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DATE: May 19, 2014
TO: City Council
CC: Mayor Prussing
FROM: Jim Simon, City Attorney

RE: Third Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium.

SUMMARY:

The purpose of the proposed ordinance entitled An Ordinance Approving Authorizing Entering Into and Execution of the Third Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium (“Ordinance”)¹ is to extend the UC2B Consortium members’ commitment to continue financial support to UC2B NFP (the “NFP”) through October 31, 2014.

Based on the proposed six-month budget appended to the 3rd Amended IGA as Exhibit “B1”, the City would be obligated to contribute \$24,124.92 for the period May 1, 2014 through October 31, 2014. The projected monthly support from Urbana to cover the NFP’s shortfall as based on Exhibit “B1” appended to the 3rd Amended IGA would be \$4,020.82.

RECOMMENDED ACTION:

The Legal Division recommends that the City Council adopt the Ordinance as drafted which authorizes the Mayor to execute the 3rd Amended IGA in substantially the form appended to the Ordinance.

BACKGROUND:

In the past, the City Council has approved ordinances which authorized the entry and execution of the original Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium. Thereafter, the City Council approved ordinances providing for two amendments to and restatements of the original intergovernmental agreement.

In August 2013, the City Council approved an ordinance authorizing the Mayor to enter into and execute on behalf of Urbana a Second Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium (“2nd Amended IGA”). The 2nd Amended IGA, *inter alia*, authorized the Consortium to create the NFP and to draft bylaws pursuant to which the NFP would operate. Further, the 2nd

¹ Reference to the agreement itself will be “3rd Amended IGA.”

Amended IGA provided for six months of financial support for the NFP while it searched for a private party to undertake building out, maintaining and operating the UC2B network. The 2nd Amended IGA provided funding support for the NFP for the period late October 2013 through April 30, 2014. This aforesaid funding authorization has expired and the NFP remains in need of financial support from Consortium members.

The NFP was incorporated in late October 2013. The Consortium-drafted bylaws were adopted by the NFP's Board of Directors. The bylaws, *inter alia*, require the NFP to operate in accordance with the general core principles established by the Consortium – i.e., to operate an open access network, continue the current subscriber pricing structure established in connection with the federal grant which funded the initial design and development of the UC2B network, and to provide for bridging the digital divide within the Urbana-Champaign communities. At the time the 2nd Amended IGA was executed, the Consortium expected the NFP to operate at a loss for a period of at least six months and, very likely, beyond.

The City Council has approved three appointees to sit as directors on the NFP Board of Directors including: Alderperson Carol Ammons, former Alderperson Brandon Bowersox-Johnson, and Peter Resnick. Since its creation, the NFP has operated at a loss as anticipated by the Consortium's members. Consortium members have provided financial support to cover the NFP's shortfall based on the contribution formula provided for in the 2nd Amended IGA – i.e., Urbana at 25%, the University at 33%, and Champaign at 42%.

The NFP continues to operate at a loss but in recent months has had one fairly significant expense which was anticipated at the time of its creation but which is expected to diminish over the next several months. The aforesaid expense relates to continuation of the consulting services provided by Joanne Hovis. She is recognized as a leading expert in the field of public-private partnerships for development, maintenance and operation of fiber optic networks. She has been instrumental in the NFP's search for, qualification of, and negotiation with potential private third parties to build out the UC2B network system. It must also be noted that a vendor of the Consortium recently initiated a suit against Champaign as lead agency for the UC2B Consortium. The suit seeks to recover approximately \$180,000 in connection with an alleged breach of contract between Champaign, as UC2B Consortium lead agency, and the vendor. The city attorneys for Urbana and Champaign, as well the University's and the NFP's attorneys, believe that the suit has little to no merit and that Champaign will ultimately prevail. However, given the need to defend the aforesaid lawsuit and the fact that the NFP's attorney is serving lead attorney in defense of the suit, it is expected that Consortium members will provide financial assistance to fund defense of the suit in the same ratios provided for in the 3rd Amended IGA – i.e., the same ratios as provided for in the 2nd Amended IGA and as stated above.

ANTICIPATED FISCAL IMPACT ON THE CITY:

Recently, the NFP's Board of Directors adopted a six-month budget which coincides with the period to be covered should all three Consortium members enter into and execute the 3rd Amended IGA. The budget is appended to the proposed 3rd Amended IGA as Exhibit "B1."² The NFP projects total income for the six-month period to be \$180,571.96 and expenses to be

² Champaign, as lead agency for the Consortium, entered into a Transition Agreement with the NFP pursuant to which the NFP, in consideration for the exclusive right to use and market the UC2B network, agreed to assume the (footnote continued)

(footnote continued) Consortium's obligations and responsibilities concerning the maintenance and operation of the UC2B network. Exhibit "B1" has been attached to the aforesaid Transition Agreement.

\$277,071.64. Thus, the NFP projects a shortfall (operating loss) for the six-month period of \$96,499.68. If the 3rd Amended IGA is executed by Urbana, Champaign and the University, Urbana's share of this shortfall will be \$24,124.92 or \$4,020.82 per month.

There are a number of events which will or may have a direct and significant impact on the NFP's projected six-month budget.

1. A private build-out partner ("Partner") may take over the build-out, maintenance and operation of the UC2B network. If such event occurs, then the Partner will assume all the expenses related to building-out, maintaining and operating the UC2B network thereby relieving the NFP of those costs. As such, the expenses projected in the budget attached as Exhibit "B1" to the proposed 3rd Amended IGA would decrease. The Partner would contribute to a fund over a fixed period of time to assist the NFP in meeting its commitment to bridge the digital divide within the Urbana-Champaign community. At present, the NFP would ask such a Partner to contribute \$50,000 for each of three years and an additional \$50,000 over the next two-year period.

The Partner would receive all the revenue generated by the current subscribers and new subscribers to the system as well as from the sale of indefeasible rights of use ("IRUs").³ Thus, the NFP would be left without an ongoing source of revenue. In order to survive, the NFP would likely seek other sources of funding such as donations (restricted and unrestricted) and grants for projects and programs to support a minimal staff presence which would supervise, from the NFP's perspective, the Partner's activities and to undertake one of its core goals – bridging the digital divide. Such staffing would likely include a director and, possibly, an administrative staff person and/or a person with experience in the technical aspects of building-out, maintaining and operating a fiber optic network. It is very likely that the NFP will continue to require some financial support from Consortium members even though its operations would be greatly scaled back.

2. The NFP continues to use Ms. Hovis's consulting services, albeit on a gradually diminishing basis. It is expected that, should the NFP proceed with a Partner, the NFP's consulting expenses for Ms. Hovis slow to a trickle and cease.

3. Shortly after the formation of the NFP a vendor of the Consortium filed a lawsuit against Champaign as the Consortium's lead agency. The suit alleges that Champaign, as lead agency, breached a fiber installation contract with the vendor by reducing the number of premises to which fiber would be run thereby reducing the vendor's opportunity to generate a profit. The vendor's suit also claims that Champaign failed to payout the contract retainage upon completion of the contract. The suit seeks to recover about \$280,000. Following compliance by the vendor in supplying final lien waivers, Champaign paid out the retainage thereby reducing the vendor's alleged damages by over \$100,000. The city attorneys for Urbana and Champaign and the University's and NFP's attorneys have carefully reviewed the vendor's remaining claim and have concluded that Champaign has a strong defense. It is expected that Champaign will ultimately prevail in the lawsuit. However, since the NFP's attorney is handling the defense of the lawsuit, the cost of defense will be shared by the Consortium members based on the formula provided

³ An IRU grants to the purchaser to use specifically-designated fiber strands on an exclusive basis.

for in the 2nd Amended IGA and as proposed being carried over to the 3rd Amended IGA – i.e., Champaign-42%; the University-33%; and Urbana-25%.

4. The NFP may not complete an arrangement with a Partner and, thus, will continue to operate the UC2B network in its current form. In such instance, the Consortium members will continue to be required to support the NFP by funding its shortfall for a relatively indefinite period of time. It is expected that, under this scenario, the level of funding required from Consortium members would be significantly higher than that projected by the six-month budget appended to the proposed 3rd Amended IGA. As such, the NFP will periodically request the Consortium members to extend the expiration of the funding date in the 3rd Amended IGA (if the Consortium members execute the same) on a regular basis.

5. Upon incorporation of the NFP, it became responsible for approximately \$1.4 million due the University which funded construction costs beyond those covered by the federal grant which led to the formation of the UC2B Consortium. However, the NFP has used a portion of its revenue from subscribers to pay down its obligation to the University to the extent that its obligation has been reduced down to about \$220,000. This obligation remains pending.

6. Earlier this year, the City received \$230,000 in reimbursement for installing optical fiber before and/or as part of the initial UC2B development process. Some of those funds have been used to cover a shortfall in the City's commitment to the Consortium and other of those funds have been used to cover the NFP's prior months' shortfall which do not include March, April or May 2014. The remainder of those funds along with funds provided for in the FY 2014-2015 budget will be used to provide support to the NFP if the City Council approves the Ordinance.

7. The City Council has approved an IRU agreement with the NFP which grants the City the exclusive right to use certain specific fibers for the next 20 years. Given the City's earlier contribution to the UC2B system project, the City will not be charged for the IRU. However, the City Council also approved a fiber maintenance agreement for the optical fiber granted pursuant to the aforesaid IRU agreement. The maintenance agreement obligates the City to pay a maintenance fee of \$16,170 for each of the years during which the IRU remains in place – i.e., 20 years.

Given the uncertainty insofar as whether a Partner will undertake a build-out of and take over the maintenance and operation of the UC2B network, there can be no firm determination as to what Urbana's continued financial support for the NFP will be or how long such contribution requirement will last.

DISCUSSION OF ALTERNATIVES:

While each alternative has advantages and disadvantages, it is very like that the NFP will need continued financial support from Consortium members. The level of such support remains in question.

Alternative 1: City Council approves the Ordinance which authorizes the Mayor to execute on behalf of Urbana the 3rd Amended IGA in substantially the form as appended to this memorandum.

Advantages:

- Provides for continued financial support to fund the NFP's short-fall.
- Provides for a finite period of time (six months) during which such financial support by Consortium members will be required.
- Allows for continued continuity in the transition process including the NFP's reliance on professional staff and, where necessary, consulting experts to continue developing a relationship with a Partner and, thereafter, monitoring such relationship.
- Assures that the NFP remains stable during the expected transition period during which a Partner will take over build-out, maintenance and operation of the UC2B system.
- Allows the NFP to focus its attentions on developing a relationship with a Partner rather than devoting energies to fundraising.

Disadvantages:

- Consortium members will continue to provide financial support to the NFP.
- While the NFP has adopted a six-month budget, much information is unknown insofar the aforesaid budget is realistic or whether the NFP will require a lesser or greater amount of financial support from Consortium members.
- There is a strong likelihood that the NFP will require continued financial support from Consortium members beyond the extended six-month period provided for in the proposed 3rd Amended IGA, on hopefully a lesser basis.

2. City Council's decision not to approve the Ordinance which provides for execution of the 3rd Amended IGA.

Advantages:

- Financial support for the NFP would end since the financial support provided for in the 2nd Amended IGA expired on April 30, 2014.
- The NFP would be required to seek financial support from sources other than Consortium members if it chooses to remain financially viable.
- It is likely that Consortium members would have greater influence over the NFP should the latter seek significant financial support from Consortium members.

Disadvantages:

- The NFP would very likely be forced to either dissolve or significantly scale back its operations since, as is currently evident, its costs continue to exceed its revenue.

- The overall operation of the UC2B system may ultimately fail.
- If the NFP ceases to exist, the UC2B system will, by reason of the 2nd Amended IGA, revert back to the Consortium for either operation or disposition.
- The NFP, in the short term, may become less attractive to a Partner.

RECOMMENDATION RESTATED:

The Legal Division recommends that the City Council adopt the Ordinance in the form appended hereto.

ATTACHMENTS:

- Ordinance.
- 3rd Amended IGA in legislative form, without exhibits.
- 3rd Amended IGA in final form with exhibits including –
 - Attachment “A” – Budget Summary which was appended to 2nd Amended IGA.
 - Attachment “B” – UC2B Operations Fund Statement which was appended to 2nd Amended IGA.
 - Budget Summary which was appended to 2nd Amended IGA.
 - **Attachment “B1” – Budget for six-month period, May 1, 2014 through October 31, 2014.**
 - Bylaws of UC2B NFP which were appended to 2nd Amended IGA.
 - Exhibit “A: – List of UC2B Polices appended to Bylaws.
- Agreement between Champaign, as UC2B Consortium lead agency, and UC2B NFP which was executed subsequent to the execution of the 2nd Amended IGA and the incorporation of UC2B NFP (“Transition Agreement”).
 - Exhibit “A” to Transition Agreement.
 - **Attachment “B1” - Budget for six-month period, May 1, 2014 through October 31, 2014.**
- UC2B Business and Strategic Plan pages 82-90.

