network electronics following the two-year period.

SECTION 11. GENERAL ADMINISTRATION

11.1. Contributions. Each party shall be responsible for contributing to the Consortium budget and expenses based on a cost-sharing formula established from time to time by the ~~members~~parties. Any change in the formula may be made by a unanimous vote of the ~~parties'~~parties' ~~voting representatives on the~~ Policy Committee. ~~The initial approved cost-sharing formula will be attached as Exhibit A" after approval of the Policy Committee as set forth in this subsection.—~~ ~~The most recently approved cost-sharing formula shall continue unless amended by unanimous vote of the parties.~~

~~b) 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.

~~e) 11.3.~~ Invoices. The Lead Agency shall invoice each ~~member~~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

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

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

~~f) 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 ~~which may be lawfully applied thereto.~~

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

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

~~a) 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. The parties agree as follows with respect to right-of-way and real property usage:~~Urbana, Champaign, and the University.

~~— i) Each party hereby agrees~~

(a) Urbana, Champaign and the University each agree that the Consortium shall have a continuing license to utilize the right-of-way and real property of ~~any 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.

~~— ii(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 for construction, but not including franchise or rental fees which would otherwise require a continuing annual fee for right-of-way usage.

~~b) Construction.~~ (c) The Consortium must disclose all encumbrances of land, easements, and rights-of-way to the Department of Commerce's National Telecommunications Information Administration ("NTIA"), which shall either enter into contracts not accept any encumbrance that interferes with each the construction, intended use, operation or maintenance of the system during its estimated useful life. When requested by NTIA, the Consortium must 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.

(e) All interests in real property obtained by the Lead Agency, or by any party, for construction, maintenance or use of the system shall be held by the acquiring party in trust for the Consortium.

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

~~1.(a)~~ All construction shall be subject to all federal and state laws applicable, ~~including all laws applicable to the project as a result of receipt of grant funds under the ARRA.~~

~~2.(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 ~~the property of~~ held by the acquiring party in trust for the Consortium.

SECTION ~~14~~13. TERMINATION BY PARTIES

~~a)13.1.~~ Withdrawal. A party may terminate its participation in this Agreement 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)13.2.~~ Failure to Budget. Notwithstanding any provision of this Agreement to the contrary, a ~~member~~party may withdraw by giving prior written notice thirty (30) days in advance to each of the other parties indicating its intent to terminate its participation in this Agreement as of the end of the month following the expiration of such thirty (30) days; ~~provided, however,~~ withdrawal under this section can only be invoked if the corporate authorities of ~~such member~~the party, or the legislature in the case of the University, have failed or refused to authorize, appropriate or budget the funds necessary to pay ~~such member's~~party's share of the costs, as such costs are determined by the Policy Committee pursuant to this Agreement. Each party will utilize its best efforts to appropriate and budget sufficient funds to meet its obligations under this Agreement in full.

~~c)13.3.~~ Default. If a party ~~to this Agreement~~ is in default of its payment obligations, the Policy Committee may so declare and terminate system services to that ~~member~~party thirty (30) days after the date of mailing of notice of default and termination of services to the defaulting party, unless the defaulting party cures the default in full prior to the expiration of the thirty (30) days set forth in the notice. ~~The notice of the default declared by the Policy Committee shall be issued by the Lead Agency.- The defaulting party shall continue to be responsible to pay its assigned share of the cost of Consortium as determined in accordance with this Agreement for the ensuing nine (9) months following the termination of system services. If the defaulting party, within the nine (9)-month period, pays all amounts due and the costs incurred by the Consortium in updating the information in relevant databases, system services to the party shall be reinstated.~~

SECTION ~~12~~14. DISSOLUTION

~~It is the intent of the~~The parties intend to maintain Consortium as a continuing operation. However, should any ~~of the parties~~party elect to withdraw its participation in and support of Consortium, then Consortium may continue in operation for the benefit of the remaining parties ~~if a minimum of two (2) of the parties elect to continue their participation.~~

SECTION ~~13~~15. EQUIPMENT; USE AND OWNERSHIP; LOAN EQUIPMENT

15.1. All equipment purchased for Consortium shall be purchased, utilized and disposed of by the Lead Agency and held in trust for Consortium use ~~-,~~ subject to the federal interest described in Section 12(d). It shall be recorded and identified by the Lead Agency as Consortium-

~~Agreement~~ property, separate from other Lead Agency property. Prior to dissolution of Consortium, all proceeds from the sale of any Consortium ~~Agreement~~ property or data shall be devoted solely to the operation of Consortium. In the case of a change in Lead Agency, all right, title, and interest to Consortium property shall be transferred with the Lead Agency function to the new Lead Agency.

15.2. Any ~~member-agency party~~ may, with approval of the Policy Committee, loan personal property or equipment to the Lead Agency for the use of Consortium. Such property shall continue to be owned by the ~~member-agency party~~, and the Lead Agency 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 Director, the property is essential to Consortium and requires replacement to ensure consistency and proper functioning of Consortium, then such loaned equipment shall be withdrawn only after providing a reasonable notice of withdrawal to the other parties.

