

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

(Authorizing Creation of Urbana-Champaign Big Broadband, Inc., a not-for-profit corporation to acquire the UC2B assets and to undertake the next phase of the “UC2B” project following expiration of federal grant.)

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

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

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

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

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

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

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

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

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

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

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

Section 1.

A Second 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 "Second Amended UC2B IGA"), be and the same is hereby authorized and approved.

Section 2.

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

PASSED BY THE CITY COUNCIL this _____ Day of _____, 2013.

Phyllis D. Clark, City Clerk.

APPROVED BY THE MAYOR OF THE CITY OF URBANA, ILLINOIS this ____ Day of _____, 2013.

Laurel Lunt Prussing, Mayor.



LEGAL DIVISION
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P.O. Box 219, Urbana, IL 61803-0219
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DATE: August 1, 2013
TO: City Council, Mayor
CC:
FROM: City Attorney.

SUBJECT: AUGUST 5, 2013 URBANA COUNCIL MEETING - DRAFT SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT PROVIDING FOR THE CREATION OF THE URBANA-CHAMPAIGN BIG BROADBAND CONSORTIUM SS 2013-037.

Please note, a final recommended version of the draft Second Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium (“2nd Amended IGA”) was not attached to your Council packet. What has been attached is the latest draft.

Recommendation: Approve the 2nd Amended IGA in concept since the changes still needed to be made are in language to meet the Council’s strongly-expressed concern about giving the UC2B assets to a private not-for-profit entity and the fear that they may ultimately fall into the hands of a private for-profit entity.

Discussion: At the July 30th joint study session of the Urbana and Champaign councils, several concerns were expressed about the transition of the UC2B network from a consortium of Urbana, Champaign and the University to a private not-for-profit (“NFP”). The two major concerns were: (a) openness of the NFP’s operations to the public and (b) the sale of UC2B’s assets to a private, albeit, NFP. The attorneys for the cities and the University were given direction to address these issues. The attorneys believe that the first concern has been addressed sufficiently by making changes to the draft NFP bylaws. See bylaws attached to lead memorandum which identifies the changes made and reasons therefore. However, addressing the second concern – transfer of UC2B assets to the NFP – is far less easy to address. Analyzing that concern has raised a number of technical and legal issues. Thus, the delay in getting a recommended final version of the 2nd Amended IGA.” Some of these issue concern:

- The University’s inability to sell or transfer title to those UC2B assets which it owns.
- Whether leasing and licensing UC2B assets to the NFP gives the NFP sufficiently strong rights in those assets to attract purchasers of indefeasible rights of use (“IRU”) in the system – i.e., rights to connect to and use the UC2B system. IRUs can sell for as much as \$500,000. Thus, a purchaser of an IRU wants assurance that he/she/it will have an uninterrupted right to the purchased IRU for an appropriately long period of time?
- How will the UC2B Consortium (comprised of the two cities and the University) operate once it leases or licenses its assets to the NFP?

- What will the mechanism be for returning the lease and license rights given to the NFP should the NFP need to dissolve?
- Who will get the assets back from the NFP – Champaign as the lead agency, Urbana, the University, or the UC2B Consortium?
- What if the entity to receive the assets upon the NFP’s dissolution doesn’t want them?
- Once the assets are returned how do the three entities deal with them? What if one or two of the entities have withdrawn from the UC2B Consortium in the mean time?

There are many other similar “nit-picky” issues which need to be addressed before completing a final recommended draft of the 2nd Amended IGA.

However, given that those are legal issues and not policy issues (the policy issue being retention of ownership of the UC2B assets by the three entities or the UC2B Consortium), the City Attorney recommends that the Council approve the 2nd Amended IGA in concept since the only policy changes contained in the draft (versus the First Amended Intergovernmental Agreement which was already approved by both cities and the University) is the creation of the NFP. The rest of the issues, as noted above, are technical/legal, in terms of meeting both councils’ concerns about “giving” the UC2B assets to the NFP.



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DATE: July 31, 2013
TO: City Council, Mayor
CC:
FROM: City Attorney.

SUBJECT: AUGUST 5, 2013 URBANA COUNCIL MEETING - DRAFT SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT PROVIDING FOR THE CREATION OF THE URBANA-CHAMPAIGN BIG BROADBAND CONSORTIUM SS 2013-037.

A. Introduction.

The purpose of this memorandum is to transmit the attached draft of the Second Amended and Restated Intergovernmental Agreement providing for the creation of the Urbana-Champaign Big Broadband Consortium (UC2B) (“2nd Amended IGA”), the draft bylaws for the not-for-profit corporation (which are an exhibit to the 2nd Amended IGA) which will take over the next phase of UC2B including its operations and a budget. The amendments to the intergovernmental agreement contained in the 2nd Amended IGA are necessary to authorize the creation of a not-for-profit entity (“NFP”) to replace the intergovernmental Consortium.

B. Some Initial Considerations.

The funding from UC2B came from several sources including (a) a \$22 million grant from the National Telecommunications and Information Administration (“NTIA”); (b) an approximately \$3 million grant from the State of Illinois; and (c) moneys from Urbana, Champaign and the University. The two grants were awarded to the University and the University issued sub-awards to the Cities from NTIA grant funds.

As the timetable below provides, timely action on approving the 2nd Amended IGA (which includes the draft bylaws for the NFP) is necessary in order to assure a smooth, orderly, and efficient transition of UC2B into its next phase while reducing its financial impact on Urbana. Currently, it is planned that the cities and the University (“Founding Entities”) will retain their interests in the UC2B assets as they exist today and lease or license, as the case may be, those assets to the NFP. The NTIA will have an ownership and/or lien interest in those assets which were purchased, acquired and/or created using NTIA grant funds. Thus, the NTIA must approve the plan for leasing and/or licensing those assets to the NFP. The approval process requires an application by the University (to whom the NTIA grant was issued) and approval of that application by NTIA. Such application and approval process may take several weeks. In all events, University’s application for NTIA approval must be submitted to the NTIA by no later than August 15th and NTIA approval must be obtained by no later than September 30th. If the

process is not completed, dealing with the assets purchased, acquired and/or created with NTIA grant funds becomes considerably more difficult. Likewise, the University will need to deal with the State of Illinois Central Management Services which can be an extremely cumbersome process. Thus, approval of the 2nd Amended IGA (including the attached bylaws) by the councils of Urbana and Champaign and the University's Chancellor must occur as soon as possible.

At the joint study session of the Urbana and Champaign councils held on July 30, 2013, much discussion was held about the need for a certain level of "openness" in how the NFP will operate and assuring participation by minorities and women in the NFP and by other persons who will provide goods and services to, for or on behalf of the NFP. The focus of that meeting was on the draft NFP bylaws.

The draft bylaws being conveyed with this memorandum attempt to address the concerns raised by both councils and members of the public.¹ Not all suggestions in the manner or language presented can be included for any one of a number of reasons. For example, due care must be exercised insofar as how much control the Founding Entities can exercise over the NFP and its operations and activities. Too much control can lead to a denial of the NFP's application for state and/or federal tax exempt status or revocation of that status once granted. As another example, the NFP will be operating (unlike the Urbana Champaign Sanitary District) in a competitive environment. Thus, the NFP will need to balance its need to protect its confidential, proprietary and trade secret information from others with its public purpose of providing the services for which it is founded and which are consistent with the tenets of the NTIA grant. As yet another example, it would not serve the NFP or the Founding Entities to load down the NFP's board of directors with numerous operational requirements which would render the entity inefficient and less able to meet its purposes.

The attorneys for Urbana, Champaign and the University have tried to incorporate as many of the Urbana Council suggestions (and suggestions from the Champaign Council and the public) as reasonable with the recognition that the NFP must be postured in such a way as to be successful in serving its community.

C. Recommended Action.

The City Attorney recommends that the Council approve the terms of the 2nd Amended IGA (which includes approving the draft bylaws which are attached as an exhibit to the 2nd Amended IGA) as submitted with this memorandum and authorize the Mayor to execute the 2nd Amended IGA.

The 2nd Amended IGA, draft bylaws, and initial budget have been prepared by staff of the Founding Entities and were presented at a July 30th joint meeting of the Urbana and Champaign city councils. At present, it is contemplated that 2nd Amended IGA and bylaws will be presented to and approved by (a) the Urbana Council at its August 5th meeting, (b) the Champaign Council

¹ The draft bylaws were distributed to Council members and the Mayor in advance of the Council's June 10th meeting. The bylaws were discussed at the June 10th meeting as part of Bill DeJarnette's, Mike Monson's and the City Attorney's UC2B update to the Council during that meeting. Another draft of the bylaws and a draft of the 2nd Amended IGA was included in the packet for the July 30th study session of the Urbana Council and Champaign Council.

at its August 6th meeting; and (c) the Chancellor of the University on August 5th or 6th since the Chancellor does not need University Board of Trustee approval.

While it is recognized that some may want more time to debate this matter, what must be kept in mind is that if the NTIA directs that changes be made in the University's application for approval to lease and/or license the UC2B assets to the NFP, consideration of those changes may require Council action from both cities. Each Council action would likely require a minimum of a four or five day turn around – one or more days to get information about the NTIA concerns/requests to Council members for their consideration, a day to explain the information if technical, 48 hours for notice of Council meetings, and the meetings themselves. It is entirely possible that the aforesaid process may need to be replicated to address all of the NTIA's concerns if the NTIA does not simply provide a single document which states all of its concerns. Thus, it is possible, again, depending how the NTIA proceeds, for the NTIA-mandated application "correction" process to consume 10 to 14 days.