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

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

WHEREAS, the City of Urbana (“Urbana”) is an Illinois home rule unit of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

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”; and

WHEREAS, Urbana, Champaign and the University (collectively, hereinafter, the “Consortium”) in order to create, implement and operate a community-wide open access broadband fiber optic network (hereinafter, “UC2B network”) 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; and

WHEREAS, the members of the Consortium have entered into and have amended the aforesaid initial intergovernmental agreement on two occasions; and

WHEREAS, the Consortium, pursuant to the Seconded Amended and Restated Intergovernmental Agreement providing for the Creation of the Urbana-Champaign Big Broadband Consortium, created and incorporated a not-for-profit corporation commonly referred to as UC2B NFP (hereinafter, the “NFP”); and

WHEREAS, in order to facilitate the NFP’s success in locating a partner to build out, maintain and operate the UC2B network, the Consortium members agreed to provide and have provided financial support to the NFP through April 30, 2014; and

WHEREAS, the NFP has requested and requires additional financial support from the Consortium members while it pursues and completes an arrangement with a private partner to build out, maintain and operate the UC2B network; and

WHEREAS, Urbana seeks to facilitate the NFP’s success by amending the currently in-force intergovernmental agreement with the other Consortium members based on the funding formula contained in the said existing intergovernmental agreement.

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

Section 1.

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

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver to the City Clerk of the City of

Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of the Third Amended IGA as so authorized and approved for and on behalf of the City of Urbana, Illinois.

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

Phyllis D. Clark, City Clerk.

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

Laurel Lunt Prussing, Mayor.

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

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

Background

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

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

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

~~L.M. The Parties enter into this Third Amended IGA to in order to accommodate ongoing negotiations between the NFP and a potential third party System operator and to compensate the NFP for ongoing services it provides the Consortium.~~

NOW, THEREFORE, the Parties agree as follows:

Terms of Agreement

SECTION 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. CONSORTIUM CREATED

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

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

SECTION 3. CONSORTIUM MISSION

The mission of the Consortium and its Parties is to:

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

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

SECTION 4. POLICY COMMITTEE CREATED

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

4.1. Membership.

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

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

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

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

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

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

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

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

SECTION 5. POLICY COMMITTEE FUNCTIONS AND RESPONSIBILITIES

The Policy Committee shall have the following functions and responsibilities:

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

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

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

5.4. Budget.

- (a) The Policy Committee shall annually approve a budget and approve amendments to said budget and expenditures as from time to time deemed necessary by the Parties.
- (b) The tentative budget for each year shall be submitted by the Lead Agency – Operations to the Policy Committee during March of each year.
- (c) Unless a new budget is approved by July 1st of any year, the last previously approved budget shall continue from year to year.
- (d) The format of the budget shall conform to the format of the Lead Agency - Operation's budget unless otherwise directed by vote of the Policy Committee.

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

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

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

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

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

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

5.10. Role of the Technical Committee.

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

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

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

SECTION 6. LEAD AGENCY DESIGNATIONS

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

6.2. RESERVED.

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

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

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

SECTION 7. LEAD AGENCY - OPERATIONS DUTIES

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

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

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

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

SECTION 8. PARTY RESPONSIBILITIES

Each Party shall:

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

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

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

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

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

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

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

9.6. RESERVED.

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

SECTION 9A. TRANSITION TO NON-PROFIT CORPORATION

9A1. The Transition Period is defined as beginning July 1, 2013 and ending the later of January 31, 2014 or six (6) months after formation of the NFP and the Transfer of System and other Consortium assets by UC2B to the NFP. The Post-Transition Period means the period that begins immediately after the expiration of the Transition Period and extending through the date provided in the Post-Transition Budget (described in Section 9A6) during which time the NFP provides services to the Consortium in connection with the operation and/or maintenance of the System.

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

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

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

- (a) The license fee shall be determined by agreement of the City Manager of Champaign, the Mayor of Urbana, and the Chancellor of the University's Urbana-Champaign campus, or their designees ("panel members"), within forty-five (45) days after the date of notice by the NFP of a need for such determination. If the panel members are unable to reach a unanimous decision within this time period, each member shall present

relevant information to a third party to be selected by a majority vote of the panel members within fourteen (14) days after the expiration of the forty-five (45) days. The cost of the third party shall be shared equally by the Parties. The third party shall determine the rate or formula within fourteen (14) days from presentation of the information. Such determination shall consider the rates currently charged for use of the rights-of-way by the Parties. Such rates shall be uniform for use of the rights-of-way in all jurisdictions. Such determination shall be binding on Champaign, Urbana, and the University.

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

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

9A6. **Attachment "B"** to this Agreement is a preliminary budget for the compensation to be paid by the Consortium to the NFP during the Transition Period ("Transition Budget"). The Parties recognize that the Transition Budget is an estimate only. Each Party will make best efforts to include its share in its annual institutional budget. Attachment B1 to this Agreement is the budget for compensation to be paid by the Consortium for services provided by the NFP during the Post-Transition Period ("Post-Transition Services Budget"). Champaign, as lead agency, is authorized to enter into an agreement for such services. The Parties may revise or extend the Post-Transition Services Budget in accordance with their internal approval processes, after negotiation with the NFP to provide services the Consortium deems necessary to satisfy its obligations under the Project. The Post-Transition Budget Agreement for services shall describe the proposed services to be provided by the NFP during a defined Post-Transition Period, together with the cost of salaries and benefits of the employees providing the services. Services may include oversight of System operations, including third party System operators; administration of public-benefit funds; and System maintenance and repair. Champaign shall require the NFP to provide its proposed Post-Transition Budget in sufficient time to allow the Consortium members to consider such request in the ordinary course of their governance.

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

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

SECTION 10. ADDITIONAL COMMITMENTS

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

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

10.3. **RESERVED.**

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

(b) UC2B may use one rack for fiber termination, but not electronic equipment, in Node 2 – Scott Hall, at no charge so long as needed for System operation.

(c) UC2B personnel will have access to the UC2B spaces in Nodes 2, 8 and 9 twenty-four (24) hours-a-day, every day of the year via proximity cards (prox cards) supplied by the University to UC2B personnel. Charges for the space in Nodes 8 and 9 will start with the August 15, 2012 commencement of UC2B retail services.

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

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

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

SECTION 11. GENERAL ADMINISTRATION

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

11.2. Records. The Lead Agency shall maintain financial records regarding Consortium operations and finances in accordance with generally accepted governmental accounting

standards, which records shall be available at the Lead Agency's finance offices for inspection by any of the Parties during regular business hours.

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

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

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

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

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

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

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

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

approval may be withheld until such time as the Consortium pays to NTIA the federal share of the real property, including broadband facilities and equipment as provided in 15 C.F.R. 14.32. The security interest shall be executed in advance of any sale or lease and not later than closeout of the Federal Construction Grant.

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

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

SECTION 13. WITHDRAWAL OF PARTY

13.1. Withdrawal.

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

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

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

SECTION 13A. DEFAULT

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

SECTION 14. LIMITED CONTINUATION OF CONSORTIUM/DISSOLUTION

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

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

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

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

SECTION 15.PROPERTY: USE AND OWNERSHIP: LOAN EQUIPMENT

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

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

SECTION 16.RIGHTS OF WITHDRAWING PARTY TO CONSORTIUM ASSETS

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

SECTION 17. DISPOSITION OF CONSORTIUM ASSETS UPON DISSOLUTION

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

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

17.2 RESERVED.

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

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

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

SECTION 18.INSURANCE

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

SECTION 19. LIMITATIONS OF PERSONNEL

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

SECTION 20. AMENDMENTS

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

SECTION 21.RESERVED

SECTION 22. EFFECTIVE DATE

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

SECTION 22A. EXPIRATION DATE AND SURVIVAL

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

SECTION 23. NOTICES

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

SECTION 24. APPLICABLE LAWS

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

SECTION 25. COUNTERPARTS

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

CITY OF CHAMPAIGN

CITY OF URBANA

By: _____
City Manager

By: _____
Mayor

Date: _____

Date: _____

ATTEST: _____
City Clerk

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney

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

By: _____
Comptroller

Date: _____

Approved by:

Chancellor

Business Office

- Attachments:**
- A. Preliminary Startup Budget (Section 9.4)**
 - B. Transition Budget**
 - B(1) Services Budget**
 - C. Proposed NFP Bylaws (Section 9A6)**

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

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

Background

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

- K. Effective June 5, 2012, the Parties amended and restated the IGA to incorporate the Letter of Understanding and to make other related changes.
- L. Effective August 15, 2013, Parties entered into the Second Amended IGA to transition operations of the System to a not-for-profit corporation.
- M. The Parties enter into this Third Amended IGA to in order to accommodate ongoing negotiations between the NFP and a potential third party System operator and to compensate the NFP for ongoing services it provides the Consortium.

NOW, THEREFORE, the Parties agree as follows:

Terms of Agreement

SECTION 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. CONSORTIUM CREATED

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

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

SECTION 3. CONSORTIUM MISSION

The mission of the Consortium and its Parties is to:

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

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

SECTION 4. POLICY COMMITTEE CREATED

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

4.1. Membership.

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

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

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

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

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

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

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

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

SECTION 5. POLICY COMMITTEE FUNCTIONS AND RESPONSIBILITIES

The Policy Committee shall have the following functions and responsibilities:

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

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

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

Budget.

- (a) The Policy Committee shall annually approve a budget and approve amendments to said budget and expenditures as from time to time deemed necessary by the Parties.
- (b) The tentative budget for each year shall be submitted by the Lead Agency – Operations to the Policy Committee during March of each year.
- (c) Unless a new budget is approved by July 1st of any year, the last previously approved budget shall continue from year to year.
- (d) The format of the budget shall conform to the format of the Lead Agency - Operation's budget unless otherwise directed by vote of the Policy Committee.

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

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

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

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

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

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

5.10. Role of the Technical Committee.

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

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

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

SECTION 6. LEAD AGENCY DESIGNATIONS

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

6.2. RESERVED.

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

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

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

SECTION 7. LEAD AGENCY - OPERATIONS DUTIES

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

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

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

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

SECTION 8. PARTY RESPONSIBILITIES

Each Party shall:

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

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

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

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

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

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

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

9.6. **RESERVED.**

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

SECTION 9A. TRANSITION TO NON-PROFIT CORPORATION

9A1. The Transition Period is defined as beginning July 1, 2013 and ending the later of January 31, 2014 or six (6) months after formation of the NFP and the Transfer of System and other Consortium assets by UC2B to the NFP. The Post-Transition Period means the period that begins immediately after the expiration of the Transition Period and extending through the date provided in the Post-Transition Budget (described in Section 9A6) during which time the NFP provides services to the Consortium in connection with the operation and/or maintenance of the System.

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

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

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

- (a) The license fee shall be determined by agreement of the City Manager of Champaign, the Mayor of Urbana, and the Chancellor of the University's Urbana-Champaign campus, or their designees ("panel members"), within forty-five (45) days after the date of notice by the NFP of a need for such determination. If the panel members are unable to reach a unanimous decision within this time period, each member shall present

relevant information to a third party to be selected by a majority vote of the panel members within fourteen (14) days after the expiration of the forty-five (45) days. The cost of the third party shall be shared equally by the Parties. The third party shall determine the rate or formula within fourteen (14) days from presentation of the information. Such determination shall consider the rates currently charged for use of the rights-of-way by the Parties. Such rates shall be uniform for use of the rights-of-way in all jurisdictions. Such determination shall be binding on Champaign, Urbana, and the University.

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

9A5. The Parties acknowledge that the NFP's role is to assume the Consortium's ongoing responsibilities for maintaining and operating the System for its useful life in accordance with the Federal Construction Grant. In order to facilitate creation of the NFP and the orderly and smooth Transfer of Consortium assets and the assignment of contracts, and obligations related thereto and their management, the Parties may compensate the NFP to provide services to the Consortium in connection with the operation and/or maintenance of the System. Each Party shall contribute to the compensation according to the formula set forth in Section 9.3. Champaign shall contract with the NFP to provide for the Transfer of Consortium assets and for any services to be provided by the NFP during the Transition Period and the Post-Transition Period.

