

ORDINANCE NO. 2014-04-044

**AN ORDINANCE APPROVING, AUTHORIZING ENTERING INTO AND EXECUTING AN AGREEMENT GRANTING INDEFEASIBLE RIGHT TO USE OPTICAL FIBER ASSETS**

(Authorizing the Entering Into and Execution of an Agreement with UC2B NFP Providing the City of Urbana the Indefeasible Right to Use Certain Optical Fiber Assets.)

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, Urbana has previously purchased and paid for the infeasible right to use certain fiber optic assets which were installed or caused to be installed in the cities of Urbana and Champaign and the University of Illinois Urbana-Champaign Campus pursuant to the aforesaid federal grant, but which rights have not heretofore been memorialized in a written instrument; and

WHEREAS, Urbana deems it necessary and appropriate to memorialize its agreement with UC2B NFP involving the formal granting of Urbana its infeasible right to use certain fiber optic assets; and

WHEREAS, the exhibit appended hereto provides for such aforesaid infeasible right of use memorialization.

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

**Section 1.**

An Agreement Granting Infeasible Right to Use Optical Fiber Assets in substantially the form attached hereto and hereby incorporated herein by reference, including attachments and exhibits thereto (hereinafter, “IRU Agreement”), 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 later being and the same being hereby authorized to attest to said execution of the IRU Agreement 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.

**AGREEMENT GRANTING INDEFEASIBLE  
RIGHT TO USE OPTICAL FIBER ASSETS**

**THIS AGREEMENT GRANTING AN INDEFEASIBLE RIGHT TO USE (“IRU”)** certain fiber assets (“Agreement”) is entered into on \_\_\_\_\_, 2014 between Urbana Champaign Big Broadband (“UC2B”), an Illinois Not-For-Profit Corporation, with offices at 713 Edgebrook Drive, Champaign, Illinois (“Grantor”), and the City of Urbana (“Urbana”) with offices at 400 S. Vine, Urbana, Illinois (“Grantee”), each a “Party” and together, the “Parties.”

**RECITALS**

1. As directed by the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”), the U.S. Department of Commerce, through its National Telecommunications and Information Administration (“NTIA”), issued a Notice of Funds Availability (“NOFA”) under the Broadband Technology Opportunities Program (“BTOP”), 74 F.R. 33104 (July 9, 2009);
2. The University of Illinois, on behalf of Grantor, applied for and received BTOP Award ID No. NT10BIX5570044 (“Award”) totaling \$22,534,776, to establish a BTOP infrastructure project known as Urbana-Champaign Big Broadband or UC2B (“Project”);
3. The University of Illinois, on behalf of Grantor, applied for and received DCEO Award ID No. 11-031002 (“State Award”) totaling \$3,500,000, to establish an “Illinois Jobs Now” fiber-optic infrastructure project known as Urbana-Champaign Big Broadband or UC2B (“Project”);
4. Grantor owns or will own optical fiber network assets constituting a fiber optic network in and around the Urbana-Champaign area (“Network”);
5. Grantee desires to acquire from Grantor, and Grantor desires to grant to Grantee an indefeasible right to use certain fiber optic strands within the Network on the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Grantor and Grantee agree as follows:

**1. Table of Exhibits Made Part of This Agreement**

- Exhibit A: Identification of Fiber Assets
- Exhibit B: Fiber Specifications, Testing and Acceptance
- Exhibit C: Compensation
- Exhibit D: UC2B Private Network Expansion Policy
- Exhibit E: UC2B Policy Statement/Resolution on Further Use

## 2. Definitions

- 2.1 “Agreement” means this Agreement, any and all Exhibits and Attachments thereto, and any Addenda to which the Parties may agree from time to time.
- 2.2 “Associated Property” means the tangible and intangible property needed for the use of Fiber Assets. Associated Property includes, but is not limited to, connecting points, support structures and all underlying rights, but expressly excludes any rights in any electronic or optronic equipment.
- 2.3 “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 2.4 “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind applicable to the placement and maintenance of Fiber Assets and Associated Property and appurtenances, whether imposed by a governmental authority or a private entity.
- 2.5 “Award” shall mean the financial assistance award issued by NTIA to Award Recipient for the Project, designated Award # NT10BIX5570044.
- 2.6 “Award Recipient” means the Board of Trustees of the University of Illinois, acting on behalf of the Intergovernmental Consortium known as Urbana Champaign Big Broadband (UC2B).
- 2.7 “Award Documentation” means documents relating to the Award which are available online at <http://www2.ntia.doc.gov/grantees/UniversityofIllinois>, or otherwise publicly accessible from NTIA, in addition to the actual grant application and Due Diligence documents filed by Award Recipient on which the Award was based.
- 2.8 “BTOP” means the Broadband Technology Opportunities Program of the NTIA.
- 2.9 “Dark Fiber” means fiber optic cable strands without electronic and/or optronic equipment and which is not "lit" or activated.

- 2.10** “Interconnection Point” means a point on one side of which is Grantee’s responsibility for ensuring its connections and paying for and installing its Equipment, termed Premise Side, and the other side of which point is the Network Side, for which Grantor is responsible as set forth in this Agreement.
- 2.11** “Federal Interest” means the federal government’s ownership interest in real or personal property, whether tangible or intangible, that is acquired or is improved, in whole or in part, with funds from the Award.
- 2.12** “Fiber Assets” means Dark Fiber owned by Grantor and funded in whole or in part with Award funds, specifically identified in Exhibit A, and for which Grantee has acquired an IRU through this Agreement.
- 2.13** “Grantee System” means the fiber optic system owned or controlled by Grantee on the Premise Side of the Interconnection Points as identified in Exhibit A, including all associated Equipment owned or controlled by Grantee on the Premise Side of the Interconnection Points and Equipment owned or controlled by Grantee on the Network Side.
- 2.14** “IRU” means the grant of an exclusive, irrevocable, indefeasible right to use specific strands of fiber for a term of years.
- 2.15** “Maintenance” means work that must be performed upon or to Fiber Assets and Associated Property to ensure the continuity of an acceptable signal transmitted through the fibers (in conformance with the manufacturer’s specifications), or to ensure the safety and reliability of the Fiber Assets. Unless otherwise agreed in writing, Maintenance shall not include any work associated with either equipment owned by an entity other than Grantor, or equipment that sends, receives, interprets or modifies a signal or signal data.
- 2.16** “Network” means the Grantor fiber optic cable network (including the fiber optic cable, cable accessories, and related connections) in and around the cities of Urbana and Champaign, Illinois, of which the Fiber Assets are a part.
- 2.17** “Network Side” means the side of the Interconnection Point on which Grantor will provide Fiber Assets in accordance with this Agreement, including the splice point applicable thereto, as depicted in Exhibit A.
- 2.18** “NTIA” means the U.S. Department of Commerce’s National Telecommunications and Information Administration.
- 2.19** “Premise Side” means the side of the Interconnection Point on which Grantee or Third Party Equipment as designated by Grantee is connected to Fiber Assets, as depicted in Exhibit A.
- 2.20** “Project” means the project outlined in the Award Documentation.

**2.21** “Route” means the physical path traversed by the Fiber Assets, as set forth in Exhibit A, accompanying maps, and related documents.

**2.22** “State Award” shall mean the financial assistance award issued by the Illinois Department of Commerce and Economic Opportunity (DCEO) to Award Recipient for the Project, designated Award # 11-031002.

### **3. Term and Termination**

This Agreement shall continue for a term of twenty (20) years from the Acceptance Date (as defined in Exhibit B), expiring at midnight on the 20<sup>th</sup> anniversary of that date (“Term”), unless terminated sooner under the provisions of this Agreement. Upon expiration of the initial Term, this Agreement may be renewed upon such terms and conditions as the Parties may agree.

#### **3.1 Termination for Cause**

This Agreement is subject to termination for cause by either Party in accordance with the procedures set forth in Section 7.

#### **3.2 Grantee Termination of IRU**

If at any time Grantee determines that any or all of the Fiber Assets have reached the end of their economically useful life, or Grantee otherwise desires not to retain any or all of the Grantee rights under this Agreement, Grantee has the right to abandon the applicable Grantee rights by written 12 -month notice to Grantor. In such case, this Agreement shall terminate as to the portion abandoned, and Grantee shall not be entitled to a refund of any of the consideration paid.

