

MEMORANDUM

TO: Mayor Prussing and Members of the Urbana City Council

FROM: Rich Hentschel, Comptroller

RE: Billing, Collection and Accounting Agreement with UC2B

DATE: March 10, 2014

Attached for your consideration is a resolution approving and authorizing an agreement, also attached, with the Not-for-profit organization (“NFP”) created to support the Big Broadband project otherwise known as UC2B. As a means of support to facilitate the billing of subscriber services, the City of Urbana Finance Department has been providing such services since June 1, 2013 under a verbal agreement with UC2B. The attached agreement formalizes those services. In general, those services include billing subscribers for monthly services, collecting subscriber payments, remitting those collections on a monthly basis to the NFP, and withholding from those remittances a fee per subscriber plus actual costs such as materials and postage to reimburse the City of Urbana for its services and costs. The attached agreement is meant to document the services to be provided and the reimbursement to the City of Urbana.

Fiscal Impact: Negligible since fees charged for Finance Department services and costs reimbursed are done on a cost recovery basis.

Recommendation: Approve the resolution as presented.

**RESOLUTION NO. 2014-03-015R**

**A RESOLUTION APPROVING AN AGREEMENT WITH THE URBANA-CHAMPAIGN BIG BROADBAND NFP FOR BILLING, COLLECTION, AND ACCOUNTING SERVICES**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

A Billing, Collection and Accounting Agreement between the City of Urbana, Illinois, and the Urbana-Champaign Big Broadband NFP, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, 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 and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**PASSED BY THE CITY COUNCIL** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

**APPROVED BY THE MAYOR** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

## **BILLING, COLLECTION AND ACCOUNTING AGREEMENT**

This Billing, Collection and Accounting Agreement (hereinafter, "Agreement") is entered into by and between the City of Urbana, Illinois, a municipal corporation, (hereinafter, the "Urbana") and the Urbana-Champaign Big Broadband NFP, a not-for-profit corporation organized and operating in the State of Illinois, (hereinafter, the "NFP") hereinafter, collectively, the "Parties") this \_\_\_\_\_ Day of January, 2014.

WHEREAS, in September 2009, the City of Champaign ("Champaign), the Board of Trustees of the University of Illinois ("University") and Urbana entered into an intergovernmental agreement ("IGA") creating the UC2B Consortium ("Consortium") in anticipation of receiving a federal grant for construction and operation of a community broadband system composed of a series of fiber optic rings constructed as an open network, together with all fiber connections to the premises; and

WHEREAS, in February 2010, the University received a Broadband Technology Opportunities Program grant from the U.S. Department of Commerce National Telecommunications and Information Administration for construction of the open network fiber optic system, conditioned on local cost share of nearly \$7 million, bringing the total construction budget to about \$29 million ("BTOP Grant"); and

WHEREAS, pursuant to agreement of Urbana, Champaign and the University, Champaign was designated as lead agency for the Consortium in connection with certain aspects of the grant; and

WHEREAS, on August 15, 2013, Champaign, Urbana and the University executed the "Second Amended and Restated Intergovernmental Agreement Between the City of Champaign, City of Urbana, and the University of Illinois" ("2<sup>nd</sup> Amended IGA"), which commits both cities and the University to certain undertakings including the formation of a not-for-profit corporation to take over the operation, management, and further build-out of the open network fiber optic system initially started with the aforesaid grant proceeds; and

WHEREAS, in June 2013, Urbana took over responsibilities for billing and collections from persons who have subscribed to and have agreed to pay a monthly fee for access to and use of the open network fiber optic system ("Subscribers");

WHEREAS, starting in June 2013, Urbana and Champaign, as lead agency of the UC2B Consortium, have had an informal arrangement whereby Urbana would handle the billing, collection and accounting of Subscribers' monthly subscription fees and would remit such collected subscription fees to Champaign as lead agency; and

