

**ORDINANCE NO. 2014-04-044**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 1.**

An Agreement Granting Indefeasible Right to Use Optical Fiber Assets in substantially the form attached hereto and hereby incorporated herein by reference, including attachments and exhibits thereto (hereinafter, "IRU Agreement"), be and the same is hereby authorized and approved.

**Section 2.**

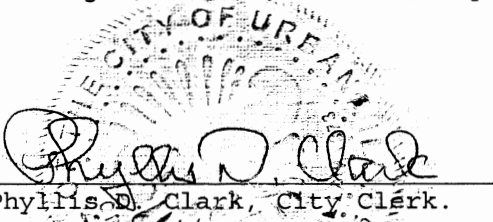
The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver to the City Clerk of the City of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of the IRU Agreement as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

PASSED BY THE CITY COUNCIL this 5<sup>th</sup> Day of May, 2014.

AYES: Ammons, Brown, Jakobsson, Madigan, Marlin, Roberts, Smyth

NAYS:

ABSTAINS:



*Phyllis D. Clark*  
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Phyllis D. Clark, City Clerk.

APPROVED BY THE MAYOR this 5<sup>th</sup> Day of May, 2014.

*Laurel Lunt Prussing*  
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Laurel Lunt Prussing, Mayor.