SECTION 1416. RIGHTS OF TERMINATING PARTY TO CONSORTIUM ASSETS

A party terminating its participation in ~~this Agreement~~ the Consortium shall ~~continue to maintain its~~ have no financial interest in ~~all~~ equipment purchased for the Consortium operation prior to the date of that ~~member's party's~~ termination. Such equipment or proceeds derived from the disposition of the equipment shall continue to be used for the continued operation of Consortium until Consortium is dissolved. ~~The Lead Agency shall deliver to the terminating party a list of the equipment in which the terminating party has an interest within twenty (20) days after the effective date of termination.~~

SECTION 1517. DISPOSITION OF CONSORTIUM ASSETS UPON DISSOLUTION

Upon dissolution of Consortium, unless the parties otherwise agree:

17.1. Within 30 days after the last of the parties to agree to dissolve or when 2 or 3 parties terminate participation in the Consortium, the parties shall ~~each~~ select a person technically qualified to evaluate the assets of the Consortium and suggest a manner and method of disposition in a written report. Said person shall, within sixty (60) days after the last of the parties to select a representative, suggest the manner and method of disposition of the assets - to the parties in their written report. The person selected shall be guided, but not be restricted, by the following principles, unless otherwise required by law:

- ~~—(a.)~~ The location of the asset, if the location is important to the usefulness of the asset;
- ~~—(b.)~~ Whether an asset would be useful only when used in conjunction with another asset;
- ~~—(c.)~~ The impact on any user who is, or may be impacted, by the disposition;
- ~~—(d.)~~ The replacement value of the asset;
- ~~—(e.)~~ The population served by the asset;
- ~~—(f.)~~ Any federal regulations which govern the disposition of the assets.

17.2. If the chief administrative officer of any party is not evidenced agreement within twenty-eight (28) days after receipt of the report, by notifying the Chief Administrative Officer of the other parties in writing, the parties shall be deemed to have not agreed on the disposition by this method and proceed to ~~method 2~~ Section 17.3 below.

~~2-17.3.~~ All assets held in trust by the Lead Agency on behalf of the parties ~~to this Agreement~~ shall be sold at a public sale, ~~and the proceeds, all assets held in trust by the Lead~~

~~Agency on behalf of the parties of this Agreement will be sold at 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 parties ~~to this Agreement~~ in equal amounts.

17.4. Any one (1) or more of the parties 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 Policy Committee.~~ ~~If any one (1)a~~ party 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 right-of-way of a governmental unit, including the right-of-way of the parties, shall be required to enter into an agreement with that governmental unit for the use of the right-of-way, and there shall not be any continuing right to use the ~~right~~right-of-way of a governmental unit as an inherent aspect of the purchase.

SECTION ~~16~~18. INSURANCE

The Lead Agency shall procure and maintain, during the term of this Agreement or any extension thereof, sufficient property insurance to cover the replacement value of the Consortium equipment and all equipment loaned to Consortium, against all direct loss or damage. The cost of any such insurance shall be a cost of operating Consortium, to be borne by the parties hereto in the same manner as other costs in accordance with this Agreement. The Lead Agency 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 ~~member-agency~~party as additional insured under the liability policy procured.

SECTION ~~17~~19. LIMITATIONS OF PERSONNEL

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

SECTION ~~18~~20. AMENDMENTS

This Agreement may be amended in writing at any time by ~~mutual~~ agreement of all ~~of the-~~ parties ~~to the Agreement~~. 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 participating in the Consortium, the parties will amend this Agreement accordingly.

SECTION ~~19~~SECTION 21. ADDITIONAL NON-VOTING MEMBERS

The Policy Committee may ~~add new~~appoint non-voting governmental ~~members~~representatives to the Policy Committee if such ~~admission to membership~~appointment would assist the Committee in the conduct of its business.

SECTION ~~20~~22. EFFECTIVE DATE

This Agreement shall be effective ~~as to each member~~ on the date ~~such member executed~~signed by the last party to sign the Agreement.

~~SECTION 21.~~

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 Officer of each party and to the attorney representing each party. -The date of the notice shall be the ~~third day after the date of mailing of notice is provided by mail. If the notice is provided by personal delivery, the date of personal delivery is the date of the notice.~~receipt.

SECTION ~~22~~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 ~~agreement concerning ARRA funds~~agreements.

SECTION ~~23~~25. COUNTERPARTS

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

~~IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Agreement as of the dates below indicated.~~

CITY OF CHAMPAIGN

CITY OF URBANA

By: _____
City Manager

By: _____
Mayor

Date: _____

Date: _____

ATTEST: _____
City Clerk

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO FORM:

City Attorney

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

By: _____
Comptroller

Date: _____

ATTEST: _____
Secretary

Chancellor

Business Office

APPROVED AS TO FORM:

Campus Legal Counsel

- Attachments: 1. UC2B Proposal
- 2. Notice of Funds Availability Fact Sheet
- 3. Notice of Funds Availability

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