### **4. Programmatic Requirements**

#### **4.1 Federal Interest in Fiber Assets**

Pursuant to applicable BTOP and other federal requirements, the Parties acknowledge that the federal government retains an undivided equitable reversionary Federal Interest in physical and intangible assets that are directly or indirectly acquired or improved with BTOP funds. This includes the Network and Fiber Assets. As a result, the IRU granted by this Agreement is subject to such Federal Interest. If Grantee permits any other person to acquire an interest in the Fiber Assets, including, but not limited to persons that may finance the acquisition of this IRU, Grantee shall take all necessary steps to ensure that the Federal Interest is communicated to such persons and shall cause the Federal Interest to be duly recorded and preserved as part of any such transaction.



## **4.2 Subject to Federal and State Program Requirements**

This Agreement and the Parties' performance thereunder are subject to all relevant requirements of NTIA and the Department of Commerce and Economic Opportunity of the State of Illinois. Each Party shall cooperate with the other in taking such actions in a timely manner as may be necessary to fulfill these requirements.

## **5. Grant and Acceptance of IRU**

### **5.1 Grant of Right**

Upon the "Commencement Date" (namely, the date on which Grantee's right to use the Fiber Assets commences, which shall be the Acceptance Date of the last Fiber Assets to be accepted under Exhibit B), Grantor grants and conveys to Grantee for the Term the exclusive and indefeasible right of use of the Fiber Assets; and nonexclusive access to and use of the Interconnection Points and the tangible and intangible property needed for the use of the Fiber Assets and Associated Property.

### **5.2 Exclusivity**

The IRU is exclusive to Grantee. Grantor shall not grant additional IRUs or otherwise convey Grantee's continuous control of the Fiber Assets in question to any person or entity other than Grantee during the Term of this Agreement. Grantor acknowledges that Grantee may operate the Fiber Assets through a management agreement with another entity.

### **5.3 Private Network Expansion Policy**

Grantee agrees to abide by Grantor's Private Network Expansion Policy attached hereto as Exhibit D, and incorporated herein by reference, and as it may be amended from time to time in the future by the UC2B Policy Committee or its successor, provided that any such amendments shall of general applicability to Grantees of IRUs from UC2B who are similarly situated. The Grantor shall notify Grantee in writing at least 14 days prior to formal consideration of a proposed substantive amendment or addition to such resolutions or statements.

### **5.4 Title**

Grantor shall retain legal title in the Fiber Assets throughout the duration of the IRU, and nothing in this Agreement shall convey any legal title to real or personal property, nor shall it create any security interest, except for the Federal Interest addressed in Section 4. Grantee shall, however, have a beneficial and equitable interest in the Fiber Assets during the Term.

## **5.5 Fiber Specifications, Delivery and Acceptance, and Costs**

### **5.5.1 Fiber Specifications**

Attached as Exhibit B are specifications that prescribe the minimum standards that Fiber Assets must meet. Grantor may modify these technical specifications from time to time for technological, operational, or business reasons equally and neutrally applying to all holders of IRU's of the Fiber Assets, but Grantor may not require Grantee, without its consent, to accept a reduction or increase in the quantity of Fiber Assets granted pursuant to this Agreement, a reduction of the amount of transmission capacity available on such Fiber Assets, the relocation of the beginning or ending point of any route, the loss of the availability of any Interconnection Points, or the inability to use the full number of Fiber Assets granted, except during emergencies.

Exhibit B refers to certain system design specifications that describe the construction of the Fiber Assets as they relate to physical access for interconnection. If a physical interconnection initiated by Grantee is materially impeded by a failure of the Fiber Asset to meet those specifications, the Fiber Asset will be corrected to substantially meet these specifications at Grantor's cost.

### **5.5.2 Installation; Construction**

Grantor shall perform such work, if any, at its expense, as may be required for placement and provision of Fiber Assets on or in the Route described in Exhibit A. Grantor will construct the Network to the Interconnection Points as designated in Exhibit A, in accordance with the parameters, criteria, work and acceptance testing schedules set forth in Exhibit B.

### **5.5.3 Delivery and Acceptance**

Delivery of the Fiber Assets shall be deemed to occur on the Acceptance Date, as determined in the manner set forth in Exhibit B.

### **5.5.4 Costs**

Grantor shall be responsible for its own costs that may be incurred with respect to the installation, construction, and testing of the Fiber Assets and the costs of obtaining the Authorizations for which it is responsible under this Agreement. Grantee shall be responsible for the costs that may be incurred with respect to the initial and any subsequent splicing of the Fiber Assets at the Interconnection Points specified in Exhibit A, which shall be performed solely by Grantor's personnel or agents, and for all other costs associated with Grantee's use of the Fiber Assets, including the equipment necessary to light the fibers and the Authorizations for which it is responsible under this Agreement.

## **5.6 Grantee Use**

Subject to the limitations set forth in this Agreement, Grantee may use the Fiber Assets and the Associated Property as granted under this Agreement for any lawful purpose, as if Grantee were the absolute owner thereof, including the exclusive right to use the Fiber Assets in the conduct of Grantee's business and as permitted by this Agreement, provided that Grantee shall not convey any interest in the Fiber Assets to any other party without the prior written consent of Grantor, which consent shall not be unreasonably denied.

### **5.6.1 UC2B Policy Committee Resolutions and Statements**

Grantee agrees to abide by resolutions and published policy statements relating to the use of the Fiber Assets of general applicability to grantees of IRU's from UC2B who are similarly situated, authorized by the UC2B Policy Committee, or its successor including but not limited to the policy statement attached to this Agreement as Exhibit E or any future written policy changes or updates concerning use of the Network Assets by IRU holders and other entities. The Grantor shall notify Grantee in writing at least 14 days prior to consideration of a proposed substantive amendment or addition to such resolutions or statements.

### **5.6.2 Subleases**

Grantee shall not enter into a sublease or other agreement (collectively "Subleases") that permits a third party to acquire a legal or equitable interest in the Fiber Assets without first obtaining Grantor's written permission and without complying with the limitations on Subleases set forth in this Section, Exhibits D and E, and other applicable terms of this Agreement.

#### **5.6.2.1. Sublessee Maintenance Requirement**

Grantee shall cause any and all Subleases to include terms stating that the sublessee, prior to commencing any activity under the Sublease, shall enter into a maintenance agreement with Grantor. Grantor shall be a third-party beneficiary of such terms.

## **5.7 Access**

### **5.7.1 Access by Grantee**

Grantor shall allow Grantee's representatives reasonable direct ingress and egress to Grantor's property on which Grantor has placed Fiber Assets and Associated Property, in connection with this Agreement, to facilitate the purposes of this Agreement, and to permit Grantee to be on Grantor's premises at such times as may be required to install, test and repair Grantee's equipment, or to effect a cure of Grantor's breach. Grantee personnel and its agents shall, while on the premises of Grantor, comply with all industry standard rules and regulations, and other requirements communicated to Grantee by

Grantor including security requirements and, where required by government regulations as disclosed by Grantor, receipt of satisfactory governmental clearances.

### **5.7.2 Access by Grantor**

On reasonable request to, notice to and consent of Grantee as to a mutually acceptable time, which shall not be unreasonably withheld, conditioned or delayed, Grantor shall be permitted reasonable access to Fiber Assets on the property of Grantee for the sole purpose of fiber testing and repair in connection with an outage of the Network. Grantor personnel and its agents shall, while on the premises of Grantee, comply with all industry standard rules and regulations, and other regulations communicated to Grantor by Grantee including security requirements and, where required by government regulations as disclosed by Grantee, receipt of satisfactory governmental clearances.

### **5.8 Sale or Abandonment of Fiber Assets**

In the event that Grantor sells the Fiber Assets prior to the expiration of the Term, Grantee's right to use the Fiber Assets during the Term shall not be affected, and any such sale shall explicitly be made subject to the IRU granted by this Agreement. Should Grantor decide to abandon the Fiber Assets prior to the expiration of the Term, it shall reasonably cooperate with Grantee to ensure that Grantee's rights under this Agreement are preserved to the maximum extent possible.

### **5.9 Authorizations**

Grantor shall be responsible for acquiring and maintaining at its expense all applicable Authorizations relating to the physical construction, operation, and maintenance of the Fiber Assets, but Grantor shall not be responsible for acquiring or maintaining Authorizations relating to the services provided through the use of the Fiber Assets, which shall remain the sole responsibility of the entity providing such services.

### **5.10 Compliance With Applicable Laws**

The Parties shall comply with all applicable laws, regulations, rules, orders and other legal requirements in its performance of this Agreement.

