



**LEGAL DIVISION**  
400 S. Vine St., Urbana, IL 61801  
P.O. Box 219, Urbana, IL 61803-0219  
(217) 384-2464  
Fax: (217) 384-2460

**DATE: July 28, 2016**  
**TO: City Council Members**  
**CC: Mayor Prussing**  
**FROM: James Simon, City Attorney**

**RE: City of Urbana’s Right of First Refusal to Purchase UC2B Assets and Consent to Transfer of the iTV-3, Inc. Cable Franchise Agreement to iTV-3, LLC (an Affiliate of Countrywide Broadband, LLC) – Update of April 15 and June 8, 2016 Memoranda**

In several prior memoranda, the City Attorney discussed the pending sale of iTV-3, Inc.’s (“iTV-3”) assets in the cities of Urbana and Champaign to Countrywide Broadband, LLC or an affiliate created by Countrywide Broadband, LLC (iTV-3, LLC). (To avoid confusion between iTV-3, Inc. and iTV-3, LLC, references to Countrywide Broadband, LLC and its affiliate iTV-3, LLC will be, collectively, “CWB”.) Those prior memoranda described and discussed ongoing negotiations between CWB and UC2B NFP (the “NFP”) to arrive at a better structured agreement than the one which the NFP had entered into with iTV-3.

At its July 18, 2016 meeting, the Committee of the Whole voted to send on to the City Council, with no recommendation, an ordinance which –

- took no action on Urbana’s right of first refusal (“RFR”) to purchase those iTV-3 assets which were located within Urbana’s corporate boundaries; and
- withheld, without prejudice, the City Council’s consent to iTV-3’s request to assign and transfer its cable franchise agreement with Urbana to CWB.

It was anticipated at that time that CWB and NFP negotiations would produce an agreement or, at the very least, agreement on what essential terms should be included in a final agreement.

**NFP-CWB UNDERSTANDING (MOU):**

Since the July 18 meeting, the NFP and CWB have reach an understanding in a memorandum of understanding (“MOU”) regarding essential terms pursuant to which CWB will operate, maintain and expand the UC2B Network and handle customer, community and local government relations. See Exhibit attached hereto.<sup>1</sup>

---

<sup>1</sup> At the time this memorandum was drafted the NFP and CWB were discussing clarification of several lesser terms in the MOU. Thus, a final copy of the MOU was not available. A final copy will be provided to the City Council when it becomes available.

The more significant terms in the MOU provide:

- CWB will expand the UC2B Network each year as follows:

<b>Year</b>	<b>Annual Build-Out Target</b>	<b>Aggregate Build-Out Target</b>
2017	3,250 new HP	3,250
2018	3,500 new HP	6,750
2019	3,750 new HP	10,500
2020	3,700 new HP	14,200
2021	3,800 new HP	18,000
2022	4,000 new HP	Lesser of 22,000 or remaining single-family homes within the Cities that are not already HPs

“HP” refers to fiber passing a residential dwelling unit or a commercial structure. The MOU defines how dwelling units within multiple dwelling unit buildings (apartments) and businesses in multiple business buildings are counted.

- CWB, after consulting with the NFP, will redefine the build-out sectors originally established by iTV-3.
- For years 2017-2019, CWB will build out any sector where 45% of the dwelling and business units confirm an interest in subscribing to CWB’s service. For years 2020-2022, the sector build-out threshold is reduced to 40%.
- CWB will be obligated to pay the NFP a prescribed amount in any year in which CWB fails to build out 30% of the build-out requirement for that year as listed above.
- During the 90 days immediately following the date of the MOU, Urbana and Champaign have a right to purchase the UC2B Network constructed with federal, state and local funds and those assets which iTV-3 added to the UC2B Network. The option must be exercised within the 90-day period and, if exercised, the closing must occur no later than December 31, 2016. The agreed-upon purchase price is \$8.2 million.<sup>2</sup>
- In any of the years 2020, 2021 or 2022 CWB fails to build out 30% or more of the required build out for any of these given years, Urbana and Champaign will have the right to purchase all assets which were constructed using federal, state and local funds, those assets installed by iTV-3, and those assets installed by CWB in Urbana and Champaign. The purchase option must be exercised by about March 31<sup>st</sup> of the year in which the cities elect to exercise such option. The purchase price will be (an appraised market value of the IRU) + (an appraised market value of the then existing customers) + (the costs which CWB incurred in undertaking whatever build-out it completed).