D. Why Wasn't the Process Planned in Advance?

The NTIA awarded numerous grants for projects similar to UC2B. Initially, the numerous grants were all scheduled to expire on different dates. However, the NTIA elected to extend the expiration dates to September 30, 2013. Thus, all the grants will now expire on the same day. On July 22, 2013, the NTIA staff person administering the UC2B grant contacted the University to advise that the application regarding continuing use and/or disposition of those assets purchased, acquired, and/or created with NTIA grant funds be submitted no later than August 15, 2013. Thus, the Founding Entities did not learn of the application submission deadline until July 22nd.

E. Process and Timeline to Transfer the Assets to the NFP.

The NTIA will retain for a number of years an ownership/lien interest in those physical assets of UC2B which were created or acquired with NTIA grant moneys. The length of the NTIA's ownership/lien interest in each such asset will depend on the respective asset's useful life expectancy (e.g., 20 years for the fiber). As a result, the NTIA will retain approval authority for any request to transfer, lease or license those assets to or by the NFP. It is critical that this approval process be completed prior to September 30, 2013. As the review and approval process outlined below demonstrates, there is little time to complete the steps required to submit the request for approval to the NTIA and obtain the NTIA's approval thereof:

- July 30, 2013 – Joint Study Session of Urbana and Champaign City Councils with public input.
- August 5, 2013 – University approval of 2nd Amended IGA and NFP bylaws.
- August 5, 2013 – Urbana City Council approval of 2nd Amended IGA and NFP bylaws with public input.
- August 6, 2013 – Champaign City Council approval of 2nd Amended IGA and bylaws with public input.

- August 9, 2013 – Application made to State of Illinois for formation of the NFP.
- August 15, 2013 – Submit application to the NTIA for approval of a lease and/or license to the NFP of those UC2B assets purchased, acquired or created with NTIA grant funds. lease and/or license proposal to Federal government.
- August 15-29, 2013 – NTIA reviews and comments on the University’s application to approve a lease and/or license of those UC2B assets purchased, acquired, and/or created with NTIA grant funds. This process may require revisions to the application as directed by the NTIA. The review process may involve back and forth communications between NTIA and the University with possible Urbana and Champaign council input and approval.
- August 29, 2013 – A formal application for University authority to lease and/or license the UC2B assets to the NFP is submitted based on the “back and forth” changes required in the application by the NTIA.
- September 5, 2013 – Expect State approval of incorporation of NFP. Please note that incorporation of the NFP does not automatically confer state tax exempt status. A separate application to the State will be required to obtain state tax exemption. The NTIA’s action on approving the asset transfer is not dependent on obtaining state tax exempt status.
- September 5, 2012 – Begin asset and liability leasing and licensing. Documenting asset leasing, licensing and the attendant liabilities connected therewith will require significant drafting involving the Founding Entities’ attorneys and staffs.
- September 12, 2013 – File formal Uniform Commercial Code (UCC) financing statements with State which memorialize the federal government’s ownership/lien interests in those assets purchased, acquired and/or created with NTIA grant funding.
- September 30, 2013 – All NTIA approvals must be completed by this date.
- Sometime after creation of the NFP, it will make formal application to both the State and the Internal Revenue Service for tax-exempt status. The application to the IRS will be for tax exempt status under 26 U.S.C. § 501(c)(4).

F. Summary.

The following is a brief summary of what has transpired concerning UC2B to date:

- The Founding Entities approved an intergovernmental agreement in 2009 providing for the creation of the UC2B Consortium in anticipation of the receipt of NTIA grant funding to construct and operate an open access, fiber optic network.
- In 2011, the aforesaid initial intergovernmental agreement was modified by a non-binding Letter of Understanding among the Founding Entities to provide for clear

articulation of the roles and responsibilities of the Founding Entities and to establish a budget for start-up operations of the system.

- The initial intergovernmental agreement was amended by the parties in 2012 to incorporate the terms contained in the Letter of Understanding.
- Further amendments to the intergovernmental agreement are now necessary to authorize a transition of UC2B from a heavily local publicly funded intergovernmental Consortium to a stand-alone NFP.
- The UC2B Business and Strategic Plan was approved by the parties in 2012 and recommends this transition to a not-for-profit entity.²
- The amendments to the intergovernmental agreement also provide for a set of bylaws under which the new NFP will incorporate and initially operate.
- The Founding Entities will have appointment power over the NFP's Board of Directors.
- Creation of the NFP and the transfer of the assets, contracts and liabilities to the not-for-profit require approval of the Federal government prior to September 30, 2013.
- The amendments also provide the not-for-profit with access to and use of the public rights-of-way without charge until such time as it secures a private partner for operation and build-out of the network. Such provision provides a level playing field among similar service providers.
- The 2013/2014 operational budget for the entity will remain in effect for six months after the formation of the not-for-profit. That budget is incorporated into the agreement.
- The policies and prices previously-approved by the Consortium's Policy Committee will remain in effect for at least one year unless the Board of Directors of the not-for-profit determine any of those policies to be detrimental to the operation of the entity.
- The process to transfer the assets includes Federal approval and needs submission of the application to transfer those assets no later than August 15 in order to complete the process prior to the grant's expiration date of September 30, 2013.

G. Background.

1. Original Agreement, Letter of Understanding and First Restated Agreement.

² The Business Plan recommended that a 501(c)(3) organization be formed. However, after careful inquiry into whether an open access fiber optic network can be operated as a 501(c)(3). Research determined that UC2B would not qualify for 501(c)(3) status and that 501(c)(4) status would be applicable and available.

Champaign, Urbana and the University entered into an Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium (“Initial IGA”) in September of 2009. In August 2011, the parties entered into a Letter of Understanding with the intent to amend the Initial IGA. In June 2012, the parties amended and restated the Initial IGA to incorporate the Letter of Understanding and to make other corrections in the First Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband System Consortium (“1st Amended IGA”).

2. The Proposed 2nd Amended Agreement and Issues Under Consideration.

a. General Concept. The parties are at the stage now where a further amendment of the 1st Amended IGA is required. These amendments are contained in the draft 2nd Amended IGA. A strike-out version showing the changes is attached to this Report. Generally, the changes are made to reflect the transition of the organization from one of a governmentally-operated and funded organization to a private not-for-profit entity.

b. Business Plan. The primary purpose of the changes to the 1st Amended IGA is to provide for the formation of an Illinois not-for-profit corporation that is independent of the governmental entities and to relieve the governmental entities of future financial and liability risks associated with operating the broadband system. This notion of transitioning the intergovernmental consortium to a not-for-profit entity is reflected in the UC2B Business and Strategic Plan (“Plan”), which has been adopted by both City Councils and the University. Part of the Plan provided for a not-for-profit entity to assume control and operation of the broadband system in order to promote its further development in the future. A discussion concerning the UC2B Business and Strategic Plan, insofar as operating structure is concerned, is contained on pages 81-90 of the Plan. These pages are attached.

c. Bylaws. Attached to the draft 2nd Amended IGA are the draft bylaws, which would transition significant characteristics of the not-for-profit corporation and, thereafter, govern its operations. Highlights of the draft bylaws are as follows:

i. The NFP would be created under the laws of the State of Illinois and would apply for tax-exempt status as a 501(c)(4) organization under the Internal Revenue Code. A Memorandum dated May 1, 2013 prepared by the law firm of Holland and Knight addresses some of the more basic questions concerning the corporate structure and tax-exempt status. The NFP could create other spin-off entities as needed. For instance, the NFP could form a for-profit subsidiary corporation to operate the system. Creation of a for-profit entity would reduce or eliminate the NFP’s obligation to pay income tax on its unrelated business income. The NFP might also form a separate, private foundation to under 501(c)(3) in order to obtain grants where such status is necessary.

ii. The Board of Directors would be composed of nine representatives with three representatives appointed by each of the three entities, specifically by the Mayor of Urbana, the City Manager of Champaign and the Chancellor of the University. Vacancies on the board would be filled by the appointing entity. The terms of the Board of Directors will be three years, though the first group will have staggered

terms. Each entity will have an opportunity to address transition not only upon the resignation of a board member but also at the end of the board member's term.

iii. Although most of the bylaws provisions are fairly standard for not-for-profit corporations, they do provide for more transparency than typical by indicating that Board meetings generally should be open to the public.

iv. Existing Assets and Contracts. The Consortium will assign all of its existing contracts and liabilities to the NFP. This includes construction-related contracts and operational contracts. The Consortium will lease and/or license all the UC2B assets to the NFP.

d. Rights-of-way. The three founding entities would ultimately grant the NFP rights to use respective rights-of-way, not only for the current system but also for future build out. There would be no fees required of the NFP to use the rights-of-way until the NFP entered into a contract with a third party for the operation of the system. The City Manager of Champaign, the Mayor of Urbana and the Chancellor of the University or their designees would determine an appropriate fee for the rights-of-way. The determination will consider the cost currently paid by persons paying for the right-of-way use in the community.

e. Transition Budget and Staff. During the transition period, defined as the period beginning July 1, 2013 and ending the later of January 31, 2014 or six months after the formation of the NFP, the entities will fund a transition based on the budget attached to this Report. After the initial appointments to the NFP board, the NFP will require some immediate staffing and start-up assistance. The City of Champaign, as lead agency for UC2B, will supervise the transfer of the assets, manage this transition process and assist the NFP until such time it is able to establish its own staff or has a private partner in place to manage, operate and expand the system.

f. Adoption of Existing Pricing and Policies. The draft 2nd Amended IGA provides that the NFP would be initially constituted and operated consistent with the UC2B Business and Strategic Plan and policies adopted by the Policy Committee, including those related to prices for the use of system assets.