WHEREAS, on August 16, 2013, pursuant to the 2<sup>nd</sup> Amended IGA, the NFP was incorporated in the State of Illinois as a not-for-profit corporation; and

WHEREAS, on or about October 22, 2013, Champaign, as lead agency for the Consortium, and the NFP entered into an Agreement to Transition Big Broadband Operations (hereinafter, "Transition Agreement") from the Consortium to the NFP; and

WHEREAS, Paragraph 2.2 of the Transition Agreement provides that Champaign, as lead agency for the Consortium, may provide the NFP with certain "billing" for and on behalf of the NFP; and

WHEREAS, the Parties to this Agreement now seek to formalize and memorialize their arrangement concerning Urbana's subscription billing, collection and accounting activities for, on behalf of, and for the benefit of the NFP.

NOW for good, valuable and mutual consideration which each Party to this Agreement acknowledges as having in hand received and in consideration for the exchange of the covenants, terms and conditions contained in this Agreement the Parties hereto agree as follows.

**A. TRANSITION:** The Parties recognize that –

1. prior to October 22, 2013, Urbana created, maintained and operated a system for billing Subscribers, collecting Subscribers' payments, and for accounting for the same for the Consortium;

2. on or about October 22, 2013 the Consortium assigned its rights, liabilities, responsibilities, and obligations for the management, maintenance, operation, and expansion of the open network fiber optic system which it had created with grant and other moneys to the NFP;

3. the Transition Agreement included a list of contracts which the Consortium and the NFP had agreed would be assigned to the NFP;

4. Urbana's subscription billing, collection and accounting services were not specifically included in the list of contracts which, pursuant to the Transition Agreement were being assigned to and accepted by the NFP;

5. it was the intention of Urbana and the NFP to include the then existing billing, collection and accounting arrangement between Urbana and the NFP in the Transition Agreement; and

6. it is now appropriate for the Parties to formalize in this Agreement their contractual relationship regarding Urbana's performance of subscription billing, collection and accounting services for, on behalf of, and for the benefit of the NFP.

**B. OBLIGATIONS OF URBANA:**

1. During the term of this Agreement and any extension thereof, Urbana shall maintain, manage, and operate a system for the purpose of (a) billing subscription fees to Subscribers on a monthly basis, (b) collecting such subscription fees from Subscribers, (c) tracking the costs of Urbana's efforts in the aforesaid regards, (d) accounting for subscription revenues received and costs and expenses incurred and/or expended in undertaking the aforesaid services, and (e) undertaking such other work or performing such other services as agreed upon by and between the NFP and Urbana. (Hereinafter, references to the provision by Urbana of the aforesaid services shall be "Accounting and Billing Services" and references to the system created to undertake the performance of the aforesaid shall be "Accounting and Billing System.") The rate or rates which shall be billed by Urbana to Subscribers on behalf of the NFP shall be set by the NFP.

2. Urbana, on behalf of the NFP, shall send monthly billing statements to Subscribers for the monthly fees which the NFP charges to its Subscribers. Urbana shall include on each monthly Subscriber billing statement such information as Urbana and the NFP agree is necessary and appropriate.

3. Urbana shall collect, receive, and hold any and all Subscriber payments and, thereafter, remit to the NFP those Subscriber payments as provided in Subparagraph B.4. Urbana shall hold all such revenue for the benefit of the NFP until it disburses such revenue to the NFP in the manner provided in this Agreement.

4. On or before the tenth (10<sup>th</sup>) calendar day of each month commencing in January 2014, if not sooner commenced prior thereto, Urbana shall tender to the NFP all Subscriber fees which Urbana received during the prior month. Such tender shall be made either by check made payable to "Urbana-Champaign Big Broadband NFP" or by electronic deposit into an account maintained by the NFP. If, at the time this Agreement is executed by the last Party to do so, Urbana is holding any Subscriber fees, then Urbana shall tender those fees to the NFP in the manner provided in this Paragraph.