---

<sup>2</sup> The cities have the right to seek another person who might be willing to operate, maintain and build out the UC2B Network and handle customer, community and local government relations on more favorable terms than those to which CWB has agreed.

However, if by 2022 CWB builds out 6,600 “HPs”, the purchase options for 2020, 2021 and 2022 will not be available.

- CWB will donate \$50,000 per year through 2022 to the NFP’s Community Benefit Fund.
- CWB will donate \$25,000 per year through 2022 to the NFP in support of other local projects.
- CWB will reimburse the NFP \$40,000 for expenses which the NFP incurred in negotiating the MOU.
- CWB will maintain a physical retail store in Urbana or Champaign commencing no later than 180 days after January 1, 2017.

The NFP governing board has approved the MOU and has recommended that Urbana and Champaign waive their RFRs. The parties also agreed that the terms contained in the MOU and those terms contained in the NFP Agreement but which are not inconsistent with the MOU will be included in a final agreement and that the terms contained in the NFP-iTV-3 IRU (except where inconsistent with the MOU) and a UC2B Network maintenance agreement will be incorporated into a separate single agreement between the NFP and CWB. In short, the NFP Agreement will be replaced by the agreements between the NFP and CWB.

#### **URBANA-iTV-3 CABLE FRANCHISE AGREEMENT:**

As more thoroughly discussed in the City Attorney’s prior memoranda, the Urbana-iTV-3 cable franchise agreement contained a provision which provided that iTV-3 could assign and transfer its rights and obligations under that agreement to a third person. However, any such assignment and transfer was conditioned on the consent of the City Council. Thus, in a letter dated April 7, 2016 and a Federal Communications Commission Form 394 (“FCC 394”), iTV-3 and CWB notified Urbana of iTV-3’s intent to assign and transfer the iTV-3 cable agreement to CWB. The letter also requested the City Council to consent to the proposed transaction. At its July 18 meeting, the Committee of the Whole moved an ordinance on to the City Council, without recommendation, which provided for the City Council’s denial of iTV-3’s request to assign and transfer its cable agreement to CWB.

In a letter dated July 25, 2016, CWB advised Urbana and Champaign that CWB had obtained statewide authority to provide cable service. CWB obtained an amendment to the statewide authorization in order to provide cable service in Urbana and Champaign. Thus, iTV-3 and CWB withdrew their FCC 394 and request for the City Council to approve the proposed assignment and transfer of the respective cable agreements to CWB.

The NFP governing board has approved the MOU and has recommended that Urbana and Champaign waive their RFRs. Since CWB has withdrawn its applications to acquire Urbana’s and Champaign’s cable franchise agreements with iTV-3, no action is required regarding those agreements.

## **LEGAL DIVISION RECOMMENDATION:**

Attached to this memorandum is a draft ordinance which provides that:

- the City Council waive the RFR granted to Urbana in Paragraph 8 of the NFP Agreement; and
- the City Council take no action to consent to or deny iTV-3's request to assign and transfer its cable agreement with Urbana since CWB has obtained statewide authority to operate a cable system, including in Urbana.

Given CWB's acquisition of statewide authority to operate a cable system and the MOU, the terms of which CWB and the NFP have agreed to, the City Attorney recommends that the City Council adopt the draft ordinance included with this memorandum (instead of the ordinance which the Committee of the Whole moved onto the City Council) which provides that the City Council –

- waives its right of first refusal to purchase those UC2B Network assets located in Urbana which right is provided for in Paragraph 8 of the NFP Agreement; and
- take no action on CWB's and iTV-3's request for consent for iTV-3 to assign and transfer its cable agreement with Urbana to CWB since such assignment and transfer are no longer needed in light of CWB's receipt of statewide authorization to provide cable services.