H. Alternatives.

1. Consider and approve the 2nd Amended IGA at the August 5th Urbana Council meeting with Champaign Council's consideration and approval set for August 6th.

2. Consider and approve the 2nd Amended IGA at the August 12th Urbana Council meeting regardless of whether the Champaign Council considers the matter at its August 6th meeting or August 13th meeting.

3. Approve amendments to the 2nd IGA and then approve the 2nd IGA as amended.

I. Discussion of Alternatives.

1. Alternative 1 – Urbana Council action on the 2nd Amended IGA at its August 5th meeting.

a. Advantages –

i. Allows for maximum number of days to address any concerns expressed in the NTIA approval process and to gain NTIA approval for the leasing and licensing of the assets.

ii. Provides best opportunity to gain approval of the leasing and licensing of the asset thereby avoiding State involvement and having to start the process from scratch.

iii. Provides for creation of NFP and reduces parties' financial and legal liabilities associated with the short and long term operation of the fiber network.

iv. As a private entity, the NFP will be able to adapt to the competitive industry more efficiently than if UC2B continued to operate as consortium of the Cities and University.

v. Board of Directors appointed by the Founding Entities thereby creating reasonable local oversight of the NFP.

vi. Provides for compliance with the UC2B Business and Strategic Plan recommendations.

vii. Does not preclude Cities or University from expanding the network within their rights-of-way in different ways, e.g. in conjunction with a private partner, as a municipal utility, or as a co-op.

b. Disadvantages –

i. Requires quick turn-around time for approval by local parties with less time to deliberate.

ii. Process requires significant staff time to make all of the required applications while construction and operations support is on-going. Alternative 2 will require direction from Councils to revise the proposed 2nd Amended IGA so that they may still be placed on the next regular business meeting agendas.

2. Alternative 2 – Urbana Council action at its August 12th meeting.

a. Advantages –

i. Allows some flexibility to offer amendments to the 2nd IGA and then discuss them with Champaign and the University.

ii. Further advantages are dependent upon direction provided by the Councils.

b. Disadvantages –

- i. Requires more time to be spent especially if the Councils propose different, competing, or conflicting provisions which must, thereafter, be negotiated between the Councils and the University.
- ii. Lack of approval of amendments and creation of NFP may result in dissolution of Consortium as it is currently constituted upon expiration of the grant on September 30th thereby putting the entire UC2B business operation at risk.
- iii. May delay the leasing and licensing of the assets thereby necessitating restarting the asset transfer approval process with the State of Illinois.
- iv. Requires further financial and staff support from each of the member agencies to address, negotiate and document agreed-upon modifications to the Intergovernmental Agreement and bylaws.
- v. Degree of advantages are dependent upon the respective Councils' directions and whether they are consistent or conflict.
- vi. Disagreement among the parties to the draft 2nd Amended IGA causes delay in the asset transfer application process.
- vii. May be more costly for the parties.

3. Alternative 3 – Adopt amendments to the 2nd IGA followed by adoption of the 2nd IGA as amended.

a. Advantages –

- i. Permits the Urbana Council to recommend what it believes are appropriate changes to the 2nd IGA to address Council and public concerns.
- ii. Slows the process down allowing for more deliberation.

b. Disadvantages –

- i. Requires consideration of any Urbana Council approved changes to the 2nd IGA by the Champaign Council and the University.
- ii. Creates less cushion to address issues which arise in the application process for asset transfer and the creation of the NFP.
- iii. Creates uncertainty that the process can be completed by September 30th.
- iv. May lead to disagreement between Urbana, Champaign and the University.

J. Community Input.

There has been significant community input during this transition period. The UC2B Policy Committee meetings (including its July 24th meeting) at which the transition process has been discussed have been open to the public and involved public input. A joint study session involving Urbana's and Champaign's councils was convened on July 30th at which there was significant public input. The public has provided input outside of the aforesaid meetings to Urbana and Champaign council members.

K. Budget Impact.

The transition budget is incorporated into the 2nd Amended IGA. At this time, the terms of the draft 2nd Amended IGA maintain an estimated financial contribution by the City of Champaign, out of its General Operating Fund, of \$104,000 through the period of 6 months after the creation of the NFP. The longer it takes to provide for the transition to the NFP the higher that contribution becomes. The same applies to the City of Urbana and the University whose estimated contributions for operations are \$62,000 and \$81,700 respectively. These estimates do not include any budget amendments that will be necessary to account for year-end actuals and re-budgets from the prior Fiscal Year for unspent revenues, nor do they include any money for construction during the transition period.

L. Staffing Impact.

The draft 2nd Amended IGA and the NFP draft bylaws have been prepared by the staff attorneys of the Founding Entities in conjunction with outside legal counsel. Since April, significant staff and counsel time has been devoted to preparation of these documents. They have been prepared based upon industry expertise and experience and consistent with the recommendations of the UC2B Business and Strategic Plan.

Additionally, as lead agency for UC2B operations and the lead agency for construction of the portion of Phase 1 located in Champaign and all of Phases 2, 2.5 and 3, the City of Champaign devotes approximately 4 full time equivalent (FTE) positions to constructing the UC2B infrastructure and operation of the business as an internet service provider. Of these FTE's, 2.5 are temporary positions brought on specifically for the UC2B project. City staff manage 3 construction contracts and 1 contract associated with the purchase of materials and equipment related to construction; 1 engineering contract; and 7 operational contracts including call center services and infrastructure locating services, outside legal counsel and professional consulting services. Staff provide and supervise customer service representatives, and program and manage the UC2B customer management software via a contract held by the University. City staff provide UC2B customer support that handle requests for service ranging from subscriber billing inquiries and complaints to damaged service connections to requests for assistance to connect additional devices. Administratively, City staff manage the UC2B operations budget and capital fund for UC2B construction. Staff tracks its UC2B-related expenses, provides accounting for those expenses and, on a monthly basis, prepares requests for reimbursement for eligible expenses from Federal grant funds through the sub-award agreement with the UI. This is complicated because the City is not the grant recipient and does not have regular and ongoing access to current availability of grant funds. Staff also bills the UC2B member agencies for their pro-rata shares of the operational expenses incurred, i.e. 42% for

Champaign, 33% for UI and 25% for Urbana. City staff prepare public notices, agendas, minutes, reports and materials for the UC2B Policy Committee and the UC2B Technical Committee.

This support as lead agency will remain through the transition process or until the NFP has hired or acquired the additional resources necessary to manage, operate and expand the network. As a result, the City will continue to have limited staff time available during this time to devote back to economic development priorities.

ATTACHMENTS

1. Draft Second Amended and Restated Intergovernmental Agreement.
2. Draft NFP bylaws (which are attached to the Second Amended and Restated Intergovernmental Agreement).
3. Draft initial NFP budget.
4. UC2B Business and Strategic Plan Excerpt (Operational Structure and Governances).
5. Excerpt from May 8, 2013 UC2B Policy Committee meeting minutes re: proposed bylaws.
6. Excerpt from July 24, 2013 UC2B Policy Committee meeting minutes re: draft Second Amended and Restated Intergovernmental Agreement, including transition budget and draft NFP bylaws.

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

THIS SECOND 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. The Parties now desire to enter into this Second Amended IGA to transition operations of the System to a not-for-profit corporation.

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 broadbandSystem developed under this Agreement.

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

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

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

"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 underserved, and vulnerable populations as required by the Federal Construction Grant.

"System" means a series of fiber optic rings constructed as an open network, and including all fiber connections to the 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" means 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, subject to the Lead Agency's policies and procedures, except as otherwise specified in the Agreement. The Parties hereby authorize and direct the Lead Agency to operate pursuant to this Agreement, and the Lead Agency hereby agrees to operate pursuant to this Agreement.

SECTION 3. CONSORTIUM MISSION

The mission of the Consortium and its Parties is to:

- 3.1. Coordinate the construction of the 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-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 to the Policy Committee during March of each year.
- (c) Unless a new budget is approved by July 1st of any year, the last previously approved budget shall continue from year to year.
- (d) The format of the budget shall conform to the format of the Lead Agency's budget unless otherwise directed by vote of the Policy Committee.

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

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

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

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

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

6.2. The Parties agree to meet to determine the Lead Agency for the purposes of administering or performing the operational phases of the grant.

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

- (a) Provide staff support to the Policy Committee;
- (b) Coordinate UC2B activities as directed by the Policy Committee;
- (c) Market UC2B services to the designated census areas, anchor institutions, and third parties (private and public) that might wish to use UC2B services;

- (d) Plan and manage operations during and after the construction period; and
- (e) Manage the construction process.