### **5.11 Removal**

Promptly after the expiration or earlier termination of the IRU, or after the relocation of a portion of the Route, Grantee shall cause the removal of all electronics, equipment, and other property related to the operation of such Fiber Assets, whether such equipment is owned and operated by Grantee, Vendor(s), or Grantee(s), under Grantor's reasonable supervision. If Grantee shall not have removed all such electronics, equipment, or other property within a commercially reasonable period, not to exceed sixty (60) days, Grantor shall have the right, but not the obligation, to remove such electronics, equipment or other property, and shall then use reasonable practices to store and otherwise maintain

such property on Grantee's behalf until it may be claimed by Grantee, but Grantor shall have no obligation to store and maintain such property for a period longer than sixty (60) days from removal, after which period Grantor may dispose of such property in any manner whatsoever. Grantee shall reimburse Grantor for any and all reasonable costs and expenses incurred in removing and storing such electronics, equipment or other property. Notwithstanding the foregoing, Grantor shall have a possessory lien on Grantee property which is attached to Fiber Assets, to the extent of any unpaid money due Grantor at the time of a termination or expiration of the IRU.

## **5.12 Compensation**

Grantee shall compensate Grantor in the manner set forth in Exhibit C for the benefits that Grantee receives under this Agreement. Specifically, Grantee shall pay to Grantor the "Use Charge" set forth in Exhibit C in connection with Grantee's use of the Fiber Assets and Associated Property, payable in two equal installments with the first installment due and payable upon execution of this Agreement and the second installment due and payable upon the Acceptance Date. In addition, Grantee shall pay to Grantor a one-time "Provisioning Charge" set forth in Exhibit C, in connection with work performed by Grantor to enable Grantee's use of Fiber Assets, and Grantee shall pay to Grantor a "Splicing Charge" in connection with initial splicing work performed by Grantor.

## **6.0 Maintenance and Operations**

### **6.1 Maintenance of Fiber Assets**

The obligations of the Parties concerning Maintenance of Fiber Assets shall be as set forth in a separate Maintenance agreement, the execution of which by the Parties shall be a condition precedent to the operation of this Agreement.

### **6.2 No Grantor Responsibility for Use of Fiber Assets**

Unless otherwise agreed by the Parties, Grantor shall have no responsibility for the operation, activation, or transmission of information or data through the Fiber Assets. The Parties understand that activation and ongoing operation of the Fiber Assets shall be undertaken by Grantee, or other entities in a manner that complies with all legal requirements and is not in conflict with any provision of this Agreement.

## **7.0 Remedies**

### **7.1 Default and Cure**

A Default under this Agreement shall occur if (a) a Party fails to perform, in any material respect, any of its obligations set forth in this Agreement, (b) such failure is not excused by any provision of this Agreement, and (c) such failure continues un-remedied for a period of twenty-eight (28) days following receipt of written notice from the non-

breaching Party. If the breach by its nature cannot be cured within twenty-eight (28) days and the breaching Party within that time has commenced its cure, there shall be no Default as long as the Party diligently continues such cure to completion.

## **7.2 Remedies**

Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to terminate this Agreement, including the IRU for which it provides, and to pursue any and all available legal or equitable remedies against the defaulting Party. The non-breaching Party may pursue such remedies simultaneously or consecutively, at its discretion.

## **8.0 Availability of Grant Funds**

This Agreement and IRU are contingent upon NTIA's and DCEO's payment of the full amount of the Award and State Award with respect to Grantor's Fiber Assets. If NTIA or DCEO fails to make such payments, Grantor shall have the right to rescind this Agreement.

## **9.0 Confidentiality**

### **9.1 In General.**

If either Party provides or has provided confidential or proprietary information ("Confidential Information") designated as such to the other Party, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. This Agreement and its terms shall not be deemed the Confidential Information of both Parties. All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing Party and shall be used by the receiving Party only for the intended purposes set forth in this Agreement. Except as otherwise required by law, after the receiving Party's need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writings reflecting Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably necessary to perform under this Agreement, or as otherwise may be permitted in writing by the disclosing Party.

### **9.2 Exceptions**

The foregoing provisions of this section shall not apply to (i) any required disclosures to the NTIA or other government authority, (ii) disclosures required under the Freedom of Information Act and applicable state or local government open records laws, (iii) any

Confidential Information or any provisions of this Agreement which becomes publicly available, other than through the Party claiming this exception, or is required to be disclosed by law, (iv) Confidential Information that is independently developed by the receiving Party without breach of any obligation of confidentiality; (v) Confidential Information that becomes available to the Party claiming this exception without restriction from an unrelated third party, or becomes relevant to the settlement of any dispute or enforcement or defense of either Party's rights under this Agreement, provided that appropriate protective measures shall be taken to preserve the confidentiality of such Confidential Information to the extent permissible in accordance with such settlement or enforcement process; (vi) disclosures of this Agreement to any proposed permitted assignee provided that each such proposed assignee agrees to be bound by confidentiality obligations no less stringent than those set forth herein; or (vii) disclosures by either Party of the physical route of Fiber Assets for marketing and sales-related purposes.

### **9.3 Intellectual Property**

Nothing in this Agreement shall be construed as a grant of any right or license under any copyrights, inventions or patents now or later owned or controlled by Grantee or Grantor, and nothing in this Agreement shall be construed as granting any right, title or interest in the other Party's trademarks, trade names, service marks or other intellectual property rights. The Parties agree not to use the trademarks, trade names, or service marks of the other party without prior written permission.

### **9.4 Survival**

The confidentiality provisions in this section shall survive expiration or termination of this Agreement.

## **10.0 Miscellaneous**

### **10.1 Assignment**

Grantee shall not assign its rights in this Agreement without the prior written consent of Grantor. Nothing in this Agreement shall limit Grantor's right to assign its rights. In the event of an assignment by either Party, the assignee must assume all of the rights and obligations of the assigning Party.

### **10.2 Notices**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by facsimile transmission with confirmation of delivery, electronic mail with confirmation of delivery receipt, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of the transmission and receipt of facsimile or electronic mail transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

If to Grantor:

Contact: Executive Director  
Mailing Address: 713 Edgebrook Drive, Champaign, IL 61820  
Phone: (217) 366-8222  
Fax:  
Email: [bill@uc2b.net](mailto:bill@uc2b.net)

With a copy to:

Contact: David Krchak, Attorney  
Mailing Address: 30 E. Main, Suite 500, Champaign, IL 61820  
Phone: (217) 351-1500  
Fax: (217) 351-2017  
Email: [krchak@tmh-law.com](mailto:krchak@tmh-law.com)

If to Grantee:

Contact: Mayor  
Mailing Address: 400 S. Vine Street, Urbana, IL 61801  
Phone: (217) 384-2456  
Fax:  
Email: [lprussing@urbanainllinois.us](mailto:lprussing@urbanainllinois.us)

With a copy to:

James L. Simon, City Attorney  
City of Urbana  
400 S. Vine Street  
Urbana, IL 61801  
Phone: (217) 384-2464  
Fax: (217) 384-2460  
Email: [jlsimon@urbanainllinois.us](mailto:jlsimon@urbanainllinois.us)

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section.

### **10.3 Indemnification**

To the extent permitted by law, each Party, on behalf of itself and its affiliates, directors, officers, employees, agents, successors, and assigns (“Indemnitor”) agrees to indemnify, defend, protect and hold the other Party and its directors, officers, directors, employees, agents, successors, and assigns (“Indemnified Persons”) harmless from and against any liability arising out of any claims, suits, actions, damages, claims, losses, fines, judgments, costs and expenses (including reasonable attorneys’, accountants’, experts’ fees) of any kind or character (collectively “Claims”) incurred by any Indemnified Persons (a) because of the death of any person, or any injuries or damage received or



sustained by any persons or property, which in whole or in part arise on account of the negligent acts or omissions of the Indemnitor in the performance or non-performance of its obligations or exercise of its rights under this Agreement, including any material violation by Indemnitor of any law or permit applicable thereto; (b) under the Workers' Compensation laws asserted by any other person providing goods or services for or on behalf of any of the foregoing in connection with this Agreement; or (c) arising out of, caused by, related to, or based upon, a contractual or other relationship between such claiming party and the Indemnitor, as it relates to Fiber Assets.

### **10.3.1 Additional Indemnity by Grantee**

Additionally, Grantee agrees to indemnify, defend, protect and hold Grantor and its directors, officers, directors, employees, agents, successors, and assigns harmless from any Claims arising out of or resulting (a) from use or operation of the Fiber Assets by Grantee or its agents, or (b) from the provision or interruption of any connectivity, services, or content through the Fiber Assets, or (c) from the use of the Fiber Assets by Grantee's or its agents' Grantees.

### **10.3.2 Exceptions**

An Indemnitor's obligations under this section shall not apply to any Claims to the extent caused by the negligence, intentional acts or omissions, willful misconduct, or reckless action by a party claiming indemnification.