9A6. **Attachment "B"** to this Agreement is a preliminary budget for the compensation to be paid by the Consortium to the NFP during the Transition Period ("Transition Budget"). The Parties recognize that the Transition Budget is an estimate only. Each Party will make best efforts to include its share in its annual institutional budget. Attachment B1 to this Agreement is the budget for compensation to be paid by the Consortium for services provided by the NFP during the Post-Transition Period ("Services Budget"). Champaign, as lead agency, is authorized to enter into an agreement for such services. The Parties may revise or extend the Services Budget in accordance with their internal approval processes, after negotiation with the NFP to provide services the Consortium deems necessary to satisfy its obligations under the Project. The Agreement for services shall describe the proposed services to be provided by the NFP during a defined Post-Transition Period. Services may include, but not be limited to, oversight of System operations, including third party System operators; administration of public-benefit funds; and System maintenance and repair. Champaign shall require the NFP to provide its proposed Post-Transition Budget in sufficient time to allow the Consortium members to consider such request in the ordinary course of their governance.

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

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

SECTION 10. ADDITIONAL COMMITMENTS

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

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

10.3. **RESERVED.**

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

(b) UC2B may use one rack for fiber termination, but not electronic equipment, in Node 2 – Scott Hall, at no charge so long as needed for System operation.

(c) UC2B personnel will have access to the UC2B spaces in Nodes 2, 8 and 9 twenty-four (24) hours-a-day, every day of the year via proximity cards (prox cards) supplied by the University to UC2B personnel. Charges for the space in Nodes 8 and 9 will start with the August 15, 2012 commencement of UC2B retail services.

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

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

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

SECTION 11. GENERAL ADMINISTRATION

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

11.2. Records. The Lead Agency shall maintain financial records regarding Consortium operations and finances in accordance with generally accepted governmental accounting

standards, which records shall be available at the Lead Agency's finance offices for inspection by any of the Parties during regular business hours.

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

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

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

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

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

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

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

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

approval may be withheld until such time as the Consortium pays to NTIA the federal share of the real property, including broadband facilities and equipment as provided in 15 C.F.R. 14.32. The security interest shall be executed in advance of any sale or lease and not later than closeout of the Federal Construction Grant.

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

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

SECTION 13. WITHDRAWAL OF PARTY

13.1. Withdrawal.

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

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

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

SECTION 13A. DEFAULT

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

SECTION 14. LIMITED CONTINUATION OF CONSORTIUM/DISSOLUTION

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

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

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

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

SECTION 15. PROPERTY; USE AND OWNERSHIP; LOAN EQUIPMENT

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

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

SECTION 16. RIGHTS OF WITHDRAWING PARTY TO CONSORTIUM ASSETS

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

SECTION 17. DISPOSITION OF CONSORTIUM ASSETS UPON DISSOLUTION

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

- a) Within 30 days after the distribution is effective, the Consortium members shall select a person ("Appraiser") technically qualified to evaluate the assets and suggest a manner and method of disposition in a written report. The Appraiser shall, within sixty (60) days after being selected, suggest the manner and method of disposition of the assets to the

Consortium members in a written report. The Appraiser selected shall be guided, but not be restricted, by the following principles, unless otherwise required by law:

- (i) The location of the asset, if the location is important to the usefulness of the asset;
- (ii) Whether an asset would be useful only when used in conjunction with another asset;
- (iii) The impact on any user who is, or may be impacted, by the disposition;
- (iv) The replacement value of the asset;
- (v) The population served by the asset;
- (vi) Any laws governing the disposition of the assets.

17.2 RESERVED.

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

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

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

SECTION 18. INSURANCE

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

SECTION 19. LIMITATIONS OF PERSONNEL

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

SECTION 20. AMENDMENTS

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

SECTION 21. RESERVED

SECTION 22. EFFECTIVE DATE

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

SECTION 22A. EXPIRATION DATE AND SURVIVAL

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

SECTION 23. NOTICES

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

SECTION 24. APPLICABLE LAWS

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

SECTION 25. COUNTERPARTS

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

CITY OF CHAMPAIGN

CITY OF URBANA

By: _____
City Manager

By: _____
Mayor

Date: _____

Date: _____

ATTEST: _____
City Clerk

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney

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

By: _____
 Comptroller

Date: _____

Approved by:

 Chancellor

 Business Office

- Attachments:**
- A. Preliminary Startup Budget (Section 9.4)**
 - B. Transition Budget**
 - B(1). Services Budget**
 - C. Proposed NFP Bylaws (Section 9A6)**

Attachment 'A'

BUDGET SUMMARY

Department		2008	2009	2010	2011	2012	2012	2012	2012	2013
Fund		Actual	Actual	Actual	Actual	Budget	Amended	YTD	Revised	Budget
Activity										
Account	Account Description									
UC2B Operations										
Operating Funds										
UC2B Operations										
501	501 - SALARIES; SCHEDULED	0	0	0	0	0	84,826	0	0	0
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022266)						84,828		0	0
525	525 - GROUP MEDICAL & LIFE INSURANCE	0	0	0	0	0	7,235	0	0	0
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022257)						7,235		0	0
526	526 - CITY IMRF/BURS PAYMENTS	0	0	0	0	0	8,605	0	0	0
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022268)						8,605		0	0
527	527 - CITY FICA PAYMENTS	0	0	0	0	0	6,474	0	0	0
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022259)						6,474		0	0
600	600 - OFFICE SUPPLIES	0	0	0	0	0	2,000	1,160	2,000	2,000
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022260)						2,000		0	0
610	610 - ACTIVITY SPECIFIC SUPPLIES	0	0	0	0	0	80,000	4,908	80,000	30,000
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022251)						80,000		0	0
700	700 - PROFESSIONAL SERVICES	0	0	0	0	0	182,983	30,510	186,000	230,800
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022262)						182,983		0	0
712	712 - PROFESSIONAL MEMBERSHIPS	0	0	0	0	0	1,500	0	0	1,500
	Adjustment: BA 2011/2012-2 OMNIBUS (27400022263)						1,500		0	0

Mar 06, 2012 09:10 AM

Page 1 of 2

ATTACHMENT A

Attachment 'A' Continued

Department										
Fund										
Activity										
Account	Account Description	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Budget	2012 Amended	2012 YTD	2012 Revised	2013 Budget
713	713 - PROFESSIONAL DEVELOPMENT	0	0	0	0	0	3,000	1,049	1,090	3,000
	Adjustment BA 2011/2012-2 OMNIBUS (27400022264)						3,000		0	0
720	720 - MISC. CONTRACTUAL SERVICES	0	0	0	0	0	4,000	0	16,500	40,500
	Adjustment BA 2011/2012-2 OMNIBUS (27400022265)						4,000		0	0
721	721 - PRINTING & DOCUMENT PROCESSING	0	0	0	0	0	3,000	0	5,000	5,000
	Adjustment BA 2011/2012-2 OMNIBUS (27400022266)						3,000		0	0
725	725 - POSTAGE AND EXPRESS CHARGES	0	0	0	0	0	0,500	86	100	1,000
	Adjustment BA 2011/2012-2 OMNIBUS (27400022267)						6,500		0	0
902	902 - TFR TO GENERAL OPERATING FUND	0	0	0	0	0	27,225	13,613	86,725	122,588
	Adjustment BA 2011/2012-2 OMNIBUS (27400022268)						27,225		0	0
Total Activity		0	0	0	0	0	368,148	51,312	345,376	436,088

UC2B Operations Fund Statement 08

	<u>FY11/12 Actual</u>	<u>FY12/13 Budget</u>	<u>FY12/13 Estimate</u>	<u>FY13/14 Budget</u>
<u>Beginning Balance</u>	0	(72,878)	(72,878)	(165,848)
Revenues				
Revenue Transfers	57,151	437,214	237,214	104,064
Revenues	72,176	1,040,129	761,430	743,458
Total Revenues	<u>129,327</u>	<u>1,477,343</u>	<u>998,644</u>	<u>847,522</u>
Expenditures				
Capital Expenses	0	19,900	19,900	0
Commodities	12,562	57,100	42,000	42,000
Contractual Services	107,350	1,128,438	788,941	432,574
Expenditure Transfers	75,113	122,588	122,588	125,000
Personnel Services	7,181	120,867	118,165	82,100
Total Expenditures	<u>202,206</u>	<u>1,448,913</u>	<u>1,091,614</u>	<u>681,674</u>
<u>Total Ending Balance</u>	(72,878)	(44,448)	(165,848)	0
<u>Fund Balances</u>				
Non-Spendable	0	0	0	0
Restricted	0	0	0	0
Committed	0	0	0	0
Assigned	0	0	0	0
Unassigned	(72,878)	(44,448)	(165,848)	0

Comments:

BUDGET SUMMARY

Department										
Fund										
Activity										
Account	Account Description	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Budget	2013 Amended	2013 YTD	2013 Revised	2014 Budget
Revenues										
Operating Funds										
UC2B Revenues										
34201	34201 - OTHER SERVICE FEES - UC2B	0	0	0	0	0	425,450	27,280	136,000	375,000
	Adjustment: BA 2012/2013-3 CORRECTION (27400023803)						425,450		0	0
352	352 - CITY EXPENSE REIMBURSEMENTS	0	0	0	54,219	235,531	352,378	153,716	352,378	143,708
	U of I						0		0	61,765
	Urbana						0		0	61,943
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023715)						116,847		0	0
356	356 - MISCELLANEOUS	0	0	0	0	0	0	0	11,000	0
35601	35601 - MISCELLANEOUS - SPECIFIC	0	0	0	0	0	0	0	0	225,000
360	360 - INTEREST & INVESTMENT INCOME	0	0	0	258	0	0	(357)	(249)	(250)
389	389 - ARRA GRANT FUNDS	0	0	0	17,599	30,000	262,301	174,848	262,301	0
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023717)						200,000		0	0
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023716)						32,301		0	0
402	402 - TFR FROM GENERAL OPERATING FUND	0	0	0	57,151	370,557	437,214	76,133	237,214	104,064
	Adjustment: BA 2012/2013 3 OMNIBUS (27400023718)						66,657		0	0
	Per TL remove 1X FY13 SBR						0		(200,000)	104,084
Total Activity		0	0	0	129,327	636,088	1,477,343	431,419	998,644	847,522

BUDGET SUMMARY

Department		2009	2010	2011	2012	2013	2013	2013	2013	2014
Fund		Actual	Actual	Actual	Actual	Budget	Amended	YTD	Revised	Budget
Activity										
Account	Account Description									
UC2B Operations										
Operating Funds										
UC2B Operations										
501	501 - SALARIES: SCHEDULED	0	0	0	0	0	54,817	16,798	28,555	38,312
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023719)						54,817		0	0
502	502 - SALARIES: UNSCHEDULED	0	0	0	6,670	0	45,253	56,744	69,123	19,708
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023720)						45,283		0	0
511	511 - OVERTIME PAY	0	0	0	0	0	0	8,162	12,000	15,000
526	526 - GROUP MEDICAL & LIFE INSURANCE	0	0	0	0	0	6,400	0	0	0
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023721)						6,400		0	0
526	526 - CITY IMRF/SURS PAYMENTS	0	0	0	0	0	6,753	1,803	3,187	4,720
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023722)						6,753		0	0
527	527 - CITY FICA PAYMENTS	0	0	0	510	0	7,854	5,774	7,320	4,360
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023723)						7,854		0	0
	FICA for 502 positions thru 9/13						0		0	1,429
600	600 - OFFICE SUPPLIES	0	0	0	1,150	2,000	7,000	222	2,000	2,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023724)						5,000		0	0
610	610 - ACTIVITY SPECIFIC SUPPLIES	0	0	0	11,412	30,000	30,000	21,243	30,000	30,000