SECTION 7. LEAD AGENCY DUTIES

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

- (a) Employing and supervising all personnel assigned to the Consortium in accordance with the Lead Agency's policies and procedures, including, but not limited to, hiring, firing, disciplining, establishing incentives, benefits, negotiations with unions, and all other employment decisions.
- (b) Directing the management and supervision of all employees assigned to Consortium duties in accordance with the policies and procedures of the Lead Agency.
- (c) Incurring and paying, on the behalf of the Parties and in accordance with this Agreement and 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, including the acquisition of interests in real property as necessary to complete the Project.
- (e) Expending funds in accordance with the Consortium's approved budget. Purchasing shall be conducted in accordance with the Consortium approved budget and the purchasing policies and procedures of the Lead Agency.
- (f) Providing all personnel administration, financial support staff, insurance, legal advice and management support and services in accordance with this Agreement and the approved Consortium budget and the policies and procedures of the Lead Agency.
- (g) Billing and collecting from each Party its share of the cost of 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 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; and
- 8.5. Pay for Consortium activities in accordance with this Agreement.

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

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

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.

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 right-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 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 City Manager, Mayor and Chancellor are unable to reach a unanimous decision within this time period, each 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. 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 right-of-way in all jurisdictions. Such determination shall be binding on Champaign, Urbana, and the University.
- (b) Champaign shall distribute the license fee among the Parties according to the formula set forth in Section 9.3.

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

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

9A7. The Lead Agency, 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 price 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 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 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. UC2Bwill pay electrical power usage and a charge for cooling based on the actual electrical power usage.

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

(c) UC2B personnel will have access to the UC2B spaces in Nodes 2, 8 and 9 twenty-four 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 20-year Indefeasible Rights of Use agreements (IRUs) with UC2B for use of specified strands of dark fiber on the seven UC2B rings and five UC2B sub-

rings. UC2B will enter into renewable five- 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 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 are supported by the University. UC2B and the University may contract for support of the core network electronics following the two-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 shall invoice each Party on the first day of each quarter for the next quarter's service for its share of Consortium costs based on the approved cost sharing formula

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

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

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

11.7. Fiscal Year. 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.
- (e) All interests in real property obtained by the Lead Agency, or by any Party, for construction, maintenance or use of the System shall be held by the acquiring Party in trust for the Consortium.

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

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

SECTION 13. 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 twenty-eight (28) days of notice of vacancy shall be presumed to be an unreasonable failure to perform under this section.

13.2 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 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

The parties intend to maintain the Consortium as a continuing operation for the limited purposes of recovery of assets in the event of a 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 Parties.

SECTION 15. EQUIPMENT; USE AND OWNERSHIP; LOAN EQUIPMENT

15.1. Unless otherwise prohibited by law and as otherwise prescribed by law, all tangible and real property purchased by a Party for the Consortium shall be held in trust by that Party for Consortium use, subject to the federal interest described in Section 12(d).

15.2. Any Party may, with approval of the Policy Committee, loan personal property or equipment to the Lead Agency for the use of the Consortium. Such property shall continue to be owned by the Party, and the Lead Agency shall keep written records of such loaned equipment. If the Party owning the loaned equipment wishes to withdraw it from Consortium service, that Party may do so provided that, if in the opinion of the Consortium 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 terminating withdrawal from its participation in the Consortium shall continue to hold in trust all property purchased by that Party for System purposes and shall permit the Consortium or NFP, as the case may be, to use the property for its useful life for System purposes, have no financial interest in equipment purchased for the Consortium operation prior to the date of that party's termination or in assets recovered by the Consortium under any conditional transfer of assets to the NFP. Such equipment or proceeds derived from the disposition of the equipment shall continue to be used for the continued operation of Consortium until Consortium is dissolved.~~

SECTION 17. RESERVED DISPOSITION OF CONSORTIUM ASSETS UPON DISSOLUTION

Upon dissolution of Consortium, unless the Parties otherwise agree:

Comment [A1]: I know it has been part of the agreement but I don't think it is accurate – or permitted by law. If University purchased property, then it can't dispose of or waive its interest in the property under State law. I'm sorry I didn't catch this in earlier

versions... Maybe I am misinterpreting, but it seems that we need to provide that each party holds title to property they purchase but that the property is held by them for the benefit of UC2B (whether the Consortium or NFP). I wouldn't want to somehow create an undivided interest among the three and then the property is in limbo because the University can't get permission to dispose of its interest.

Comment [A2]: This provision presumably applies to NFP lease and license interests, and the NFP's after-acquired assets as provided in the Bylaws.

FS says: This provision applies to dissolution of the CONSORTIUM, not the NFP.

Comment [A3]: I know, but the Consortium isn't going away, just the policy committee. If we consider the leased property owned by the University to be "assets of the Consortium," then we cannot permit by contract a sale of University/State assets. Again, I am sorry I did not think through this original language when we were amending the IGA the first time.

JLS: I think the language in Sec. 16 actually addresses all these issues you both are raising. If a party owns assets it will be "transferring, leasing, or licensing" those assets. There is no provision for transfer of title. Rather, if that party withdraws it is agreeing that upon withdrawal it will allow the other parties and the NFP to continue using the withdrawing party's owned assets for their useful life. Maybe the reference to "hold in trust" is the problem. Maybe it might simply state something to the effect of allowing the continued use: "A Party withdrawing from participation in the Consortium shall continue to allow the other Parties and the NFP to use those assets owned by the withdrawing party during the useful life of those assets."

Comment [A4]: MP: working on this section, I want you to review my last comment. I don't think University can allow its property to be disposed of per a contract because of State Property Control Act.

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

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

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

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

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

SECTION 18. INSURANCE.

The Lead Agency shall procure and maintain, during the term of this Agreement or any extension thereof, sufficient property insurance to cover the replacement value of 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 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.

Comment [A5]: If this is property purchased by Champaign for UC2B, then I think Champaign would hold title and not the University. If it includes property purchased by the University, then I think this is a problem.

JLS: I think the "unless otherwise required by law" could be changed to "unless otherwise provided by law" and that would take care of the issue. If law does not allow the University to sell "state assets" then that fact would be taken into consideration regarding any disposition. Another approach would be to add a "(g)" which states "Any state statute or regulation which governs the disposition of any Party's assets."

Comment [A6]: OK if Champaign purchased it.

Comment [A7]: I'm not sure this comports with the concerns expressed at the July 30 joint meeting of councils. I thought disposition of the assets upon their return to the Consortium would be done by agreement of those Parties which are then members of the Consortium?

FS: says: Note this concerns dissolution of the consortium, not dissolution of the NFP

Comment [A8]: LMP: I agree. I think all of this needs to be revised. We cannot permit a sale of University assets. We can agree to lease them. Again, I wasn't aware until recently that the University had purchased any assets.

Comment [A9]: Again, I'm not sure this is what was contemplated at the July 30 joint study session of the council. We talked about the assets (lease, license, ownership rights, title and/or interests) would come back to Champaign in trust for the Consortium and upon their return the then existing Consortium members which determine how to dispose of the assets.

FS: says: Note this concerns dissolution of the consortium, not dissolution of the NFP. This only happens if the University withdraws from the CONSORTIUM. Itg has always been contemplated because all the assets are in control of the consortium or the NFP.

Comment [A10]: JLS: We may need to rethink Art. XVII through a bit more.

Comment [A11]: Wouldn't this also kick in if NFP property reverts to Champaign, whether by termination of the lease/license or distribution under dissolution?

SECTION 20. AMENDMENTS

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

SECTION 21. 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, 16, 17, 20, 22A, 22B of this Agreement shall continue to be operative and binding according to their terms.

SECTION 22B. ASSETS IF NFP DISSOLVED

(a) Where Champaign, as Trustee for the Consortium, is entitled to receive a distribution of assets under either a voluntary or involuntary 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. The Consortium members shall meet and confer to determine how the assets may be best used for the good of the community

(b) 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 Party shall be shared equally by the existing Consortium members. Parties who have not withdrawn from the Consortium.

SECTION 23. NOTICES

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

SECTION 24. APPLICABLE LAWS

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

SECTION 25. COUNTERPARTS

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

CITY OF CHAMPAIGN

CITY OF URBANA

By: _____ By: _____
City Manager Mayor

Date: _____ Date: _____

ATTEST: _____ ATTEST: _____
City Clerk 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: _____

Chancellor

Business Office

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

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BYLAWS
OF
URBANA-CHAMPAIGN BIG BROADBAND, INC.

an Illinois not for profit corporation

Comment [JLS1]: Change necessitate by requirements of Secretary of State as confirmed by Champaign Legal Department.

ARTICLE I
CORPORATION

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

Comment [JLS2]: See JLS Comment 1 above.

Section 1.2. Statement of Role and Purposes. The Corporation shall be organized and operated exclusively for charitable, educational or scientific purposes 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 relieve the burdens of government 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 underprivileged unserved and underserved members of the public areas; and
- 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.

Comment [JLS3]: Tracks with language of grant.

Comment [JLS4]: Tracks with language of grant.

Comment [JLS5]: Tracks with language of grant.