ORDINANCE NO. 2016-07-058

AN ORDINANCE WAIVING RIGHT OF FIRST REFUSAL TO PURCHASE ASSETS

(Waiver of the City of Urbana's Right to Purchase Those UC2B Fiber Optic Network Assets Located within The City of Urbana's Corporate Boundaries and which are Operated by iTV-3, Inc.)

WHEREAS, the City of Urbana ("Urbana") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power, whether legislative or administrative, and perform any function pertaining to its government and affairs not otherwise expressly reserved to the State of Illinois by legislation; and

WHEREAS, in August 2009, the University of Illinois ("University") submitted a proposal to the U.S. Department of Commerce seeking financial assistance in order to create and construct a high speed fiber optic network within the City of Urbana and the City of Champaign ("Champaign") to be known as the Urbana-Champaign Big Broadband project ("UC2B Network"); and

WHEREAS, in September 2009, Urbana, Champaign and the University entered into and executed an Intergovernmental Agreement ("IGA") which provided for the organization of the Urbana-Champaign Big Broadband Consortium ("Consortium") in order to create and construct the UC2B Network should the federal government approve the University's request for financial assistance to create and construct the UC2B Network; and

WHEREAS, in February 2010, the U.S. Department of Commerce awarded the University a grant of up to \$22,534,776 for the creation and construction of the UC2B Network; and

WHEREAS, in November 2010, the Illinois Department of Commerce and Economic Opportunity awarded the University a \$3,500,000 grant to construct the UC2B Network; and

WHEREAS, Urbana and Champaign provided local funding and/or in-kind value for the construction of the UC2B Network; and

WHEREAS, the Consortium commenced, undertook, and completed creation and construction of the UC2B Network in accordance with the terms and conditions of the U.S. Department of Commerce and the State of Illinois grants which included laying optical fiber within a number of low income neighborhoods (census tracts); and

WHEREAS, the Consortium members began operating the UC2B Network but ultimately decided to form a not-for-profit corporation to take over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, on August 16, 2013, the Urbana Champaign Big Broadband NFP (the "NFP") was incorporated; and

WHEREAS, the U.S. Department of Commerce was given a 77% lien interest in those physical assets of the UC2B Network which were acquired and installed using the federal grant funds; and

WHEREAS, on or about September 20, 2013, the U.S. Department of Commerce (the National Telecommunications and Information Administration) approved the University's request to assign and transfer the operation, maintenance and expansion of and to grant indefeasible rights of use in and to the UC2B Network to the NFP; and

WHEREAS, sometime after September 20, 2013, the Consortium members transferred and assigned their rights to operate, maintain and expand and to grant indefeasible rights of use in and to the UC2B Network to the NFP while retaining any and all ownership rights in and to the physical assets which comprise the UC2B Network as of the immediate aforesaid date; and

WHEREAS, sometime prior to February 28, 2014, the NFP decided to seek a partner which would have the financial and staff resources and ability to operate, maintain and expand the UC2B Network with the goal of expanding the same throughout Urbana and Champaign; and

WHEREAS, on or about February 28, 2014, the NFP and iTV-3, Inc. ("iTV-3") entered into an agreement ("NFP Agreement") which, *inter alia*, transferred the NFP's right to operate, maintain and expand and grant indefeasible rights of use in and to the UC2B Network to iTV-3; and

WHEREAS, Paragraph 8 of the NFP Agreement states:

iTV-3 further agrees that, in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called "the Cities") will have right of first refusal to purchase iTV-3's interests in their

respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.