## **10.4 LIMITATION OF LIABILITY.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION AS APPLICABLE, ECONOMIC LOSS OR LOST BUSINESS OR PROFITS, INTERRUPTIONS OF SERVICE, OR ANY DELAY, ERROR OR LOSS OF DATA OR INFORMATION, ARISING IN ANY MANNER OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT AND GRANTOR'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), ALL CLAIMS FOR WHICH ARE HEREBY SPECIFICALLY WAIVED BY GRANTEE.

## **10.5 Representations and Warranties; Disclaimers**

By execution of this Agreement, each Party represents and warrants to the other that: (a) the Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization; (b) the Party has full right and authority to enter into and perform this Agreement in accordance with the terms hereof and thereof; (c) the Party's execution, delivery, and performance of this Agreement will not conflict with, violate or

result in a breach of (i) any law, regulation, order, writ, injunction, decree, determination or award of any governmental authority or any arbitrator, applicable to such Party, (ii) any of the terms, conditions or provisions of its charter, bylaws, or other governing documents of such Party, (iii) any material agreement to which it is a party, or (iv) any instrument to which such Party is or may be bound or to which any of its material properties or assets is subject; (d) the Party's execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action; (e) that the signatories for such Party are authorized to sign this Agreement; (f) there are no actions, suits, proceedings or investigations pending, or to the knowledge of the Party, threatened against or affecting the Party of any of its properties, assets or businesses in any court or before or by any governmental authority that could, if adversely determined, reasonably be expected to have a material adverse effect on the Party's ability to perform its obligations under this Agreement; (g) the Party has not received any currently effective notice of any material default; and (h) the Party has not previously been and is not currently, debarred, suspended, or proposed for debarment, declared ineligible, voluntarily excluded from transactions by any federal or state department or agency, or subject to any inquiry, investigation, or proceeding regarding the foregoing.

#### **10.6 General Disclaimer**

GENERAL DISCLAIMER. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, GRANTOR MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF ITS FIBERS, OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

#### **10.7 Taxes**

Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.

#### **10.8 Insurance**

During the term of this Agreement and IRU, each Party shall maintain a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Illinois, covering use and activity contemplated by this Agreement with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, with Five Million Dollars (\$5,000,000.00) umbrella coverage. Each Party shall name the other Party, including its officers, employees, and agents, as Additional Insureds for the said purpose and use of this Agreement. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Illinois where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to either Party upon the other Party's request.

## **10.9 Relationship of the Parties**

### **10.9.1 No Joint Venture**

This Agreement is not intended to create, nor shall it be construed to create, any partnership, joint venture, or employment relationship between Grantor and Grantee, and neither Party shall be liable for the payment or performance of any debt, obligations, or liabilities of the other Party, unless expressly assumed in writing. Each Party covenants that it shall not act in a manner that may be construed to be inconsistent with the foregoing nor otherwise act or purport to act on behalf of the other Party except as may be expressly authorized in writing by the other Party. Grantor and Grantee, in performing any of their obligations hereunder, shall be independent contractors or independent Parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

### **10.9.2 No Subrecipient**

This Agreement is not intended, to create nor shall it be construed to create, a subrecipient relationship between Grantor and Grantee, as it relates to the Award or State Award.

## **10.10 Force Majeure**

### **10.10.1 Force Majeure Events**

Notwithstanding any other provision of this Agreement, neither Grantor nor Grantee shall be liable for any failure or delay in performing its obligations, or for any loss or damage, resulting from any event or circumstance beyond the reasonable control of the Party, including but not limited to an earthquake, hurricane, fire, flood, lightning, sinkhole or other forces of nature, acts of war, terrorism or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes (“Force Majeure Event”), *provided* that the obligation of the Grantee to pay the Grantor as provided in this Agreement shall be not be diminished by a Force Majeure Event.

### **10.10.2 Response to Force Majeure**

A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party and shall make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance.

### **10.10.3 Suspension Pending Force Majeure**

The deadline by when a Party must perform an obligation under this Agreement, other than payment of money, shall be postponed by the period of time by which the Party’s

ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

**10.11 Applicable Law**

This Agreement will be governed and construed in accordance with the laws of the State of Illinois, without regard to any conflicts of law provisions that would affix jurisdiction in another State, and any dispute arising out of this Agreement shall be filed in a court of competent jurisdiction in Champaign County, Illinois.

**10.12 Headings**

Headings and captions of this Agreement’s sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Agreement’s terms or be used to interpret or assist in the construction of this Agreement.

**10.13 Waiver**

Any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at the time.

**10.14 Entire Agreement; Amendments**

This Agreement and the Exhibits constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments or representations, whether oral or written, concerning the subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way except by a writing signed by the authorized representatives of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Grantor:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Grantee:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of Illinois        )  
                                  ) ss.  
County of Champaign)

State of Illinois        )  
                                  ) ss.  
County of Champaign)

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **IDENTIFICATION OF FIBER ASSETS**

Grantor grants to Grantee, and Grantee accepts from Grantor, an IRU as described in Section 5 of this Agreement of Fiber Assets specifically identified in this Exhibit. Updates to Fiber Asset identification information will be provided by Grantor to Grantee within ninety (90) days of completion of any material change, including relocation, affecting the Fiber Assets. If Grantee desires additional information concerning the Fiber Assets or route, the Parties shall cooperate to accommodate such request.

#### **1. Route and Quantity**

The fiber optic strands and associated property which is the subject of this IRU includes approximately 830.16 strand-miles of fiber (route miles x the number of fiber strands) located within the Route ("Fiber Assets"). The actual length of the Route, used for invoicing purposes, will be determined and via an Optical Time Domain Reflectometer (OTDR) test, and provided to Grantee prior to the Acceptance Date.

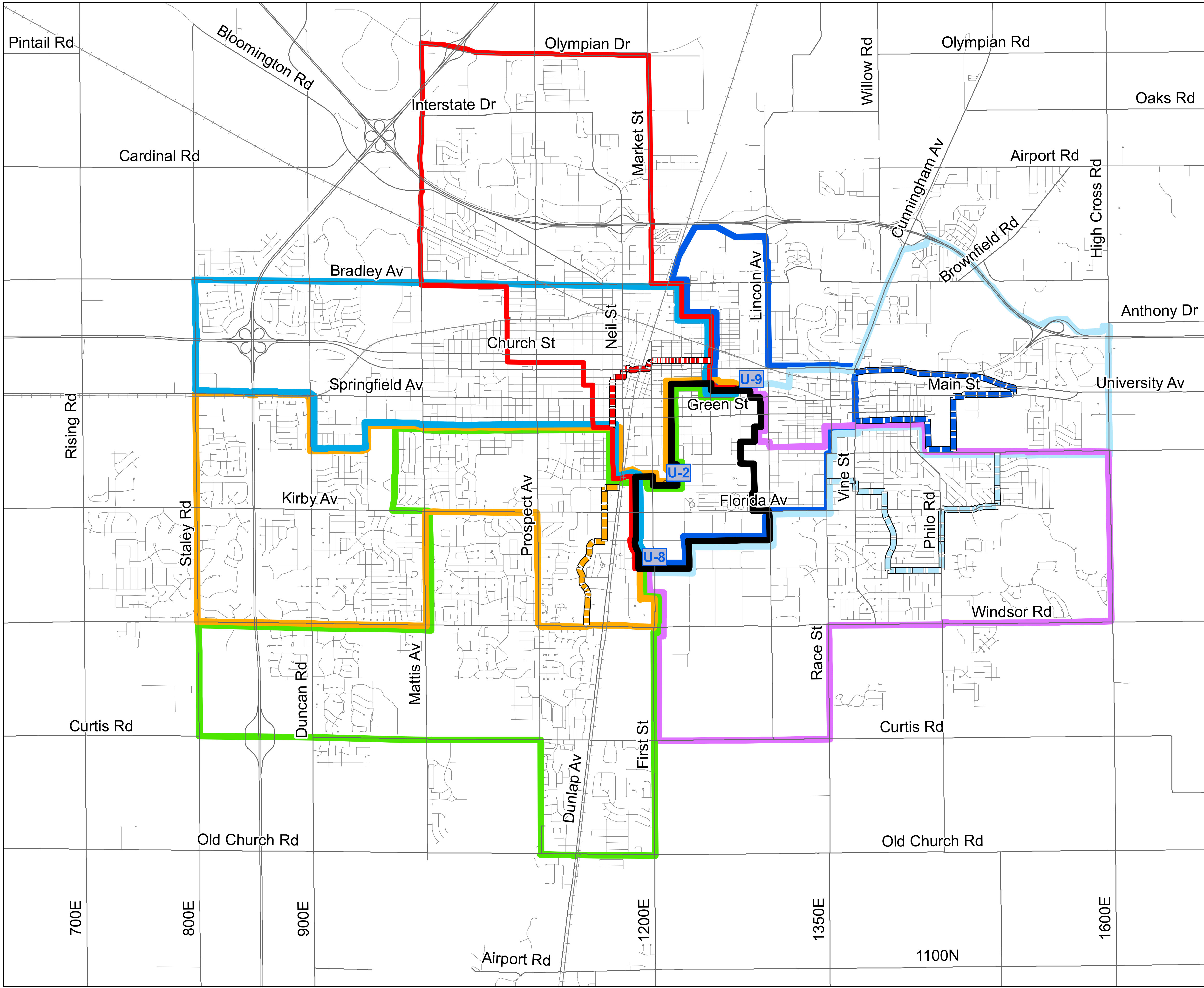
##### **1.1 Route Description**

The Route shall be as follows:

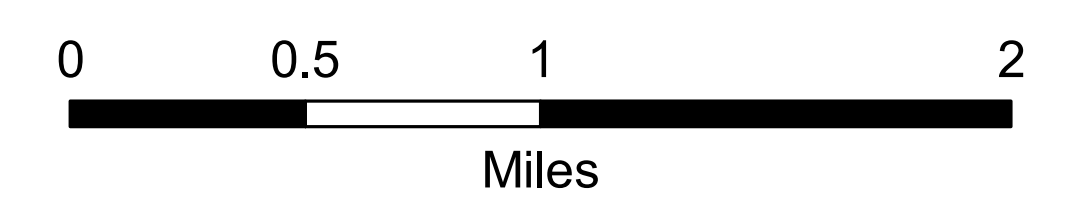
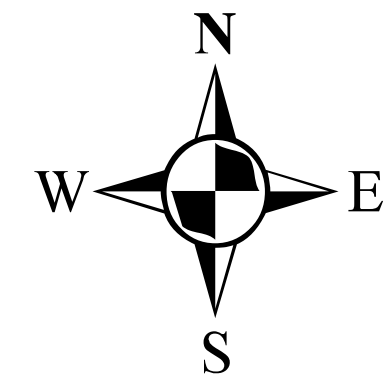
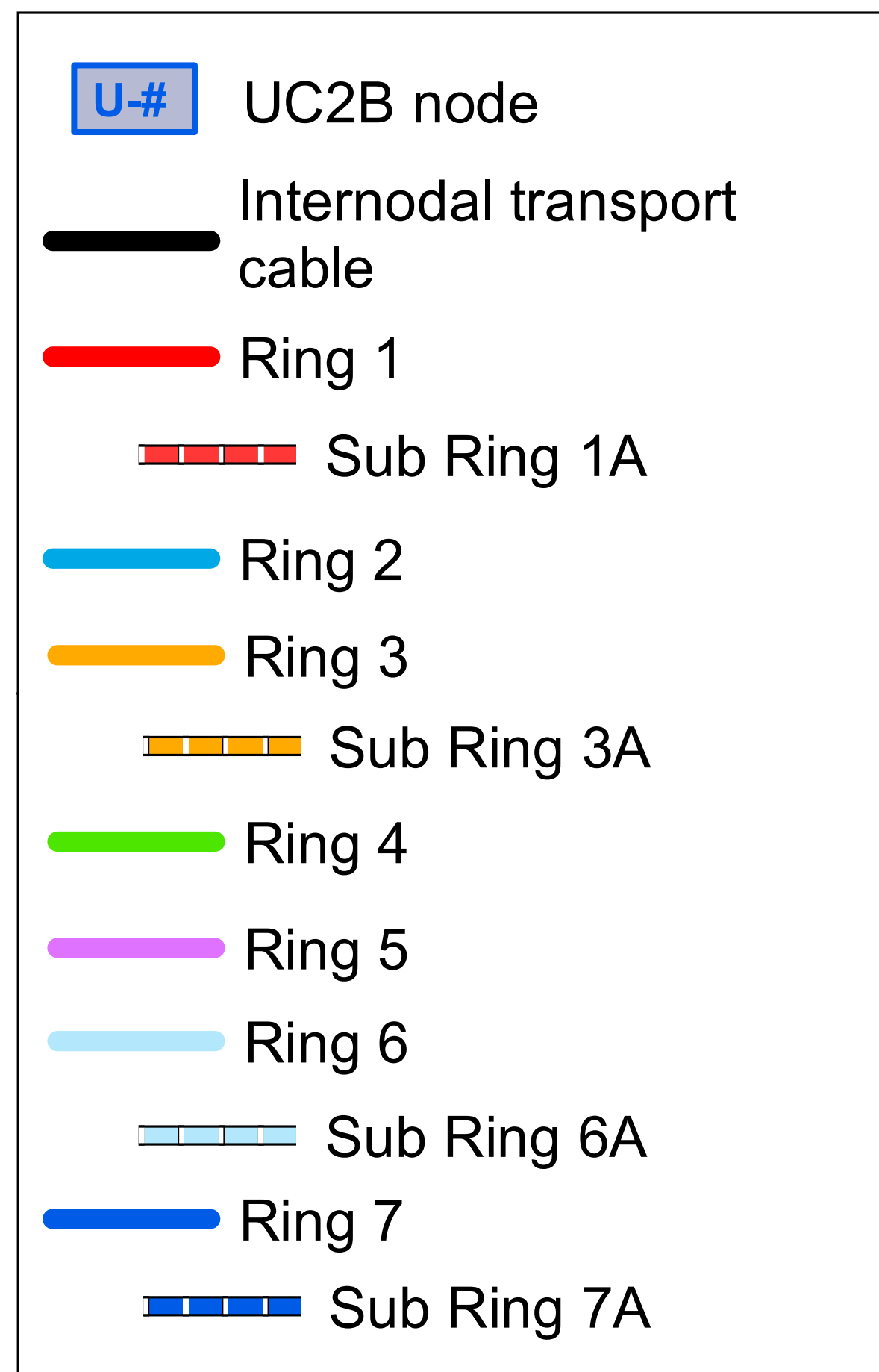
Fiber strands and lateral locations as described on the following charts on the routes shown on the following maps.

#### **2. Interconnection Points**

Interconnection points as shown on the following maps.



## Backbone Rings & Sub Rings





**Fiber Customer Requirements Worksheet**

Customer:  
**City of Urbana & District 116 Schools**

ROW Discount  
50%

Ring #	Color	Name	Length in Miles	IRU Cost Per Strand	Total # of Strands on Ring or Sub-Ring	Total District 116 Strands	Total City of Urbana Strands	Number of Billed Strands	Total One-Time IRU Cost	Annual Ring Maintenance Charge
1	Red	#1 - Far North Champaign	17.38	\$26,070	4	0	4	2	\$26,070	\$2,607
1A	Dashed Red	#1A - Ring #1 Sub-Ring A	8.18	\$12,274	0	0	0	0	\$0	\$0
1B	Dashed Red	#1 - Ring #1 Sub-Ring B	14.53	\$21,793	0	0	0	0	\$0	\$0
2	Medium Blue	#2 - Near North Champaign	17.59	\$26,379	0	0	0	0	\$0	\$0
3	Orange	#3 - Middle Champaign	20.86	\$31,285	0	0	0	0	\$0	\$0
3A	Dashed Orange	#3A - Ring #3 Sub-Ring	9.37	\$14,057	0	0	0	0	\$0	\$0
4	Green	#4 - South Champaign & Savoy	22.88	\$34,318	0	0	0	0	\$0	\$0
5	Purple	#5 - South Urbana	17.14	\$25,709	8	4	4	2	\$25,709	\$2,571
6	Cyan	#6 Middle Urbana	15.98	\$23,972	10	4	6	4	\$47,944	\$2,397
6A	Dashed Cyan	#6A - Ring #6 Sub-Ring	16.49	\$24,734	10	4	6	4	\$49,468	\$628
7	Dark Blue	#7 North Urbana	13.12	\$19,673	10	2	8	6	\$59,019	\$1,968
7A	Dashed Dark Blue	#7A - Ring #7 Sub-Ring	16.76	\$25,141	10	2	8	6	\$75,423	\$867

Total One-Time Cost for IRU: \$283,633.00 **Agreed to in 2009**  
 Total One-Time Cost for Fiber Laterals to Buildings (from Exhibit A.3): \$87,500.00

**Total One Time Cost:** **\$371,133.00** **\$345,675.00**

Annual Charge for Fiber Ring Maintenance: \$10,170.00  
 Annual Charge for Fiber Lateral Maintenance (from Exhibit A.3): \$6,000  
**Total Annual Maintenance Charge: \$16,170.00**