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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 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

Bylaws of Urbana-Champaign Big Broadband, Inc.

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 or the City of 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 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 the City of Urbana, City of Champaign, and Village of Savoy, including such property owned or controlled by the University of Illinois 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 entity hereinbefore referred to as the "Urbana-Champaign Big Broadband Consortium (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 from the City of Urbana, City of Champaign, and/or the University of Illinois such all-rights, title and-or interest in and to the System as may be necessary to operate and maintain the System, but such transfer shall be conditioned on the return of the assets to the City of Champaign as trustee for the members of the Consortium and any and all other assets, liabilities, obligations, and agreements related to the System which are held, entered into, or incurred by one or more of the City of Urbana, City of Champaign, and/or the University of Illinois on behalf of the Consortium And any other relevant obligations contained in the Intergovernmental Agreement.

Comment [JLS6]: To reflect in change that current assets will not be transferred to the new entity but will be leased to the new entity.

Section 4.1.3. Acceptance of Use of Public Rights-of-Way. The Corporation shall enter into and execute non-exclusive license agreements with the Cities of Champaign, Urbana, and the University of Illinois to provide for the Corporations 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 for the use of the aforesaid three governmental entities' public rights-of-way 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 the City of Champaign on behalf of the City of Urbana, the City of Champaign, and the University of Illinois established by the Cities and the University.

Bylaws of Urbana-Champaign Big Broadband,-Inc.

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 cooperate with the City of Urbana, City of Champaign, University of Illinois, and Consortium 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 said 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 the City of Urbana, City of Champaign, and University of Illinois.
- (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 relative to prices for use of the System and policies relevant to use of the System and other such formally adopted Consortium policies 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 the City of Urbana, City of Champaign, and University of Illinois 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. The number of directors on the Board of Directors shall be nine ~~(9). The number of directors may be increased or decreased by the amendment of this Section 4.2. No decrease in the number or range of directors shall have the effect of shortening the term of an incumbent director.~~ In the event there is a Withdrawing Entity (as defined below in Bylaws of Urbana-Champaign Big Broadband, Inc.

Comment [JLS7]: Deletion and insertion to accommodate prohibition on amending this provision by the Board of Directors.

Section 4.3), then the number of directors on the Board of Directors shall decrease from nine (9) to six (6).

Section 4.3. Eligibility and Qualifications. Directors shall be residents of the State of Illinois. The City of Urbana, the City of Champaign, and the University of Illinois shall have, in perpetuity, the right and authority to appoint the directors of the Corporation as hereinafter provided. The initial Board of Directors shall consist of three (3) individuals appointed by each of the duly elected or appointed officials or officers of the following three (3) entities: City Manager of the City of Champaign, an Illinois home rule municipal corporation ("Champaign"); the Mayor of the City of Urbana, an Illinois home rule municipal corporation ("Urbana"); and the Chancellor of the University of Illinois at Urbana-Champaign ("University"), respectively. Champaign, Urbana and University are collectively referred to in these Bylaws as the "Appointing Entities."

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 thirty (30) days after a vacancy on the Board occurs, or (c) any other express act indicating intention to withdraw.

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 Withdrawing Entity Directors 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 from nine (9) to six (6) until such time that the remaining directors amend this Section or 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. As near as may be, terms may 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 any reason 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, breach of a fiduciary duty to the Corporation, and/or conduct which prevents or makes it difficult for the Board to conduct business.

Comment [JLS8]: To accommodate requests from both Council members and community.

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.

Comment [JLS9]: To accommodate requests from both Council members and community.

Section 4.8. Reports.

(a) Nothing in these Bylaws shall prohibit any Director from The Directors may provideproviding reports from time to time to the Appointing Entities regarding the activities of the Corporation. The report shall 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 collectively believes 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.

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Comment [JLS10]: To accommodate requests from both Council members and community.

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

Comment [JLS11]: Added because, while a desire to be public is reasonable, it must be remembered that this new entity will be in competition with other similar entities. No entity invites its competitors to board meetings or distributes confidential, proprietary or trade secret information to its competitors.

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ARTICLE V

BOARD OF DIRECTORS MEETINGS

Section 5.1. Annual Meetings of the Board of Directors. The annual meeting of the Board of Directors shall be held during the fourth quarter of each calendar year.

Comment [JLS12]: Preparation and public circulation of "annual reports" is a common practice among not-for-profit and for-profit corporations.

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

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(b) Generally, the meetings of the Board of Directors shall be open to the public.

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(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.

Comment [JLS13]: To accommodate requests of Council members and community. Also, reorganized into single section.

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Section 5.2. RESERVED.Regular Meetings of the Board. Regular meetings of the Board of Directors shall be held at such time and place as such Board shall from time to time determine; however, the Board of Directors shall meet at least quarterly. Said meetings may be held within or without the State of Illinois.

Comment [JLS14]: Deletion made since covered above. Above provides for public access to meetings thus, requiring meetings to be held where public can attend.

Section 5.3. Meetings by Electronic Device. Members of the Board 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 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.Public Meetings of the Board. Generally, the meetings of the Board of Directors shall be open to the public; provided, however, that 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.

Comment [JLS15]: Section moved above.

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. ~~Unless otherwise provided in these Bylaws, notice of any special meeting of the Board of Directors shall be given at least five (5) calendar days prior to the dates of the meeting.~~ 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.

Comment [JLS16]: Such notice timing is not required for Council meetings or in the Illinois Not For Profit Act. These types of meetings normally are called in an emergency which, typically, would lead to a closed meeting.

Section 5.7. Waiver of Notice. Notice of the time, place and purpose of any meeting of the Board of Directors may be waived by facsimile or other writing, either before or after such

Bylaws of Urbana-Champaign Big Broadband, Inc.

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.

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.

Comment [JLS17]: There may be times when immediate action must be taken to protect the entity or preserve its assets but when a physically attended meeting cannot be held. Addition limits when such action by written consent can occur.

Section 5.13. Compensation. The Directors as such 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

Bylaws of Urbana-Champaign Big Broadband, Inc.

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 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
Bylaws of Urbana-Champaign Big Broadband, Inc.

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 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 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

Bylaws of Urbana-Champaign Big Broadband, Inc.

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 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
Bylaws of Urbana-Champaign Big Broadband, Inc.

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

Bylaws of Urbana-Champaign Big Broadband, Inc.

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 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 members 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

Bylaws of Urbana-Champaign Big Broadband, Inc.

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 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.

Comment [JLS18]: No change is required since reference and inclusion of Consortium's policy on minorities and women will be included in these Bylaws.

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 alter, 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, modified, or otherwise altered or replaced by the Board of Directors.

Comment [JLS19]: To accommodate requests of Council members and community so that Board of Directors cannot change certain key bylaw provisions relating to appointment of board members and disposition of assets on dissolution.

ARTICLE XII

DISSOLUTION OF CORPORATION

Section 12.1. Dissolution. Except as otherwise provided by law, upon the voluntary dissolution of the Corporation, the Board of Directors shall, 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 the City of Champaign to be held in trust for the Consortium, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner as provided by law.

Comment [JLS20]: How the Appointing Entities deal with the assets once they are returned is a matter for the IGA and these bylaws since these bylaws do not and cannot bind the Appointing Entities. Some agreement, whether it is the 2nd Amended IGA or some other agreement will need to be in place upon return of the assets. This provision does not deal with the current assets since they are leased other than to return the lease rights to Champaign to be held in trust as stated. This provision does apply to newly/after acquired assets of the new entity.

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
- 2012-12 A Resolution Approving Wholesale and Dark Fiber Services and Rates
- 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

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	120,887	118,185	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
Fund Balances				
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		2009	2010	2011	2012	2013	2013	2013	2013	2014
Fund		Actual	Actual	Actual	Actual	Budget	Amended	YTD	Revised	Budget
Activity										
Account	Account Description	Actual	Actual	Actual	Actual	Budget	Amended	YTD	Revised	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	81,765
	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	17,699	30,000	262,301	174,648	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)	104,064
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	54,817	15,798	26,555	38,312
		Adjustment: BA 2012/2013-3 OMNIBUS (27400023719)					54,817		0	0
	502	502 - SALARIES: UNSCHEDULED	0	0	0	6,670	45,263	56,744	69,123	19,708
		Adjustment: BA 2012/2013-3 OMNIBUS (27400023720)					45,263		0	0
	511	511 - OVERTIME PAY	0	0	0	0	0	8,162	12,000	15,000
	525	525 - GROUP MEDICAL & LIFE INSURANCE	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	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	7,654	5,774	7,320	4,360
		Adjustment: BA 2012/2013-3 OMNIBUS (27400023723)					7,654		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
		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

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 (27400023725)						25,000		0	0
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023726)						15,000		0	0
	Adjustment: BT#41 (27400023965)						(7,900)		0	0
	Adjustment: BT#45 (27400023985)						(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: PYE (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	6,000	3,995	6,000	5,000
	Adjustment: BA 2012/2013-3 OMNIBUS (27400023729)						3,000		0	0
720	720 - MISC. CONTRACTUAL SERVICES	0	0	0	5,143	240,500	247,500	19,217	50,000	6,000
	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	10,299	12,000	12,000
724	724 - OFFICIAL CITY BUSINESS EXPENSE	0	0	0	0	0	33,500	2,607	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