(The "right of first refusal" granted to Urbana and Champaign in Paragraph 8, hereinafter referred to as "RFR"); and

WHEREAS, iTV-3 took over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, iTV-3 and Urbana entered into and executed a Cable Television Franchise Agreement ("Cable Agreement") dated December 15, 2014, whereby iTV-3 was granted the right to provide cable television service to those Urbana residents and businesses which subscribed to the service which iTV-3 would make available; and

WHEREAS, iTV-3, pursuant to the Cable Agreement, commenced providing cable service over the UC2B Network; and

WHEREAS, Champaign entered into a substantially similar cable franchise agreement with iTV-3; and

WHEREAS, on or around February 12, 2016, iTV-3 notified the NFP and the NFP notified Urbana and Champaign that iTV-3 and Countrywide Broadband, LLC ("CWB") had entered into and executed an asset purchase agreement ("APA") whereby iTV-3 agreed to sell and CWB or an affiliate created by CWB (iTV-3, LLC)(CWB and iTV-3, LLC, collectively, "CWB") agreed to purchase all of iTV-3's assets wherever located including, but not necessarily limited to, those located in Urbana and Champaign; and

WHEREAS, Urbana received a notice from iTV-3 and CWB of CWB's intent to acquire iTV-3's cable franchise with Urbana which notice was included in a Federal Communications Commission Form 394 ("FCC 394"); and

WHEREAS, Champaign received the same notice and FCC 394 from CWB and iTV-3 regarding CWB's intent to acquire iTV-3's cable franchise with Champaign; and

WHEREAS, federal regulations (47 CFR 76.502) provide that Urbana has 120 days from the date of receipt of FCC 394 in which to decide whether or not to grant iTV-3's request to assign and transfer the Cable Agreement to CWB; and

WHEREAS, in a letter dated July 25, 2016, CWB notified Urbana and Champaign of CWB's withdrawal of its applications (FCC 394s) to acquire the above-referenced cable franchises; and

WHEREAS, NFP and CWB have agreed in a memorandum of understanding ("MOU") on terms which the NFP believes are acceptable and which the NFP has recommended to Urbana, Champaign and the University to approve (Exhibit); and

WHEREAS, the Urbana and Champaign City Attorneys and the University's attorney have recommended modifications to the terms contained in the MOU and CWB has accepted those recommendations; and

WHEREAS, the MOU provides that the NFP will recommend to Urbana and Champaign that they waive their respective RFRs; and

WHEREAS, the City of Urbana City Council now deems it appropriate to waive Urbana's RFR as provided in Paragraph 8 of the NFP Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AND FOR THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, as follows:

Section 1.

The City Council shall and hereby does waive Urbana's right of first refusal (RFR) to purchase those iTV-3 assets which are located in Urbana but which are not already owned by Urbana or the University which right is provided for in Paragraph 8 of the NFP Agreement.

Section 2.

Notwithstanding Section 1 herein, the City Council does not waive any option to purchase those UC2B Network assets which are located in Urbana but which are not already owned by Urbana or the University which purchase right is provided for in Paragraph 11 of the Memorandum of Understanding approved by CWB and the NFP in any subsequent agreement entered into by and between CWB and the NFP which contains one or more purchase options in favor



of Urbana which is or are similar to the purchase options appearing in said MOU Paragraph 11.

Section 3.

The City Council recognizes that no action on its part is required concerning CWB's acquisition of the cable franchise agreement between iTV-3, Inc. and Urbana and, therefore, no such action is taken.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this \_\_\_\_ Day of \_\_\_\_\_, 2016 with the "ayes" and "nays" being recorded as follows:

AYES: \_\_\_\_\_.

NAYS: \_\_\_\_\_.

ABSTENTIONS: \_\_\_\_\_.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk.

APPROVED by the Mayor this \_\_\_\_\_ Day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor.

## MEMORANDUM OF UNDERSTANDING

Urbana Champaign Big Broadband, an Illinois not-for-profit corporation (“**UC2B**”) and iTV-3, LLC, a Delaware limited liability company (“**CWB**” with each of UC2B and CWB being referred to as a “Party” and, together, as the “Parties”), enter into this Memorandum of Understanding (“MOU”) on this \_<sup>th</sup> day of July, 2016:

**WHEREAS** CWB has entered into an agreement (the “**APA**”) to purchase substantially all of the assets of iTV-3, Inc. an Illinois corporation (“**iTV-3**”), including, without limitation, all of iTV-3’s rights and obligations under that certain “Agreement Granting Indefeasible Right To Use Optical Fiber and Other Assets” between iTV-3 and UC2B, dated May 31, 2014, as amended on January 29, 2015 (the “**IRU**”), and that certain “Agreement” between iTV-3 and UC2B, dated February 28, 2014, as amended by their May 27, 2014 “Addendum to Agreement” (the “**UC2B Agreement**”);

**WHEREAS** Section 9.1.1 of the IRU and Section 8 of the UC2B Agreement grant to the Cities of Champaign and Urbana, Illinois (separately, a “**City**” and together, the “**Cities**”) a right of first refusal to purchase certain assets subject to the APA (the “**RFR**”), which CWB has asked the Cities to waive;

**WHEREAS** a waiver by the National Telecommunications and Information Administration (“**NTIA**”) of its Broadband Technology Opportunities Program (“**BTOP**”) rules may be required for iTV-3 to assign its rights under the IRU to CWB, or for UC2B to amend and restate the IRU with CWB, and agree to allow iTV-3 to assign its rights under the IRU to CWB, and CWB has asked UC2B to obtain such waiver;

**WHEREAS** CWB may also request the Cities to assign iTV-3’s cable franchises to CWB, or to grant new cable franchises to CWB;

**WHEREAS** the Cities and the University of Illinois (the “**University**”) have asked UC2B to undertake appropriate due diligence and to recommend to the Cities whether to waive their RFR; ~~but have had their respective counsel participate in the negotiation of this MOU;~~

**WHEREAS** UC2B is willing to recommend to the Cities that they waive their RFR and is willing to support CWB’s request for a waiver from the NTIA, on condition that CWB agree to operate, develop and expand the fiber network assets that are the subject of the IRU under the terms and conditions set forth herein; and

**WHEREAS** CWB is willing to agree to the network operational, expansion and development requirements set forth herein on condition that the Cities waive their rights under the RFR and, if requested, grant cable franchises to CWB, and that the NTIA grant the waiver requested by CWB;

**WHEREAS**, this MOU is a statement of intent that the parties shall proceed in good faith to promptly negotiate, draft and, at the time CWB consummates its acquisition of the iTV-3 assets, execute a, Amended and Restated IRU and a maintenance agreement as required to implement the terms of this MOU.

**NOW, THEREFORE** the Parties execute this MOU based on the following conditions:

All rights and obligations of iTV-3 under the UC2B Agreement, the IRU and the May 31, 2014 Maintenance Agreement by and between iTV-3 and UC2B, which are not otherwise amended by or inconsistent with the following terms and conditions, shall continue as rights and obligations of CWB (after it has assumed such agreements) and UC2B, respectively. For clarity and without exclusivity, the Parties agree that some or all the following sections of the UC2B Agreement are or will be clarified, superseded or mooted, in whole or in part, by the provisions of the IRU or the agreements that will be entered into pursuant to this MOU: Sections 1, 8, 10, 13, 14, 18, 25, 31, 32 and 34 and Sections 6 and 10 of the May 27, 2014 Addendum to Agreement; and agree that some or all the following sections of the IRU are or will be clarified, superseded or mooted, in whole or in part, by the agreements that will be entered into pursuant to this MOU: Sections 4.3, 9.9.1, and 9.2.

**Obligations of CWB**

Subject to *force majeure*, and conditioned upon CWB’s consummation of the acquisition of the assets of iTV-3 and upon the Cities’ waiving their rights under the RFR and, if requested, granting cable franchises to CWB, and upon the NTIA’s granting of a waiver of its BTOP Program rules on terms reasonably agreeable to CWB,

1. CWB will extend the BTOP (as defined in the IRU) Grant-Funded Network (the “**Network**”) to pass additional residences within the City Limits of the Cities at the following annual rate during the Term:

<u>Year</u>	<u>Annual Build-Out Target</u>	<u>Aggregate Build-Out Target</u>
2017	3,250 new HP	3,250
2018	3,500 new HP	6,750
2019	3,750 new HP	10,500
2020	3,700 new HP	14,200
2021	3,800 new HP	18,000
2022	4,000 new HP	Lesser of 22,000 or remaining single-family homes within the Cities that are not already HPs