Department
Fund

Activity

Account	Account Description	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Budget	2013 Amended	2013 YTD	2013 Revised	2014 Budget
682	682 - OFFICE FURNITURE	0	0	0	0	0	20,100	0	10,000	10,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023728)						25,000		0	0
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023728)						15,000		0	0
	Adjustment: BT#41 (27400023865)						(7,800)		0	0
	Adjustment: BT#45 (27400023865)						(12,000)		0	0
700	700 - PROFESSIONAL SERVICES	0	0	0	94,273	230,500	716,938	375,723	610,441	58,164
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023727)						342,000		0	0
	Adjustment: FYE (FY11/12) CARRY FORWARD (27400023559)						144,438		0	0
712	712 - PROFESSIONAL MEMBERSHIPS	0	0	0	0	1,500	2,500	1,000	1,000	1,410
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023728)						1,000		0	0
713	713 - PROFESSIONAL DEVELOPMENT	0	0	0	2,840	3,000	8,000	3,935	6,000	5,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023728)						3,000		0	0
720	720 - MISC. CONTRACTUAL SERVICES	0	0	0	5,143	240,500	247,500	18,217	50,000	8,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023730)						7,000		0	0
721	721 - PRINTING & DOCUMENT PROCESSING	0	0	0	3,892	5,000	5,000	10,289	12,000	12,000
724	724 - OFFICIAL CITY BUSINESS EXPENSE	0	0	0	0	0	33,500	2,807	10,000	30,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023731)						33,500		0	0
725	725 - POSTAGE AND EXPRESS CHARGES	0	0	0	1,203	1,000	10,000	1,530	7,500	12,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023732)						9,000		0	0

Department

Fund

Activity

Account	Account Description	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Budget	2013 Amended	2013 YTD	2013 Revised	2014 Budget
740	740 - UTILITIES	0	0	0	0	0	45,000	3,954	45,000	36,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023733)						45,000		0	0
751	751 - MAINTENANCE CONTRACTS	0	0	0	0	0	35,000	0	20,000	20,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023734)						35,000		0	0
760	760 - PROPERTY & EQUIPMENT RENTAL	0	0	0	0	0	27,000	0	27,000	27,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023735)						27,000		0	0
801	801 - PROPERTY & RIGHTS ACQUISITION	0	0	0	0	0	19,900	20,069	19,900	0
	Adjustment: BT#41 (27400023966)						7,900		0	0
	Adjustment: BT#45 (27400023906)						12,000		0	0
902	902 - TFR TO GENERAL OPERATING FUND	0	0	0	75,113	122,588	122,588	61,294	122,588	125,000
Total Activity		0	0	0	202,208	636,088	1,448,913	609,423	1,091,614	456,674

BUDGET SUMMARY

Department		2008	2010	2011	2012	2013	2013	2013	2013	2014
Fund		Actual	Actual	Actual	Actual	Budget	Amended	YTD	Revised	Budget
Activity										
Account	Account Description									
UC2B Operations										
Operating Funds										
UC2B Capital Maintenance										
720	720 - MISC. CONTRACTUAL SERVICES	0	0	0	0	0	0	0	0	225,000
Total Activity		0	0	0	0	0	0	0	0	225,000

ATTACHMENT B1

**UC2B NFP
BUDGET
SERVICES AGREEMENT**

UC2B 6 mo Inc & Exp
(no L.O.U. reimb or maint)
for TA #3
May - Oct, 2014

Income

4000 · SUBSCRIBER INCOME
4001 · SERVICE FEES
4002 · PAST DUE FEES
Total 4000 · SUBSCRIBER INCOME
4400 · DARK FIBER INCOME
4401 · DARK FIBER LEASE - VOLO
4402 · DARK FIBER MAINT - VOLO
Total 4400 · DARK FIBER INCOME

	176,778.68
	2,557.28
	<u>179,335.96</u>
	1,236.00
	0.00
	<u>1,236.00</u>
	<u>180,571.96</u>

Total Income

Expense

5000 · SALARY & FRINGES EXPENSES
5050 · SALARY EXPENSE
5051 · SALARY EXPENSE - SCHEDULED
5052 · SALARY EXPENSE - UNSCHEDULED
5053 · SALARY EXPENSE - OVERTIME
Total 5050 · SALARY EXPENSE
5100 · PAYROLL TAXES
5101 · PAYROLL TAXES
Total 5100 · PAYROLL TAXES
5300 · GROUP INSURANCE EXPENSE
5301 · HEALTH INSURANCE EXPENSE
Total 5300 · GROUP INSURANCE EXPENSE
Total 5000 · SALARY & FRINGES EXPENSES
6000 · COMMODITIES
6001 · OFFICE SUPPLIES
6100 · BILLING SUPPLIES
6101 · BILLING POSTAGE
6200 · BROADBAND SUPPLIES
Total 6000 · COMMODITIES

	28,116.00
	0.00
	0.00
	<u>28,116.00</u>
	2,150.88
	<u>2,150.88</u>
	2,264.16
	<u>2,264.16</u>
	<u>32,531.04</u>
	450.00
	1,800.00
	4,200.00
	900.00
	<u>7,350.00</u>

ATTACHMENT B1

7000 · CONTRACTUAL SERVICES	
7050 · PROFESSIONAL SERVICES	
7051 · PROF SERV - EXEC DIRECTOR	0.00
7052 · PROF SERV - ACCOUNTING	7,500.00
7053 · PROF SERV - LEGAL	48,000.00
7054 · PROF SERV - TELECOMM CONSULTING	40,000.00
7055 · PROF SERV - INSURANCE PREMIUMS	3,862.50
7056 · PROF SERV - WEBSITE CONSULTANT	3,000.00
7060 · BILLING SERVICES - URBANA	0.00
7062 · BILLING SERVICES - ZOHO	1,590.00
7065 · CALL CENTER EXPENSES	0.00
7070 · PROF SERVICES - CITY ADMIN EXP	0.00
Total 7050 · PROFESSIONAL SERVICES	103,952.50
7100 · PROFESSIONAL DEVELOPMENT	
7102 · PROF DEV - CONF / MTGS	600.00
Total 7100 · PROFESSIONAL DEVELOPMENT	600.00
7200 · UTILITIES	
7201 · UTILITIES - POWER	4,548.98
7202 · UTILITIES - TELEPHONE	2,520.00
7203 · UTILITIES - MIFI	456.12
7204 · UTILITIES - WEBHOST- UC2B.NET	400.00
7205 · UTILITIES - U OF I COMM TIME	12,000.00
Total 7200 · UTILITIES	19,925.10
7300 · PROPERTY - EQUIP RENTAL	
7301 · SPACE RENTAL - NODE FACILITIES	17,491.56
7302 · OFFICE SPACE RENTAL - CHAMPAIGN	0.00
Total 7300 · PROPERTY - EQUIPMENT RENTAL	17,491.56
7500 · BROADBAND SERVICES	
7501 · BBS - INTERNET BANDWIDTH	8,748.00
7502 · BBS - INTERMAPPER/REMOTEACCESS	1,065.00
7503 · BBS - TIER 2 PERSONNEL	75,400.00
7505 · BBS - FIBER PATCHING	0.00
7506 · BBS - ADOBE CREATIVE CLOUD	191.16
7507 · BSS - PAGERDUTY SERVICE	1,026.00
7508 · BSS - GOOGLE APPS	270.00
7509 · BSS - INFOBOX MAINT AGR	6,750.00
Total 7500 · BROADBAND SERVICES	93,450.16

ATTACHMENT B1

7600 · MISC CONTRACTUAL SERVICES	
7601 · POSTAGE	90.00
7603 · QUICKBOOKS SERVICE	191.28
Total 7600 · MISC CONTRACTUAL SERVICES	281.28
7700 · MISC BUSINESS EXPENSE	
7701 · RECRUITMENT	0.00
7702 · MILEAGE	540.00
7703 · MISCELLANEOUS	950.00
Total 7700 · MISC BUSINESS EXPENSE	1,490.00
Total 7000 · CONTRACTUAL SERVICES	237,190.60
Total Expense	277,071.64
NET INCOME/(LOSS)	(96,499.68)

BYLAWS
OF
URBANA-CHAMPAIGN BIG BROADBAND

an Illinois not for profit corporation

ARTICLE I
CORPORATION

Section 1.1. Name. The name of the corporation shall be the Urbana-Champaign Big Broadband (the "Corporation").

Section 1.2. Statement of Role and Purposes. The Corporation shall be organized and operated exclusively for the promotion of the common good and general welfare of the community and not for profit, within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any subsequent federal tax laws, including but not limited to the following:

- A. to promote the public interest by building, supporting and maintaining infrastructure for the provision of high-speed internet services to certain areas located in the State of Illinois;
- B. to provide high-speed internet services to certain governmental, educational and not-for-profit entities, including enhanced educational and training opportunities, and unserved and underserved areas;
- C. to promote economic development and digital inclusion as it relates to broadband communication and technology, as well as to reduce the digital divide between classes of the public and to stimulate job creation;
- D. to provide equipment, educational materials and low or no-cost services for remediation of digital divide concerns if possible within the parameters set by the Board; and
- E. to improve broadband access by public safety agencies.

The Corporation shall have all powers granted to not-for-profit corporations organized pursuant to the Illinois General Not For Profit Corporation Act of 1986, as amended from time to time (the "Act"), including without limitation the power to acquire real and personal property by

Bylaws of Urbana-Champaign Big Broadband

Page 1 of 16

ATTACHMENT C

purchase, gift, grant, devise or bequest, and to hold, own, accept and dispose of the same for the purposes of the Corporation. One of the responsibilities of the Corporation shall include fulfilling the U.S. Department of Commerce National Telecommunication and Information Administration Broadband Infrastructure Grant No. NT10BIX5570044 ("Federal Grant") to provide public access to broadband services.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. Additionally, the Corporation shall neither participate nor intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office or public referendum question.

ARTICLE II

OFFICES

Section 2.1. Registered Office. The Corporation shall continuously maintain in the State of Illinois and within the corporation limits of the City of Champaign ("Champaign") or the City of Urbana ("Urbana") a registered office and a registered agent whose business office is identical with such office.

Section 2.2. Other Offices. The Corporation may have other offices either within or without the State of Illinois, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

ARTICLE III

MEMBERS

Section 3.1. Members Prohibited. The Corporation shall have no members.

Section 3.2. Effect of Prohibition. Any action which by statute would require notice to, the presence of, or the vote, consent, approval or other action by the members shall only require notice to, the presence of, or the vote, consent, approval or other action by the Board of Directors.

Section 3.3. Associates. Nothing in this Article III shall be construed as limiting the right of the Corporation to refer to persons associated with it as "members," even though such persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 101.80 of the Act or corresponding section of any subsequent law. The Corporation may confer by amendment of these Bylaws some or all of the rights of a member as set forth in the Act on any person or persons who do not have the right to vote on changes to the Corporation's Articles of Incorporation, or on a merger, consolidation, or dissolution of the Corporation, or on a distribution of the Corporation's assets, or on a sale, lease, exchange or

Bylaws of Urbana-Champaign Big Broadband

mortgage of assets, but no such person shall be a member within the meaning of Section 101.80 of the Act.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1. Powers and Responsibilities. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, the Board of Directors shall have and exercise full power and authority to do all things deemed necessary and expedient in the governance, management and control of the business and affairs of the Corporation, including, but not limited to, hiring an Executive Director and other necessary staff, establishing policies to guide the operation of the Corporation and determining the Corporation's program of services.

Section 4.1.1. Operation of System. The Board of Directors shall assure that the Corporation shall be and remain responsible for the long-term operation within the corporate limits of Urbana, Champaign, and Village of Savoy, including such property owned or controlled by the The Board of Trustees of the University of Illinois ("University") located in one or more of the aforesaid municipalities, of the series of fiber optic rings constructed as an open network, and including all fiber connections to the rings and to any premises constructed, operated by, or controlled (hereinafter, the "System") by the predecessor of the Corporation (the "Urbana-Champaign Big Broadband Consortium, created by an intergovernmental agreement among Champaign, Urbana and the University (hereinafter, the "Consortium")) and which come into possession, custody or control of the Corporation. Such operation shall include but not necessarily be limited to the maintenance, repair and operation of the System for its useful life in accordance with the Federal Construction Grant which was managed by the Consortium.

Section 4.1.2. Acceptance of Assets. Upon the latter to occur of the formation of this Corporation or of the U.S. Department of Commerce, National Telecommunications Information Administration's approval, if the latter is necessary, the Corporation shall accept a grant or transfer from Urbana, Champaign, and/or the University of such rights, title or interest in and to the System and such other assets as may be necessary to operate and maintain the System.

Section 4.1.3. Acceptance of Use of Public Rights-of-Way. The Corporation shall enter into and execute non-exclusive license agreements with Champaign, Urbana, and the University to provide for the Corporation's use of the right-of-way as are necessary for all purposes associated with the operation of the System. The Corporation shall pay a fee established by the Cities and the University. The fee shall commence when the NFP enters into a binding and enforceable contract with any third party for the operation of the System or part thereof. The Corporation shall pay such fee to Champaign on behalf of Urbana, Champaign, and the University.