5. On or before January 15, 2014, Urbana shall provide the NFP with an accounting of all fees received by Urbana from Subscribers prior to January 1, 2014. The accounting shall include but shall not necessarily be limited to the information stated in Paragraph B.6. of this Agreement.

6. Commencing with February 15, 2014 and on or before the fifteenth (15<sup>th</sup>) day of each month thereafter, Urbana shall provide the NFP with an accounting which includes, but which may not necessarily be limited to, the following:

- (a) the name of each Subscriber and the status of each Subscriber's account;
- (b) whether each Subscriber's account is active or inactive;
- (c) the latest monthly amount billed to each Subscriber;

- (d) the date when the most recent billing statement was sent to each Subscriber;
- (e) the date when Urbana received the most recent payment from each Subscriber and the amount of each said payment;
- (f) any outstanding balance then due and owing, if any, by each Subscriber and the date when each unpaid amount was first billed to the respective Subscriber; and
- (g) such other information as the NFP and Urbana agree is necessary and appropriate.
- (h) Upon request Urbana will provide the NFP with a full database dump with related fields linked by a key field. This file will be in a format agreed upon by both parties to facilitate this procedure.

The aforesaid information shall be provided in the form of an active spreadsheet which may be manipulated by the NFP in order for it to undertake and conduct any different aggregation or analysis and/or reporting of the information contained therein. The computer software which Urbana shall use in creating the aforesaid spreadsheet shall be agreed upon by Urbana and the NFP if no such previous agreement (whether oral or written) concerning the immediate aforesaid has been made. In addition to the aforesaid spreadsheet, Urbana shall provide the NFP, in "PDF" form, with a copy of the most recent monthly billing statement sent to each Subscriber. Notwithstanding the immediate foregoing, Urbana shall not be required to provide copies of monthly billing statements which have been previously provided to the NFP unless specifically requested to do so by the NFP.

7. In the absence of express written consent of the NFP, Urbana shall have no authority to or responsibility (i) for setting, altering or amending any rate or rates charged by the NFP to Subscribers, (ii) the frequency by which billing invoices are sent to Subscribers, or any term contained in any contract, understanding or agreement entered into by and between the NFP and any Subscriber.

8. On or before a date or dates to be agreed upon by Urbana and the NFP for each of the following, if not previously accomplished, Urbana shall -

- a. establish a means by which Subscribers may pay their respective billing invoices through the internet ("online" payment) with the form of such system to be agreed upon by Urbana and the NFP but which, in all events, shall provide notice to Urbana of each such payment made;
- b. create a remote link to the Accounting and Billing System such that the NFP may login into the information and data contained therein in order to view, manipulate, and/or aggregate the information or data contained in the Accounting and Billing System;

c. move the heretofore established subscriber billing cycle such that billing statements are sent to Subscribers on the first business day of each month with the same due and payable without late fee on the twentieth (20<sup>th</sup>) of that same month; and

d. modify its Accounting and Billing System to establish and accommodate the charging of an additional fee for late receipt of payments from Subscribers with such fee or fees being established by the NFP. In the event any late fee or other penalty is to be charged by the NFP to any Subscriber, such event shall not be deemed to constitute a penalty imposed by Urbana but, rather, by the NFP.

9. Urbana shall make such periodic updates to the Accounting and Billing System as it and the NFP deem necessary to accommodate any greater efficiency in the aforesaid. Urbana shall be entitled to charge for the same as provided in Subparagraph B.11.b. However, the adding or deleting of individual Subscribers' information into the Accounting and Billing System shall not constitute an event for which an additional charge shall be made as provided in Subparagraph B.11.b.

10. Urbana shall cooperate in a reasonable and prompt manner with the NFP in making any changes, modifications or adjustments to the Accounting and Billing System.