“**HP**” will refer to each instance of Network fiber passing a residential dwelling unit or a commercial structure, including each dwelling unit in a Multiple Dwelling Unit building (“**MDU**”) and each business in a multi-business commercial building (“**MBUs**”), *provided that*

dwelling units in MDUs having more than 8 dwelling units, and businesses in MBUs having more than 8 businesses, cannot constitute more than 10% of an annual HP calculation pursuant to this Section.

2. Within 90 days after consummating its purchase of iTV-3, Inc., CWB, after consulting with UC2B, shall subdivide the Cities into geographic areas (the “**New Sectors**”), of any size as determined by CWB, but each of which shall, to the extent commercially practicable, consist of either (i) 80% or more of dwelling units in MDUs or businesses in MBUs, or (ii) 20% or less of dwelling or business units in MDUs and MBUs, with the remainder (in each of “(i)” and “(ii)”) being single family residences (“**SFRs**”), stand-alone businesses (“**SABs**”), or vacant lots (“**VL**”). The subdivision and resulting maps shall be derived from GIS data for address points in Champaign County, as provided to CWB by the Champaign County GIS Consortium. For the purposes of calculating ratios and percentages pursuant to this section, each dwelling unit and or business unit in an MDU or MBU with eight or fewer units shall be considered an SFR or SAB, as the case may be, in both the numerator and denominator, and VLs shall be included in the denominator. During 2017, 2018 and 2019, *provided that* CWB has ~~at least~~ 120 days to begin construction of FTTP service, weather permitting, CWB will build FTTP in any New Sector in which residents (in the case of SFRs or MDUs) or representatives (in the cases of MBUs and SABs) of at least 45% of the total dwelling or business units (as the case may be) in such New Sector express a confirmed interest in writing or through a functioning web portal in purchasing CWB’s internet access services over the network (a “**Pre-Sale**”). During the remainder of the Term hereof, *provided that* CWB has at least 120 days to begin construction of FTTP service, CWB will build FTTP in any New Sector in which Pre-Sales have been made to at least 40% of the total dwelling or business units (as the case may be) in such New Sector. CWB shall review the map of new Sectors annually to determine, after consulting with UC2B during the August meetings called for in Section 5, whether changes in the boundaries of the New Sectors are appropriate in light of changed circumstances, such as the identification of errors in GIS data used to design the subdivision, the expansion of the network to nearby areas, and changes in the relevant geographic areas, such as new home or business construction or changes in competitive circumstances.

3. In any Sector of Geographic Area that has at least 20 residences that have made deposits in connection with Pre-Sales, and which has Pre-Sales to at least 35% of the total premises in that Sector or Geographic Area, CWB will actively market its services for at least six months in a good faith effort to cause that Sector or Geographic Area to achieve the 45% Pre-Sale criterion for years 1 through 3, and 40% Pre-Sale criterion for years 4 through 6, set forth in Section 2 hereof.

4. Subject to the terms of Section 1 above, for any calendar year in which CWB fails to achieve the Aggregate Build-Out Target for that year as identified in Section 1 above, CWB will

~~incur pay~~ the following ~~financial remedies~~ amounts to NFP during the first 90 days of the following year:

**Financial Remedies for Failure to Meet Aggregate Build-Out Target**

<b>Year</b>	<b>Remedies</b>
2017	\$25,000
2018	\$35,000
2019	\$40,000
2020	\$25,000
2021	\$25,000
<u>2022</u>	<u>\$25,000</u>

5. By November 30, 2016 for the year 2017, and in each August thereafter prior to a year within the Term of this agreement, CWB will meet with UC2B NFP to discuss the areas of Champaign and Urbana that CWB will plan to build out during the following calendar year.

6. When building out the Network, CWB will conform to the construction standards set forth in the original Fiber Construction Manual from the BTOP grant.