Section 4.1.4. Transition Period. The Corporation, through its Board of Directors and such employees as it may, from time to time, hire, shall undertake such reasonable efforts to
Bylaws of Urbana-Champaign Big Broadband

cooperate with Urbana, f Champaign, and the University in the orderly and smooth transition of the System's assets, contracts, and obligations concerning the System and its operations.

Section 4.1.5. RESERVED.

Section 4.1.6. Additional Powers and Authority of the Board of Directors. The Corporation shall:

- (a) commence its operation in a manner which is generally consistent with the Business Plan developed and adopted by the Consortium until such time as the Corporation's Board of Directors determines that general adherence to the Business Plan is no longer necessary or appropriate.
- (b) enter into a contract to accept, where necessary and appropriate, the financial assistance made available to it by Urbana, Champaign, and the University.
- (c) continue the Consortium's policies including but not limited to those contained on Exhibit A appended hereto, incorporated herein, and made a part hereof. The continuation of these policies shall be for at least one year after the date of the Corporation's incorporation so long as such continuance is not seriously injurious to the Corporation or its operations in which case and/or after such aforesaid time period, the Corporation may make such changes to such aforesaid policies as it deems appropriate for the continued operation of the System.
- (d) if not already in place, enter into or cause any such other entity over which it has control to enter into 20-year Indefeasible Rights of Use agreements (IRUs) with Urbana, Champaign, and the University on such terms as are reasonable and appropriate for the use of specified strands of dark fiber on what was heretofore referred to as the seven UC2B rings and five UC2B sub-rings as well as renewable five-year fiber maintenance agreements for the regular maintenance and repair expenses as utility locating and fiber repair.

Section 4.2. Number. Except as otherwise provided in Section 4.3.1, the number of directors on the Board of Directors shall be nine (9).

Section 4.3. Eligibility and Qualifications. The initial Board shall consist of nine (9) members with three (3) members to be appointed by each of the following: the City Manager of Champaign, the Mayor of Urbana with the advice and consent of the Urbana City Council, and the Chancellor of the University's Urbana-Champaign campus.

Section 4.3.1. Withdrawal. An entity may choose to withdraw from appointing directors to the Board of the corporation by either: (a) sending written confirmation of withdrawal to the other appointing officials or (b) failing to appoint an individual to the Board for a period of sixty

(60) days after a vacancy on the Board occurs, or (c) any other express act indicating intention to withdraw. In the event that an Appointing Entity fails to fill a vacancy within thirty (30) days of when the vacancy occurs, the Corporation shall send written notice to that Appointing Entity advising of the vacancy, the date when such vacancy occurred, and that failure to fill the vacancy no later than sixty (60) after the vacancy occurred shall constitute a withdrawal of the Appointing Entity from making appointments to the Board of Directors.

In the event an Appointing Entity withdraws from the Corporation as a participant (hereinafter a "Withdrawing Entity"), each of the directors appointed by the Withdrawing Entity (hereinafter "Withdrawing Entity Directors"), if such director elects not to individually resign, may continue to serve the remaining balance of his or her term; provided, however, that a majority of the directors appointed by the other Appointing Entities shall have the right to remove the Withdrawing Entity Directors without the requirement of an affirmative vote by a director appointed by the Withdrawing Entity. Once the directors appointed by the Withdrawing Entity have completed their terms of service, whether by expiration of their terms or their resignation or removal as described herein, the number of directors on the Board of Directors shall decrease by three (3) until such time that the remaining directors approve the inclusion of a new Appointing Entity to work with the Corporation to further its mission and purpose.

Section 4.4. Term. The members of the Board of Directors shall serve for terms not to exceed three (3) years or until their successors are appointed. The initial terms of directors shall be staggered in such manner as to cause the terms of one of each of the three (3) directors appointed by each Appointing Entity to expire at one (1) year, two (2) years and three (3) years. Directors shall be eligible for re-appointment.

Section 4.5. Vacancies. Vacancies in the Board of Directors shall be filled by the Appointing Entity with respect to the vacant position.

Section 4.6. Removal of Directors. A director may be removed for cause by an affirmative vote of not less than two-thirds (2/3) of the directors then entitled to vote; provided, however that such affirmative vote must include at least one (1) director appointed by each of the Appointing Entities. Prior to the meeting at which directors shall consider the removal of a director, written notice of the purpose of the meeting shall have been delivered to each director at least twenty-one (21) calendar days prior to such meeting, and the director being considered for removal shall have had an opportunity to state his or her position and respond to any pertinent questions. For this purpose, cause shall include but not be limited to malfeasance, unethical or unprofessional behavior, or breach of fiduciary duty to the Corporation.

Section 4.7. Conflict of Interest. Each member of the Board of Directors shall be required to certify in writing to the Corporation that no conflict of interest exists which would impair that member's ability to serve as a director. Each director shall also certify that he or she has read and accepted the Corporation's Conflict of Interest Policy and each director shall comply with the Corporation's conflict of interest policy.

Section 4.8.Reports.

(a) Nothing in these Bylaws shall prohibit any director from providing reports from time to time to the Appointing Entities regarding the activities of the Corporation. The report may provide the Appointing Entities with information concerning the financial condition of the Corporation, and the plans for the future year of the Corporation's activities and any other information that the Board determines is relevant to the continuing operation of the Corporation. In providing any such report, the director or directors shall refrain from providing or disclosing information which is confidential, proprietary or constitutes trade secrets or which, if made public, would compromise or hinder the operations of the Corporation.

(b) The Corporation shall provide a report as to its operations at least annually and shall make said report available to the public.

ARTICLE V

BOARD OF DIRECTORS MEETINGS

Section 5.1.Meetings of the Board of Directors.

(a) The Board of Directors shall establish meeting dates and an annual meeting date and make said dates public.

(b) Generally, the meetings of the Board of Directors shall be open to the public and will allow for public input.

(c) The Board may close any meeting or portion thereof when, in its sole discretion, the Board determines that the closing of the meeting would be beneficial to the operation of the Corporation, or when otherwise provided in these Bylaws. A motion to close a meeting or portion thereof shall include a general statement of the reason for closing the meeting or portion thereof.

Section 5.2. RESERVED.

Section 5.3. Meetings by Electronic Device. Directors may participate in and act at any meeting of the Board of Directors through the use of a conference telephone or interactive technology, including but not limited to electronic transmission, Internet usage, or remote communication, by means of which all persons participating in the meeting can communicate with each other. Participation in such a meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 5.4. Special Meetings of the Board. Special meetings of the Board of Directors
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may be called by the Chair or any two (2) directors of the Board at any time by means of such written notice by first class mail, courier service, telephone, facsimile or such other communication reasonably designed to provide prompt notice of the time, place and purpose thereof to each director. Any action taken at any such meeting shall not be invalidated for want of notice if such notice shall be waived as hereinafter provided.

Section 5.5. RESERVED.

Section 5.6. Notices and Mailings. All written notices required to be given by any provisions of these Bylaws shall state the authority pursuant to which they are issued and copies shall be sent to the Secretary to be retained with records of the Corporation. Every written notice shall be deemed duly served when the same has been deposited in the United States mail in a sealed envelope so addressed, with proper postage thereon prepaid, delivered to a courier service, transmitted by electronic mail, facsimile, graphic scanning or such other written communication reasonably designed to provide prompt notice, plainly addressed to the addressee at his/her last address appearing on the appropriate record of the Corporation.

Section 5.7. Waiver of Notice. Non-receipt of a notice by a director of the time, place and purpose of any special meeting of the Board of Directors may be waived by that director by facsimile or other writing, either before or after such meeting has been held. Attendance at any meeting, except for the sole purpose of objecting to the holding of such meeting, shall constitute a waiver of notice of said meeting.

Section 5.8. Quorum. A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, irrespective of whether there is a director present to represent each of the Appointing Entities. If less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting to another time without further notice. If lack of a quorum during the course of a convened meeting results from a temporary absence of a director, the minutes of the meeting shall be so noted and the matter under consideration shall be considered as having been postponed until the next regular meeting; provided, however, that matters approved when a quorum was present at the meeting shall be deemed final.

Section 5.9. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws. Unless otherwise provided for by statute, the final expression of any director, when a vote is called for, of "abstain," "pass," or "present" or failure to vote when physically present shall not be construed as a vote or acquiescence with either side of the vote taken. Such director shall be considered absent for the purpose of determining a quorum with respect to the item under consideration.

Section 5.10. Voting. Each director is entitled to one vote on any matter properly submitted to the directors for their vote. Voting shall be in person or via telephonic or other forms of interactive participation including electronic ballot. There shall be no voting by proxy.

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Section 5.11. Procedure. Except as otherwise adopted by the Board of Directors, Roberts Rules of Order Revised (latest edition) shall govern procedure at all meetings of the Board of Directors and committees to the extent that such procedure is not otherwise covered expressly by these Bylaws.

Section 5.12. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof and which requires immediate action by the Board of Directors due to an unforeseen event, circumstance, or emergency may be taken without a meeting, if all members of the Board of Directors or of such committee, as the case may be, at the time in office, consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of the Board of Directors or of such committee. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a prior or subsequent effective date.

Section 5.13. Compensation. The directors shall not be entitled to any compensation for their services to the Corporation as directors, provided that such prohibition shall not prevent any such individual from receiving compensation for services rendered as an officer, employee or agent of the Corporation. Directors, however, shall be entitled to reimbursement from the Corporation for all of their proper expenses in accordance with such policies adopted by the Board of Directors. Directors shall also be indemnified from costs and liabilities as provided in these Bylaws.

ARTICLE VI

OFFICERS

Section 6.1. Officers. The officers of the Corporation shall be an Executive Director, a Chair, a Vice Chair, a Treasurer, a Secretary, and such other officers as may be appointed by the Board of Directors. Officers whose authority and duties are not prescribed in these Bylaws shall have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices other than the offices of Chair, Executive Director and Secretary may be held by the same person.

Section 6.2. Election and Term of Office. The officers of the Corporation shall be appointed annually by the Board of Directors at the regular annual meeting of the Board. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she or shall resign or shall have been removed in the manner provided in Section 6.3 of these Bylaws. Election of an officer shall not of itself create contract rights.

Section 6.3. Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the best interests of the
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Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 6.4. Executive Director. The Executive Director shall be the principal executive officer of the Corporation. Subject to the direction and control of the Board of Directors, the Executive Director shall be in charge of the business and affairs of the Corporation, shall see that the resolutions and directives of the Board of Directors are carried into effect, except in those instances in which that responsibility is assigned to some other person by the Board of Directors, and, in general, shall discharge all duties incident to the Office of Executive Director and such other duties as may be prescribed by the Board of Directors. The Executive Director shall assist the other directors in the performance of their duties.

Section 6.5. Chair. The Chair shall preside at all meetings of the Board of Directors. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board of Directors or these Bylaws, the Chair may execute for the Corporation any contracts, deeds, mortgages, bonds, or other instruments which the Board of Directors has authorized to be executed, and may accomplish such execution either under or without the seal of the Corporation, if any, and either individually or with the Secretary or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument. The Chair may vote all securities which the Corporation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Corporation by the Board of Directors.

Section 6.6. Vice Chair. The Vice Chair shall assist the Chair in the discharge of his or her duties as the Chair may direct and shall perform such other duties as from time to time may be assigned to him or her by the Chair or by the Board of Directors. In the absence of the Chair, or in the event of the Chair's inability or refusal to act, the Vice Chair shall perform the duties of the Chair, as applicable, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board of Directors or these Bylaws, the Vice Chair may execute for the Corporation any contracts, deeds, mortgages, bonds or other instruments which the Board of Directors has authorized to be executed, and may accomplish such execution either under or without the seal of the Corporation, if any, and either individually or with the Secretary or any other Officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument.

Section 6.7. Treasurer. The Treasurer shall be the principal accounting and financial officer of the Corporation. The Treasurer shall: (a) have charge of and be responsible for the maintenance of adequate books of account for the Corporation; (b) have charge and custody of all funds and securities of the Corporation, and be responsible therefor, and for the receipt and disbursement thereof; and (c) perform all the duties incident to the Office of Treasurer and such other duties as from time to time may be assigned by the Chair or by the Board of Directors. If

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required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. The Treasurer need not be a director.

Section 6.8. Secretary. The Secretary shall record the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and of the seal of the Corporation; keep a register of the post office address, email addresses and phone numbers of each director which shall be furnished to the Secretary by such director; and perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Chair, the Executive Director or by the Board of Directors. The Secretary need not be a director.