11. Commencing with January 15, 2014 and on or before the fifteenth (15th) day of each month thereafter, Urbana shall submit a billing invoice to the NFP based on the following:

a. A flat fee of \$1.00 per month shall be charged for each Subscriber billing invoice sent which fee shall include Urbana's preparation and forwarding of billing invoices to Subscribers, receiving Subscriber payments, holding Subscriber payments for the benefit of the NFP, recording in the Accounting and Billing System such information, and forwarding to the NFP on a monthly basis Subscriber payments received. Said flat fee shall increase each year following the first year of this Agreement by the same average percentage by which the total compensation for the employees who perform such work increases.

b. In the event the NFP requests Urbana to undertake and perform any work other than that described in Subparagraph B.11.a. of this Agreement and should Urbana agree to undertake and perform such work, the Parties shall agree upon the amount of or formula for computing the amount of compensation to be paid to Urbana for performing any such work in advance of Urbana's performance of any such work.

c. Separate from and in addition to the amounts provided for in Subparagraphs B.11.a. and B.11.b., Urbana will charge an amount equal to any and all sums which Urbana pays, advances, incurs, or becomes obligated to pay on behalf of or for the benefit of the NFP including, but not necessarily limited to any materials, supplies, services, and postage used in performing its obligations under this Agreement.

d. For the period June 1, 2013 through January 14, 2014, Urbana shall charge the NFP \$1,000 per month for each of the months of June 2013 and July 2013. For the

period August 1, 2013 through January 14, 2014, Urbana shall charge the NFP a fee in the same amount as provided in Subparagraph B.11.a. of this Agreement. Urbana shall also charge the NFP for any sums which Urbana expended, incurred or advanced on behalf of the NFP for, but not necessarily limited to, any materials, supplies, services, and postage used in performing any work for and on behalf of the NFP during the period June 1, 2013 through January 14, 2014. Urbana shall, on or before January 25, 2014, submit a billing invoice to the NFP for the amounts provided for in this Subparagraph.

12. Each invoice which Urbana sends to the NFP shall include the following:

- a. the number of billing invoices sent for the month;
- b. the number of invoices sent for the month times \$1.00 or such other fee as may be applicable;
- c. if Urbana performed a project for the NFP pursuant to Subparagraph B.11.b. –
  - i. the name of the employee(s) who performed the work;
  - ii. each said employee's hourly rate (which shall be the aggregate of the employee's base rate, longevity, and city contribution to IMRF, FICA, life insurance, and health insurance all multiplied by 1.28 [the latter to account for overhead]);
  - iii. the number of hours, computed to a fraction of no less than one-tenth (0.10) of an hour;
  - iv. a brief description of the work performed if not inherent in the assignment given by the NFP and to which Urbana agreed;
  - v. the date(s) when work was performed; and
  - vi. an extension of the hourly rate multiplied by the time expended.
- d. an itemization of amounts expended, incurred, or for which Urbana has become obligated to pay on behalf of the NFP.

13. Urbana's efforts to collect any past due and owing subscription fees shall be solely limited to including on billing invoices to Subscribers the total aggregate amount which is past due and owing, including any late payment fee or fees as calculated by the Accounting and Billing System.

14. Urbana shall provide the NFP with the identity of and contact information for an individual employed by Urbana who shall serve as the NFP's contact at Urbana for purposes of coordinating the NFP's work as provided under this Agreement.



15. Urbana shall be solely responsible for any errors or omissions in any Accounting and Billing System report, spreadsheet, or data management which it prepares or over which it has direct control.

**C. OBLIGATIONS OF NFP:**

1. On or before February 15, 2014, the NFP shall pay to Urbana, if not already paid, the total amount stated on Urbana's invoice to the NFP as provided for in Subparagraph B.11.d. of this AGREEMENT pertaining to work performed and costs and expenses incurred, expended and/or advanced by Urbana for and on behalf of the NFP during the period June 1, 2013 through January 14, 2014.

2. Except as provided in Subparagraph C.1., the NFP shall pay in full each Urbana invoice within thirty (30) days of the date appearing on each said respective billing invoice.