7. Starting April 2017, on April 30, July 31, October 31 and January 31 of each year during the Term hereof, subject to a non-disclosure agreement reasonably satisfactory to CWB and UC2B, CWB will report to UC2B on the changes to the Network during the prior calendar quarter, including:

- a. The expenses for fiber maintenance and revenues paid to CWB by UC2B IRU holders for fiber maintenance;
- b. The number of residences, businesses and Community Anchor Institutions newly passed by the Network in the previous calendar quarter, and the cumulative totals of such passings to date;
- c. The number of customers, broken out by businesses and residences and by services subscribed to;
- d. Information in CWB’s possession that UC2B is required to provide to NTIA; and
- e. “As built” descriptions and map of the network in the same format and with the same detail as required by the Cities from other utilities or in its adopted rules of general applicability. The data formats include providing map data in ArcGIS 10.x compatible format including as shapefiles or ArcGIS data layers. All data will include metadata and a data dictionary.

8. UC2B NFP and the Cities will inform CWB as soon as reasonably practicable about commercial and residential development prospects in the Cities, and will invite CWB to any and

all planning meetings with developers, the Cities or the community that involve cable, fiber, communications or utility issues or needs. CWB will participate in planning meetings for commercial and residential projects planned in either Champaign or Urbana, and will use its reasonable commercial efforts to lay its conduit in any development where relevant trenching is planned or available

9. CWB will undertake reasonable commercial efforts to support local and national projects with the members of the intergovernmental consortium (*i.e.* the Cities, the University and UC2B) on research, economic development, community development, digital inclusion and public engagement initiatives involved with or using the Fiber Assets (“Projects”). By way of example, CWB may cooperate in a Project by assisting the Project lead with proposal development, providing letters of support of the Project, engaging with local officials or citizens’ groups, or participating in meetings or conferences. Also by way of example, some current Projects include: US Ignite, NSF Funded Smart Gigabit Communities; Coalition for Local Internet Choice; National Digital Inclusion Alliance; and Schools, Health and Library Coalition. Where CWB supports or undertakes Projects, the Project Lead - whether UC2B NFP or another intergovernmental consortium member - will include CWB’s expenses to support the Project in proposals for Project funding, with overhead rates not to exceed 10% or the funder’s guidelines for indirect cost recovery for expenses to the Project budget.

10. CWB will take a visible role in supporting community groups and events, including service clubs and festivals.

11. Options to Purchase

(a) For ninety (90) days after the date hereof, the Cities shall have a right to buy or designate a buyer for the fiber network and associated equipment within the corporate boundaries of Champaign or Urbana, or included in the BTOP network, for \$8,200,000. The Cities, either jointly or separately, or their designee must consummate such purchase no later than December 31, 2016 or such option shall be deemed waived, and all obligations of CWB hereunder shall terminate upon such consummation. Notwithstanding the exercise of such option or consummation of such sale, both Parties will have the option to keep all fiber usage, rack space and similar rights they currently have; with transition, ongoing operational support services (if any) and maintenance being addressed separately, but under market terms. Should either party to an asset swap chose to terminate its rights under that swap, the parties shall negotiate balancing compensation at prevailing market rates.

(b) Beginning January 1, 2020, if, by the end of each such respective year, CWB has failed to build out at least 30% of the respective Aggregate Build-Out Target identified in Section 1 for the years 2020, 2021 or 2022 , the Cities shall have the option to purchase back all rights and associated equipment under the IRU and the fiber build-out by CWB along with the customer relationships for the market value of the IRU and the ~~actual-construction-network~~

improvements completed by CWB, ~~and the value of then-current customers~~. The purchase right valuation would be initially based on appraisals provided by appraisers selected by each of the parties. If the appraisals differ by more than 10%, the two appraisers will select a third appraiser to set the market price, otherwise the price shall be the average of the appraisals. The Cities shall have 90 days, or until March 31 following the end of any such calendar year for which the 30% aggregate target was not met to provide notice of intent to exercise the option to purchase.