Section 6.9. Appointive Officers. The Executive Director may appoint other officers and agents as he or she deems necessary to carry out the purposes of the Corporation; provided, however, that all appointments made by the Executive Director, and all the terms and conditions of the roles of such appointees, are subject to the sole approval and discretion of the Board of Directors. No appointive officer shall have any contractual rights against the Corporation for compensation by virtue of such appointment.

Section 6.10. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed by these Bylaws for regular election or appointment to such office, provided that such vacancy shall be filled when it occurs and not on an annual basis.

Section 6.11. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors, which salaries may be nothing.

ARTICLE VII

COMMITTEES

Section 7.1. Establishment of Committees. The Board may from time to time establish such committees as it deems necessary for the efficient operation of the Corporation. The Board of Directors shall appoint the members of said committees and any Chair thereof, unless otherwise directed by the provisions of these Bylaws. Unless otherwise expressly designated by the Board, each committee shall be chaired by a member of the Board of Directors. Members of each committee may include persons who are not members of the Board of Directors. The committee Chairs shall present to the Board periodic reports describing the activities of the respective committees and the recommendations resulting therefrom. The membership of each committee shall serve until the next succeeding annual meeting or until such time as the committee has concluded its work, whichever is shorter. Each committee shall consist of at least three (3) members. Committees and their agents shall have only such authority, powers

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and responsibilities as may be delegated to them by the Board or the provisions of these Bylaws. However, no such committee shall have the authority of the Board of Directors with respect to:

- (a) amending, altering or repealing the Bylaws;
- (b) electing, appointing or removing any member of any such committee or any director or officer of the Corporation;
- (c) amending the Articles of Incorporation;
- (d) adopting a plan of merger or adopting a plan of consolidation with another corporation;
- (e) authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation;
- (f) authorizing the voluntary dissolution of the Corporation or revoking proceedings therefor;
- (g) adopting a plan for the distribution of the assets of the Corporation; or
- (h) amending, altering, repealing or taking action inconsistent with any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee.

The designation and appointment of any such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him or her by law.

Section 7.2. Term of Office; Vacancies. Each member of a committee shall continue as such until the next annual meeting of the Board of Directors of the Corporation and until his or her successor is appointed, unless (a) the committee shall be sooner terminated, (b) the authorizing resolution provides a specific term for such committee, (c) such member is removed from such committee, or (d) such member shall cease to qualify as a member thereof. Vacancies in the membership of any committee, commission or advisory board may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.3. Records. Each committee and subcommittee shall maintain a written record of its procedure and activities, including minutes of meetings, and submit written reports to the Board of Directors and the Secretary. Said written reports shall be delivered at the next meeting of the Board of Directors following the committee meeting.

Section 7.4. Quorum; Manner of Acting. Unless otherwise provided in the resolution of the Board of Directors, a quorum of any committee is defined as a majority of its membership. The act of the majority of the committee members present at a meeting in which a quorum is

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present shall be the act of the committee.

Section 7.5. Committee Procedures. Reasonable notice of the meetings of any committee shall be given to the members thereof and to the Chair of the Board and the Executive Director, each of whom shall have the right to attend the meetings of the committees. The Chair of the Board, the Executive Director or the committee Chair may invite any individuals to attend any committee meeting as they may select who may be helpful to the deliberations of the committee. Each committee may operate through the establishment of one or more subcommittees to be composed of such committee members and to have such duties and responsibilities as shall be delegated to the subcommittee by the committee Chair; however, no act of a subcommittee shall be binding upon the Corporation without the requisite vote by the Board. Each committee may adopt rules for its own operations and that of its subcommittees not inconsistent with these Bylaws or the policies of the Board of Directors.

ARTICLE VIII

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 8.1. Checks, Drafts and Money Orders. All checks, drafts and orders for payment of money shall be signed and countersigned in the name of the Corporation by such officers or agents as selected by the Board of Directors evidenced by resolution.

Section 8.2. Contracts, Conveyances and Other Legal Documents. The Board of Directors shall have the power to designate by resolution the officers and agents who shall have the authority to execute any instrument on behalf of the Corporation consistent with the Bylaws.

Section 8.3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, savings and loan associations, trust companies or other depositories as the Board of Directors may select.

Section 8.4. Audits. All the accounts and records of the Corporation together with all supporting data shall be audited by a disinterested certified public accounting firm appointed by vote of the Board of Directors. Following the end of each fiscal year, an audited financial statement shall be submitted to the Board of Directors detailing the revenues and disbursements during the preceding year.

Section 8.5. Loans and Indebtedness. No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors with such authority being either general or confined to specific instances or otherwise approved by the policies of the Corporation. Under no circumstances shall the Corporation loan any of its funds to an officer or director of the Corporation.

ARTICLE IX

INDEMNIFICATION AND INSURANCE

Section 9.1. Third Party Proceedings. The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, in which judgment was given in his or her favor, he or she was acquitted or had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 9.2. Proceedings by the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to the best interests of the Corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation, unless, and only to the extent that the court in which such action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 9.3. Successful Defense. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in Sections 9.1 and 9.2 of this Article IX or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith, if that

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person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation.

Section 9.4. Determination of Standard of Conduct. Any indemnification under Sections 9.1 or 9.2 of this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case, upon the determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 9.1 or 9.2. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who are not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion. Such determination shall be made with respect to a person who is a director or officer at the time of the determination: (a) by the majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (b) by a committee of the directors designated by a majority vote of the directors, even though less than a quorum, designated by a majority vote of such directors, (c) if there are no such directors, or if the directors so direct, by independent legal counsel in a written opinion, or (d) by the directors entitled to vote, if any.

Section 9.5. Advance Payment. Expenses (including attorneys' fees) incurred by an officer or director of the Corporation in defending a civil or criminal action, suit or proceeding may be paid by the Corporation on such terms and conditions, if any, as the Corporation deems appropriate and at all times consistent with the Errors and Omissions insurance coverage described in Section 9.7 of this Article IX.

Section 9.6. Construction of this Article. The right of indemnification and advancement of expenses provided by or granted under Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any Bylaw, agreement, vote of disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the Articles of Incorporation or a bylaw shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorized such elimination or impairment after such act or omission has occurred. The indemnification and advancement of expenses provided by or granted under Article IX shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of that person.

Section 9.7. Insurance. The Corporation shall purchase and maintain insurance, including but not limited to, Errors and Omissions insurance with minimum limits of Ten Million Dollars (\$10,000,000.00) on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or who is or was serving at the request of the Corporation

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as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article IX. If Errors and Omissions insurance coverage limits of a minimum of Ten Million Dollars (\$10,000,000.00) are not commercially available, the Corporation shall purchase and maintain such coverage at such lesser limits as may be commercially available.

ARTICLE X

MISCELLANEOUS

Section 10.1. Books and Records. The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its Board of Directors and committees having authority from the Board of Directors. All books and records of the Corporation may be inspected by the any director or his or her agent or attorney for any purpose related in any way whatsoever to the Corporation during regular business hours.

Section 10.2. Fiscal Year. The fiscal year of the Corporation shall end on December 31 of each year.

Section 10.3. Non-Discrimination. The Corporation recognizes the rights of all persons to equal opportunity in employment, compensation, promotion, education, positions of leadership and authority and shall not at any time discriminate against any employee, applicant for employment, director, officer, , contractor, or any other person with whom it deals, because of race, religion, color, handicap, disability, sex, national origin, ancestry, marital status, sexual orientation or age.

ARTICLE XI

AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS

Section 11.1. Articles of Incorporation. The Articles of Incorporation of the Corporation may be amended only by action of two-thirds of then serving directors; provided, however that such action must include at least one (1) director appointed by each of the Appointing Entities.

Section 11.2. Bylaws. The power to amend or repeal the Bylaws of the Corporation or to adopt new Bylaws shall be vested in the Board of Directors and shall require approval of no less than two-thirds of the then-serving directors; provided, however, that such action must include at least one (1) director appointed by each of the Appointing Entities. Notwithstanding the immediate foregoing, Article IV and Article XII of these Bylaws may not be amended,

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repealed or replaced by the Board of Directors, except that in the event of a withdrawal of an Appointing Entity, the Board of Directors may approve a substitute Appointing Entity.

ARTICLE XII

DISSOLUTION OF CORPORATION

Section 12.1. Dissolution. Except as otherwise provided by law, upon the voluntary dissolution of the Corporation and after paying or making provisions for the payment of all of the liabilities of the Corporation out of the assets of the Corporation, the remaining assets of the Corporation shall be transferred to Champaign to be held in trust for the Consortium.

EXHIBIT A

LIST OF UC2B POLICIES

- 2011-03 A Resolution Regarding Real Estate Acquisition
- 2011-07 A Resolution Adopting a General Policy on Minority Inclusion in Contracting
- 2011-08 A Resolution Stating a Policy to Achieve Digital Equality in the UC2B Service Area (Community Benefit Fund)
- 2012-01 A Resolution Endorsing an Initial Residential Service Tier Offering of 20 MBPS for \$19.95
- 2012-11 A Resolution Approving IRUs and Maintenance Agreement Templates
- 2012-13 A Resolution Accepting the UC2B Business and Strategic Plan and Forwarding it on to the Member Agencies for Consideration
- 2012-17 A Resolution Recommending Terms of an Agreement (Gigabit Neighborhood Gateway Proposal)
- 2012-18 A Resolution Establishing a Policy Regarding Indefeasible Rights of Use Agreements (IRUs)
- 2012-19 A Resolution Establishing a Policy Regarding Short Term Dark Fiber Leases
- 2012-20 A Resolution Establishing Wholesale Transport Services and Rates and Core Connection Charges
- 2012-24 A Resolution Establishing Private Virtual Local Area Network Rates (VLAN)
- 2012-25 A Resolution Establishing Private Virtual Local Area Network Rates (VLAN)
- 2012-26 A Resolution Approving Policies Pertaining to Copyright Compliance and Account Reinstatement
- 2013-01 A Resolution Approving a Policy Pertaining to Acceptable Use
- 2013-03 A Resolution Establishing Retail Rates for Consumer and Commercial Subscriber Accounts Outside of the UC2B Grant-Funded Areas but Adjacent to Existing Infrastructure
- 2013-05 A Resolution Approving Policies Pertaining to Statement of Privacy and Open Internet Disclosure

**AN AGREEMENT FOR SERVICES
BETWEEN THE CITY OF CHAMPAIGN ON BEHALF OF THE
URBANA-CHAMPAIGN BIG BROADBAND CONSORTIUM
AND THE URBANA-CHAMPAIGN BIG BROADBAND NFP**

THIS AGREEMENT is entered into on the date written below between the CITY OF CHAMPAIGN, a municipal corporation, ("City"), as Lead Agency for the URBANA-CHAMPAIGN BIG BROADBAND CONSORTIUM ("Consortium"), and the URBANA-CHAMPAIGN BIG BROADBAND NFP ("NFP"), a not-for-profit corporation.

WHEREAS, promotion of the construction and utilization of broadband infrastructure recently constructed is in the best interests of the Champaign-Urbana community; and

WHEREAS, an efficient method of encouraging the construction and utilization of the broadband infrastructure is in partnership with the NFP; and

WHEREAS, the Consortium desires to provide financial support for the ongoing activities generally promoted by the NFP; and

WHEREAS, the Consortium believes that the use of public funds to promote increased economic activity generated by activities promoted by the NFP will promote the creation of jobs and the overall economic well-being of the community.

NOW, THEREFORE, in consideration of the mutual undertakings contained herein, the City, as Lead Agency for the Consortium, and the NFP agree as follows:

Section 1. Overall Funding. The City, subject to the terms and conditions of this Agreement, hereby agrees to provide the NFP with Ninety-Six Thousand Five Hundred Dollars (\$96,500.00) in funding. The funds shall be payable on a monthly basis, one-sixth (1/6) of the total amount each month commencing May 1, 2014. None of these funds shall be utilized for political activities or in any other manner that is not consistent with the goals of the Urbana-Champaign Big Broadband Consortium.

Section 2. Unrestricted Funding. The funds provided under this Agreement to the NFP as identified in Section 1 are provided for implementation of the objectives as described in Exhibit A.

Section 3. Best Efforts; Work Plan. The NFP agrees to use and devote its best efforts to promote the interests of the Urbana-Champaign Big Broadband Consortium, as part of its effort to encourage development of broadband accessibility to all citizens and businesses and institutions in the Champaign-Urbana community. The NFP shall expend the funds provided under this Agreement exclusively for the purposes identified herein.