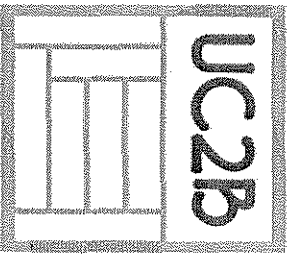
Fund

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	20,059	19,900	0
	Adjustment: BT#41 (27400023966)						7,900		0	0
	Adjustment: BT#45 (27400023986)						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	202,206	636,088	1,448,913	609,423	1,091,614	456,674

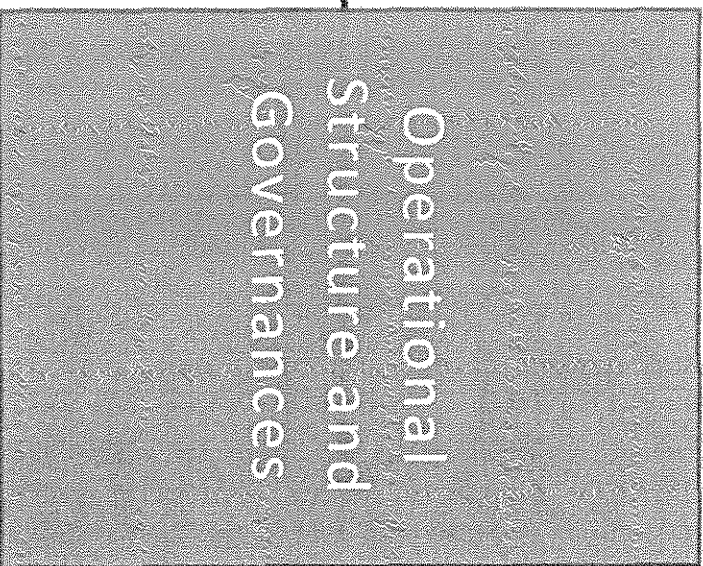
BUDGET SUMMARY

Department										
Fund										
Activity										
Account	Account Description	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Budget	2013 Amended	2013 YTD	2013 Revised	2014 Budget
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



Urbana-
Champaign
Big Broadband

UC2B Business and Strategic Plan



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	Typically a committed, cross-sector group of leaders that facilitate sustainability and local ownership. (Community Stakeholders, Independent Service Corporation, Institutional or Institutional Partners)	<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 focuses 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. 	<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"> • 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"> • 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 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 Bunyon (Minnesota) • Camino Fiber Network Coop
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NEO's Recommendation: A Hybrid Approach

<p style="text-align: center;"><u>Current Status</u></p> <p style="text-align: center;">Publicly Owned Government Authority Privately Operated</p>	<p style="text-align: center;"><u>Recommendation</u></p> <p style="text-align: center;">Consider Hybrid Non-Profit 501(c)3 with For-Profit Subsidiary Organization and Continued Community Governance</p>
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The benefits of a Hybrid Non-Profit 501c(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

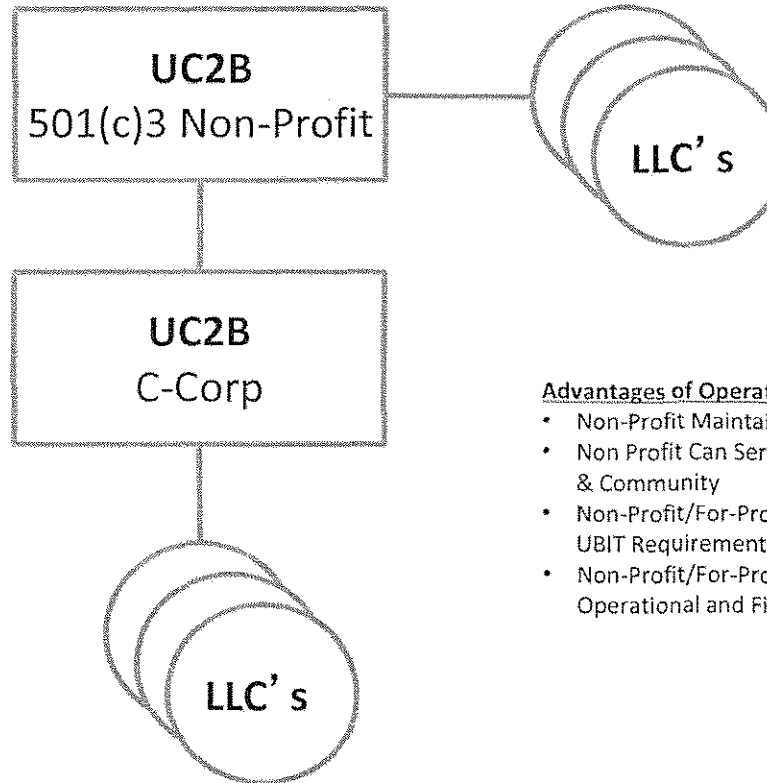
- Capital Infrastructure
 - Fiber IRUs
 - Equipment Donations
- Community Applications
 - Government Service
 - Underserved Health & Education
 - Digital Inclusion Programs

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 form 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

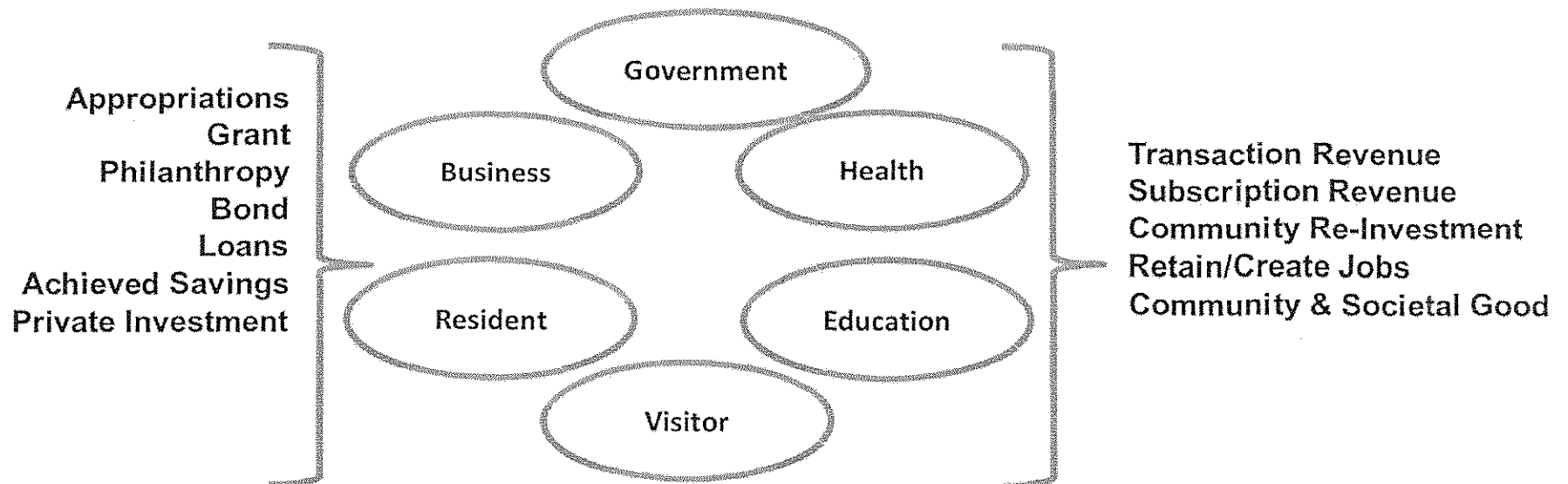
This hybrid organizational structure allows for numerous funding options, giving UC2B more flexibility and options available for funding its expansion.

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



a.) Report re: Draft Bylaws (12:35)

- Fred Stavins provided an overview/introduction to the standard draft version of the proposed bylaws (and explained that it is not a transactional document).

Technical Questions from the committee:

- Fred Halenar asked if there was a definition to the term *members* referred to in Article 3, the first section states the corporation shall have no members, however, the following 2 sections keep pointing to members.
- Tom from Holland & Knight replied that generally a not-for-profit corporation can have members or not have members and that's a determination based upon organization, there's no right answer, there's no requirement; if you have members this is the section where the bylaws requirements would be; it's conceivable that the corporation could have members, but the bylaws are drafted to not have members and the primary power is the election of directors, the directors being the people who will run or guide the corporation going forward, they are self perpetuating or drawn (the three entities) are empowered to nominate the directors of the board, but they are not typically named in the bylaws.
- Tom continued to explain that sometimes when you deal with not-for-profit corporations and this might be in a generic sense or reference to the *members*, its designed to make it clear, any powers delegated or held by the *members* in a generic sense are going to be held by the board of directors, that's first, then second if by some reason there's reference either in a contractual document or some other instrument that makes reference to *members* it's made clear that if we call somebody a *member* they're not going to have the statutory power to elect directors, it's intended to give flexibility, there might be members who might be part of an advisory group or members of some committee or there might be some reference to the term *members* but it's not intended to be members as the not-for-profit corporation act calls members, which are the persons who are entitled to elect directors. So this is intended to disclaim any responsibility that those people or power those people might have to elect the directors, the election of directors is limited to the three entities that are specified later on in the bylaws.
- Abdul Alkalimat asked if they could have that in language that is clear.
- Fred Stavins said sometimes words are used in common parlance in documents and this is what Tom is referring to, in other words, you might call somebody a member, you might eventually call a board member a member but the statute defines certain types of not-for-profit corporations and there either members that have statutory responsibilities and also there are one's that do not have members and don't have the same statute of responsibilities. This is not a membership type of not-for-profit corporation and the other two things, even if you see some reference to members in other documents, this is still not a membership corporation, and those people in Article 3.1 it says the corporation shall have no members. It is a legal document and tends to be a little more complex and the language tends to be that too. But in these two sections its pure and simply it's a way to say this is not a membership corporation under the statute.