Locations for Lateral Construction to the Fiber Backbone

Customer:  
City of Urbana & District 116

UC2B Map #	Location	Address	City	UC2B Ring #	Value of Single Building Entrances Requested	Value of Dual Redundant Building Entrances Requested
4	City of Urbana - Fire Department (Main Station)	400 S Vine St	Urbana	7		0.25
4	City of Urbana - City Hall	400 S Vine St	Urbana	7	0	
4	City of Urbana - Police Department	400 S Vine St	Urbana	7	0	
5	City of Urbana - Public Works Department	706 Glover Av	Urbana	6	0	
27	City of Urbana - Fire Department (North Station)	1407 N Lincoln Av	Urbana	7	0.5	
28	City of Urbana - Fire Department (South Station)	2103 Philo Rd	Urbana	6A	0	
79	The Urbana Free Library	210 W Green St	Urbana	7	0	
219	Cunningham Township	205 W Green St	Urbana	7	0	
228	City of Urbana - Civic Center	108 E Water St	Urbana	7	0	
481	Landscape Recycling	East University	Urbana	7A	1	
482	City of Urbana - parking deck	111 E Main St	Urbana	7	0	
42	District 116 Central Office	205 N Race St	Urbana	7		
45	Urbana High School	1002 S Race St	Urbana	6		
46	Urbana Junior High	1201 S Vine St	Urbana	6		
68	King School	1108 W Fairview Av	Urbana	7	0.5	
69	Leal School	312 W Oregon St	Urbana	6		
70	District 116 Bus Barn	812 S Glover Av	Urbana	6		
71	Prairie School	2102 E Washington St	Urbana	6		
72	Thomas Paine School	1801 James Cherry Dr	Urbana	6A		
73	Washington School	1102 N Broadway Av	Urbana	7	0.5	
74	Wiley School	1602 S Anderson St	Urbana	6A		
75	Yankee Ridge School	2102 S Anderson S	Urbana	6A		
254	Urbana Adult Ed	211 N Race St	Urbana	7		
<b>Total Number of Single Entrances for IRU:</b>					<b>2.5</b>	
<b>Total Number of Dual Redundant Entrances for IRU:</b>						<b>0.25</b>
<b>Total Number of Laterals for Annual Maintenance Charge:</b>						<b>20</b>



Ring Lengths, IRU Costs and Maintenance Charges

<b>One-Time IRU Cost per Strand per Mile:</b>	<b>\$1,500</b>
<b>One-Time IRU Cost per Single Lateral:</b>	<b>\$30,000</b>
<b>One-Time Cost per Dual Redundant Lateral:</b>	<b>\$50,000</b>
<b>Annual Maintenance Charge Per Route Mile of Ring:</b>	<b>\$300</b>
<b>Annual Maintenance Charge Per Lateral Build to a Building</b>	<b>\$600</b>

Ring #	Color on UC2B Map	Name	Estimated Length in Feet	Length in Miles	Sub-Ring for maintenance	Length in Kilometers	IRU Cost Per Fiber Strand	Annual Maintenance Per Ring
1	Red	#1 - Far North Champaign	91,765	17.380		27.97	\$26,070	\$5,214
1A	Dashed Red	#1A - Ring #1 Sub-Ring A	43,206	8.183	2.397	13.17	\$12,274	\$719
1B	Dashed Red	#1A - Ring #1 Sub-Ring B	76,712	14.529	4.247	23.38	\$21,793	\$1,274
2	Medium Blue	#2 - Near North Champaign	92,853	17.586		28.30	\$26,379	\$5,276
3	Orange	#3 - Middle Champaign	110,123	20.857		33.57	\$31,285	\$6,257
3A	Dashed Orange	#3A - Ring #3 Sub-Ring	49,479	9.371	2.200	15.08	\$14,057	\$660
4	Green	#4 - South Champaign & Savoy	120,801	22.879		36.82	\$34,318	\$6,864
5	Purple	#5 - South Urbana	90,496	17.139		27.58	\$25,709	\$5,142
6	Cyan	#6 Middle Urbana	84,383	15.982		25.72	\$23,972	\$4,794
6A	Dashed Cyan	#6A - Ring #6 Sub-Ring	87,064	16.489	4.184	26.54	\$24,734	\$1,255
7	Dark Blue	#7 North Urbana	69,249	13.115		21.11	\$19,673	\$3,935
7A	Dashed Dark Blue	#7A - Ring #7 Sub-Ring	88,497	16.761	5.781	26.97	\$25,141	\$1,734
			1,004,628	190.270		306.21		

## **EXHIBIT B**

### **FIBER SPECIFICATIONS, TESTING AND ACCEPTANCE**

#### **1.0 Fiber Optic Cable Parameters**

Fiber optic cable parameters (“Parameters”) include specifications and engineering and design requirements for the Network, including Fiber Assets, Associated Property and related connections. All Parameters shall remain consistent with then-current industry standards for the type of fiber optic cable and Associated Property comprising the Network, including, but not limited to, the splicing and testing parameters set forth herein. Either Party may provide to the other Party a request for any material modifications to these specifications as may be necessary or appropriate in any particular instance for the other Party’s approval, which shall not be unreasonably withheld, conditioned or delayed.

#### **1.1 Splicing Parameters**

The Grantor, or a contractor acting on behalf of the Grantor shall following the following splicing parameters, or if Grantee performs splicing with the permission of the Grantor, the Grantee shall follow the following splicing parameters:

- (a) The cable will be stripped back until the bare fiber is exposed. Caution will be used to prevent the fibers from being damaged during this process. Each fiber will be cleaved to ensure that a near-perfect 90-degree angle, +1 degree, is achieved. Splicing personnel will adjust their cleaving tools regularly to allow for maximum productivity.
- (b) The fiber ends will then be cleaned and fused together.
- (c) After the fibers are fused together, they will be physically secured in a splice organizer tray. The buffer tubes and splice trays will be clearly labeled to facilitate identifying fibers by number, color assignments, and direction. The splice organizer trays will be stacked together and secured to the internal frame of the splice enclosure.
- (d) The cable strength members and the inner sheaths will be secured to the internal frame of the splice closure. The completed splice closure will be sealed to ensure that the closure is water-tight.
- (e) The grounding will be completed by attaching the closure ground lugs to the specified grounding scheme.
- (f) Once all splices in a span are complete, bi-directional OTDR traces will be taken at 1550 nm, the results of which will be recorded and which will be made available to Grantee upon request.

## 1.2 Testing Parameters

During mechanical and environmental testing, any evidence of cracking, splitting or other failure of the fiber optic sheath components when examined under 5X magnification will be assumed to result in failure of the proposed test requirements. In addition, no fiber shall lose optical continuity because of the test.

The maximum splice loss average per fiber span is 0.2 dB. All traces shall be reviewed to ensure this specification is met.

When all splicing and loss measurements have been completed on a span (a cable system between two sites), connector-to-connector measurements will be made. These tests result in a characterization of entire span-loss figures. This data will be recorded, retained, and a copy thereof delivered to Grantee on CD.

## 2. Acceptance

### 2.1 Acceptance Test

Grantor shall conduct a test (“Acceptance Test”) of the Fiber Assets to determine that the Fiber Assets meet or exceed the Parameters. Grantee shall be notified not less than five (5) days in advance of the Acceptance Test. If the Fiber Assets fail to satisfy the Parameters, Grantor shall use reasonable efforts to promptly correct any such failure, whereupon Grantor shall conduct another Acceptance Test of the Fiber Assets in accordance with the Parameters. Grantor shall diligently proceed with Acceptance Tests and correction until the tests of the Fiber Assets demonstrate that they meet the Parameters. Thereupon, Grantor shall deliver to Grantee the written test reports demonstrating that the Fiber Assets meet the Parameters. The procedure set forth in this paragraph shall be repeated as necessary until Grantee accepts or is deemed to accept, pursuant to the following paragraph, all Fiber Assets.

### 2.2 Acceptance by Grantee

Grantee shall be deemed to have accepted the Fiber Assets on the date on which the following occur with respect to the Fiber Assets, said date referred to as the “**Acceptance Date**”:

- i. satisfaction of the Acceptance Test for the Fiber Assets and failure of Grantee to object to the results within ten (10) days of the date of receipt of the written test reports; or
- ii. written acknowledgment by Grantee of acceptance of the Fiber Assets.
- iii. Use of Fiber by the Grantee – It is hereby acknowledged by the Grantee that it has accepted the fiber on the date of execution of this Agreement.

**EXHIBIT C**  
**COMPENSATION**

In consideration of Grantor's obligations set forth in this Agreement, Grantee agrees the pay to Grantor compensation as set forth in this Exhibit.