Section 4. NFP Budget. The NFP agrees to expend any funds received pursuant to the terms of this Agreement consistent with the budget attached hereto as Exhibit B1. The NFP may amend such budget from time to time provided, however, that such amendments shall be provided to the City within 28 days after approval by the NFP Board.

Section 5. Records and Reports.

A. The NFP shall submit to the City through the City's Director of Planning and Development, on a monthly basis, an accounting of funds received. Such report shall be submitted monthly for the prior calendar month. The City Manager of the City may request a report on a more regular basis upon no less than seven (7) days notice.

B. During the term of this Agreement, the NFP shall submit to the City, on a regular basis, a report of activities in furtherance of the objectives identified in the attachment. Such reports shall be submitted on a quarterly basis in the month following the end of each calendar year quarter (submitted during April, July, October and January) or at such other time as the City Manager of the City may request. These reports shall detail the progress made toward the attainment of the objectives.

Section 6. Audit. The NFP shall cause books and records of the NFP to be examined at least annually by an independent certified public accountant and shall cause the annual report to be sent to the City no later than one hundred eighty (180) days after the close of the Fiscal Year of the NFP. Such report shall include a Statement of Financial Condition as of the Fiscal Year of the NFP then ended, all of which shall be audited by a certified public accountant. The City shall further have the right at any time to examine and review the financial records of the NFP, and in the event that the NFP fails to supply the City with the annual report as required in this section, the City may, at the expense of the City, from the funds payable to the NFP, cause a statement to be prepared or funds audited by an independent certified public accountant selected by the City.

Section 7. Term. This Agreement is for an indefinite term commencing May 1, 2014.

Section 8. Termination. Either the City or the NFP shall have the right to terminate this Agreement by giving notice of its intentions to terminate this Agreement at least 28 days in advance. Such termination may be for any reason, including, but not limited to, violation of the terms and conditions of this Agreement. Any party providing such notice of termination shall offer the other party an opportunity to meet and discuss such termination prior to the effective date hereunder. Upon such termination, any funds in excess of the monthly pro-rata portion of the allocated funds shall be paid back to the City within 28 days after the effective date of the termination.

Section 9. Dissolution of the NFP. In the event the NFP is dissolved for any reason after payment of all debts and obligations of the NFP, the funds provided under this Agreement for the current Fiscal Year shall, to the extent permitted by law, be returned to the City.

Section 10. Notices. All notices or submittals referred to in this Agreement shall be either sent by certified mail, delivered in person or via e-mail, and shall be deemed to have been

given if as sent addressed as set forth below to the person so named:

TO THE CITY:
City Manager and City Attorney
City of Champaign
102 N. Neil Street
Champaign, IL 61820
dorothy.david@ci.champaign.il.us
frederick.stavins@ci.champaign.il.us

TO THE NFP:
Board Chair
UC2B NFP
713 Edgebrook Drive
Champaign, IL 61820

Section 11. Waiver. Waiver by any party of any breach of any term, condition, or covenant contained in the Agreement shall not be deemed a waiver of any other term, condition or covenant herein.

Section 12. Assignability. It is agreed that neither the City nor the NFP shall have the right to assign this Agreement, in whole or in part, without the written consent of the other party.

Section 13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the City and the NFP and their respective successors and assigns.

Section 14. Human Rights. The NFP shall comply with the City's Human Rights Ordinance and if requested by the City, shall provide such hiring information as is required by the City's Equal Opportunity in Purchasing Ordinance.

IN WITNESS WHEREOF, the City and the NFP have caused this Agreement to be executed by its duly authorized representatives as of the date written below. This Agreement shall be effective upon the last of the signatories to sign the Agreement.

CITY OF CHAMPAIGN, as Lead
Agency for the URBANA-CHAMPAIGN
BIG BROADBAND CONSORTIUM,

URBANA-CHAMPAIGN BIG BROADBAND
NFP, a Not-for-Profit Corporation,

By: _____
City Manager

By: _____
President of the Board

Date: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

- A. Oversee system operations, including third party operations.
- B. Administer public benefit funds and request input from residents of the community as part of the process of expending such funds.
- C. Provide periodic written updates on the status of the system to the public.
- D. Generally promote the mission of the Consortium as contained in Section 3 of the Intergovernmental Agreement.
- E. Promote the core values of the Consortium contained in Section 1.2 of the Agreement to Transition Broadband Operations.

ATTACHMENT B1

**UC2B NFP
BUDGET
SERVICES AGREEMENT**

UC2B NFP Inc & Exp
(no LOU maint or maint)
for TA #3
May - Oct 2014

Income

4000 · SUBSCRIBER INCOME	
4001 · SERVICE FEES	176,778.68
4002 · PAST DUE FEES	2,557.28
Total 4000 · SUBSCRIBER INCOME	179,335.96
4400 · DARK FIBER INCOME	
4401 · DARK FIBER LEASE - VOLO	1,236.00
4402 · DARK FIBER MAINT - VOLO	0.00
Total 4400 · DARK FIBER INCOME	1,236.00
Total Income	180,571.96

Expense

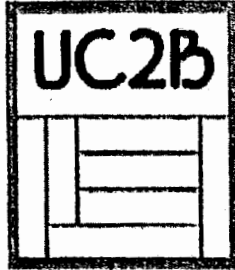
5000 · SALARY & FRINGES EXPENSES	
5050 · SALARY EXPENSE	
5051 · SALARY EXPENSE - SCHEDULED	28,116.00
5052 · SALARY EXPENSE - UNSCHEDULED	0.00
5053 · SALARY EXPENSE - OVERTIME	0.00
Total 5050 · SALARY EXPENSE	28,116.00
5100 · PAYROLL TAXES	
5101 · PAYROLL TAXES	2,150.88
Total 5100 · PAYROLL TAXES	2,150.88
5300 · GROUP INSURANCE EXPENSE	
5301 · HEALTH INSURANCE EXPENSE	2,264.16
Total 5300 · GROUP INSURANCE EXPENSE	2,264.16
Total 5000 · SALARY & FRINGES EXPENSES	32,531.04
6000 · COMMODITIES	
6001 · OFFICE SUPPLIES	450.00
6100 · BILLING SUPPLIES	1,800.00
6101 · BILLING POSTAGE	4,200.00
6200 · BROADBAND SUPPLIES	900.00
Total 6000 · COMMODITIES	7,350.00

ATTACHMENT B1

7000 · CONTRACTUAL SERVICES	
7050 · PROFESSIONAL SERVICES	
7051 · PROF SERV - EXEC DIRECTOR	0.00
7052 · PROF SERV - ACCOUNTING	7,500.00
7053 · PROF SERV - LEGAL	48,000.00
7054 · PROF SERV - TELECOMM CONSULTING	40,000.00
7055 · PROF SERV - INSURANCE PREMIUMS	3,862.50
7056 · PROF SERV - WEBSITE CONSULTANT	3,000.00
7060 · BILLING SERVICES - URBANA	0.00
7062 · BILLING SERVICES - ZOHO	1,590.00
7065 · CALL CENTER EXPENSES	0.00
7070 · PROF SERVICES - CITY ADMIN EXP	0.00
Total 7050 · PROFESSIONAL SERVICES	103,952.50
7100 · PROFESSIONAL DEVELOPMENT	
7102 · PROF DEV - CONF / MTGS	600.00
Total 7100 · PROFESSIONAL DEVELOPMENT	600.00
7200 · UTILITIES	
7201 · UTILITIES - POWER	4,548.98
7202 · UTILITIES - TELEPHONE	2,520.00
7203 · UTILITIES - MIFI	456.12
7204 · UTILITIES - WEBHOST - UC2B.NET	400.00
7205 · UTILITIES - U OF I COMM TIME	12,000.00
Total 7200 · UTILITIES	19,925.10
7300 · PROPERTY - EQUIP RENTAL	
7301 · SPACE RENTAL - NODE FACILITIES	17,491.56
7302 · OFFICE SPACE RENTAL - CHAMPAIGN	0.00
Total 7300 · PROPERTY - EQUIPMENT RENTAL	17,491.56
7500 · BROADBAND SERVICES	
7501 · BBS - INTERNET BANDWIDTH	8,748.00
7502 · BBS - INTERMAPPER/REMOTEACCESS	1,065.00
7503 · BBS - TIER 2 PERSONNEL	75,400.00
7505 · BBS - FIBER PATCHING	0.00
7506 · BBS - ADOBE CREATIVE CLOUD	191.16
7507 · BSS - PAGERDUTY SERVICE	1,026.00
7508 · BSS - GOOGLE APPS	270.00
7509 · BSS - INFOBOX MAINT AGR	6,750.00
Total 7500 · BROADBAND SERVICES	93,450.16

ATTACHMENT B1

7600 · MISC CONTRACTUAL SERVICES	
7601 · POSTAGE	90.00
7603 · QUICKBOOKS SERVICE	191.28
Total 7600 · MISC CONTRACTUAL SERVICES	281.28
7700 · MISC BUSINESS EXPENSE	
7701 · RECRUITMENT	0.00
7702 · MILEAGE	540.00
7703 · MISCELLANEOUS	950.00
Total 7700 · MISC BUSINESS EXPENSE	1,490.00
Total 7000 · CONTRACTUAL SERVICES	287,190.60
Total Expense	277,071.64
NET INCOME/(LOSS)	(96,499.68)

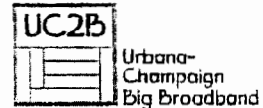


Urbana-
Champaign
Big Broadband

UC2B Business and Strategic Plan

**Operational
Structure and
Governances**

Current Operating Structure



UC2B today is operating as a governmental consortium in partnership with the City of Urbana, the City of Champaign and the University of Illinois. Although there have been numerous successful endeavors that have been executed in cooperation between these agencies, and this organizational structure and governance may be more than adequate in the short term, there may be potential issues in continuing to operate an Internet and FTTP network in the long term within this current organizational structure.

The potential pitfalls may be the following:

- Procurement processes are public with open bids, open negotiation and full disclosures. Key vendors and strategic partners may see this as a barrier to do business with UC2B as they may not want to disclose all of the nuances of the relationship, pricing, cost structures, etc. to potential competitors, their customers and the public in general. Transparency requirements in business practices often cause competitive conflict.
- The open procurement process and the nature in which decisions are made, i.e. with City Council or Board approval, may create a hindrance for UC2B to remain nimble, flexible and able to make decisions in a timely manner in order to best compete in this highly-competitive marketplace.
- Long term commitment to the mission, goals and business of the business may be threatened with the change in City Council members occurring every two years, or that the mission may not be aligned with the mission of the three agencies. It is recognized that all three agencies are fully committed to the success of UC2B today; however, this may change over time as new members are brought to the City Council or to the various Boards. Long term ability to attract funding from a range of sources may be limited based upon the current organizational structure. Operating expenses will be significant and funding or revenue must be in place to cover investment and operational expenses.
- The FTTP business is a new line of business for the consortium and the ability to operate must be built, acquired or outsourced. This requires a strong management team that will oversee this process of organizational growth. Aside from a few individuals who now work for the University, UC2B does not currently have organizational experience in the utility, telecom, Internet or fiber optic business. UC2B must develop and manage marketing and sales and compete with other community network providers. This business requires a commitment to maintenance, customer service and management of an organization that is not yet in place.



Current Operating Structure, cont'd

Providing an open forum to solicit input and to share information with the public can often provide a good platform for innovation, creativity and valuable input into the processes. However, if openness and transparency affects UC2B's ability to negotiate with vendors, and to continue to be nimble, flexible and make timely decisions, then perhaps there needs to either be a Communication Policy put in place and/or a new organizational structure may need to be established. Several service providers have expressed an interest in developing a relationship with UC2B and have expressed their desire to provide services in partnership with UC2B. However, the current Open Meetings Act laws prohibit elected or appointed decision-makers meeting in a non-public forum. The existing operational structure helps ensure UC2B's mission; however, the existing operational structure restricts future capitalizations, service development and expansion, and long-term stability with the private sector partners/customers.

What is the best operational structure to be:

- Innovative
- Scalable
- Sustainable
- Nimble and Flexible
- Financeable
- Open

Scalability and sustainability will require flexibility in governance, continued innovation and deployment, and the ability to adapt to the competitive environment through partnerships, service enhancements and salable pricing model.

The current organizational structure may serve UC2B well in the short term. The question will be, "at what point does it make sense to restructure the organization?" The answer to that question will be, "when the challenges of this organizational structure limit UC2B success."