- Chair Bowersox stated so although we may call someone a member, they are not a member in the legal sense.
- Fred Stavins made reference to the way a scholar is described at the university.
- Pete Resnick asked a general question related to the bylaws, regarding what are articles of incorporation, can you distinguish between those two, and are we going to have both sorts or will this serve as both of those things.
- Tom from Holland & Knight said the articles of incorporation is sometimes referred to as a charter but the articles of incorporation is the document that is filed with the Secretary of State to create the corporation and there are some specific provisions that the articles of incorporation must contain, for example, it will say who are the registered agent and officer, who are the initial directors of the corporation, and a statement of the purpose that the corporation was formed for and generally something about what happens when this corporation dissolves. Those are provisions that are number one. A public record so that anyone that can go to the Secretary of State's website will be able to find those terms of those articles of incorporation and that is a governing document for the corporation. The bylaws are a sort of broader set of governing principles which may very well follow and be consistent with the articles but they do not necessarily have to be filed with the Secretary of State, they are adopted as the rules of operation for a corporation, and have to be consistent with the articles. The bylaws are broader and have provisions for the administration of the corporation, things like directors, officers, and committees but they are generally not published and filed with the Secretary of State. Someone would not be able to go to the Secretary of State's website and obtain the bylaws. It may be because of different requirements, the bylaws may be available to a member of the public who is looking for those documents, but it would not be from the Secretary of State, it may be from the corporation, or maybe the IRS, if you have a 5013C.
- Pete Resnick and the committee discussed property transactions and if they were in the articles of incorporation, the bylaws or the intergovernmental agreement.
- Fred Stavins referred to Article 12 that discusses corporation dissolution.
- Abdul Alkalimat asked for clarity between the intergovernmental agreement and the bylaws.
- Fred Stavins said the bylaws have to be approved by the three entities, the agreement is really between the three entities, and we have goals for the creation of the not-for-profit entity and one of the goals is to maintain some distance between that entity and we want to create that distance, both in terms of liability and operation and we want it to be independent and ultimately that's the goal of all three entities. The concern about dissolution and we have to be concerned about the federal grant, and that is covered in Article 12 because it says any dissolution or disposed of property has to be consistent with the federal grant so there are some limitations we have to live with – we're trying to empower an independent corporation and that's the goals so we want to act consistently.
- Chair Bowersox asked about the diagram about flow of dollars especially UBI between the not-for-profit and for-profit subsidiary piece; and if you could add the community benefit fund to that diagram or explain to us, or how that community benefit fund works. If someone is a subscriber and pays \$50 to the for-profit subsidiary, does some of that \$50 have to go to taxes, to corporate income taxes before it goes into the community

benefit fund which is a charitable purpose or can we instead have the community benefit fund get its cut pretax dollars.

- Tom with Holland & Knight asked why the community benefit fund gets anything from the for-profit entity. When you talk about the community benefit fund are you talking about the not-for-profit entity or is there a separate entity not shown on the chart.
- Chair Bowersox said it's not a separate entity but there is a separate concept called community benefit fund, and we have expressed interest in a community benefit fund where a certain amount of revenue gets held to be used for the charitable purpose of bridging the digital divide, getting people access to computers, labs or equipment, so some portion of our revenue is already being dedicated to that community benefit fund, that charitable purpose.
- Fred Stavins said they don't have that completely sorted through, but it is a concept that is front and center with us, but that type of detail isn't in the bylaws right now.
- Tom with Holland & Knight did add that if you had a community benefit fund, because it's formed as a charitable entity, it would be considered an exempt purpose, a charitable purpose – something along those lines, if the for-profit is required to pay to the community benefit fund, then that's not going to be a pretax payment, a charitable-type of payment; if on the other-hand it was a voluntary payment that the for-profit makes out of the goodness of its heart, it's not required to pay it, and makes charitable contribution, that very well could be considered a charitable contribution and be deductible, a pretax payment. You must determine why money flows from the for-profit entity to this community benefit fund and if it's required it's not going to be considered a contribution, if it's done on a voluntary for free-will basis then you might be able to treat that kind of a payment as a contribution, which would be tax deductible.
- Pete Resnick asked about the for-profit, are its bylaws and its articles of incorporation going to be done the similar way as this, that the three entities will come up with that set of bylaws and create that for-profit entity.
- Tom with Holland & Knight said there will be bylaws, a for-profit – if it's a corporation and it doesn't have to be necessarily, another entity is called a limited liability company; let's just make it easy & say it's another corporation, it will have bylaws, it will have articles of incorporation, they will be for-profit articles of incorporation and the primary difference that will be for a for-profit, it can pay dividends, it can make contributions to its shareholders, that's the principle difference, but generally speaking because it's a corporation, it will have bylaws that will be the governing rules for the organization, it will have articles of incorporation which will be similar to the not-for-profit articles of incorporation, it will have a registered agent, a registered officers, directors, those will be the for-profit, but generally speaking the primary difference will be the for-profit will be permitted to make contributions to its owners or its shareholder; and the shareholder could be the not-for-profit entity, however the for-profit could also be potentially the three members of the consortium. That's not how we described it in this chart, but it's conceivable, the three entities could be the shareholders of the for-profit. The for-profit will have one or more shareholders, the shareholders will elect the directors, and the directors will run the for-profit.
- Pete Resnick said the reason he asked the question is if the for-profits bylaws were created in such a way that it said as part of the bylaws, a percent of our profits would be

contributed to this community benefit fund, does that constitute requiring it to or does that constitute it voluntarily deciding to contribute and therefore be pretax.

- Tom with Holland & Knight said that's a good question, and doesn't usually see that done, but if there is a reason for a for-profit corporation would make a payment like that, you may be able to make an argument that it is a voluntary contribution (by putting that provision in).
- Mike Smeltzer said in the short term it would seem if the community benefit fund lived within the for-profit entity that's just an operational expense (it's like marketing or outreach) and we can't call it a community benefit fund a charitable contribution until we create a 501C3 for the community benefit fund and that's a two or three year operation; so we would want to make the community benefit fund apart of the for-profit entity, just as part of their operational behavior.
- Fred Halenar asked about Section 6 Officers and 6.2 which is the Election and Term of Office more specifically the third sentence in there, reported that there is one extra 'or' that needs removed in the sentence.

There were no Public Comments

Board Member Comments:

- Abdul Alkalimat asked what the relationship between what we've been doing up until now and the creation of this new entity. Do the decisions we've made roll over, do they have to be reaffirmed, what is the general transition?
- Fred Stavins replied it depends on the intergovernmental agreement and what it provides for in terms of rolling over decisions, when you talk about policies that have been established, we will want to adopt the same policies because we need those to operate, we'll want to consider everything the board has decided to date.
- Fred Halenar said under Article 7 Section 7.3 Records it talks about some distribution reports to the directors and the secretary and nowhere did it mention also to the executive director - wondered if that wouldn't be a good source so there would be some guarantee of distribution.
- Tom with Holland & Knight said technically the executive director is an officer but is not part of the board. The executive director is responsible to carrying out the day to day operations, whereas the directors are overseers of the policies and general direction of the corporation. The executive director is not necessarily a member of the board of directors.
- Fred Halenar said in Section 7.3 wouldn't it behoove the corporation to add the executive director for maybe possible distribution of executive materials.
- Tom with Holland & Knight said he believes that's a good point, but remember Section 7.3 is referring to the records of each committee so it's a narrow provision talking about records of the committees that would be formed. It's not a bad idea but will leave it up to the board as they accept these bylaws. But this Section refers to records of committees not the overall corporation itself.
- Fred Stavins agreed and maybe adding that to the responsibilities of the executive director there needs to be some records responsibility and that would ensure that.
- Mike DeLorenzo said we do not want the executive director to be a formal member of the board of directors, we want to keep those separate right.
- Fred Stavins agreed.