**1. Amount**

**1.1 IRU Use Charge**

Grantee will pay to Grantor a Use Charge in the amount of \$371,133.00 which payment shall be due and payable upon the date this Agreement is first executed by both parties, provided however, Grantee had heretofore paid \$345,675.00 which Grantor acknowledges as full payment hereunder due to the early payment as part of the grant process.

**1.2 Non-recurring Provisioning Charge**

Grantee will pay to Grantor a one-time provisioning charge of \$0.00 which payment shall be due within thirty (30) days of Grantee's receipt of an invoice from Grantor.

**1.3 Splicing Charge**

Grantee and Grantor acknowledge that any and all initial splicing of Fiber Assets at Grantee Interconnection Points which have been undertaken at Grantee's request or for the benefit of Grantee prior to the execution of the agreement to which this Exhibit C is appended have been paid in full. Grantee shall pay to Grantor or Grantor's designee the cost of any additional splicing of Fiber Assets at Grantee Interconnection Points which Grantee requests following the execution of the agreement to which this Exhibit C is appended and the charge for such cost shall be the actual cost to Grantor plus ten percent (10%). Payment by Grantee of such cost shall be due within twenty-eight (28) days of Grantee's receipt of an invoice for such cost from Grantor or Grantor's designee.

**2.0 Invoice and Payment Terms**

Payment of each invoice is due within twenty-eight (28) days of Grantee's receipt of such invoice.

**2.1 Invoicing and Payment Addresses**

Grantor will send invoices payable by Grantee to the following address:

City of Urbana  
Mayor's Office  
400 S. Vine Street  
Urbana, IL 61801

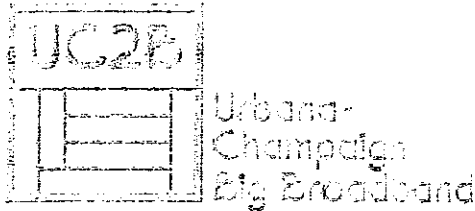
Grantee will send payments due Grantor to the following address:

Urbana Champaign Big Broadband, an Illinois Not-for-Profit Corporation  
713 Edgebrook Drive  
Champaign, IL 61820

## 2.2 Late Payments

If payment is not received by Grantor from Grantee within fifteen (15) days of when due and payable under this Agreement, then a late fee of the lesser of (i) five percent (5%) per month or (ii) the maximum percentage permitted by law may be assessed on the delinquent balance not paid by the due date. Any such late fee shall be paid within thirty (30) days of receipt of an invoice therefor and shall cover the period commencing with the day on which such payment was due and ending with the day on which such payment is actually received, both inclusive. The payment of any such late fee shall not be deemed an extension of time for payment or a waiver of any failure to remit any other payment due under this Agreement as and when such payment is due. Notwithstanding the foregoing, failure by Grantee to pay an invoice within fifteen (15) days of when due and payable under this Agreement shall be deemed a Default, in which case Grantor may pursue the remedies for breach set forth in Section 7 of this Agreement, in addition to any other rights and remedies available to Grantor under applicable law.

## EXHIBIT D



### Policy for Private Expansion of UC2B for Business Services

Several private entities have expressed interest in connecting new or existing lateral fiber infrastructure to UC2B backbone rings in order leverage those rings to provide fiber-based services to businesses.

As UC2B does not currently have a plan or funding for the expansion of fiber-to-the-premise to businesses located outside the grant-funded FTTP areas, the Policy Board should consider adopting policies that encourage private entities to invest their capital to extend the UC2B network by building additional lateral cables and serve more businesses.

This expansion should always be under certain conditions that promote an open-access network as well as minimize the operational overhead for UC2B and the local municipalities in managing additional infrastructure in their rights-of-way.

For the purposes of this discussion, a "lateral cable" will be defined as a fiber cable connecting to a UC2B backbone ring, or to an existing lateral cable and terminating in a manhole or handhole in the public right of way. By this definition "lateral cables" exist only in the city rights-of-way.

A "drop cable" is a cable that connects to a lateral cable in the city right-of-way in a manhole or hand hole and then goes primarily on private property or in a utility easement on private property to connect to a building. While a few feet of a drop cable may be in the city right-of-way it should be thought of as a cable that is located on private property.

There are locations where a UC2B ring cable, manhole and splice case are in the right-of-way in front of a location desiring UC2B service. In those instances, the drop cable would connect directly to the ring cable and there would be no lateral cable in that connection.

It is common for the general term "laterals" to be used to describe both "lateral cables" and "drop cables" – singularly or in combination. This narrative will attempt to make a clear distinction between the two where that distinction is relevant.

The suggested policy that follows would only apply to new lateral and drop cables connecting from a UC2B ring cable (or from an existing UC2B lateral fiber cable) that are built to commercial locations. Only the specific new lateral cable and drop cable infrastructure being donated would be subject to the donation policy. (In some cases there could also be splice cases and handholes or manholes involved on the lateral cable in addition to the cables themselves.)

This policy does not affect existing backbone or lateral fiber infrastructure that a provider may already have in place prior to signing IRU or donation agreements with UC2B. In the event that the organization donating the fiber and UC2B differ on the definition of some portion of that donor's infrastructure, both parties agree to make a good faith effort to come to a compromise that is acceptable to both parties.

Any other fiber infrastructure that the donating entity may have would not be affected. Fiber that interconnects a provider's network to UC2B's network would not be affected. An ISP's main fiber connection to the UC2B network core would not be affected. That other fiber infrastructure would remain the sole property of the provider, who remains 100% responsible for its maintenance.

There are a series of core principles that the suggested policy promotes:

- A. All lateral fiber infrastructure in the cities' rights-of-way that connects to the UC2B network shall be operated as an open-access network by UC2B.
- B. The City of Urbana and the City of Champaign through their Public Works Departments and the University of Illinois through its Utilities department have expressed a strong preference for having all lateral fiber infrastructure in their rights-of-way that connects to UC2B fiber to be owned, managed and maintained by UC2B.

The fewer organizations that each city and the University have to track and coordinate with concerning infrastructure in their rights-of-way, the less burden it will be on the cities and University. While the cities cannot limit who can build fiber infrastructure in its rights-of-way, UC2B can set consistent conditions that must be met before connecting private lateral fiber cables to UC2B fiber cables.

- C. UC2B should have total ownership and maintenance responsibility for all lateral fiber infrastructure in the local rights-of-way that connects to its fiber network.
- D. Assuming ownership and maintenance responsibility for the lateral fiber infrastructure that is "donated", should not put a financial strain on UC2B, but rather support UC2B's sustainability. Donating entities will pay recurring maintenance charges for the donated fiber, and UC2B will keep a small



portion of the one-time funds paid. No lateral fiber donation in Champaign, Urbana or Savoy will be rejected because of its potential maintenance costs.

- E. Any donated lateral fiber infrastructure must be located within the city limits of the City of Urbana, the City of Champaign the Village of Savoy, or on the property of the University of Illinois. UC2B has no interest in directly maintaining any donated infrastructure outside of these areas. The value of the donated fiber infrastructure will be determined by the donating party and UC2B on a case-by-case basis and jointly agreed to in the donation agreement.

The elements of a policy for "donated" lateral fiber infrastructure in commercial areas:

1. Before an entity can connect its lateral fiber infrastructure to a UC2B backbone ring or to an existing lateral cable, that entity must first:
  - A.) Execute an IRU or lease agreement with UC2B for the UC2B backbone fiber ring to which the "donated" lateral fiber infrastructure will connect. Each UC2B ring desired must be leased in its entirety.
  - B.) ) Execute a donation agreement that details the physical location of the lateral fiber infrastructure being donated and the original cost of installing the donated lateral fiber infrastructure on a per lateral cable basis (with each of its associated drop cables.)
  - C.) Execute a fiber maintenance agreement for the UC2B ring fiber that is being leased, and also for the lateral fiber infrastructure being donated.
2. The fiber maintenance contract for the ring and donated lateral fiber infrastructure shall be at the then-current UC2B fiber maintenance rates. UC2B will incur all expenses for J.U.L.I.E. locates and fiber infrastructure repairs and routine maintenance for the donated lateral fiber infrastructure. Costs for relocating fiber infrastructure in the event of road construction or some other planned event are typically shared by the "users" of the fiber infrastructure on a prorated basis.
3. Any lateral fiber infrastructure that is donated to UC2B must be documented in full, be in excellent operational condition, be built to UC2B standards, and be clear of any ownership encumbrances. Manholes or conduits that are shared with multiple entities are not good candidates for UC2B ownership and maintenance. A lateral fiber cable that already has multiple owners is not a good candidate for UC2B ownership and maintenance. A lateral fiber cable that has more than 10% of its strands fail OTDR testing is not a good candidate for UC2B ownership and maintenance. All donated lateral fiber cables must be accompanied by individual end-to-end OTDR reports for each strand, which will be verified by UC2B before acceptance.