NEO recommends a hybrid approach, a 501c(3) non-profit with for-profit LLC subsidiaries. This organizational structure that may mitigate the potential challenges of other organizational structures, while at the same time provide flexibility in gaining funding from a number of potential sources, and give the organization the ability to offer multiple types of products, services and revenue sources; and the ability to partner with MANY entities and service providers. This approach also allows innovation, scalability, sustainability and allows UC2B to be nimble and flexible.

Each type of organizational structure has its benefits and potential pitfalls. There is no bad organizational structure; each has its set of challenges. An outline of the possible organizational structures, their pros, cons and examples of other FTTP networks are shown on the following pages.

Business Model Comparison

Commonly Called	Owned By	Operated By	Pros	Cons	Examples
1. Public Utility	Municipal/Co-Op	City, Enterprise or Private Sector	<ul style="list-style-type: none"> Enterprise services with a high level of local control over network funding and priorities. Public good often overrides profit motives. User access fees; can result in savings for the public utility. Utility investment can be managed in either a wholesale model which encourages provider partners and extends community investment or through retail model which engages end-users. Dedicated retail customer (sticky). Community model creates loyalty -not just price. 	<ul style="list-style-type: none"> Often greater capital investment with no guarantees that service adoption will cover investment and operational expenses. Usually a new line of business requirements Organization must build -acquire organizational experience Public Utility must develop and manage marketing, sales and compete with other community network providers Many cities are uncomfortable with maintenance and management commitment Government fund accounting not allow certain shared revenue/cost for municipal utility Transparency requirements in business practices can cause competitive conflict. 	<p>Wholesale Models:</p> <ul style="list-style-type: none"> Chelan, WA <p>Retail Models:</p> <ul style="list-style-type: none"> St. Louis Park, MN; Chattanooga, TN Bristol, VA Chaska, MN; St. Cloud, FL Benton Public Utility District, Kennewick, Washington Saint Louis Park, Minnesota
2. Non-profit 501(c)3 501(c)12	<p>(Typically a committed, cross-sector group of leaders that facilitate sustainability and local ownership.</p> <p>(Community Stakeholders, Independent Service Corporation, Institutional or Institutional Partners)</p>	<p>Management of Non-profit with flexible governance:</p> <ul style="list-style-type: none"> Charitable Community Leaders Private and/or public sector governance Hybrid Public-Private Governance <p>Can either be a charitable or service related non-profit.</p>	<ul style="list-style-type: none"> Non-profit mission will be directed by the selected governance model and their individual mandates. Non-Profit can have a social mandate that focuses on community needs and operates network independent from other govt. business. Can aggregate demand and leverage capital assets. More funding options are available to the non-profit versus municipal led initiatives. Also provides flexible business models that can evolve to address selected community needs. 501(c)3 enables charitable giving and provides shelter for assets. 501(c)12 provides tax advantages for service organizations 	<ul style="list-style-type: none"> Usually a new line of business requirements Organization must build -acquire organizational experience Non-Profit must develop and manage marketing, sales and compete with other community network providers. Start-up structure and funding may be complex and difficult. Requires member or stakeholder buy-in Fund-raising may be difficult. Traditional financing may be more complicated by business model and ROI analysis. IRS has had increasing interest in reviewing and ensuring non-profit status and has in recent years pierced the veil when a non-profit is used as a shelter. IRS may require hybrid non-profit and for-profit corporation to manage unrelated business income. Mission often limits ability to take advantage of new opportunities 	<ul style="list-style-type: none"> OneCommunity, OH, Boston, MA; Cape Cod, MA; Rhode Island

<p>3. Publicly Owned</p> <p>Municipality</p> <p>Government Authority</p> <p>Privately Operated</p>	<p>Municipal/Government governance, non-profit, consortium of cities, public/private consortium, or private company operated</p>	<p>Management of the Non-profit governed by a municipal or government council or through operating agreement with private sector partner.</p>	<ul style="list-style-type: none"> • Can encourage build out of "middle mile" across a region and competition in local broadband market. Generally encourages private sector investment through incentives or through revenue commitments. • Easier for government to leverage assets, participate in collaborative ventures, and partner with non-profit. • Can aggregate public enterprise demand-use and leverage capital assets to reduce cost. • Can create alternative revenue streams to lower overall operating expenses. 	<ul style="list-style-type: none"> • Providers develop and invest in infrastructure based on anticipated ROI. • Varying business models make it difficult to ensure success • Competitive providers may not continue to invest in the network and may not offer services that meet community needs pushing the underserved burden and expenses onto the publicly owned asset while they cherry pick the high value customers. 	<ul style="list-style-type: none"> • Utopia, West Valley City, UT; • Windom, Minnesota Network; Nevada, MO; • Corpus Christi, TX
<p>4. Consortium</p>	<p>Group of public partners, private partners, or public and private partners</p>	<p>Private and/or public sector</p>	<ul style="list-style-type: none"> • Buying consortia with the option to aggregate services with the benefit of volume discounts and option to co-invest in new infrastructure at a lower shared cost per individual if services are otherwise unavailable. • A Broadband buyers club for big broadband users across a region. 	<ul style="list-style-type: none"> • Usually focus on consortia/membership and does not solve connectivity for all end users in a region. • Buyers club is subject to market conditions and rates may change based on provider market costs and willingness to sell at discounted rates. • Consortia member's services limited to provider contracts/services. • Cities/University has limited input and control; typically the entity contracts with one private sector partner for network services. • The entity has little or no impact on competition in the local broadband market. • Citizen services are driven by purely profit motive. 	<ul style="list-style-type: none"> • Fredericton, NB; • Ohio Middle Mile Consortium (OMMC); • Wireless Silicon Valley
<p>5. "Public/Private" Or Franchise</p>	<p>Public/Private investment with either public or private leadership</p> <p>Typically a Private sector provider or reseller</p>	<p>Private sector</p>	<ul style="list-style-type: none"> • Minimizes financial, development and operational commitment by the cities/university • Provides the entity option to use services for their direct benefit without significant capital risk. 	<ul style="list-style-type: none"> • No control over the service providers and services being offered. There is no guarantee that service provider will invest and whether they will provide services that meet the needs of community. 	<ul style="list-style-type: none"> • Philadelphia; • Umatilla county; • Rio Rancho, NM; • Tucson, AZ
<p>6. Subscriber Based Private</p>	<p>Private sector</p>	<p>Private sector</p>	<ul style="list-style-type: none"> • No financial risk for the and no control over services being delivered or made available to the community. Limited or no political risk for city. 	<ul style="list-style-type: none"> • No control over the service providers and services being offered. There is no guarantee that service provider will invest and whether they will provide services that meet the needs of community. 	<ul style="list-style-type: none"> • Common carrier, cable and third party providers. • The status quo. Any number of private networks may serve a community.

<p>7. Co-Op Model</p>	<p>Municipal/Government governance, non-profit, consortium of cities, public/private consortium, or private company operated</p>	<p>Management of the Non-profit governed by a municipal or government council or through operating agreement with private sector partner.</p>	<ul style="list-style-type: none"> • Community, locally based. Can continue to focus on the needs of the community. • Unique funding model; may use several approaches to financing: crowd funding, service providers can participate in the capital funding, Individuals, and government. • Can aggregate public enterprise demand-use and leverage capital assets to reduce cost. • Can create alternative revenue streams to lower overall operating expenses. 	<ul style="list-style-type: none"> • Providers develop and invest in infrastructure based on anticipated ROI and Capital Membership • Varying business models make it difficult to ensure success • Competitive providers or Individuals may not continue to invest in the network and may not offer services that meet community needs. 	<ul style="list-style-type: none"> • United Electric Cooperative (Missouri) • Paul Bunyan (Minnesota) • Camhu Fiber Network Coop
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NEO's Recommendation: A Hybrid Approach

Current Status
 Publicly Owned
 Government Authority
 Privately Operated

Recommendation
 Consider Hybrid
 Non-Profit 501(c)3 with
 For-Profit Subsidiary Organization
 and Continued Community
 Governance

The benefits of a Hybrid Non-Profit 501(c)3 organization with For-Profit Subsidiaries will combine the benefits of the Non-Profit organization (tax advantages, charitable contributions, maintaining the mission for the societal good and maintain the interest of government and the community) with the benefits of For-Profit LLCs or C-Corps (another set of funding sources, and may maximize opportunities for operational flexibility, efficiency and financial sustainability.)

This organizational structure may alleviate the potential concern of open procurement processes which may be seen by vendors, key strategic partners as a barrier to do business with UC2B. This organizational structure may also allow UC2B to make decisions more quickly and allow UC2B to be more nimble and flexible in order to best compete in the marketplace. This organizational structure may mitigate the potential concern of change in City Council members occurring every two years and may provide an environment whereby long-term commitments to the mission, goals and business of the business can be kept in place. And finally, this separate, stand-alone entity operates at arms length from the cities and UI and lessens the financial and legal risks of operating this network.

The recommendation of a hybrid structure gives UC2B the advantages of both a non-profit entity and a for-profit business. This allows UC2B to move forward with a number of various entities in partnership (service providers, network infrastructure funders, customers, i.e. the medical community, schools, and businesses) and gives UC2B the most flexibility in maintaining the local and societal focus. Local ownership and control by the member agencies would remain in place with the appointment of representatives to the Board of Directors. The details of such an entity would need to be negotiated among the member agencies in a new intergovernmental agreement and set of organizational by-laws.

UC2B – Business Strategy & Operations
Recommended Operation, Legal and Tax Structure (Post Grant)



Mission Oriented Community Programs

- Capital Infrastructure
 - Fiber IRUs
 - Equipment Donations
- Community Applications
 - Government Service
 - Underserved Health & Education
 - Digital Inclusion Programs

Member Programs

Maintain Target Percentage of Ownership <30%

Un-Related Business Income

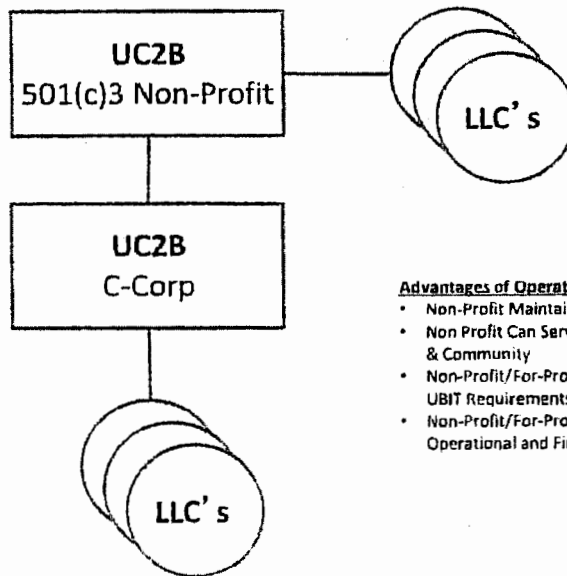
Maintain Target Percentage of Ownership <30%

100% Ownership by UC2B Non-Profit

- Unrelated revenue recognition
- Royalty Use of Assets
- Target Unrelated Mission Use

Limited Liability Company

- Vendor Service Partnerships
- Network Vendor Agreements
- 100% Unrelated Income Recognition



Advantages of Operating Structure

- Non-Profit Maintains Mission Focus
- Non Profit Can Service the Interest of Government & Community
- Non-Profit/For-Profit Arrangement Manages IRS UBIT Requirements
- Non-Profit/For-Profit Maximize Opportunities for Operational and Financial Sustainability



This Structure Facilitates Multiple Funding Sources

- Grants/Loans from Charitable Foundations & Trusts
- Donations from Corporate Entities
- Bond Financing-public ownership and either G.O. Debt or Revenue Bonds
- Hybrid Bond financing using Pooled or Citizen Opt-In Bond Programs
- Private operator and private capital with Public ownership of underlying asset
- Institutional Investor (international fund)
- Potential investor/banker
- International Infrastructure Funds
- International/Sovereign wealth funds with an interest in such investments targeting education and social programs
- Hybrid public/private model using an "on behalf of entity" or alter ego entity or even create a community venture fund partnered with Private sector owner who would also manage

This hybrid organizational structure allows for numerous funding options, giving UC2B more flexibility and options available for funding its expansion.

This Structure Facilitates Flexibility in Sourcing Operations

- Outsourcing and Staffing Flexibility
 - Service Trades
 - Accept Donations and In-Kind Service Partnerships
 - Simplified Service Contracting
 - Broad Range of Contract Service Options

To Summarize: This Structure Would Create

- A variety of sources of funds in combination over time
- A variety of revenue and other outcomes
- A portfolio management approach