(c) The provisions of Paragraphs 11(a) and (b) hereof will replace Section 9.1.1 of the ~~IRU (Right of First Refusal) May 27, 2014 Addendum to Agreement~~.

(d) CWB may satisfy the build-out obligations stated in Sections 1 and 11(b) herein in years prior to the respective target years identified in such sections. By way of example, if CWB were to extend the network to pass 6,600 new HP by December 31, 2018, it would no longer be potentially subject to the Cities' purchase right described in Section 11(b) hereof.

(e) The remedies set forth and described in, respectively, the UC2B Agreement and the IRU, as amended by the agreements entered into pursuant to this MOU, shall continue to be available to the Parties for defaults or breaches of their respective obligations under the terms of those agreements. Notwithstanding the foregoing, the respective financial penalties set forth in Section 4 hereof shall be the sole and exclusive remedies for CWB's failure to achieve the Aggregate Build-Out Targets set forth in Section 1 hereof, ~~and the purchase option described in Section 11(b) hereof shall be the sole and exclusive remedy for CWB's failure to achieve the 30% build-out target described in that Section.~~

12. For each calendar year until December 31, 2022, CWB shall make a \$50,000 annual donation to the Community Benefit Fund. These donations will be made in equal monthly installments during each respective year.

13. For each calendar year until December 31, 2022, CWB will make a \$25,000 annual donation to UC2B NFP in support of the Projects enumerated in Section 9 above and in support of digital inclusion and eliminating the digital divide or other activities of the NFP. These donations will be made in equal monthly installments during each respective year.

14. After January 1, 2017, within 180 days, CWB will establish and maintain a physical retail storefront presence within the corporate limits of at least one of the Cities, which shall be open the public at least 40 hours a week.

15. Conditioned upon (i) the execution of this MOU by UC2B no later than the close of business on July ~~2229~~, 2016; (ii) the agreement by both the Cities of Champaign and Urbana, no later than August 17, 2016, to waive their respective RFRs and, if requested by CWB, to either transfer iTV-3, Inc.'s cable franchises to CWB or to grant new cable franchises to CWB, on the same terms and conditions as the franchise granted to iTV-3, and (iii) UC2B's exercising all reasonable, commercial efforts to obtain, as expeditiously as reasonably possible, a waiver from

the NTIA of its BTOP Program rules to the extent necessary to effectuate the terms of this MOU, CWB will donate to UC2B up to \$40,000 to reimburse UC2B's reasonable and actual out-of-pocket third-party fees and expenses for external (*i.e.* not City-employed) consultants and attorneys who have been or are utilized for the purpose of evaluating the present franchise and IRU transfers and obtain necessary approvals.

**Obligations of UC2B**

16. UC2B shall recommend to each of the Cities that it waive in this instance its respective RFR and, if requested by CWB, grant a cable franchise to CWB in time to allow the Cities to waive its respective RFR and grant its respective franchise by August 17, 2016.

17. Consistent with the terms of this MOU, UC2B shall amend and restate the IRU Section 4.3 of the IRU shall be replaced by the following:

Beginning no later than December 31, 2022, Grantee will make available for lease or IRU the percentage of any unused ring fiber in the network equal to the percentage of 22,000 HP which have not been passed. ~~provided that Grantee will not be obligated to make available for lease or IRU fiber in New Sectors where it has constructed FTTP because that fiber will be necessary to meet growing demand in those New Sectors. At the time that the unused ring fiber is made available for Lease or IRU, Grantee will no longer be obligated to build fiber in Sectors where some or all of the allocated ring fiber has been made available by lease or IRU.~~ Grantee will offer the fiber for lease or IRU at the Illinois Century Network's then-existing pricing for comparable leases or IRUs in Central Illinois, with associated maintenance costs to be set at market price as of the date of the fiber lease or IRU.

18. As soon as practicable, UC2B shall seek on an expedited basis the waiver from the NTIA BTOP Program rules in connection with the assignment and grant of an amended and restated IRU.

**URBANA CHAMPAIGN BIG BROADBAND,**  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
John Koontz, its Chair



**iTV-3, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Grier Raclin, its President and CEO