4. An entity donating lateral fiber infrastructure to UC2B will have exclusive rights to use half of the donated lateral fiber cable strands and half of the associated donated drop cable strands via a \$1 dollar 20-year IRU. That IRU shall be renewable for multiple similar terms. The remaining strands of fiber in that infrastructure will be available for other entities to "buy into".
5. The lateral fiber cable and the associated fiber drop cables attached to each lateral fiber cable will define each donated fiber segment. Entities wishing to lease dark fiber to a location served by a donated lateral cable and drop cable, must lease the entire fiber segment - the complete lateral fiber cable and all of the drop cables associated with that lateral cable.
6. The donated lateral fiber infrastructure must always provide at least 12 strands of fiber for the drop cable into a commercial building. If there are more than 3 potential tenants in a commercial building the fiber drop cable must have at least 4 strands of fiber per potential tenant up to a maximum of 48 strands. Lateral fiber cables must provide 4 strands for each potential commercial customer served by that lateral cable up to a maximum of 96 strands. Fiber cables that lack the desired number of strands are not good candidates for UC2B ownership and maintenance.
7. The first additional entity that elects to buy into "donated lateral infrastructure" will pay to UC2B a one-time fee equal to 55% of the original installation cost of that infrastructure segment as documented by the original entity at the time of donation and agreed to by UC2B in the donation agreement. UC2B shall then provide 50% of the original installation cost to the original entity that donated the lateral fiber infrastructure (retaining 5% for UC2B overhead.)
8. That first additional user (second total user) of the "donated lateral infrastructure" will be entitled to 2 fiber strands on each fiber drop cable served by the lateral cable. That first additional user (second total user) will also be entitled to 2 strands on the lateral fiber cable. This will allow that second user to connect multiple customers served by that lateral infrastructure by deploying a ringed network topology and bi-directional single-strand optics on the fiber strands.
9. That second user will enter into an IRU or lease agreement for UC2B ring fiber that connects to that lateral fiber cable (leasing complete UC2B rings at a time) at then-current rates, and will be provided with a \$1 dollar 20-year IRU for the lateral and drop cable fibers. Both leases shall be renewable for multiple similar terms.

10. That second user will enter into a fiber infrastructure maintenance agreement for the UC2B backbone ring being leased as well as for the lateral and drop cable fiber being leased at UC2B's then-current annual fiber maintenance rates. The original entity that donated the fiber will not receive any reduction in the rate of its fiber maintenance agreement should additional entities lease strands in the donated cables.
11. Should a second "additional" (third total) entity desire to use the donated lateral fiber infrastructure, they will pay to UC2B a one-time fee equal to 40% of the original installation cost of that infrastructure as documented by the original entity at the time of donation and agreed to by UC2B in the donation agreement.

UC2B shall then provide 15% of the original installation cost to the original entity that donated the fiber infrastructure and 15% of the original installation cost to the first additional entity that bought into that fiber infrastructure (retaining 10% for UC2B overhead.) At that point, the original entity that donated the fiber infrastructure to UC2B and the first entity that bought into the infrastructure will both be considered to have been "made whole" and will receive no additional compensation from any additional users of that fiber infrastructure. The second additional entity that invested will also not receive any compensation from any additional users of that lateral fiber infrastructure.

12. The third user of the "donated lateral infrastructure" will be entitled to 2 fiber strands on each fiber drop cable served by the lateral cable. That second additional user (third total user) will also be entitled to 2 strands on the lateral fiber. This will allow that third user to connect multiple customers served by that lateral infrastructure by deploying a ringed network topology and bi-directional single-strand optics on the fiber strands.
13. The third user will enter into an IRU or lease agreement for UC2B ring fiber at then-current rates, and will be provided with a \$1 dollar 20-year IRU agreement for the lateral fiber and the drop cable fiber. Those leases shall be renewable for multiple similar terms.
14. That third user will enter into a fiber infrastructure maintenance agreement for the UC2B backbone ring being leased as well as for the lateral and drop cable fiber being leased at UC2B's then-current annual maintenance rates. The original entity that donated the fiber, and the first entity that "bought into" the fiber will not receive any reduction in the rate of their fiber maintenance agreements as a result of this second entity "buying into" the donated lateral fiber infrastructure.

15. Once two additional entities have bought into a donated lateral fiber cable and its associated drop cables, UC2B shall be free to use the remaining fiber strands on the lateral cable and all of the associated drop cables to provide retail or wholesale services, which could include lambda-based services to accommodate additional entities that wish dedicated access to the locations served by the donated lateral fiber infrastructure. Unless it already has rights to use fiber strands on a lateral cable or drop cable. UC2B will never lease the last two strands of fiber on those cables, which will always leave UC2B in a position to offer lit services on an open-access basis, even if the fiber cables involved are "full".
16. Should UC2B have funds and the need to do so, UC2B could be the first or second entity to "buy into" lateral and drop cables. Unless there have been two other entities buy into a lateral and its associated drop cable(s), UC2B can only use the additional strands on those donated cables for its own purposes by "buying into" them like any other provider.
17. All splicing at all times to the UC2B fiber backbone rings or to existing UC2B lateral cables will be performed by UC2B staff or contractors working for UC2B.
18. Before donating fiber infrastructure to UC2B, any splicing other than to the UC2B backbone ring or to an existing lateral cable will be performed by the entity donating the lateral fiber infrastructure. Once the lateral fiber infrastructure has been donated, UC2B staff or contractors working for UC2B will perform all splicing.
19. There are also groups of geographically-clustered businesses that are considering building their own lateral and drop cables in order to connect to UC2B. If they then donated that infrastructure to UC2B, it would be open to all entities to lease with no up-front costs.
20. This policy applies only to lateral fiber infrastructure serving commercial locations. It does not apply to any other fiber infrastructure that an entity may own and connect to UC2B's fiber infrastructure. A policy covering dark fiber and residential locations can be created later if the need arises.

EXHIBIT "E"

RESOLUTION NO. 2012-18

REVISED  
7/12/12

A RESOLUTION

ESTABLISHING A POLICY REGARDING INDEFEASIBLE RIGHTS OF USE  
AGREEMENTS  
(IRUs)

WHEREAS, the UC2B Policy Board adopted Resolution 2012-11 on May 24, 2012 approving IRU and maintenance agreement templates for those entities that initially invested in UC2B and for the Illinois Department of Transportation (IDOT); and

WHEREAS, the UC2B Policy Board approved, in the form of a motion made by Smeltzer, seconded by Schnuer, the IRU rates from the NTIA Grant Application as contained in the Letters of Intent with the initial investors on May 24, 2012; and

WHEREAS, those IRU rates for the initial investors are as follows:

- \$1,500 per strand mile with a 20-year IRU;
- \$600 Annual flat rate per lateral connection for fiber maintenance (independent of strands used);
- \$300 Annual maintenance rate for ring fiber maintenance per route mile (independent of strands used).

NOW, BE IT RESOLVED BY THE UC2B POLICY COMMITTEE, as follows:

Section 1. That UC2B will offer dark fiber IRUs to additional entities beyond the initial investors and IDOT beginning February 1, 2013.

Section 2. That UC2B will allow single strands to be "purchased" on an entire ring. No strands will be available for portions of a ring.

Section 3. That IRU rates for purchasers beyond the initial investors are as follows:

- \$1,500 per strand mile with a 20-year IRU;
- \$600 Annual flat rate per lateral connection for fiber maintenance (independent of strands used);
- \$300 Annual maintenance rate for ring fiber maintenance per route mile (independent of strands used)

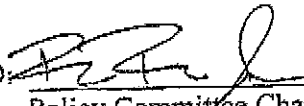
Section 4. That public entities holding IRUs are prohibited from subleasing or "selling" their interests to for-profit third party interests.

Section 5. That private entities holding IRUs are allowed to sublease or "resell" their interests to third parties ("sublessors") with the written approval of UC2B.

Section 6. That sublessors identified in Section 5 above must enter into an IRU agreement with UC2B for \$1 for the remainder of the term of the original IRU or the entire duration of the sublease if less than the term of the original IRU.

Section 7. That sublessors identified in Section 5 above must enter into a standard fiber maintenance agreement with UC2B at the rates identified in Section 3 above.

RESOLUTION NO. 2012-18  
PASSED:

APPROVED:  7/13/2012  
Policy Committee Chair