3. The NFP shall use its remote access to the Accounting and Billing System solely to view, maintain, update, add, delete, change, correct, aggregate, and manipulate the data contained therein and for no other purpose whatsoever. The NFP shall not undertake or make any modification of, deletion from, addition to, alteration of, or changes to the Accounting and Billing System software without prior notification to and the written consent of Urbana. Further, the NFP shall not undertake or make any effort whatsoever to seek or obtain access to any other Urbana financial, accounting, business, personnel, departmental, or other information maintained in any Urbana electronic or computer-assisted information system. In the event that Urbana determines that the NFP has used its remote access in a manner contrary to this Paragraph, such conduct shall constitute a breach of this Agreement and shall entitle Urbana to immediately terminate this Agreement effective on the effective date of a notice to the NFP of Urbana's intention to terminate this Agreement.

4. The NFP shall provide Urbana with the identity of and contact information for an individual employed by the NFP who shall serve as Urbana's contact at the NFP for purposes of coordinating Urbana's Accounting and Billing Services as provided under this Agreement and for giving direction and authority to Urbana when necessary in order for Urbana to carry out its responsibilities and obligations under this Agreement.

5. The NFP shall be solely responsible for any modification of, deletion from, addition to, alteration of, or changes to the data which it or any of its agents inputs into the Accounting and Billing System. Further, the NFP shall be responsible for any adverse impact or consequences which its modification of, deletion from, addition to, alteration of, or change to the Accounting and Billing System data may have on the operation of the Accounting and Billing System.

6. With the exception of including in billing invoices to Subscribers of notices of amount or amounts past due and owing to the NFP, the NFP shall be responsible for undertaking any and all efforts, including but not necessarily limited to initiating legal action, to collect past due and owing amounts from those Subscribers who have failed to pay their billing invoices within the time period provided on the respective billing invoices.

**D. JOINT OBLIGATIONS AND MISCELLANEOUS PROVISIONS:**

1. The term of this Agreement shall be for one year commencing on the date first appearing above. This Agreement shall automatically renew for one year periods unless and until a Party hereto provides written notice to the other Party at least ninety (90) days in advance of the expiration of any aforesaid one-year period of the notifying Party's intention to terminate this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement on ninety (90) days advance written notice to the other party without such notice of termination being deemed a breach of this Agreement. Following the termination of this Agreement the NFP shall reimburse and/or compensate Urbana, as the case may be, for any reasonable costs and expenses which Urbana incurs in connection with any time which any Urbana employee expends and/or any out-of-pocket cost or expense which Urbana incurs or for which it becomes obligated to pay in connection with the winding down and transitioning to the NFP or its designee the work provided for in this Agreement. The NFP's obligation to compensate Urbana for work performed and/or services rendered during the wind-down period following termination of this Agreement shall survive the termination of this Agreement. Further, Urbana shall promptly remit to the NFP any Subscriber fees which Urbana receives during the wind-down period following notice of termination of this Agreement as well as any Subscriber fees which Urbana receives after the effective date of such termination.

2. Throughout the duration of this Agreement and following its termination, Urbana shall retain any and all rights, title, and interest, including but not necessarily limited to intellectual property rights, in and to the Accounting and Billing System including any changes or modifications thereto. Nothing in this Agreement shall be deemed, interpreted or construed as creating or vesting any rights in the NFP to the Accounting and Billing System and any changes or modifications thereto.

3. In the event either Party defaults on any obligation or responsibility required of it under this Agreement, the other Party shall notify the allegedly defaulting Party in writing of the default and such written notice shall identify the nature of the default and the term, condition or covenant in this Agreement which the non-defaulting Party believes was breached. The written default notice shall state that the allegedly defaulting Party shall have ten (10) business days in which to either cure the default or provide evidence insofar as why the allegedly defaulting Party believes that no default in fact occurred. In the event the allegedly defaulting Party notifies the non-defaulting Party that no default has occurred, the Parties shall meet within seven (7) business days from receipt of the allegedly defaulting Party's written response to the notice of default in order to resolve their differences. In the event that the alleged default is not cured or that the Parties have not reached agreement regarding the existence of any such default and its cure, as the case may be, either Party may elect to declare this Agreement terminated effective thirty (30) days from the date that notice of such intent to terminate was served on the other Party.