- Rev. Zernial Bogan asked if it's safe to say that the committees will give these reports first to the executive director and then they will be distributed to the board of directors through him, or is it bypassing him and going directly to the board.
- Fred Stavins said what happens generally is the executive director is preparing the minutes; the administrative person is usually the minute preparer.
- Barb with Holland & Knight said the one exception that would only occur once or twice a year is if you have a committee that's doing an evaluation of the executive director, you may or may not want those to immediately go to that person or there may be some other process for that.
- Abdul Alkalimat said so the community benefit fund committee would essentially fall under this Article 7.
- Chair Bowersox said if that ends up being a committee of this entity, yes and that's still to be determined.
- Fred Halenar asked in Section 9.7 Insurance we refer to a ten million dollar minimum for errors and omissions insurance, is that a standard driven by the classification that we're looking for here for the organization; is that a standard - how is the ten million dollars selected.
- Fred Stavins said they used what the municipalities typically carry, it's what we would have to protect the City Council, and it is not driven by industry or any other standard.
- Pete Resnick asked in Section 2.2 it talks about aligning the offices outside of Urbana-Champaign, why would we want to do that?
- Fred Stavins thought they had it required it to be in Champaign and Urbana.
- Tom with Holland & Knight said the principle office is to be in Champaign or Urbana in Section 2.1, but Section 2.2 really is intended to provide corporations with flexibility, if there was some reason for the corporation to maintain an office in Springfield, or Chicago, if there was some necessity for that, you wouldn't want tripped up by saying that this corporation can't have an office except in Champaign or Urbana. Now that's what this is intended to do, provide flexibility but if that is a concern you don't have to have this provision.
- Pete Resnick said his general reaction is it would be problematic to do so, I would rather force the board to have enough of a vote to change the bylaws to do such a thing rather than by majority go ahead and do it.
- Mike Smeltzer said it depends on how you define office, we might rent a small space in St. Louis for equipment, now whether you consider that an office or not but we would have physical that we owned and paid rent for in St. Louis; we would want to be able to do that. We wouldn't have any people there full time, so maybe that doesn't make it an office. But if we pay rent and a power bill there maybe it is an office.
- Fred Stavins said maybe it is for flexibility but we did negate the principle office in Champaign-Urbana; building and flexibility is not a bad idea. It is another point to consider when we're finalizing this.
- Pete Resnick said it seems there was a provision for if there was a withdrawing entity; the board members would go down to six. It says that each entity would have two but there are three, so he believes it was just an error (Section 4.3). And wondered if it needs to include if there were two withdrawing entities. There is nothing in Section 4 or 12 talking about two withdrawing entities.

- Tom with Holland & Knight said there is no problem with having one entity. This would be a policy issue for the three organizing entities.
- Pete Resnick provided three other points/questions to the committee via email, summarized them, and then discussed taxability.
- Chair Bowersox said that the question about privacy on the Urbana City Council side, there will be many people who believe this should be subject to the Open Meetings Act, extreme extent of the law, but we all know this group needs to meet sometimes in a closed session; it is important to include or say that when this group has board meetings they would be at a public location that's open to the public, that there would be a public input time on the agenda and the board can only act on things that are on the agenda (basic provisions to include the public). This would be for the board of not-for-profit bylaws.
- Deb Feinen said that she doesn't believe it's as simple as adding a few lines, because there's a provision in here that allows unanimous consent, if all board members agree, they can sign off, and if we're going to change that, it may affect other places in the document.
- Chair Bowersox shared one other point about question of 501C3 versus 501C4 and this is just food for thought as this is sorted through, but one of the advantages of 501C3 that was in the business plan was that we could apply for foundation grants, charitable funding, and citizens could contribute and use as a tax deduction, and that advantage of the 501C3 has a lot of weight.
- Mike Smeltzer said he has asked those same questions and really the answer comes down to timing, receiving the 501C3 status could be a three year process. There is nothing that prohibits us from having a 501C3 as a subset of the 501C4, so we may elect to do that but it could take us several years until we get to that point. We can get a 501C4 approved much quicker.
- Pete Resnick asked what a 501C12 is.
- Tom with Holland & Knight said it's generally called a mutual telephone company, and doesn't know if that C12 exemption is applicable to this type of organization, depending on its requirements and how we set our entity, that is what is its purpose going to be, it's possible that it could qualify as a C12 but points out that C12 would not be a whole lot different in this respect. It's profits would be exempt from income tax but it would not be eligible to receive a charitable contribution just like the C4; so whether is C4 or C12.
- Barb with Holland & Knight said they mentioned C12 because it was referred to in the business plan. We didn't want to ignore it.
- Chair Bowersox said as long as there is a C3 somewhere in the picture, whether it's the parent or elsewhere, the ability for us to go after foundation funding or solicit charitable donations should be somewhere in the picture will be really helpful to us.
- Abdul Alkalimat raised a general question regarding the composition of the board; it's around the ambiguous concept of the community. When we originally established the composition of this board, there were four categories of membership, one of which was the community, ambiguous as it is since the members of the City Council have been voted on by the community and represent the community. But here's the difference between how we set this up originally and the way we're going forward, part of it has to do with how the entities of the intergovernmental agreement are going to actually choose the three people to sit on this committee so we obviously want to maintain our legitimacy

and credibility in the eyes of the people who live in Champaign-Urbana and since we have had a community rep given the ambiguity of it on this board, but it's not planned for the next board, we should have some discussion about that, and some way of explaining that, how we're moving from one organizational structure to the next. So everyone is clear and united behind the new UC2B board or whatever we call ourselves in the future. The point is the community representation.

- Bill DeJarnette had a couple comments but will do them in writing about the one including the director appointed by each of the entities and other areas of concern.

Summary of Comments/Questions Made at the UC2B Policy Committee Meeting

July 24, 2013

- The new NFP will have a Board of Directors. How are those appointments made and how much control do the member entities have over the actions taken by their appointees?
- The NFP will be a private corporation outside of the direct control and ownership of the original UC2B member entities. This is a concern. The network was constructed with public funds. It should remain under the control of the public.
- Why shouldn't the member entities retain control and ownership and allow the NFP access rights to operate the network?
- The proposal provides that the three member entities will have to agree upon a fee to utilize the rights-of-way. What happens if they do not come to an agreement and a fee is "imposed" upon one or more of the members?

(Comments provided via e-mail from UC2B Policy Committee Board Member Pete Resnick)

Begin forwarded message:

> From: Pete Resnick <resnick@episteme-software.com>
> Subject: Review of the new Inter-Governmental Agreement (IGA)
> Date: July 24, 2013 12:24:42 AM CDT
> To: Brandon Bowersox <brandonbowersox@gmail.com>, Bill Gray <wrgray@city.urbana.il.us>

>

> Brandon, Bill,

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> I prepared this as quickly as I could. I hope this review is helpful. Brandon, please feel free to forward it to the rest of the Policy Committee.

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> UC2B, as originally envisioned, is a network to serve the community for the public good. In particular, the vision of UC2B was to connect up public anchor institutions with the citizens, starting with the lower income and more vulnerable neighborhoods of our community. Our community spent \$6.8 million of local taxpayer money to accomplish this, along with \$3.5 million of State Grants, to match the \$22.5 million in Federal grant money, money that we received *because* of our promise to serve the public. What we have received is a great public asset that the public has put a good deal of resource into creating.

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> The new Inter-Governmental Agreement (IGA), as proposed, gives the entirety of that \$33 million public asset, including virtually all decision making on how to use that asset, to a private Not-For-Profit (NFP) organization that is not subject to public scrutiny or demands. This is a terrible outcome and a betrayal of the public trust.

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> The items in the proposed IGA that I find most troubling are:

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> 9A3 - This section conveys *all* of the assets (including all of the network equipment and fiber optics cables) to the NFP. Instead of the cities and university retaining ownership of the \$33 million infrastructure, leasing it or granting an Indefeasible Right of Use (IRU) to the NFP, we simply give it to them, lock stock and barrel.

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> 9A4 - We are required to grant all rights of way (ROW) to the NFP. We can charge (but, as far as I can tell, can't refuse to grant) for use of ROW only if a third party other than the NFP operates, and optionally builds out, the network.

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> 9A4.a) Any fees to be charged for ROW must be agreed by Urbana, Champaign, and the University (the "Parties" to the IGA). If the Parties can not agree on the amount, 2 out of 3 of them can appoint an outside party to determine the fees.

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> 9A5 - The NFP will maintain and operate for useful life "in accordance with the Federal Construction Grant", but as far as I can tell, that limits them only to provide "open access". With historical experiences of how AT&T and other telecom companies behaved when they were required to provide open access,

nobody should be sanguine about this provision.

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> 9A7.a) - The Parties can appoint, but not replace, directors of NFP board. Whoever we end up on the board is there until they decide to step down. There are no terms for board members specified.

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> 9A7.f) - The NFP can change any policy made by Policy Committee it deems "detrimental". Other non-detrimental policies it is only required to maintain for 1 year.

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> 9A7.h) - The NFP is to give an IRU of fiber (no amounts or particulars specified) back to the Parties for 20 years on "reasonable and appropriate" terms, and 5 year maintenance contracts. However, in 10.5, it says that "UC2B" is to grant the IRUs of fiber (still unspecified) and 10.7 defines "UC2B" as the NFP *or* an affiliate of the NFP. In other words, the Parties might have to negotiate IRUs with affiliates of the NFP.

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> There are no provisions for what is to happen in the event of dissolution of the NFP. There is no requirement that the infrastructure revert to the Parties.

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> There are no provisions whatsoever that the work of this NFP be in the public interest, that it's work be done in public view, or that it work at the behest of the public, which differs greatly from the current state of affairs where everything is under the control of elected officials or their (replaceable) designees.

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> I see no reason that the Parties cannot retain ownership and control of this public infrastructure. If they must, the Parties could give an IRU of the fiber *to* the NFP, not the other way around. I see no reason that the actions of this NFP not remain under eventual control of the public.

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