4. To the extent necessary and as may be from time to time requested, each Party shall cooperate with and assist the other Party so that the other Party may in good faith undertake and carry out that Party's responsibilities and obligations under this Agreement.

5. Each Party to this Agreement represents and warrants that the person executing this Agreement on behalf of the designated Party has the authority to do so.

6. Except as otherwise provided elsewhere in this Agreement, any notice required to be given under this Agreement shall be deemed effective as follows if in writing and sent as follows:

a. If sent by mail: Such notice shall be deemed effective five (5) business days following the date such notice was placed with the United States Postal Service for delivery by First Class Mail Certified Return-Receipt-Requested so long as the said notice is placed in a properly addressed envelope bearing appropriate postage pre-paid.

b. If by facsimile: Such notice shall be deemed effective one (1) business day following the date such notice was transmitted by facsimile machine but only if the transmitting facsimile machine provides a printed receipt evidencing that the faxed notice was received by the recipient's facsimile machine on a specific date and at a specific time.

c. By personal delivery: Such notice shall be deemed effective one (1) business day following the date of such personal delivery so long as the notice is placed in a properly addressed envelope and delivered to an employee of the recipient at the address listed below for the recipient Party.

d. By courier delivery: Such notice shall be deemed effective in the same manner as if personally delivered to the recipient Party as provided above.

e. Notices shall be sent to the intended recipient Party at the following:

To Urbana: City of Urbana, Attention City Attorney, 400 S. Vine Street, Urbana, Illinois 61801. Facsimile: 217-384-2460

To the NFP: Urbana-Champaign Big Broadband NFP, Operations Manager, 713 Edgebrook Drive, Champaign, Illinois 61820

Any changes regarding to whom or where notices must be sent must be given to the other Party in writing.

7. This Agreement and any interpretation or construction thereof shall be in accordance with the laws of the State of Illinois. Any action to interpret, construe, enforce, or for breach of this Agreement shall be commenced and maintained in the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois. However, prior to the initiation of any such court action, the Parties shall voluntarily submit to mediation with a mediator jointly selected by the Parties hereto with any and all expenses of such mediation being shared equally by the Parties. In the event that any court action is initiated by a Party to this Agreement against the other Party, the Party who substantially prevails in such action shall be entitled to recover from

the other Party any and all costs and expenses, including reasonable attorneys' fees, incurred by the substantially prevailing Party.

8. This Agreement may be amended, modified, or changed only by a writing which is duly executed by the Parties hereto.

9. This Agreement shall be deemed to replace and supersede any prior agreement, whether oral or written, entered into by the Parties hereto regarding the subject matter contained in this Agreement.

10. The Parties to this Agreement recognize and acknowledge that Urbana's approval hereof will require approval by its City Council and that the NFP's approval hereof may require approval of its Board of Directors. The Parties further recognize and acknowledge that the aforesaid City Council and Board of Directors meet at regularly scheduled meetings which may or may not allow for performance of certain obligations and responsibilities on the specific dates provided in this Agreement. In the event that either the City Council or the Board of Directors is unable to approve this Agreement, where required, in time so as to meet one or more of the dates provided in this Agreement, the Parties hereto shall cooperate so as to perform the obligation and responsibility within a reasonable timeframe after full execution of this Agreement and such delayed performance shall not be deemed by either Party as a breach of or a default on this Agreement.

11. The recitals set forth at the beginning of this Agreement shall be and hereby are incorporated in this Subparagraph as if fully set forth herein.

FOR URBANA:

FOR NFP:

\_\_\_\_\_  
Mayor.

\_\_\_\_\_  
Duly Authorized Officer.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Attest:

\_\_\_\_\_  
City Clerk.

\_\_\_\_\_